RECEIVED-FPSC

12 OCT 31 AM 10:17

COMMISSION CLERK

HEARING EXHIBITS FOR THE HEARING HELD ON October 23, 2012 in DOCKET NO. 090538 –TP

Comprehensive Exhibit List for Entry into Hearing Record

Hearing I.D. #	Witness	I.D. # As Filed	Exhibit Description	Entered
STAFF – EXHIBITS				
1		Exhibit List	Comprehensive Exhibit List	
2	BullsEye	Staff's Exhibit #2	Response Of BullsEye Telecom, Inc. To First Set Of Interrogatories (1-10) From Staff Of The Florida Public Service Commission *[Bates Nos. 00001-00018]*	**Stipulated**
3	Navigator	Staff's Exhibit #3	Navigator Telecommunications, LLC's Objections and Responses to Staff's First Set of Interrogatories (Nos. 1-9) *[Bates Nos. 00019-00034]*	**Stipulated**
4	TWTC	Staff's Exhibit #4	TW Telecom Of Florida's L.P.'s Objections And Responses to the Staff of the Florida Public Service Commission's First Set Of Interrogatories & APPENDIX STAFF INT 2 *[Bates Nos. 00035-00117]*	**Stipulated**
5	QCC	Staff's Exhibit #5	Qwest Communications Company LLC's Objections And Responses To Staff's First Set Of Interrogatories (Nos. 1-26) *[Bates Nos. 00118-00210]* Qwest Communications Company LLC's Objections & Responses To Staff's First Set Of Interrogatories (No. 16) **(Confidential)** *[Bates Nos. 00211]*	**Stipulated**

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP **EXHIBIT** 1
PARTY Florida Public Service Commission Staff
DESCRIPTION Comprehensive Exhibit List

DOCUMENT NUMBER-DATE
07376 OCT 31 12
FPSC-COMMISSION CLERK

6	QCC	Staff's Exhibit #6	Qwest Communications Company LLC's Objections And Supplemental Response To Staff's First Set Of Interrogatories (No. 19) **(Confidential)** *[Bates No. 00212]*	**Stipulated**
7	QCC	Staff's Exhibit #7	Qwest Communications Company, LLC Responses To Staff's First Request For Production Of Documents (Nos. 1-3) *[Bates Nos. 00213-00220]*	**Stipulated**
8	QCC	Staff's Exhibit #8	Qwest Communications Company LLC's Responses To Staff's Second Set Of Interrogatories (Nos. 27-37) & Second Request For Production Of Documents (No. 4) *[Bates Nos. 00221-00236]*	**Stipulated**
9	QCC	Staff's Exhibit #9	Qwest Communications Company, LLC's Objections and Responses To Broadwing Communications, LLC's First Set Of Interrogatories (Nos. 1-18), Second Document Requests (Nos. 4-21) And First Request For Admissions (Nos. 1-4) To Qwest Communications Company, LLC *[Bates Nos. 00237-00284]* Qwest Communications Company LLC's Objections & Responses to Broadwing's Interrogatory (No. 12) (**Confidential**) *[Bates No. 00285]*	**Stipulated**

10	QCC	Staff Exhbit #10	Qwest Communications Company, LLC's Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) And Second Document Requests (No. 7) To Qwest Communications Company, LLC *[Bates Nos. 00286-00292]* Qwest Communications Company LLC's Supplemental Response To Broadwing's Document Request (No. 7) (entire document – QCC Bates stamp Nos. 002903 through 002906 **(Confidential)** *[Bates No. 00293]*	**Stipulated**
11	QCC	Staff's Exhibit #11	Qwest Communications Company, LLC's Objections and First Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 18), and Second Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) and Second Document Requests (No. 7) To Qwest Communications Company, LLC *[Bates Nos. 00294-00301]* Qwest Communications Company, LLC's Response to Broadwing's Second Document Request No. 7 (entire document; Bates stamp Nos. 002928-002930) **(Confidential)** *[Bates No. 00302]*	**Stipulated**

12	QCC	Staff Exhibit #12	Qwest Communications Company, LLC's Objections and Third Supplemental Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) and Second Document Requests (No. 7) To Qwest Communications Company, LLC *[Bates Nos. 00303-00310]* Qwest Communications Company LLC's Supplemental Response To Broadwing Communications LLC's Second Document Request (No. 7) (entire document; Bates stamp Nos. 002931-002940) **(Confidential)** *[Bates No. 00311]*	**Stipulated**
13	BullsEye	Staff's Exhibit #13	Response Of BullsEye Telecom, Inc. to First Set Of Interrogatories (1-8) and Document Requests (1-5) From Qwest Communications Company, LLC *[Bates Nos. 00312-00336]*	**Stipulated**
14	BullsEye	Staff's Exhibit #14	Response Of BullsEye Telecom, Inc. To Interrogatories No. 9-19 And Document Request No. 6-11 From Qwest Communications Company, LLC *[Bates Nos. 00337-00352]*	**Stipulated**
15	QCC	Staff's Exhibit #15	Qwest Communications Company, LLC's Objections and Response To BullsEye Telecom, Inc.'s First Set Of Interrogatories (Nos. 1-4), Document Requests (Nos. 1-9) and Requests To Admit (Nos. 1-10) *[Bates Nos. 00353-00380]*	**Stipulated**

16	QCC	Staff's Exhibit #16	Qwest Communications Company, LLC's Objections and Supplemental Response To BullsEye Telecom, Inc.'s First Set Of Interrogatories (No. 4), Document Requests (Nos. 2, 3, and 5) *[Bates Nos. 00381-00389]*	**stipulated**
17	QCC	Staff's Exhibit #17	Qwest Communications Company, LLC's Objections & Response To BullsEye Telecom, Inc.'s Second Set Of Document Requests (Nos. 10-12) **(Confidential)** *[Bates No. 00390]*	**Stipulated**
18	QCC	Staff's Exhibit #18	Qwest Communications Company, LLC's Objections & Responses To BullsEye Telecom, Inc.'s Second Set Of Interrogatories (Nos. 5-22) And Third Set Of Document Requests (Nos. 13-24) *[Bates Nos. 00391-00425]* Qwest Communications Company, LLC's Objections & Responses To BullsEye Interrogatories (Nos. 16 and 19); and document request (No. 18), Bates stamp Nos. 003004-003040, entire document **(Confidential)** *[Bates No. 00426]*	**Stipulated**
19	TWTC	Staff's Exhibit #19	TW Telecom Of Florida, L.P's Objections And Responses To Qwest Communications Company, LLC's First Set Of Interrogatories And Document Requests *[Bates Nos. 00427-00451]*	**Stipulated**
20	TWTC	Staff's Exhibit #20	TW Telecom of Florida, L.P's First Supplement to Interrogatory No. 1 From Qwest Communications Company, LLC's First Set of Data Requests *[Bates Nos. 00452-00458]*	**Stipulated**

21	TWTC	Staff's Exhibit #21	TW Telecom Of Florida, L.P's First Supplement To Interrogatory No. 2(s) From Qwest Communications Company, LLC's First Set Of Data Requests *[Bates Nos. 00459-00463]*	**stipulated**
22	TWTC	Staff's Exhibit #22	TW Telecom of Florida, L.P's Objections And Responses To Qwest Communications Company, LLC's Second Set Of Interrogatories, Second Set Of Document Requests and First Set of Requests For Admission *[Bates Nos. 00464-00486]*	**Stipulated**
23	QCC	Staff's Exhibit #23	Qwest Communications Company, LLC's Objections & Responses To TW Telecom Of Florida, L.P.'s First Set Of Interrogatories (Nos. 1-8), Document Requests (Nos. 1-5) and Requests For Admission *[Bates Nos. 00487-00514]* Qwest Supplemental Response to TW Telecom of Florida, L.P.'s Document Request Nos. 3 & 4 **(Confidential)** *[Bates No. 00515]*	**Stipulated**
24	QCC	Staff's Exhibit #24	Qwest Communications Company, LLC's Objections & Responses To TW Telecom Of Florida, L.P.'s Third Set Of Interrogatories (No. 14), and Fourth Set Of Document Requests (No. 13) **(Confidential)** *[Bates No. 00516]*	**Stipulated**
25	QCC	Staff's Exhibit #25	Qwest Communications Company, LLC Supplemental Objections and Responses to TW Telecom Of Florida, L.P.'s Third Set Of Interrogatories (No. 14) **(Confidential)** *[Bates No. 00517]*	**Stipulated**

26	QCC	Staff's Exhibit #26	Qwest Communications Company, LLC's Response TW Telecom Of Florida, L.P.'s Third Set Of Document Requests (Nos. 10-12) – **(Confidential)** *[Bates No. 00518]*	**stipulated**
27	QCC	Staff's Exhibit #27	Qwest Communications Company, LLC's Objections & Response MCIMetro Access Transmission Services d/b/a Verizon Access Transmission Services' First Set Of Interrogatories (No. 22 – subparts a & b) *[Bates Nos. 00519-00520*	**Stipulated**
28		Staff's Exhibit #28	Qwest Supplemental Discovery Responses to Birch Communications First Set Of Interrogatories (Nos. 1-4) and Document Requests (Nos. 1-3) **(Confidential)** *[Bates Nos. 00521-00528]*	**Stipulated**
29		Staff's Exhibit #29	FCC Declaratory Ruling in CCB/CPD NO. 01-02 *[Bates Nos. 00529-00538]*	**Stipulated**
30		Staff's Exhibit #30	Minnesota DOC Complaint in Docket No. P-442 et.al./C04-235 *[Bates Nos. 00539-00563]*	**Stipulated**
31		Staff's Exhibit #31	QCC Responses to MCI Interrogatories Nos. 5 & 7 *[Bates Nos. 00564-00566]*	**Stipulated**
32		Staff's Exhibit #32	QCC Responses to MCI Interrogatories Nos. 4 & 24 *[Bates Nos. 00567-00571]*	**Stipulated**
33		Staff's Exhibit #33	Qwest added to service list dated 4-29-2005 *[Bates Nos. 00572-00574]*	**Stipulated**
34		Staff's Exhibit #34	Minnesota PUC Order Dismissing Complaint in Docket No. P-442 et.al./C04-235 *[Bates Nos. 00575-00605]*	**Stipulated**
35		Staff's Exhibit #35	Qwest August 24, 2005 Comments to Minnesota PUC in Docket No. P-442 et.al./C04-235 *[Bates Nos. 00606-00618]*	**Stipulated**

36		Staff's Exhibit #36	QCC & AT&T dated January 29, 2007 (Minnesota State Court Complaint) *[Bates Nos. 00619-00663]*	**stipulated**
QWEST COMMUNICATIONS COMPANY, LLC (QCC) - (DIRECT)				
37	William R. Easton	WRE-1A (Direct)	CLEC Agreement Rates **(Confidential)**	
38	William R. Easton	WRE-1B (Direct)	*CLEC Agreement Rates *to be withdrawn at hearing	
39	William R. Easton	WRE-2 (Direct)	Bell South Tariff	
40	William R. Easton	WRE-3 (Direct)	Verizon Tariff	
41	William R. Easton	WRE-4 (Direct)	Embarq Tariff	
42	William R. Easton	WRE-11 (Direct)	BullsEye-AT&T Agreement **(Confidential)**	
43	William R. Easton	WRE-12 (Direct)	BullsEye Discovery Responses	
44	William R. Easton	WRE-13 (Direct)	BullsEye Price List	
45	William R. Easton	WRE-17A (Direct)	2001 Ernest Agreement **(Confidential)**	
46	William R. Easton	WRE-17B (Direct)	2007 Ernest Agreement **(Confidential)**	
47	William R. Easton	WRE-18 (Direct)	QCC Discovery to Ernest	
48	William R. Easton	WRE-19 (Direct)	Ernest Price List	
49	William R. Easton	WRE-20 (Direct)	Flatel Agreement **(Confidential)**	
50	William R. Easton	WRE-21 (Direct)	QCC Discovery to Flatel	

51	William R. Easton	WRE-22 (Direct)	Flatel Price List **(Confidential)**	
52	William R. Easton	WRE-30 (Direct)	Navigator-AT&T Agreement **(Confidential)**	
53	William R. Easton	WRE-31 (Direct)	Navigator Discovery Responses	
54	William R. Easton	WRE-32 (Direct)	Navigator Price List	
55	William R. Easton	WRE-36 (Direct)	TWT-AT&T Agreement **(Confidential)**	
56	William R. Easton	WRE-37 (Direct)	TWT Discovery Responses	
57	William R. Easton	WRE-38 (Direct)	TWT Price List	
58	Lisa Hensley Eckert	LHE-1 (Direct)	Bullseye Demand Letter	
59	Derek Canfield	DAC-5 (Direct)	BullsEye Overcharge Analysis Summary **(Confidential)**	
60	Derek Canfield	DAC-6 (Direct)	BullsEye Overcharge Analysis Detail **(Confidential)**	
61	Derek Canfield	DAC-9 (Direct)	Ernest Overcharge Analysis Summary **(Confidential)**	
62	Derek Canfield	DAC-10 (Direct)	Ernest Overcharge Analysis Summary **(Confidential)**	
63	Derek Canfield	DAC-11 (Direct)	Flatel Overcharge Analysis Summary **(Confidential)**	
64	Derek Canfield	DAC-12 (Direct)	Flatel Overcharge Analysis Detail **(Confidential)**	
65	Derek Canfield	DAC-20 (Direct)	Navigator Overcharge Analysis Summary **(Confidential)**	
66	Derek Canfield	DAC-21 (Direct)	Navigator Overcharge Analysis Detail **(Confidential)**	

67	Derek Canfield	DAC-25 (Direct)	TW Telecom Overcharge Analysis Summary **(Confidential)**	
68	Derek Canfield	DAC-26 (Direct)	TW Telecom Overcharge Analysis Detail **(Confidential)**	
69	Dennis L. Weisman	DLW-1 (Direct)	Dennis L. Weisman Curriculum Vitae	
TW TELECOM OF FLORIDA, I.P, (CLEC GROUP) - (DIRECT & REBUTTAL)				
70	Don J. Wood	DJW-1 (Direct)	CV of Don J. Wood	
71	Don J. Wood	DJW-2 (Direct)	Qwest Agreement No. 1 – Excerpt **(Confidential)**	
72	Don J. Wood	DJW-3 (Direct)	Qwest Agreement No. 2 – Excerpt **(Confidential)**	
73	Don J. Wood	DJW-4 (Rebuttal)	MN PUC Agenda Notice 7-20-04	
74	Don J. Wood	DJW-5 (Rebuttal)	AT&T Comments, August 19, 2004	
75	J. Terry Deason	TD-1 (Rebuttal)	Biographical Information Terry Deason	
BULLSEYE TELECOM, INC. (BULLSEYE) - (REBUTTAL)				
76	Peter K. LaRose	PKL-1 (Rebuttal)	Qwest Complaint Against AT&T (1-29-07)	
77	Peter K. LaRose	PKL-2 (Rebuttal)	FCC Statistics of Carriers (2004/2005)	
78	Peter K. LaRose	PKL-3 (Rebuttal)	Qwest Announcement to BullsEye (2-25-08)	
79	Peter K. LaRose	PKL-4 (Rebuttal)	Minnesota DOC Comments (3-13-06)	
80	Peter K. LaRose	PKL-5 (Rebuttal)	AT&T Public Comments (8-19-04)	

TW TELECOM OF FLORIDA, I.P. (TWTC) - (REBUTTAL)				
81	Rochelle D. Jones	RDJ-1 (Rebuttal)	Comparison of AT&T and Qwest Purchases with TWTC **(Confidential)**	

82	Rochelle D. Jones	RDJ-2 (Rebuttal)	EDGAR Copy of TWTC/AT&T Agreement	
83	William R. Easton	BullsEye	Late filed - Qwest Supplemental Response and Selected attachments	
84	William R. Easton	BullsEye	Confidential	
85	William R. Easton	BullsEye	Qwest Response to Interrogatories 18, 21 and 22	
86	William R. Easton	BullsEye	Easton/Canfield/Weisman Errata Sheet	
87	Lisa Hensley Eckert	TW Telecom	Google Search Results for "Time Warner Telecom Agreement with AT&T"	
88	Don J. Woods	TW Telecom	TW Telecom errata Sheet	

CD TABLE OF CONTENTS

- **090538.Staff Hearing Exhibits.BATES.PDF -** This is a 663-page document, which contains Staff Hearing Exhibits 00001 through 00663, bates-stamped.



Exhibits 2-36

2

Response Of BullsEye Telecom, Inc. To First Set Of Interrogatories (1-10) From Staff Of The Florida Public Service Commission

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-EI EXHIBIT 2
PARTY Florida Public Service Commission Staff
DESCRIPTION BullsEye (Staff's Exhibit #2)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of

QWEST COMMUNICATIONS COMPANY, LLC,

Docket No. 090538-TP

Against

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50.

RESPONSE OF BULLSEYE TELECOM, INC. TO FIRST SET OF INTERROGATORIES (1-10) FROM STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION

BullsEye Telecom, Inc. ("BullsEye"), by and through its undersigned counsel, hereby responds to *Staff's First Set of Interrogatories to BullsEye Telecom, Inc. (Nos. 1-10).*

090538 Hearing Exhibits 00002

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

The following General Objections, which includes the reservation of rights provided below, are incorporated into each of the responses set forth herein.

1. BullsEye objects to the discovery propounded on the grounds that the Florida Public Service Commission does not have jurisdiction over the Complaint or Amended Complaint of Qwest Communications Company ("QCC").

2. BullsEye objects to each and every discovery request to the extent the request:

a. Seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. BullsEye does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these discovery requests. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive BullsEye's right to retract such disclosure.

b. Seeks information not in the possession, custody or control of BullsEye.

c. Purports to require BullsEye to provide information beyond what is available to BullsEye at the present time through reasonable diligence or inquiry.

d. Seeks information regarding or relating to BullsEye beyond the State of Florida.

e. Requires or purports to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-22, 25-40, and 28106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

f. Seeks to impose a duty on BullsEye to respond or supplement its response in excess of the duty imposed by the Commission's applicable discovery rules or requirements.

g. Is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

h. Is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

090538 Hearing Exhibits 00003

i. Is not reasonably calculated to lead to the discovery of admissible evidence or not relevant to the subject matter of this action.

j. Purports to require BullsEye to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

k. Relates to time periods beyond the time periods on which the claims in this proceeding are based and beyond the applicable statute of limitations.

l. Seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

m. Seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination. Any responsive confidential information will be provided to Staff, subject to a claim for confidentiality in accordance with the Commission's rules. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

3. Any information and/or documents that BullsEye provides in response to a discovery request reflects BullsEye's present knowledge, information and belief, and may be subject to change or modification based on, among other things, BullsEye's further discovery, or on facts or circumstances which may subsequently come to BullsEye's attention.

4. Any information or documents BullsEye produces should not be construed as acknowledgement of Commission jurisdiction over QCC's Complaint or Amended Complaint. The Commission does not have jurisdiction over the QCC Complaint or Amended Complaint, and BullsEye expressly reserves the right to oppose or otherwise challenge the Commission's ongoing assertion of jurisdiction.

5. BullsEye has made a reasonable effort to respond to each and every discovery request as it understands and interprets such request. Should Staff assert a different interpretation of any discovery request, BullsEye reserves the right to supplement or amend its objections.

6. BullsEye reserves its right to supplement its responses to each and every discovery request for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that BullsEye may subsequently obtain.

090538 Hearing Exhibits 00004

7. In responding to discovery requests, BullsEye expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any discovery request on any ground including, but not limited to, the ground that the document, information or discovery request is irrelevant and immaterial to the issues in this action. Nothing in BullsEye's responses to any discovery request should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the discovery requests. Moreover, the fact that BullsEye has responded to all or part of any of the discovery requests is not intended and shall not be construed as a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

8. As noted above, for avoidance of any doubt, this statement of General Objections and Reservation of Rights is incorporated into each BullsEye response, and any objection or response by BullsEye to any instruction or request is made without waiver of, and subject to, this statement of General Objections and Reservation of Rights.

BULLSEYE RESPONSES TO INTERROGATORIES

Interrogatory No. 1

1. Do you currently or have you ever provided switched access service to Qwest Communications Company, LLC (QCC)? If so,

   a. please describe the switched access service you provide/provided.

   b. does your switched access service differ depending on which carrier is receiving the service? If so, how does it differ and why?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

BullsEye does currently and has provided switched access service to QCC in Florida. BullsEye is not a facilities-based service provider, but instead provides local exchange services in Florida by leasing telecommunications services, including switching, from AT&T Corp. (AT&T) and other ILECs pursuant to interconnection agreements and related commercial agreements. Specifically, the switched access services provided by BullsEye in Florida are

provided using the AT&T switching facilities that BullsEye leases from AT&T, and similar such switching facilities from other ILECs in their incumbent territories.

As the Complainant in this case QCC has the burden of proof to *affirmatively demonstrate* that it *is* in fact similarly situated to another IXC, and thus BullsEye does not have the burden in this proceeding to show that its services differ depending on which carrier is receiving the service. Notwithstanding QCC's burden of proof and thus the impropriety of this interrogatory, BullsEye notes that in general switched access services differ from customer to customer depending on a variety of factors, including without limitation: (a) the customer's call volumes, (b) the traffic types delivered by the customer, (c) the customer's calling patterns, and (d) the underlying costs for BullsEye to provide service to a particular customer. Such differences, however, are not the only bases upon which differential pricing of switched access services may be justified.

Interrogatory No. 2

2. Do you have a price list on file with the Florida Public Service Commission (FPSC)?

   a. If so, are the rates, terms, and conditions for the provision of switched access service contained in your filed price list? Please identify where in your price list this information is located.

   b. If you have a price list on file with the FPSC, but the rates, terms, and conditions for the provision of switched access service are not contained in your filed price list, where can that information be found?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

Yes. Please see Section 3.9 of BullsEye's Florida PSC Price List No. 2.

090538 Hearing Exhibits 00006

Interrogatory No. 3

3. If you do not have a price list on file with the FPSC, where can your rates, terms, and conditions for the provision of switched access service be found?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

Please refer to the response to Interrogatory No. 2 above. This interrogatory is not applicable to BullsEye.

Interrogatory No. 4

4. Did QCC contact your company regarding purchasing switched access service at customer-specific or Individual Case Basis (ICB) rates, terms, and conditions? If so,

   a. what did QCC specifically ask for (lower rates, better terms, etcetera)?

   b. when was the request(s) received and in what form?

   c. what was your company's response to the request(s)?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

No. QCC did not contact BullsEye regarding purchasing switched access service on a customer-specific or Individual Case Basis.

BullsEye did receive via mail one letter from Charlie Galvin Jr. of QCC dated February 25, 2008. The letter indicated that, as a result of information made available to QCC in a "recent" state commission investigation (*i.e.*, proceedings before the Minnesota PUC in 2004 and 2005) QCC was aware that AT&T had entered into nationwide agreements with some LECs relating to intrastate switched access charges. The letter requested that QCC be provided the

"most favorable" rate charged to any other IXC and demanded reimbursement for all past charges to QCC that exceeded the "most favorable" rate. QCC did not make a request for a QCC-specific or Individual Case Basis agreement.

The QCC letter provided no demonstration, and did not even assert, that QCC was similarly situated to AT&T. The letter contained no legal basis to underlie the QCC claim of an entitlement to the rate forced upon BullsEye by AT&T. Moreover, QCC continued thereafter, and to this day, to pay BullsEye the rates set forth in BullsEye's filed price list without any dispute of those rates and charges as required by the filed price list. The QCC letter also demanded copies of agreements relating to intrastate switched access charges, claiming that AT&T had waived confidential treatment of any such agreements (this QCC statement turned out to be untrue, as in 2009 AT&T filed in support of confidential treatment of its agreements before the Public Utilities Commission of Colorado).

BullsEye did not provide any such "most favorable rate" to AT&T, as QCC incorrectly asserted, but rather was coerced into entering the AT&T agreement in order to stay in business. QCC's February 2008 letter followed, by just a couple of months, QCC's own settlement with AT&T, which settled QCC's affirmative assertion that the agreements forced on BullsEye and other LECs by AT&T are "void, illegal and unenforceable." The only appropriate course of action for QCC to have followed would have been pursuit of that suit against AT&T and/or corollary actions before other courts or state commissions to force AT&T to pay the same lawfully-tariffed rate being paid by QCC. QCC instead chose this improper path, attempting through obtrusive litigation to collect from the much smaller CLECs a monetary windfall based on the agreements.

090538 Hearing Exhibits 00008

As noted above, BullsEye was forced by AT&T to provide different rates as AT&T withheld payments owed to BullsEye and the amounts withheld were substantial enough to threaten the very ability of BullsEye to continue in business. Thus, BullsEye was forced to enter into the agreement in exchange for the payment of past due amounts. BullsEye does not have in-house legal counsel, and did not (and does not) have the resources to litigate this issue since AT&T is well known for its ability to overcome less-financed opponents in court.

Interrogatory No. 5

5. Does/did your price list, either filed with the FPSC or found elsewhere, make known that your company may enter into customer-specific or ICB contracts for the provision of switched access service? If so, where can those provisions be found?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

Yes. Please see Section 5 of BullsEye's Florida PSC Price List No. 2.

Interrogatory No. 6

6. If your price list, either filed with the FPSC or found elsewhere, does not include provisions for ICB or customer-specific rates, terms, and conditions for the provision of switched access service, how would an IXC be made aware the option may be available?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

Please see the response to Interrogatory No. 5, above. BullsEye notes, however, that tariff terms are not necessary to make an IXC aware of pricing options. Specifically, an IXC would be aware of an option to seek an ICB agreement or customer-specific rates, terms, and

090538 Hearing Exhibits 00009

conditions to the extent such agreements or arrangements are permitted by law. Telecommunications carriers are charged with knowledge of the laws governing the purchase and provision of service in each jurisdiction in which they operate. Each carrier is entitled to seek negotiation of an ICB agreement or customer-specific rates, terms, and conditions to the extent permitted by law. If customer-specific arrangements are not permissible, or are void or unenforceable, then all carriers are liable for the filed rates.

Concerning this case more specifically, the fact that AT&T had forced its preferred switched access rates upon hundreds of LECs was made public in the Minnesota PUC proceeding in 2004. QCC even admits, in ¶ 9 of the Amended Complaint QCC filed in this proceeding, that AT&T's comments in the Minnesota PUC proceeding in 2004 revealed that "[i]n the past four years or so, AT&T has entered into ***hundreds*** of agreements based on the same form with CLEC providers of switched access services ***throughout the United States***."[1]

QCC sued AT&T in court in 2007 for monetary damages and for a declaration that the agreements forced on BullsEye and other LECs by AT&T are "void, illegal and unenforceable." QCC entered into a settlement of that lawsuit with AT&T in late 2007.

BullsEye has no record of any request from QCC for an ICB agreement or customer-specific rates, terms and conditions. QCC's February 2008 letter certainly does not qualify as any such request. Rather, after decrying AT&T's bullying tactics in court in 2007, Qwest simply adopted those same tactics in 2008 by pursuing these baseless but oppressive legal proceedings at various State Commissions.

[1] Emphasis in original.

Interrogatory No. 7

7. Does your price list, either filed with the FPSC or found elsewhere, contain provisions regarding billing disputes? If so,

   a. where can those specific provisions be found?

   b. has QCC filed a billing dispute with your company regarding the rate it pays for switched access service under the provisions outlined in your price list? When was the dispute filed and has it been resolved?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

Yes. Section 2.10 of BullsEye's Florida PSC Price List No. 2 contains specific provisions governing billing disputes. These provisions require, *inter alia*, that QCC and every other customer that disputes any invoiced charge do so by filing a notice of dispute with BullsEye within 60 days of the invoice.

QCC never filed a billing dispute with BullsEye regarding the rate QCC pays for switched access service pursuant to these billing dispute provisions.

Interrogatory No. 8

8. Do you believe settlement agreements are the same as customer-specific/ICB contracts that may be based on volume and term discounts and made available to other similarly situated IXCs? Please explain your response.

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

No, an ICB is generally an arms-length transaction negotiated in good faith. In this instance the settlement agreement was forced by coercion and a direct threat to the ability of

090538 Hearing Exhibits 00011

BullsEye to remain in business. That is not an arms-length transaction negotiated on a level playing field.

Settlement agreements are the result of compromises made between specific parties as a result of many different considerations. Thus, although the terms of a settlement may specifically encompass a given service, the reasons for entering the settlement may be due to considerations that have nothing to do with the service itself.

Consider for example a situation where a nascent CLEC is faced with the following circumstances: (a) the largest IXC in the United States is withholding all access charge payments on a nationwide basis, imposing intense financial difficulties on the CLEC; (b) the IXC's affiliate ILECs serve as the CLEC's primary supplier of wholesale telecommunications services in dozens of states; (c) the CLEC is heavily reliant on the prompt payment of access charges for its ongoing business operations, and (d) the IXC states its willingness to resume payment of access charges nationwide, both withheld and going forward, if the CLEC enters an agreement providing for reduced switched access rates nationwide. In such a situation, the CLEC cannot continue to operate – let alone embark on costly litigation against the well-funded IXC in nearly every State, that would likely cause termination of the wholesale supply relationship with the IXC's affiliates – without acceding to the IXC's demands.

On the other hand, ICB contracts are typically based on volume and term discounts relating solely to a customer's usage of a specific service. Such contracts are entered simply as an incentive to obtain or retain a particular customer or class of customers, and do not reflect the same breadth of considerations that underlie settlement agreements.

090538 Hearing Exhibits 00012

Interrogatory No. 9

9. If your company was a party to a settlement agreement that included rates lower than those in your price list for switched access service,

   a. do you believe an IXC that is not a signatory to the settlement should be allowed to avail itself of those rates, terms, or conditions? Please explain your response.

   b. could an IXC that is not a signatory to the settlement agreement be considered similarly situated as those companies that were part of the dispute/settlement process? Please explain your response.

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

BullsEye is not a party to a lawful settlement agreement with AT&T.

With respect to sub-question a., one IXC cannot simply attempt to avail itself of the rates and terms of another IXC's settlement. A settlement agreement reflects unique considerations and compromises between the parties thereto, such that the rates and terms are likewise unique.

The settlement considerations of particular parties cannot simply be ignored or disregarded. Moreover, attempts to hijack one carrier's agreement for another's benefit has the effect of chilling carriers' incentives to settle with one another, since each carrier entering a settlement would have to assume that the settlement's rates and terms would apply to a far broader spectrum of carriers with categorically distinct characteristics and situations.

With respect to the second question, the similarly situated issue is irrelevant given the illegality of the IXC [AT&T] agreement.

Moreover, the issue would be moot even if it were not irrelevant, as it is nearly impossible for two IXCs to be so precisely and similarly situated that the relationship of each to the CLEC might warrant the same exact considerations, compromises, and trade-offs, and QCC has never even attempted to make this requisite demonstration.

090538 Hearing Exhibits 00013

In these particular circumstances, however, the issue never even arises given QCC's position that the actions of AT&T that forced the settlement were coercive and the resultant agreement illegal. As such, unless QCC and its new owner CenturyLink want to act in a similarly unlawful fashion, QCC must immediately withdraw its Amended Complaint.

The PSC should properly declare the settlement agreement with AT&T null and void and require that AT&T pay the tariffed rates. To even consider permitting QCC to benefit from an agreement that QCC knows to be illegal, and to allow this case to proceed, compounds the misconduct.

Interrogatory No. 10

10. Referring to page 4, paragraph 12, of your Answers to Amended Complaint of Qwest filed on November 16, 2010, both filings note that the companies (BullsEye and Granite) were "compelled to enter into an invalid, unenforceable, "settlement agreement"" with AT&T in 2003 (Granite) and in 2004 (BullsEye).

    a. Please explain why and how each company believes it was compelled to enter into a settlement agreement.

    b. Please explain why the 2003 BullsEye/AT&T settlement agreement is invalid and unenforceable?

    c. Please explain why the 2004 BullsEye/AT&T settlement agreement is invalid and unenforceable?

BULLSEYE RESPONSE:

Without waiving, and subject to all stated objections, BullsEye provides the following response:

The agreement between AT&T and BullsEye is invalid and unenforceable. Prior to entering the agreement, BullsEye had billed AT&T in all jurisdictions at the rates for switched access service in BullsEye's filed price lists and tariffs. Beginning in 2001, AT&T withheld all intrastate access payments on a nationwide basis from BullsEye, even though AT&T was legally

obligated to pay BullsEye the rates set forth in BullsEye's filed price lists and tariffs. AT&T refused to make any payments for switched access services unless BullsEye entered a settlement agreement on rates and terms demanded by AT&T.

As BullsEye could not continue to operate – let alone embark on costly litigation against the very well-funded AT&T in nearly every State, that would likely cause termination of the wholesale supply relationship with AT&T's ILEC affiliates – BullsEye was left with no choice but to enter the settlement agreement on the terms demanded by AT&T.

Dated: December 16, 2011

/s Andrew M. Klein

Andrew M. Klein*
Allen C. Zoracki*
KLEIN LAW GROUP PLLC
1250 Connecticut Ave. NW, Suite 200
Washington, DC 20036
(202) 289-6955
AKlein@KleinLawpllc.com
AZoracki@KleinLawpllc.com

Counsel for Respondent
BullsEye Telecom, Inc.

* Designated as a qualified representative in Docket No. 100008-OT

AFFIDAVIT

STATE OF MICHIGAN)

COUNTY OF WAYNE

I hereby certify that on this 1ST day of OCTOBER, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared PETER K. LAROSE who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) 1-10 from STAFF'S FIRST SET OF INTERROGATORIES (NO. 1-10) TO BULLSEYE TELECOM, INC., in Docket No. 090538-TP, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 1ST day of OCTOBER, 2012.

PETER K. LAROSE

Notary Public
State of Michigan, at Large

My Commission Expires:

DEENA M. HEATH
NOTARY PUBLIC – MICHIGAN
WASHTENAW COUNTY
ACTING IN THE COUNTY OF WAYNE
MY COMMISSION EXPIRES APRIL 6, 2015

CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 16th day of December, 2011, to the following:

Florida Public Service Commission
Theresa Tan
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

Qwest Communications Company, LLC
Adam L. Sherr
Associate General Counsel
Qwest
1600 7th Avenue, Room 1506
Seattle, WA 98191
Tel: 206-398-2507
Fax: 206-343-4040
Email: Adam.Sherr@qwest.com

Qwest Communications Company, LLC
d/b/a CenturyLink QCC
Susan S. Masterson
CenturyLink
315 S. Calhoun St., Suite 500
Tallahassee, FL 32301
Tel: 850-599-1560
Fax: 850-224-0794
susan.masterson@centurylink.com

tw telecom of florida, l.p.
XO Communications Services, Inc.
Windstream NuVox, Inc.
Birch Communications, Inc.
DeltaCom, Inc.
STS Telecom, LLC
Matthew J. Feil
Gunster Yoakley & Stewart, P.A.
215 S. Monroe Street, Suite 618
Tallahassee, FL 32301
mfeil@gunster.com

Broadwing Communications, LLC
Marsha E. Rule
Rutledge, Ecenia & Purnell
P.O. Box 551
Tallahassee, FL 32302-0551
marsha@reuphlaw.com

MCImetro Access Transmission Service
d/b/a VerizonAccess Transmission Services
Dulaney O'Roark
VerizonAccess Transmission Services
Six Concourse Pkwy, NE, Ste 800
Atlanta, GA 30328
De.oroark@verizon.com

XO Communications Services, Inc.
Jane Whang
Davis Wright Tremaine
Suite 800
505 Montgomery Street
San Francisco, California 94111-6533
JaneWhang@dwt.com

BullsEye Telecom, Inc.
Andrew M. Klein
Allen C. Zoracki
Klein Law Group, PLLC
1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036
aklein@kleinlawpllc.com
azoracki@kleinlawpllc.com

Budget Prepay, Inc.
Alan C. Gold
Alan C. Gold, P.A.
1501 Sunset Drive, 2nd Floor
Coral Gables, FL 33143
agold@acgoldlaw.com

Navigator Telecommunications, LLC
Michael McAlister, General Counsel
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P. O. Box 13860
North Little Rock, AR 72113
mike@navtel.com

Access Point, Inc.
Lightyear Network Solutions, LLC
Navigator Telecommunications, LLC
PAETEC Communications, Inc.
US LEC of Florida, LLC d/b/a PAETEC Business Services
Eric J. Branfman
Philip J. Macres
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806
eric.branfman@bingham.com
Philip.macres@bingham.com

Lightyear Network Solutions, Inc.
John Greive, Vice President of Regulatory Affairs & General Counsel
Lightyear Network Solutions, LLC
1901 Eastpoint Parkway
Louisville, KY 40223
john.greive@lightyear.net

Access Point, Inc.
Richard Brown
Chairman-Chief Executive Officer
Access Point, Inc.
1100 Crescent Green, Suite 109
Cary, NC 27518-8105
Richard.brown@accesspointinc.com

Ernest Communications, Inc.
General Counsel
5275 Triangle Parkway
Suite 150
Norcross, GA 30092
lhaag@ernestgroup.com

Flatel, Inc.
c/o Adriana Solar
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 100
West Palm Beach, Florida 33409
asolar@flatel.net
flatel@aol.com

/s Allen C. Zoracki
Allen C. Zoracki

3

Navigator Telecommunications, LLC's Objections and Responses to Staff's First Set of Interrogatories (Nos. 1-9)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-EI EXHIBIT 3
PARTY Florida Public Service Commission Staff
DESCRIPTION Navigator (Staff's Exhibit #3)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: December 12, 2011

NAVIGATOR TELECOMMUNICATIONS, LLC.'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-9)

Navigator Telecommunications, LLC. ("Navigator") hereby submits its objections and responses to the Staff of the Florida Public Service Commission's ("Staff") First Set of Interrogatories and Document Requests (collectively "Interrogatories" and individually "Interrogatory") dated November 9, 2011 that are associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

Navigator makes the General Objections, which also includes the reservation of rights, provided below, to each and every Interrogatory and also incorporates each of the General Objections, which also includes the reservation of rights, into each and every specific objection to each Interrogatory.

1. Navigator objects to each and every Interrogatory to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to

documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. Navigator does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these Interrogatories. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive Navigator's right to retract such disclosure.

2. Navigator objects to each and every Interrogatory to the extent it seeks to impose an obligation on Navigator to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such Interrogatory is overly broad, unduly burdensome, confusing, beyond the scope of this litigation, not reasonably calculated to lead to the discovery of admissible evidence. In that connection, Navigator further objects to the definition of "You" and "Your" in the definitions to the Interrogatories as overly broad by including non-employees of Navigator.

3. Navigator objects to the definition of "identify" with respect to a document in the definitions to the Interrogatories as overly broad, unduly burdensome, and not relevant.

4. Navigator objects to the definition of "document," in the definitions to the Interrogatories as overly broad, unduly burdensome, and not relevant.

5. Navigator objects to each and every Interrogatory to the extent it seeks information not in the possession, custody or control of Navigator or already in Staff's

possession, custody or control. To the extent the Navigator provides any requested information or documents, Navigator shall only produce information within its sole possession, custody or control.

6. Navigator objects to each and every Interrogatory to the extent it seeks information or documents not in the possession of Navigator, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent the Staff seeks to require Navigator to create documents not already in existence.

7. Navigator objects to each and every Interrogatory to the extent it purports to require Navigator to provide information beyond what is available to Navigator at the present time through reasonable diligence or inquiry.

8. Navigator objects to each and every Interrogatory to the extent it seeks information or documents regarding or relating to Navigator beyond the State of Florida. Because the Commission's jurisdiction is limited to certain intrastate telecommunications services provided within the State of Florida, any Interrogatory that seeks such information is therefore unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. No such information or documents are being produced.

9. Navigator objects to Staff's definitions to the Interrogatories and to the Interrogatories themselves to the extent they require or purport to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-

22, 25-40, and 28106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

10. Navigator objects each and every Interrogatory to the extent it seeks to impose a duty on Navigator to supplement its response greater than that imposed by the Commission's applicable discovery rules or requirements.

11. Navigator objects to each and every Interrogatory to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

12. Navigator objects to each and every Interrogatory to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

13. Navigator objects to each and every Interrogatory to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

14. Navigator objects to each and every Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or are not relevant to the subject matter of this action.

15. Navigator objects to each and every Interrogatory to the extent it purports to require Navigator to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

16. Navigator objects to objects to each and every Interrogatory to the extent the time periods for which information is sought extends beyond the time periods on which the claims of

the Complaint are based and the applicable statute of limitations because such discovery is overly broad, unduly burdensome, and not relevant.

17. Navigator objects to each and every Interrogatory to the extent it seeks information from periods of time not relevant to this proceeding.

18. Navigator objects to each and every Interrogatory as unduly burdensome to the extent that the burden on Navigator to answer or produce documents sought by a Interrogatory is the same or less than the burden to Staff of obtaining the same information on its own.

19. Navigator objects to each and every Interrogatory to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

20. Navigator objects to each and every Interrogatory to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or non-disclosure agreement entered into between Qwest and Navigator in this proceeding. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

21. Navigator objects to each and every Interrogatory insofar as it calls for production of electronically stored information ("ESI") in native format as unduly burdensome. Navigator

will produce electronically stored information in a "reasonably usable format." Navigator further objects to the production of ESI to the extent it is not reasonably accessible because of undue burden or cost. Navigator further objects to each and every Interrogatory to the extent it calls for the production of electronically stored information in more than one form.

22. Navigator objects to each and every Interrogatory insofar as it calls for production of all metadata for all electronically stored information, as production of all metadata for all responsive and non-privileged electronically stored information is overbroad, unduly burdensome and calls for the production of information that is neither relevant to any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence.

23. Navigator objects to each and every Interrogatory to the extent that it requests that Navigator search for and produce electronically stored information contained on disaster recovery or archival media, legacy systems, or deleted, fragmented, shadowed or temporary data on the grounds that such information is not reasonably accessible due to the cost and burden of restoring, accessing, reviewing and producing such data.

24. Any information and/or documents Navigator provides in response to a Interrogatory reflects Navigator's present knowledge, information and belief, and may be subject to change or modification based on, among other things, Navigator 's further discovery, or on facts or circumstances which may subsequently come to Navigator's attention.

25. Any information or documents Navigator produces should not be construed as an acknowledgement that the Commission has jurisdiction over Qwest's Complaint that initiated

this proceeding. Navigator expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of Qwest's Complaint.

26. Navigator has made a reasonable effort to respond to each and every Interrogatory as it understands and interprets such Interrogatory. If Staff should assert an interpretation of any Interrogatory that differs, Navigator reserves the right to supplement or amend its objections.

27. Navigator reserves its right to supplement its responses to each and every Interrogatory for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that Navigator may subsequently obtain.

28. In responding to Interrogatories, Navigator expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any Interrogatory on any ground including, but not limited to, the ground that the document, information or Interrogatory is irrelevant and immaterial to the issues in this action. Nothing in Navigator's responses to any Interrogatory should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the Interrogatories. Moreover, the fact that Navigator has responded to all or part of any of the Interrogatories is not intended and shall not be construed as a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

29. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservation of rights, are incorporated into each of Navigator's responses, and any objection or response by Navigator to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

DEFINITION OF SPECIFIC OBJECTIONS TO STAFF'S INTERROGATORIES

Many of the specific objections that Navigator makes are applicable to several of Staff's Interrogatories. For this reason, Navigator provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. *Not Relevant*: The Interrogatory is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. *Unduly Burdensome*: The Interrogatory is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) Staff can obtain the data through publicly available information.

3. *Overly Broad*: The Interrogatory seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. *Vague and Ambiguous*: The Interrogatory is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the Navigator cannot reasonably determine the intended meaning, scope or limits of Staff's Interrogatory.

5. *Calls for a Legal Conclusion*: The Interrogatory calls for a conclusion of law.

SPECIFIC RESPONSES TO INTERROGATORIES

Navigator's specific responses to Staff's Interrogatories, which includes general and specific objections, are provided below.

INTERROGATORIES

1. Do you currently or have you ever provided switched access service to Qwest Communications Company, LLC (QCC)? If so,

a. please describe the switched access service you provide/provided.

RESPONSE: Yes, Navigator provides originating and terminating switched access services.

PROVIDED BY: Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

b. does your switched access service differ depending on which carrier is receiving the service? If so, how does it differ and why?

RESPONSE: No.

PROVIDED BY: Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

2. Do you have a price list on file with the Florida Public Service Commission (FPSC)?

a. If so, are the rates, terms, and conditions for the provision of switched access service contained in your filed price list? Please identify where in your price list this information is located.

RESPONSE: Yes. The rates, terms and conditions are found in sections 3, 4 and 5.

PROVIDED BY: Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

b. If you have a price list on file with the FPSC, but the rates, terms, and conditions for the provision of switched access service are not contained in your filed price list, where can that information be found?

RESPONSE: Not applicable.

3. If you do not have a price list on file with the FPSC, where can your rates, terms, and conditions for the provision of switched access service be found?

RESPONSE: Not applicable.

4. Did QCC contact your company regarding purchasing switched access service at customer-specific or Individual Case Basis (ICB) rates, terms, and conditions? If so,

a. what did QCC specifically ask for (lower rates, better terms, etcetera)?

RESPONSE: No. Qwest did not contact Navigator to request negotiation of an ICB arrangement. Navigator received an email dated February 25, 2008, with an attached "General Notification" from Qwest, requesting that Navigator "provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates" and that "you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same service to AT&T or any other interexchange carrier." Further, the letter stated that "Qwest also requests reimbursement for all past charges that exceed the lowest, off-tariff rates offered to AT&T or to other interexchange carriers."

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113

b. when was the request(s) received and in what form?

RESPONSE: Navigator received an email dated February 25, 2008, with an attached "General Notification" from Qwest.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113

c. what was your company's response to the request(s)?

RESPONSE: Navigator has not located any written response.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113

5. **Does/did your price list, either filed with the FPSC or found elsewhere, make known that your company may enter into customer-specific or ICB contracts for the provision of switched access service? If so, where can those provisions be found?**

RESPONSE: Yes. Section 7.

PROVIDED BY: Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

6. **If your price list, either filed with the FPSC or found elsewhere, does not include provisions for ICB or customer-specific rates, terms, and conditions for the provision of switched access service, how would an IXC be made aware the option may be available?**

RESPONSE: Not applicable.

7. **Does your price list, either filed with the FPSC or found elsewhere, contain provisions regarding billing disputes? If so,**

   a. **where can those specific provisions be found?**

RESPONSE: Section 2.4 and its subsections.

PROVIDED BY: Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

   b. **has QCC filed a billing dispute with your company regarding the rate it pays for switched access service under the provisions outlined in your price list? When was the dispute filed and has it been resolved?**

RESPONSE: No.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113

8. **Do you believe settlement agreements are the same as customer-specific/ICB contracts that may be based on volume and term discounts and made available to other similarly situated IXCs? Please explain your response.**

RESPONSE: Navigator objects to this Interrogatory as it calls for a legal conclusion or opinion. Without waiving this objection, Navigator responds that it does not believe they are the same. Settlement agreements are made to resolve specific disputes and are unique to specific parties and circumstances. They are not the same as an ICB offering based on volume and term discounts.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113, with objections by undersigned counsel.

9. **If your company was a party to a settlement agreement that included rates lower than those in your price list for switched access service,**

   a. **do you believe an IXC that is not a signatory to the settlement should be allowed to avail itself of those rates, terms, or conditions? Please explain your response.**

RESPONSE: Navigator objects to this Interrogatory as it calls for a legal conclusion or opinion. Without waiving this objection, Navigator responds that it does not believe that an IXC that is not a party to a specific settlement agreement resolving a range of outstanding disputes should be allowed to avail itself of the terms of that specific settlement agreement.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113, with objections by undersigned counsel.

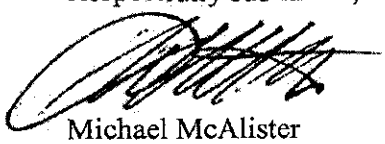
b. could an IXC that is not a signatory to the settlement agreement be considered similarly situated as those companies that were part of the dispute/settlement process? Please explain your response.

RESPONSE: Navigator objects to this Interrogatory as it calls for a legal conclusion or opinion. Without waiving this objection, Navigator responds that an IXC not a signatory to a settlement agreement would not be similarly situated, as a settlement agreement resolves party-specific disputes under unique circumstances.

PROVIDED BY: David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113, with objections by undersigned counsel.

Dated this 12th day of December 2011.

Respectfully submitted,



Michael McAlister
General Counsel
Navigator Telecommunications, LLC.
8525 Riverwood Park Drive
P.O. Box 13860
North Little Rock, AR 72113
(501) 954-4051 – Telephone
(501) 954-4002 – Facsimile
mike@navtel.com

AFFIDAVIT

STATE OF ARKANSAS)

COUNTY OF PULASKI)

I hereby certify that on this 12th day of December, 2011, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared David Stotelmyer, who is personally known to me, and he acknowledged before me that he provided the answers to interrogatory number(s) 4, 7b, 8, and 9 from STAFF'S FIRST SET OF INTERROGATORIES (NO. 1-9) TO NAVIGATOR TELECOMMUNICATIONS, LLC. in Docket No. 090538-TP, and that the responses are true and correct based on his/her personal knowledge.

I further certify that on this 12th day of December, 2011, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Kenrick LeDoux, who is personally known to me, and he acknowledged before me that he provided the answers to interrogatory number(s) 1, 2, 5, and 7a from STAFF'S FIRST SET OF INTERROGATORIES (NO. 1-9) TO NAVIGATOR TELECOMMUNICATIONS, LLC. in Docket No. 090538-TP, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 12th day of December, 2011.

Cassandra J. Kellum
Notary Public

My Commission Expires:
November 16, 2020

4

TW Telecom Of Florida's L.P.'s Objections And Responses to the Staff of the Florida Public Service Commission's First Set Of Interrogatories & APPENDIX STAFF INT 2

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 4
PARTY Florida Public Service Commission Staff
DESCRIPTION TWTC (Staff's Exhibit #4)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: December 12, 2011

TW TELECOM OF FLORIDA, L.P.'S OBJECTIONS AND RESPONSES TO THE STAFF OF THE FLORIDA PUBLIC SERVICE COMMISSION'S FIRST SET OF INTERROGATORIES

tw telecom of florida, l.p. ("TWTC") hereby submits its objections and responses to the First Set of Interrogatories of the staff of the Florida Public Service Commission's ("Staff") dated November 9, 2011, and associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

TWTC makes the General Objections, which also includes the reservation of rights, provided below to each and every Interrogatory and also incorporates each of the General Objections, which also includes the reservation of rights, into each and every specific objection to each Interrogatory.

090538 Hearing Exhibits 00036

1. TWTC objects to each and every Interrogatory to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. TWTC does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these Interrogatories. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive TWTC's right to retract such disclosure.

2. TWTC objects to the definition of "identify" with respect to a "document" in the Interrogatories to the extent that the definition is overly broad, unduly burdensome, and not relevant.

3. TWTC objects to the definition of "document" in the Interrogatories to the extent that the definition is overly broad, unduly burdensome, and not relevant.

4. TWTC objects to each and every Interrogatory to the extent it seeks information not in the possession, custody or control of TWTC or already in Staff's possession, custody or control. To the extent the TWTC provides any requested information or documents, TWTC shall only produce information within its sole possession, custody or control.

5. TWTC objects to each and every Interrogatory to the extent it seeks information or documents not in the possession of TWTC, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent the Staff seeks to require TWTC to create documents not already in existence.

6. TWTC objects to each and every Interrogatory to the extent it purports to require TWTC to provide information beyond what is available to TWTC at the present time through reasonable diligence or inquiry.

7. TWTC objects each and every Interrogatory to the extent it seeks to impose a duty on TWTC to supplement its response greater than that imposed by the Commission's applicable discovery rules or requirements.

8. TWTC objects to each and every Interrogatory to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

9. TWTC objects to each and every Interrogatory to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

10. TWTC objects to each and every Interrogatory to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

11. TWTC objects to each and every Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or are not relevant to the subject matter of this action.

12. TWTC objects to each and every Interrogatory to the extent it purports to require TWTC to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

13. TWTC objects to objects to each and every Interrogatory to the extent the time periods for which information is sought extends beyond the time periods on which the claims of

090538 Hearing Exhibits 00038

Qwest are based and the applicable limitations period(s) because such discovery is overly broad, unduly burdensome, and not relevant.

14. TWTC objects to each and every Interrogatory to the extent it seeks information from periods of time not relevant to this proceeding.

15. TWTC objects to each and every Interrogatory as unduly burdensome to the extent that the burden on TWTC to answer or produce documents sought by a Interrogatory is the same or less than the burden to Staff of obtaining the same information on its own.

16. TWTC objects to each and every Interrogatory to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

17. TWTC objects to each and every Interrogatory to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or non-disclosure agreement entered into between Qwest and TWTC in this proceeding. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

18. Any information and/or documents TWTC provides in response to a Interrogatory reflects TWTC's present knowledge, information and belief, and may be subject to change or modification based on, among other things, TWTC's further discovery, or on facts or circumstances which may subsequently come to TWTC's attention.

090538 Hearing Exhibits 00039

19. Any information or documents TWTC produces should not be construed as an acknowledgement that the Commission has jurisdiction over Qwest's Complaint that initiated this proceeding. TWTC expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of Qwest's Complaint.

20. TWTC has made a reasonable effort to respond to each and every Interrogatory as it understands and interprets such Interrogatory. If Staff should assert an interpretation of any Interrogatory that differs, TWTC reserves the right to supplement or amend its objections.

21. TWTC reserves its right to supplement its responses to each and every Interrogatory for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that TWTC may subsequently obtain.

22. In responding to Interrogatories, TWTC expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any Interrogatory on any ground including, but not limited to, the ground that the document, information or Interrogatory is irrelevant and immaterial to the issues in this action. Nothing in TWTC's responses to any Interrogatory should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the Interrogatories. Moreover, the fact that TWTC has responded to all or part of any of the Interrogatories is not intended and shall not be construed as a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

090538 Hearing Exhibits 00040

23. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservation of rights, are incorporated into each of TWTC's responses, and any objection or response by TWTC to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

DEFINITION OF SPECIFIC OBJECTIONS TO STAFF'S INTERROGATORIES

TWTC provides the following definitions of its specific objections and, where applicable, repeats only the defined term in stating its specific objections.

1. "Not Relevant" or "Irrelevant": The Interrogatory is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. "Unduly burdensome": The Interrogatory is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) Staff can obtain the data through publicly available information.

3. "Overly broad": The Interrogatory seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

090538 Hearing Exhibits 00041

4. "Vague and ambiguous": The Interrogatory is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the TWTC cannot reasonably determine the intended meaning, scope or limits of Staff's Interrogatory.

5. "Calls for a legal conclusion": The Interrogatory calls for a conclusion of law.

RESPONSES TO INTERROGATORIES

TWTC's responses to Staff's Interrogatories incorporate the above general objections and are provided subject to and without waiving those objections. Additional specific objections are provided below.

INTERROGATORIES

1. Do you currently or have you ever provided switched access service to Qwest Communications Company, LLC (QCC)? If so,

a. please describe the switched access service you provide/provided.

Yes, TWTC has and does provide switched access service to QCC.

The general description of TWTC's Switched Access Service can be found starting on page 39 of the TWTC price list, where it states:

> 3.1 General
>
> Switched Access Service, which is available to Customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a Customer's premises and an end user's premises. It provides for the use of common and dedicated terminations, switching and trunking facilities, and for the use of common subscriber plant of the Company.

Switched Access Service provides for the ability to originate or terminate calls from an end user's premises to a Customer's premises in the LATA where it is provided. When the Customer is a CMRS provider, Switched Access Service rates apply for all interMTA traffic.

Switched Access Service is also available to pass calls between a Customer's premises and the premises of another carrier, including a CMRS provider and an Interconnected Wholesale provider.

The application of rates for Switched Access Service is described in Section 4 following. Rates and charges for services other than Switched Access Service, i.e., a Customer interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Arrangements for indirect or direct interconnection by Local Exchange Carriers, Competitive Local Exchange Carriers, Wireless Providers (Commercial Mobile Radio Services (CMRS) and Personal Communications Services (PCS)) and Interconnected Wholesale Providers with the Company's facilities for the completion of local and intraLATA toll traffic will be negotiated on a case by case basis, provided that, in cases where no agreement is in place for completion of such calls, the Company may charge one of the following rates: the state authorized UNE Switching rate(s) or the rate being charged by the other carrier for the Company's traffic terminating on the other carrier's network.

Please refer to TWTC's Florida Price List for intrastate switched access services.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

b. does your switched access service differ depending on which carrier is receiving the service? If so, how does it differ and why?

Typically, no, it does not.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

090538 Hearing Exhibits 00043

2. Do you have a price list on file with the Florida Public Service Commission (FPSC)?

a. If so, are the rates, terms, and conditions for the provision of switched access service contained in your filed price list? Please identify where in your price list this information is located.

Yes, TWTC does have a price list on file. The rates, terms and conditions for TWTC's Switched Access Services are contained in Section 4 of its price list beginning on page 53. Please see a copy of the price list included herewith in hard copy form only, as "Appendix Staff INT 2" (with Bates stamped pages TWTC 00001 through TWTC 00064) sent by U.S. Mail or hand delivery only to Staff and to Qwest. Other interested parties may view the responsive documents on request.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

b. If you have a price list on file with the FPSC, but the rates, terms, and conditions for the provision of switched access service are not contained in your filed price list, where can that information be found?

Not applicable.

3. If you do not have a price list on file with the FPSC, where can your rates, terms, and conditions for the provision of switched access service be found?

Not applicable.

4. Did QCC contact your company regarding purchasing switched access service at customer-specific or Individual Case Basis (ICB) rates, terms, and conditions? If so,

a. what did QCC specifically ask for (lower rates, better terms, etcetera)?

See "Appendix Staff INT 4" (with Bates stamped pages TWTC 00065 through TWTC 00066).

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

b. when was the request(s) received and in what form?

The letter speaks for itself, but appears to be in the form of a data request, i.e. not a request to negotiate, but a demand for information regarding another customer or customers.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

c. what was your company's response to the request(s)?

Tina Davis, Deputy General Counsel for TWTC, called the contact at QCC and informed that contact QCC was not similarly situated to AT&T.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

5. Does/did your price list, either filed with the FPSC or found elsewhere, make known that your company may enter into customer-specific or ICB contracts for the provision of switched access service? If so, where can those provisions be found?

Yes. In the Price List provided (Appendix Staff INT 2), please see Section 5 - Customer Specific Contracts - beginning on page 58.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

6. If your price list, either filed with the FPSC or found elsewhere, does not include provisions for ICB or customer-specific rates, terms, and conditions for the provision of switched access service, how would an IXC be made aware the option may be available?

Not applicable.

090538 Hearing Exhibits 00045

7. **Does your price list, either filed with the FPSC or found elsewhere, contain provisions regarding billing disputes? If so,**

a. where can those specific provisions be found?

Yes. In the price list provided (Appendix Staff INT 2), please see Exhibit A, Section 2.10 - Claims and Disputes - beginning on page 26.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

b. has QCC filed a billing dispute with your company regarding the rate it pays for switched access service under the provisions outlined in your price list? When was the dispute filed and has it been resolved?

No. QCC has not filed any disputes related to Florida intrastate switched access rates.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

8. **Do you believe settlement agreements are the same as customer-specific/ICB contracts that may be based on volume and term discounts and made available to other similarly situated IXCs? Please explain your response.**

TWTC objects to this interrogatory to the extent that it solicits a legal conclusion or opinion. Subject to and without waiving this objection, TWTC states as follows.

No, TWTC does not believe that settlement agreements are the same as customer-specific contracts. Customer-specific contracts outline the terms and conditions for specific services, comparable to how a tariff or price list would. Settlement agreements arise when there are specific disputes that the parties resolve to avoid litigation through an agreed-upon compromise of the disputes.

Answer provided by: Counsel (objection) and Carolyn Ridley, V.P. Regulatory, TWTC

090538 Hearing Exhibits 00046

9. If your company was a party to a settlement agreement that included rates lower than those in your price list for switched access service,

a. do you believe an IXC that is not a signatory to the settlement should be allowed to avail itself of those rates, terms, or conditions? Please explain your response.

TWTC objects to this interrogatory to the extent that it solicits a legal conclusion or opinion and calls for an opinion based on a hypothetical, drawn from speculation and/or insufficient and unproven factual information. Subject to and without waiving this objection, TWTC states as follows.

No, however, IXCs can avail themselves of the underlying TWTC price list including a customer-specific contract pursuant to the price list. Settlement agreements resolve disputes between the negotiating parties only.

Answer provided by: Counsel (objection) and Carolyn Ridley, V.P. Regulatory, TWTC

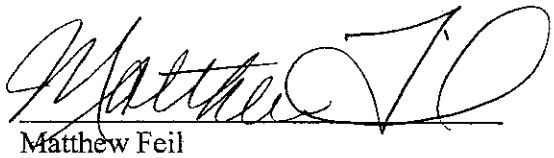
b. could an IXC that is not a signatory to the settlement agreement be considered similarly situated as those companies that were part of the dispute/settlement process? Please explain your response.

TWTC objects to this interrogatory to the extent that it solicits a legal conclusion or opinion and calls for an opinion based on a hypothetical, drawn from speculation and/or insufficient and unproven factual information. Subject to and without waiving this objection, TWTC states as follows.

No, see answer to 9(a) above. An IXC that is not a signatory to an agreement is not similarly situated unless it had exactly the same dispute and other circumstances as the signatory party. Also, the non-signatory IXC would have to provide the same consideration as the signatory party provided (i.e., compromise of a dispute or disputes).

Answer provided by: Counsel (objection) and Carolyn Ridley, V.P. Regulatory, TWTC

Respectfully submitted this12th day of December, 2011

By: 

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@ gunster.com
(850) 521-1708

090538 Hearing Exhibits 00048

AFFIDAVIT

STATE OF KENTUCKY)

COUNTY OF WARREN)

I hereby certify that on this 16th day of October, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared CAROLYN M. RIDLEY, who is personally known to me, and she acknowledged before me that she provided the responses to the applicable portions of the following interrogatories, including any supplements thereto, in FPSC Docket No. 090538-TP, and that such are true and correct based on his/her personal knowledge:

Qwest Interrogatories Nos. 1, 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(m), 2(n), 2(o), 2(p), 2(q), 2(r), 2(s), 3 and 8.

Staff Interrogatories Nos. 1(a), 1(b), 2, 4(a), 4(b), 4(c), 5, 7(a), 7(b), 8, 9(a), and 9(b).

Carolyn Ridley
Carolyn Ridley

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 16th day of October, 2012.

Kim Witherspoon
Notary Public
State of Kentucky, at Large

My Commission Expires: 8-6-2014

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

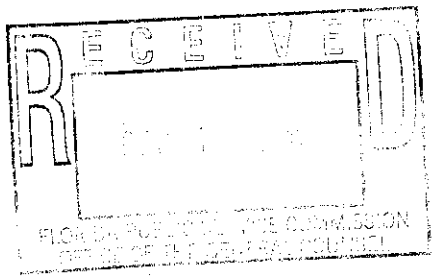
In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

APPENDIX STAFF INT 2

Bates stamped pages TWTC Fla 000001 through TWTC Fla 000064

tw telecom of florida, l.p. Responses to Staff Interrogatory No. 2

Response dated: December 12, 2011



ACCESS SERVICE PRICE LIST

This Price List, ***tw telecom of florida l.p.*** *Florida Price List No. 5, replaces in its entirety* ***tw telecom of florida l.p.*** *Florida Price List No. 4*

General Rules and Regulations and Terms and Conditions

for

ACCESS SERVICE

Provided by

tw telecom of florida l.p.

This Access Price List contains the descriptions, regulations, service standards and rates applicable to the furnishing of telecommunications business services provided by **tw telecom of florida l.p.** with principal offices at 10475 Park Meadows Drive, Littleton, CO 80124. This Price List applies to services provided within the Orlando, Tampa and Daytona Beach LATAs. This Price List is on file with the Florida Public Service Commission and copies may be inspected, during normal business hours, at the Company's principal place of business.

090538 Hearing Exhibits 00051

ACCESS SERVICE PRICE LIST

CHECK SHEET

Pages of this price list, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original price list and are currently in effect as of the date on the bottom of this page.

PAGE	REVISION		PAGE	REVISION		PAGE	REVISION	
Title	Original	*	26	Original	*	51	Original	*
1	Original	*	27	Original	*	52	Original	*
2	Original	*	28	Original	*	53	Original	*
3	Original	*	29	Original	*	54	Original	*
4	Original	*	30	Original	*	55	Original	*
5	Original	*	31	Original	*	56	Original	*
6	Original	*	32	Original	*	57	Original	*
7	Original	*	33	Original	*	58	Original	*
8	Original	*	34	Original	*	59	Original	*
9	Original	*	35	Original	*	60	Original	*
10	Original	*	36	Original	*	61	Original	*
11	Original	*	37	Original	*	62	Original	*
12	Original	*	38	Original	*	63	Original	*
13	Original	*	39	Original	*			
14	Original	*	40	Original	*			
15	Original	*	41	Original	*			
16	Original	*	42	Original	*			
17	Original	*	43	Original	*			
18	Original	*	44	Original	*			
19	Original	*	45	Original	*			
20	Original	*	46	Original	*			
21	Original	*	47	Original	*			
22	Original	*	48	Original	*			
23	Original	*	49	Original	*			
24	Original	*	50	Original	*			
25	Original	*						

* - Indicates pages included in this filing.

ACCESS SERVICE PRICE LIST

TABLE OF CONTENTS

	Page
CHECK SHEET	1
TABLE OF CONTENTS	2
SUBJECT INDEX	3
EXPLANATION OF SYMBOLS	4
PRICE LIST FORMAT	5
SECTION 1 - ABBREVIATIONS AND DEFINITIONS	6
SECTION 2 - TERMS AND CONDITIONS	15
SECTION 3 - SWITCHED ACCESS SERVICE	39
SECTION 4 - RATES AND CHARGES	53
SECTION 5 - CUSTOMER SPECIFIC CONTRACTS	58
SECTION 6 - TELECOMMUNICATIONS SERVICES PRIORITY	59

ACCESS SERVICE PRICE LIST

SUBJECT INDEX

	Page
Abbreviations and Definitions	6
Assignment or Transfer of Service	16
Billing and Payments	23
Cancellation of Application for Service	21
Claims and Disputes	26
Discontinuance and Restoration of Service	19
Explanation of Symbols	4
Interconnection	29
Inspection, Testing and Adjustment	28
Jurisdictional Reporting	34
Liability of the Company	30
Liability of the Customer	31
Limitation on Service	15
Obligations of the Customer	61
Operator Pass-through Service	52
Payment of Deposits	27
Rate Categories	46
Switched Access Service	39
Rates and Charges	53
Taxes and Surcharges	33
Term Agreements	22
Undertaking of the Company	15
Use of Service	16

ACCESS SERVICE PRICE LIST

EXPLANATION OF SYMBOLS

The following symbols shall be used in this price list for the purpose indicated below:

(D) - Indicates Discontinued Rate or Regulation

(I) - Indicates Increased Rate

(M) - Indicates Move in Location of Text

(N) - Indicates New Rate or Regulation

(R) - Indicates Reduced Rate

(T) - Indicates Change of Text Only

ACCESS SERVICE PRICE LIST

PRICE LIST FORMAT

A. Page Numbering - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially, however, new pages are occasionally added to the price list. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between Pages 14 and 15 would be 14.1.

B. Page Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc. that the Commission follows in their price list approval process, the most current page number on file with the Commission is not always the price list page in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2
2.1
2.1.1
2.1.1.A
2.1.1.A.1
2.1.1.A.1.a
2.1.1.A.1.a.I
2.1.1.A.1.a.I.(i)
2.1.1.A.1.a.I.(i).(1)

D. Check Sheets - When a price list filing is made with the Commission, an updated check sheet accompanies the price list filing. The check sheet lists the pages contained in the price list, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc., remains the same, just revised revision levels on some pages). The price list user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

090538 Hearing Exhibits 00056

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS

Access Minutes - Denotes usage of exchange facilities in intrastate service for the purpose of calculating chargeable minutes of use.

Access Service or Switched Access Service - Access to the switched network of an Exchange Carrier for the purposes of originating or terminating communications. Access Service is available to carriers as defined herein.

Access Service Request (ASR) - The Industry service order format used by Access Service Customer and access providers as agreed to by the ATIS/Ordering and Billing Forum.

Access Tandem - An Exchange Carrier's switching system that provides a traffic concentration and distribution function for originating or terminating traffic between local switching centers and a Customer's premises.

Account - The Customer who has agreed, verbally or by signature, to honor the terms of service established by the Company. An account may have more than one access code and/or operating company number (OCN) and/or carrier identification code (CIC) billed to the same Customer address.

Answer supervision - The transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to the Customer's point of termination as an indication that the called party has answered or disconnected.

Authorized User - A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Call - A Customer attempt for which the complete address code is provided to the called end office.

Carrier or Common Carrier - Provider of telecommunications services for hire. See also Interexchange Carrier or Exchange Carrier.

Carrier Access Code - A uniform seven (7) digit code assigned to an individual carrier. The seven (7) digit code has the form 950-xxxx or 101-xxxx.

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Central Office - A local company switching system where the station loops are terminated for purposes of interconnection to each other and to trunks.

Channel(s) - An electrical or, in the case of fiber optic-based transmission systems, a photonic communications path between two or more points of termination.

Commercial Mobile Radio Service (CMRS) - A wireless provider of telecommunications services.

Common Channel Signaling (CCS) - A high speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

Communications System - Denotes channels and other facilities which are capable of communications between terminal equipment provided by an entity other than the Company.

Collocation - Carrier facilities and/or equipment located in the local exchange carrier's central offices.

Commission – The Florida Public Service Commission.

Company - **tw telecom of florida l.p.**, the issuer of this price list.

Constructive Order - Delivery of calls to or acceptance of calls from the Company's end user locations over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase access services as described herein. Similarly the selection by a Company's end user of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

Conventional Signaling - The inter-machine signaling system has been traditionally used in North America for the purpose of transmitting the called number's address digits from the originating Local Switching Center which terminates the call. In this system, all of the dialed digits are received by the originating switching machine, a path is selected, and the sequence of supervisory signals and out pulsed digits is initiated. No overlap out pulsing ten digit ANI, ANI information digits, or acknowledgment link are included in this signaling sequence.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Customer - Any person, firm, corporation or other entity which orders or obtains service under this price list and is responsible for the payment of charges.

Customer Agreement - The mutual agreement between the Company and the Customer for the provision of the Company's service.

Customer-Designated Premises - The premises specified by the Customer for the origination or termination of Access Services.

Customer Point of Presence (POP) - The physical location associated with the Customer's communication system.

Digital Cross Connect System (DCS) - A digital system within a communications network with centralized switching and cross connection.

Digital Signal level 0 (DS0) - A dedicated, full duplex digital channel with line speeds of 2.4, 4.8, 9.6, 19.2, 56 or 64 Kbps.

Digital Signal level 1 (DS1) - A dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Bipolar with 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe (ESF) formats. DS1 Service has the equivalent capacity of 24 Voice Grade or DS0 services.

Digital Signal Level 3 (DS3) - A dedicated, high capacity, full duplex channel with a line speed of 44.736 Mbps isochronous serial data having a line code of bipolar with three zero substitution (B3ZS). Equivalent capacity of 28 DS1 Services.

Dedicated Access or Dedicated Transport - A method for a Customer to directly connect two locations of their choice with dedicated (non-switched) services.

Duplex Service - Service which provides for simultaneous transmission in both directions.

End User - Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to or uses intrastate service provided by a Carrier.

Entry Switch - The first point of switching.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Exchange - A group of lines in a unit generally smaller than a LATA established by the Company for the administration of communications services in a specified area. An Exchange may consist of one or more central offices together with the associated facilities used in furnishing communications services within that area.

Exchange Carrier - Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Facilities - Denotes any cable, poles, conduit, carrier equipment, wire center distribution frames, central office switching equipment, etc., utilized to provide the services offered under this price list.

FCC – Federal Communications Commission.

Feature Group D – Access service which provides trunk side access to Company switches through the use of end office or access tandem switch trunk equipment. Feature Group D service may be arranged for 10XXXX dialing or equal access without using a dial code.

Fiber Optic Cable - A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

Firm Order Confirmation (FOC) - Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

Hub - The Company office where Customer facilities are terminated for purposes of interconnection to Trunks and/or cross-connection to distant ends.

Interconnected Wholesale Provider - A company which sells, installs and maintains telephone systems for end users that interconnects its network to other telecommunication carriers networks for the delivery of telecommunication services.

Individual Case Basis - A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Interexchange Carrier (IXC) or Interexchange Common Carrier - Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in state or foreign communication for hire by wire or radio, between two or more exchanges.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

InterMTA (Major Trading Area) - For purposes of this price list, InterMTA refers to telecommunications traffic exchanged between a LEC and a CMRS, PCS or Wireless provider that originates and terminates in different Major Trading Areas as used by the FCC to define coverage for certain services.

Interstate - For purposes of this price list, the term Interstate applies to the regulatory jurisdiction of services used for communications between locations located in different states within the United States or between one or more location in the United States and one or more international locations.

IntraMTA (Major Trading Areas) - For purposes of this price list, IntraMTA refers to telecommunications traffic exchanged between a LEC and a CMRS, PCS or Wireless provider that originates or terminates within the same Major Trading Area as used by the FCC to define coverage for certain services.

Intrastate - For purposes of this price list, the term Intrastate applies to the regulatory jurisdiction of services for communications between locations within the same state or services which are not jurisdictionally interstate.

Joint User - A person, firm or corporation designated by the Customer as a user of access facilities furnished to the Customer by the Company, and to whom a portion of the charges for such facilities are billed under a joint use arrangement.

LATA (Local Access and Transport Area) - A geographic area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Local Access - The connection between a Customer's premises and a point of presence of the Exchange Carrier.

Local Calling Area - A geographical area as defined in the Company's local or general exchange service tariff (s) in which an end user may complete a call without incurring toll usage charges.

Local Switching Center - The switching center where telephone exchange service Customer station channels are terminated for purposes of interconnection to each other and to interoffice trunks.

090538 Hearing Exhibits 00061

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Message - A message is a Call as defined above.

Network - Those telecommunication facilities operated by the Company, and excludes any telecommunication facilities that are operated by other telecommunication providers.

Network Services - The Company's telecommunications Access Services.

Nonrecurring Charges - The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees.

OC-12 - A high capacity channel for full duplex, synchronous, optic transmission of digital signals based on the SONET Standard at a rate of 622.08 Mbps.

OC-3 - A high capacity channel for full duplex, synchronous, optic transmission of digital signals based on the SONET Standard at a rate of 155.52 Mbps.

Off-Hook - The active condition of switched access or a telephone exchange service line.

Off-Net - A Customer is considered to be Off-Net when its point of presence is not served by the same Hub in which the Company's Local Switching Center, which is providing service to the Customer, is located.

On-Hook - The idle condition of switched access or a telephone exchange service line.

On-Net - A Customer is considered to be On-Net when its point of presence is served by the same Hub in which the Company's Local Switching Center, which is providing service to the Customer, is located.

Originating Direction - The use of Switched Access Service for the origination of calls from an end user or Customer premises to an IXC premises or to another Local Exchange Carrier or CMRS provider.

Out of Band Signaling - An exchange access signaling feature which allows Customers to exchange call control and signaling information over a communications path which is separate from the message path.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Point of Presence (POP) - Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Point of Termination - The point of demarcation within a Customer-designated premises at which the Company's responsibility for the provision of access service ends. The point of demarcation is the point of interconnection between Company communications facilities and Customer-provided facilities as described in Part 68 of the Federal Communications Commission's Rules & Regulations.

Premises - The physical space designated by a Customer or Authorized User for the termination of the Company's service.

Presubscription - An arrangement whereby an end user may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing toll calls. The selected IXC is referred to as the end user's Primary Interexchange Carrier (PIC). The end user may select any IXC that orders FGD Access Service at the Local Switching Center that serves the end user.

Recurring Charges - The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Commencement Date - The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this price list, in which case the Service Commencement Date is the date of the Customer's acceptance of service. The parties may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed Service Order from a Customer, the Service Commencement Date will be the first date on which the service or facility was used by the Customer. For Tandem Connect Customers, the Service Commencement Date will be the first date on which the service or facility was used by the Customer.

Service Order - The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this price list.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Service(s) - The Company's telecommunications Access Services offered on the Company's Network.

Serving Wire Center - The wire center from which the Customer-designated premises would normally obtain dial tone from the Company.

Shared Facilities - A facility or equipment system or subsystem which can be used simultaneously by several customers.

Signaling Point of Interface - The Customer-designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7) - The Common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Signaling Transfer Point Access - Allows the Customer to access a specialized switch which provides SS7 network access and performs SS7 messaging routing and screening.

Special Access - See Dedicated Access.

ACCESS SERVICE PRICE LIST

SECTION 1 - ABBREVIATIONS AND DEFINITIONS, (Cont'd.)

Term Agreement - A method of purchasing the Company's services whereby the Customer agrees to purchase service between specific locations for a specified and mutually agreed upon length of time.

Terminal Equipment - Telecommunications devices, apparatus and associated wiring on the Customer-designated premises.

Terminating Direction - The use of Access Service for the completion of calls from an IXC or Carrier premises to an end user or Customer premises.

Transmission Path - An electrical path capable of transmitting signals within the range of the service offering. A transmission path is comprised of physical or derived facilities consisting of any form or configuration of plant used in the telecommunications industry.

Trunk - A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Trunk Group - A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

Wire Center - A physical location in which one or more central offices, used for the provision of exchange services, are located.

SECTION 2 - TERMS AND CONDITIONS

2.1 Undertaking of the Company

The Company's service is furnished to Customers for intrastate communications. The Company's service is available twenty-four hours per day, seven days per week.

The Company arranges for installation, operation, and maintenance of the service provided in this price list for the Customer in accordance with the terms and conditions set forth herein and in other relevant Company Tariffs.

Access Service consists of access to the switched network of an exchange carrier for the purpose of originating or terminating communications. Access Service is available to carriers as defined herein.

2.2 Limitation on Service

2.2.1 Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this price list. The Company may decline applications for service to or from a location where the necessary facilities or equipment are not available. The Company may discontinue furnishing service in accordance with this price list.

2.2.2 The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control (examples of these conditions are more fully set forth elsewhere in this price list), or when service is used in violation of provisions of this price list or the law.

2.2.3 The Company reserves the right to discontinue service, limit service, or to impose requirements as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the business or economic feasibility of providing service, as determined by the Company in its reasonable judgment.

2.2.4 The Company does not undertake to transmit messages, but offers the use of its service when available, and, as more fully set forth elsewhere in this price list shall not be liable for errors in transmission or for failure to establish connections.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.3 Assignment or Transfer of Service

All service provided under this price list is directly or indirectly controlled by the Company, and the Customer may not transfer or assign the use of service without the express prior written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of service. All terms and conditions contained in this document shall apply to all such permitted transferees or assignees, as well as all conditions of service.

2.4 Use of Service

2.4.1 Service may be used for any lawful purpose by the Customer or by any end user.

2.4.2 The Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, number, process, or code. All right, title and interest to such items remain, at all times, solely with the Company.

2.4.3 Recording of telephone conversations of service provided by the Company under this price list is prohibited except as authorized by applicable federal, state and local laws.

2.4.4 Any service provided under this price list may be resold or shared (jointly used) with other persons at the Customer's option. The Customer remains solely responsible for all use of service ordered by it or billed to its account(s) pursuant to this price list, for determining who is authorized to use its service, and for promptly notifying the Company of any unauthorized use. The Customer may advise its customers that a portion of its service is provided by the Company, but the Customer shall not represent that the Company jointly participates with the Customer in the provision of the service.

2.4.5 Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this price list, a month is considered to have 30 days.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.4 Use of Service, (Cont'd.)

2.4.6 The Customer may be required to enter into written Service Orders which shall contain or reference the name of the Customer, a specific description of the service ordered; the rate to be charged, the duration of the services, and the terms and conditions in this price list. The Customer will also be required to execute any other documents as may be reasonably requested by the Company.

2.4.7 At the expiration of the initial term specified in each Service Order, or in any extension thereof, the service term will renew automatically at the same terms and conditions for successive one-year terms unless either party notifies the other 30 days prior to the expiration of the then current term that it wishes to terminate the service. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the Service Order and this price list prior to termination, including, but not limited to, any fees for early termination. The rights and obligations which by their nature extend beyond the termination of the term of the Service Order shall survive such termination.

2.4.8 Non-Routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, and/or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.4 Use of Service, (Cont'd.)

2.4.9 Special Construction

Subject to the agreement of the Company and to the terms contained in this price list, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is construction undertaken and characterized by one or more of the following:

A. where facilities are not presently available, and there is no other requirement for the facilities so constructed;

B. of a type other than that which the Company would normally utilize in the furnishing of its services;

C. over a route other than that which the Company would normally utilize in the furnishing of its services;

D. in a quantity greater than that which the Company would normally construct;

E. involving abnormal costs;

F. on an expedited basis;

G. on a temporary basis until permanent facilities are available; or

H. in advance of its normal construction.

Special construction charges for Access Service will be determined as described in this section.

2.4.10 Ownership of Facilities

Title to all facilities provided in accordance with this price list remains in the Company, its partners, agents, contractors or suppliers.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.5 Discontinuance and Restoration of Service

Service continues to be provided until canceled by the Customer, in writing, or until canceled by the Company as set forth below. The Company may render bills subsequent to the termination of service for charges incurred before termination.

2.5.1 Cancellation by the Customer

The Customer may have service discontinued upon written notice to the Company. The Company shall hold the Customer responsible for payment of all bills for service furnished until the cancellation date specified by the Customer or until the date that the written cancellation notice is received, whichever is later. A termination liability charge applies to early cancellation of a term agreement.

2.5.2 Cancellation by the Company

A. For Nonpayment: The Company, by written notice to the Customer and in accordance with applicable law, may discontinue service or cancel an application for service without incurring any liability when there is an unpaid balance for service that is more than 30 days overdue.

B. For Returned Checks: The Customer whose check or draft is returned unpaid for any reason, after two attempts at collection, shall be subject to discontinuance of service in the same manner as provided for nonpayment of overdue charges.

C. The Customer shall be subject to discontinuance of service, without notice, for any violation of any law, rule, regulation or policy of any government authority having jurisdiction over service or of any of the provisions governing the furnishing of service under this price list, or by reason of any order or decision of a court or other government authority having jurisdiction which prohibits the Company from furnishing such service.

D. For the Company to comply with any order or request of any governmental authority having jurisdiction, the Customer shall be subject to discontinuance of service, without notice.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.5 Discontinuance and Restoration of Service, (Cont'd.)

2.5.3 Restoration of Service

A. If service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes it continued, service shall, at the Company's discretion, be restored when all past due amounts are paid or the event giving rise to the discontinuance (if other than nonpayment) is corrected and Customer pays a deposit at Company's discretion. Nonrecurring charges apply to restored services.

B. Restoration of disrupted services shall be in accordance with Federal Communications Commission Rules and Regulations, which specify the priority system for such activities.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.6 Cancellation of Application for Service

If the Customer cancels its order for service prior to the service due date, a Cancel Order Charge will apply. Charges are reflected in the Rate Section.

2.6.1 In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.6.2 Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

2.7 Minimum Period

The minimum period for which services are provided and for which rates and charges are applicable is one month unless otherwise specified. When a service is discontinued prior to the expiration of the minimum period, charges are applicable, whether the service is used or not.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.8 Term Agreements

The Company may offer Term Agreements wherein the Customer agrees to retain specified Company services for a mutually agreed upon length of time. A Termination Liability charge applies to early termination of a Term Agreement.

Upon expiration of a term contract, the service term will renew automatically at the same terms and conditions for successive one-year terms unless either party notifies the other 30 days prior to the expiration of the then current term that it wishes to terminate the service.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.9 Billing and Payments

2.9.1 All bills for service provided to the Customer by the Company are due and payable on the due date printed on the invoice ("Due Date"), which is one day prior to the date of the next monthly invoice and are payable in immediately available funds.

A. The Company shall bill on a current basis all charges incurred by and credits due to the Customer. The Customer may receive its bill in 1) a paper format, 2) on CD-ROM, or 3) via electronic transmission. Such bills are due on the Due Date regardless of the media utilized. The Company shall bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage. Adjustments for the quantities of service established or discontinued in any billing period beyond the minimum period of service will be prorated to the number of days based on a 30-day month. The Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of the bill.

B. The Company may assess charges for provisioning of additional copies of bills. See Section 4 for applicable rates and charges.

C. The Company, upon request of call detail records, including but not limited to, intraLATA toll free and intrastate access and resale services, may assess charges for the provisioning of these records. The call detail records will be in Exchange Message Interface (EMI) Industry format. See Section 4 for applicable rates and charges.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.9 Billing and Payments, (Cont'd.)

D. Further, if any portion of the payment is received by the Company after the payment Due Date as set forth above, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, a late payment penalty shall be due the Company. Any payment or portion thereof not received by the Due Date is subject to a late charge on the unpaid amount at the lesser of 1.5% per month or the maximum rate permitted by law.

E. A charge of $25.00 (twenty-five dollars) or the current allowable amount, will be assessed for any check or other form of payment returned by the drawee bank or other financial institution for insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy necessitating return of the instrument at the discretion of the drawee bank or financial institution. This charge will be assessed in addition to any charges assessed by the drawee bank or any other financial institution.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.9 Billing and Payments, (Cont'd.)

2.9.2 The Company will establish a bill day each month for each Customer account. The bill will cover charges for the billing period for which the bill is rendered, plus any known unbilled charges and adjustments for any prior periods.

There are three types of rates and charges that apply to Access Service. These are monthly Recurring Charges, usage rates and Nonrecurring Charges.

A. Monthly Recurring Charges: Monthly Recurring Charges are flat rates for facilities that apply each month or fraction thereof that a specific rate element is provided.

B. Usage Rates: Usage rates are rates that are applied on a per unit of measure basis, such as per access minute or per query. Usage rates are accumulated over a monthly period.

C. Nonrecurring Charges: Nonrecurring charges are one time charges that apply for a specific work activity (i.e., installation of new service or change to an existing service).

1. Installation of Service: Nonrecurring charges apply to each Access Service installed. The charge is applied per line or Trunk.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.10 Claims and Disputes

Objections to billed charges must be reported to the Company within 120 calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived. Claims must include all supporting documentation and may be submitted online at http://customers.twtelecom.com/disputes/ or by telephone at 1-800-829-0420. The Company shall make adjustments to the Customer's invoice to the extent that circumstances exist which reasonably indicate that such changes are appropriate.

2.10.1 If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest credits or penalties will apply.

2.10.2 If the dispute is resolved in favor of the Customer and the Customer has paid the disputed amount, the Customer will receive an interest credit from the Company for the disputed amount times a late factor as set forth in Section 2.9.

2.10.3 If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.

2.10.4 If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, the Customer must, within five (5) business days following written, electronic or telephonic notice of the resolution, pay the disputed amount including the late penalty as set forth in Section 2.9.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.11 Payment of Deposits

2.11.1 The Company may, in order to safeguard its interests, require a Customer which has a proven history of late payments to the Company or does not have established credit to make a deposit prior to or at any time after the provision of service. The deposit is to be held by the Company as a guarantee of the payment of rates and charges.

2.11.2 A deposit may not exceed the actual or estimated rates and charges for the service for a two month period. The fact that a deposit has been made in no way relieves the Customer from complying with the Company's requirement as to the prompt payment of bills.

2.11.3 At such time as the provision of the service to the Customer is terminated, the amount of the deposit will be credited to the Customer's account and any credit balance which may remain will be refunded. After the Customer has established a one year prompt payment record, such a deposit will be refunded or credited to the Customer account at any time prior to the termination of the provision of the service to the Customer.

2.11.4 In case of a cash deposit, for the period the deposit is held by the Company, simple annual interest will be applied to the deposit for the number of days from the date the Customer deposit is received by the Company to and including the date such deposit is credited to the Customer's account or the date the deposit is refunded by the Company.

2.11.5 If the amount of a deposit is proven to be less than required to meet the requirements specified above, the Customer shall be required to pay an additional deposit upon request.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.12 Inspection, Testing and Adjustment

2.12.1 The Company may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether this price list is being complied with in the installation, operation or maintenance of the Customer's or the Company's facilities or equipment. The Company may interrupt service at any time, without penalty or liability, due to the departure from or reasonable suspicion of the departure from any of these terms and conditions.

2.12.2 Upon reasonable notice, the facilities or equipment provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary for their maintenance in a condition satisfactory to the Company. No interruption allowance shall be granted for the time during which such tests and adjustments are made, unless such interruption exceeds twenty-four (24) hours in length and is requested by the Customer.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.13 Interconnection

2.13.1 Service furnished by the Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to technical limitations established by the Company.

2.13.2 Interconnection with the services or facilities of other common carriers shall be executed in accordance with this price list and the terms and conditions of the other common carrier's tariff(s).

2.13.3 The Customer shall ensure that the facilities or equipment provided by the Customer are properly interconnected with the facilities or equipment of the Company. If the Customer maintains or operates the interconnected facilities or equipment in a manner which results or may result in harm to the Company's facilities, equipment, personnel, or the quality of service, the Company may require the use of protective equipment at the Customer's expense. If this action fails to eliminate the actual or potential harm, the Company may, upon written notice, terminate the existing service of the Customer.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.14 Liability of the Company

2.14.1 The liability of the Company , or any other common carrier or other service provider that furnishes any portion of the Company's services, for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, or changing regulated or nonregulated service or facilities or equipment (including the obtaining or furnishing of information in respect thereof or with respect to the Customers of the service or facilities) will not exceed an amount equal to the MRC (calculated on a proportionate basis) for the affected service during the period which such error, mistake, omission, interruption or delay occurs. The extension of such allowances shall be the sole remedy of the Customer and the sole liability of the Company.

2.14.2 The Company will not be liable at any time or under any circumstance for indirect, consequential, special incidental, reliance, special, punitive or consequential damages (including, without limitation, harm to business, lost revenues, lost savings, lost opportunity, harm to business or loss of profits) in connection with services rendered to the Customer under this price list.

2.14.3 When the services or facilities of other common carriers are used separately or in conjunction with the Company's facilities or equipment in establishing connection to points not reached by the Company's facilities or equipment, the Company is not liable under any circumstances for any act, omission, error, mistake, interruption or delay of any connecting carrier or other service provider or their respective agents, servants or employees; nor will the Company have any such liability for providers of connections, equipment, facilities, or services other than the Company or its agents, servants, or employees.

2.14.4 The Company is not liable for interruptions, errors, delays, or defects in transmission when caused by strike or other labor problems, power fluctuations, surges or failures, national emergencies, insurrections, acts of God, war, fire, flood, adverse weather conditions, explosion, vandalism, acts of terrorism, riots, government authorities, cable cut, ordinances, laws, rules, regulations or restrictions, condemnation or exercise of rights of eminent domain, or other causes beyond the Company's control.

2.14.5 The Company will not be liable under any circumstances for any act, omission, error, mistake, interruption or delay of any person or entity owning telecommunications facilities used by the Customer or who furnishes facilities or services connected with or provided in conjunction with the Company's service; or for the culpable conduct of the Customer, its agents, servants, employees, invitees, or guests, or failures of equipment, facilities or connections provided by the Customer.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.15 Liability of the Customer

2.15.1 The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, directors, employees, agents, invitees or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.

2.15.2 Indemnification by the Customer

The Customer and any authorized or joint users, jointly and severally shall indemnify, defend and hold the Company harmless against claims, loss, damage, expense (including attorneys' fees and court costs) for (i) libel, slander, or infringement of copyright or unauthorized use of any trademark, tradename or service mark arising from the material transmitted over its facilities; (ii) infringement of patents arising from combining with, or using in connection with, facilities of the Company, equipment and systems of the Customer; (iii) all claims of any kind by Customer's end users; and (iv) all other claims including, without limitation, claims for damage to any business or property or injury to, or death of, any person arising out of any act or omission of the Customer in connection with facilities provided by the Company or the Customer. In the event any such infringing use is enjoined, the Customer, authorized user or joint user at its option and expense, shall obtain immediately a dismissal or stay of such injunction, obtain a license or other agreement so as to extinguish any claim of infringement, or terminate the claimed infringing use or modify such infringement. The Customer and any authorized or joint users, jointly and severally shall also indemnify, defend and hold the Company harmless against: all claims, demands, losses or liabilities, including, but not limited to, fees and expenses of counsel, arising out of, occasioned by, or in connection with, any act or omission of the Customer or of any person utilizing the Customer's codes, services, equipment, or facilities, with or without the consent or knowledge of the Customer. Service is furnished subject to the conditions that it will not be used: (1) to make foul or profane expressions, (2) to impersonate another person with fraudulent or malicious intent, (3) to call another person so frequently, or at such times, or in any other manner so as to annoy, abuse, threaten, or harass the other person, (4) for any other unlawful purpose, or (5) in such a manner as to interfere with the use of the service by any other user.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.15 Liability of the Customer, (Cont'd.)

2.15.3 Customer-Provided Equipment - The service and facilities furnished by the Company are subject to the following limitations: the Company shall not be liable for damage arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission or other injury, including but not limited to injuries to persons or property from voltages or currents transmitted over the facilities of the Company caused by Customer-Provided equipment or premises wire. The Company shall have no obligation to install, maintain, repair or operate Customer-provided equipment. In the event that the Company, in responding to a Customer-initiated service call, determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment, the Customer must compensate the Company for such service call at the prevailing rate.

2.15.4 Use of Facilities of Other Companies - When the facilities of other companies are used in establishing a connection, the Company is not liable for any act, error, omission, or interruption caused by the other company or their agents or employees. This includes the provision of a signaling system database by another company.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.16 Taxes and Surcharges

2.16.1 Taxes, Fees and Surcharges

"Tax" or "Taxes" means any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax-like fee or surcharge of whatever nature and however designated, imposed or sought to be imposed, on or with respect to purchases by Customer or for the Company's use of public streets or rights of way, which the Company is required or permitted by law or price list to collect from Customer; provided, however, that the term "Tax" will not include any tax on the Company's corporate existence, status, income, corporate property or payroll taxes.

The Company shall bill any and all applicable taxes, surcharges and fees, including, but not limited to: Federal Excise Tax; State Sales Tax; Municipal Taxes; Gross Receipts Taxes; Telecommunications Relay Services (TRS); and any taxes, surcharges, fees, charges or other payments contractual or otherwise, for the use of public streets or rights-of-way, whether designated as franchise fees or otherwise. As permitted by law, the Company will recover from its Customers any such charges assessed directly against the Company. Such taxes or fees will be itemized separately on the Customer's invoice or billing detail. If Customer fails to pay any Taxes properly billed, Customer will be solely responsible for payment of the Taxes, and penalty and interest.

Taxes and surcharges assessed on bundled services are based upon a model configuration of the product elements. Details are available upon Customer request.

If either Customer or the Company is audited by a taxing or other governmental authority, the other party will cooperate reasonably by responding to the audit inquiries in a proper, complete and timely manner. The Company will cooperate, at Customer's expense, with reasonable requests of Customer in connection with any Tax contest or refund claim. Customer will ensure that no lien is attached to or allowed to remain on any asset of the Company as a result of any Tax contest. Customer will indemnify and hold the Company harmless against any liabilities, damages, losses, costs or expenses arising out of such Tax proceedings, including without limitation any additional Taxes, interest, penalties and attorney's fees.

If Customer claims an exemption for any Taxes, Customer must provide the Company with a proper tax exemption certificate as authorized by the appropriate taxing authority. Customer must pay the applicable Taxes to the Company until it provides a valid exemption certificate. If applicable law exempts a service from a Tax, but does not also provide an exemption procedure, the Company will not collect such Tax if Customer provides a letter signed by one of its officers; (i) claiming a right to the exemption; (ii) identifying the applicable law that allows such exemption and does not require an exemption certificate; and (iii) agreeing to indemnify and hold the Company harmless from any tax, interest, penalties, loss, cost or expense asserted against the Company as a result of its not collecting the Taxes from Customer.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.17 Jurisdictional Reporting

2.17.1 Switched Access Services

For purposes of determining the jurisdiction of Switched Access Services (originating toll free and terminating traffic) , to the extent the Company receives sufficient call detail to permit it to determine the jurisdiction of some or all originating and terminating access minutes of use, the Company will use that call detail to render bills for those minutes. To the extent call detail is not available, the jurisdictional reporting requirements specified below will apply.

When a Customer orders Access Services, its projected Percent Interstate Usage (PIU) must be provided to the Company. Except to the extent the Company has sufficient call detail to determine the jurisdiction of the call, these percentages will be used by the Company to apportion the usage and/or charges between interstate and intrastate until a revised report is received as set forth herein.

To the extent that sufficient call detail is unavailable and the Customer has failed to provide its projected PIU, the Company shall allocate unidentifiable minutes subject to the PIU as 50 percent interstate traffic and 50 percent intrastate traffic.

Based on distribution of traffic (identifiable, Customer based PIU, Default PIU), the Company may derive an aggregated factor.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.17 Jurisdictional Reporting, (Cont'd.)

2.17.2 IntraLATA Toll Usage

For purposes of determining the jurisdiction of IntraLATA Toll Usage termination, to the extent the Company receives sufficient call detail to permit it to determine the jurisdiction of some or all originating and terminating Intralata Toll minutes of use, the Company will use that call detail to render bills for those minutes. To the extent call detail is not available, the jurisdictional reporting requirements specified below will apply.

When a Customer terminates IntraLATA Toll Usage, its projected Percent Local Usage (PLU) must be provided to the Company. Except to the extent the Company has sufficient call detail to determine the jurisdiction of the call, these percentages will be used by the Company to apportion the usage and/or charges between IntraLATA Toll and local until a revised report is received as set forth herein.

To the extent that sufficient call detail is unavailable and the Customer has failed to provide its projected PLU, the Company shall allocate unidentifiable minutes subject to the PLU as 50 percent IntraLATA Toll Usage traffic and 50 percent local traffic.

Based on distribution of traffic (identifiable, Customer based PLU, Default PLU), the Company may derive an aggregated factor.

2.17.3 Jurisdictional Reporting Timelines

The Customer shall provide to the Company, to be received no later than 15 days after the end of each quarter, a revised report reflecting the aforementioned factors, as applicable, for the past 3 months, for each service arranged for use, based solely on the traffic originating from or terminating to the Company. The quarterly report will serve as the basis for the next three (3) months billing and will be effective on the bill date for that service. If the Customer does not supply the reports for services where reports are needed, the Company will assume the percentages to be the same as was previously provided in the most recent report(s).

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.17 Jurisdictional Reporting, (Cont'd.)

2.17.4 Jurisdictional Reports Verification

If a billing dispute arises or a regulatory commission questions any of the factors, the Customer will provide the data issued to determine the applicable factor. The Customer will supply the data within 30 days of the Company request.

The Customer shall keep records of call detail from which the appropriate jurisdiction can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit, internally or with an external firm, at any time during the year. The Customer, at its own expense, has the right to retain an independent auditing firm.

In the event that an audit reveals that any Customer reported factor was incorrect, the Company shall apply the audit results to jurisdictionalize the usage, as applicable, affected by the audit. The Customer shall be back-billed or credited, for a period retroactive to the date that the incorrect percentage was reported, but not to exceed 12 months. Back-billed amounts are subject to a late payment penalty and payment shall be made in immediately available funds by the due date printed on the invoice.

Should an audit reveal that the misreported factors resulted in an underpayment of usage charges to the Company of five percent or more of the total usage charges, the Customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail, submitted to the Company by the auditor.

Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the Customer to receive such results.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.18 Obligations of the Customer

2.18.1 Damages

The Customer shall reimburse the Company for damages to Company facilities utilized to provide services under this price list caused by the negligence or willful act of the Customer, or resulting from improper use of the Company's facilities, or due to malfunction of any facilities or equipment provided by other than the Company, except that no Customer shall be liable for another Customer's actions.

2.18.2 Ownership of Facilities

Facilities utilized by the Company to provide service under the provisions of this price list shall remain the property of the Company. Such facilities shall be returned to the Company by the Customer, whenever requested, within a reasonable period following the request in as good condition as reasonable wear permits. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.

2.18.3 Equipment Space and Power

The Customer shall furnish to the Company, at no charge, equipment space and electrical power required by the Company to provide services under this price list at the points of termination of such services. The selection of ac or dc power shall be mutually agreed to by the Customer and Company. The Customer shall also make necessary arrangements in order that the Company will have access to such spaces at reasonable times for installation, testing, repair, maintenance or removal of Company service.

SECTION 2 - TERMS AND CONDITIONS, (Cont'd.)

2.18 Obligations of the Customer, (Cont'd.)

2.18.4 Testing

The service provided under this price list shall be made available to the Company at times mutually agreed upon in order to permit the Company to make tests and adjustments appropriate for maintaining the services in satisfactory operating condition. No credit will be allowed for any interruption during such tests and adjustments.

2.18.5 Design of Customer Services

The Customer shall be responsible for its own expense for the overall design of its services and for any redesigning or rearrangements of its services which may be required because of changes in facilities, operations or procedures of the Company, minimum protection criteria or operating or maintenance characteristics of the facilities.

2.18.6 Network Contingency Coordination

The Customer shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications service.

SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a Customer's premises and an end user's premises. It provides for the use of common and dedicated terminations, switching and trunking facilities, and for the use of common subscriber plant of the Company. Switched Access Service provides for the ability to originate or terminate calls from an end user's premises to a Customer's premises in the LATA where it is provided. When the Customer is a CMRS provider, Switched Access Service rates apply for all interMTA traffic.

Switched Access Service is also available to pass calls between a Customer's premises and the premises of another carrier, including a CMRS provider and an Interconnected Wholesale provider.

The application of rates for Switched Access Service is described in Section 4 following. Rates and charges for services other than Switched Access Service, i.e., a Customer interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services.

Arrangements for indirect or direct interconnection by Local Exchange Carriers, Competitive Local Exchange Carriers, Wireless Providers (Commercial Mobile Radio Services (CMRS) and Personal Communications Services (PCS)) and Interconnected Wholesale Providers with the Company's facilities for the completion of local and intraLATA toll traffic will be negotiated on a case by case basis, provided that, in cases where no agreement is in place for completion of such calls, the Company may charge one of the following rates: the state authorized UNE Switching rate(s) or the rate being charged by the other carrier for the Company's traffic terminating on the other carrier's network.

3.1.1 Ordering Conditions

Except as provided elsewhere in this price list, all services offered under this price list will be ordered using an ASR. The format and terms of the ASR will be as specified in the industry Access Service Order Guidelines (ASOG), unless otherwise specified herein.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.2 Access Service Intervals

Access Service is provided with one of the following Service Date intervals:

Standard Interval

Negotiated Interval

The Company will specify a FOC and the Service Commencement Date contingent on the ASR being complete as received. To the extent the Access Service can be made available with reasonable effort, the Company will provide the Access Service in accordance with the Customer's requested internal, subject to the following conditions:

A. Standard Interval

The Standard Interval for Access Service will be specified at the time the order is placed. This interval only applies to standard service offerings for a Customer which is On-Net and at locations where there are pre-existing facilities to the Customer Premises. Access Service provided under the Standard Interval will be installed during Company business hours.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.2 Access Service Intervals, (Cont'd.)

B. Negotiated Interval

The Company will negotiate a Service Date Interval with the Customer when:

1. The Customer requests a Service Date before or beyond the applicable Standard Interval Service Date; or

2. There is no existing facility connecting the Customer Premises with the Company; or

3. The Customer requests a service that is not considered by the Company to be a standard service offering (i.e., if additional engineering is required to complete the order); or

4. The Company determines that Access Service cannot be installed within the Standard Interval.

The Company will offer a Service Date based on the type and quantity of Access Service the Customer has requested. The Negotiated Interval may not exceed the Standard Interval Service Date by more than six (6) months, or, when there is no Standard Interval, the Company offered Service Date.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.3 Access Service Request Modifications

Any increase in the number of Access Service lines, Trunks, Access transport facilities, Out of Band Signaling connections or any change in engineering or functionality of a service will be treated as a new ASR with a new Service Date Interval.

A. Service Commencement Date Changes

ASR service date for the installation of new services or rearrangement of existing services may be changed, but the new service date may not exceed the original Service Commencement Date by more than thirty (30) calendar days. When, for any reason, the Customer indicates that service cannot be accepted for a period not to exceed thirty (30) calendar days, and the Company accordingly delays the start of service, a Service Date Change Charge will apply. In addition, when the Customer submits a request for Service Date Change that is less than five (5) business days from the date of notification by the Customer, a Service Date Change Charge and an Expedited Order Charge will apply. No Expedited Order Charge will apply if the Customer requests a Service Date Change that is more than five (5) business days from the date of request by the Customer but earlier than the original requested Service Commencement Date.

If the Customer requested service date is more than thirty (30) calendar days after the original service date, the order will be canceled by the Company on the thirty-first day. Appropriate cancellation charges will be applied. If the Customer still requires the service, the Customer must place a new ASR with the Company.

The Service Date Change Charge will apply on a per order, per occurrence basis for each service date changed. The applicable charges are set forth in Section 4.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.3 Access Service Request Modifications, (Cont'd.)

B. Design Change Charge

The Customer may request a Design Change to the service order. A Design Change is any change to an ASR which requires Engineering Review. An Engineering Review is a review by Company personnel of the service ordered and the requested changes to determine what changes(s) in the design, if any, are necessary to meet the Customer's request. Design Changes include such changes as the addition or deletion of optional features or functions, a change in the type of Transport Termination (Switched Access only) or type of Channel interface. Any other changes are not considered Design changes for purposes of this subsection and will require issuance of a new ASR and the cancellation of the original ASR with appropriate cancellation charges applied.

The Design Change Charge will apply on a per order, per occurrence basis, for each order requiring a Design Change. The applicable charges, as set forth in Section 4 are in addition to a Service Date Change Charges that may apply.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.3 Access Service Request Modifications, (Cont'd.)

C. Expedited Order Charge

When placing an Access Order for services(s) for which a Standard Interval exists, a Customer may request a Service Commencement Date that is earlier than the Standard Interval Service Date, in which case an Expedited Order Charge will apply. The Expedited Order Charge will not apply if the new Service Commencement Date is more than five (5) days from the date of the request to the Company of the expedited order request. The request for an earlier service date may be received from the Customer prior to its issuance of an ASR, or after the ASR has been issued but prior to the service date. The Company has the exclusive right to accept or deny the Expedited Order request. However if, upon reviewing availability of equipment and scheduled work load, the Company agrees to provide service on an expedited basis and the Customer accepts the Company's proposal, an Expedited Order Charge will apply.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.1 General, (Cont'd.)

3.1.3 Access Service Request Modifications, (Cont'd.)

C. Expedited Order Charge, (Cont'd.)

If the Company is subsequently unable to meet an agreed upon expedited service date, then the Expedited Order Charge will not apply.

In the event the Company provides service on an expedited basis on the Customer's request, and the Customer delays service or is not ready for delivery of service at the time of installation, a Service Date Change Charge will apply in addition to the Expedited Order Charge.

In the event the Customer cancels an expedited request, the Expedited Order Charge will be added to all applicable Cancellation Charge specified herein.

In the event the Customer requests a Service Date Change after the Company has received the original expedite request, the Expedited Order Charge will still apply.

An Expedited Order Charge will not be applied to orders expedited for Company reasons.

If costs other than additional administrative expenses are to be incurred when the Access Order is expedited, the regulations and charges for Special Construction as set forth in this price list will apply.

The Expedited Order Charge will apply on a per order, per occurrence basis, as specified in Section 4 Rates.

090538 Hearing Exhibits 00096

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories

The Company applies traditional per minute of use switched access rate elements to originating and terminating traffic including Tandem Services. Switched Access Services may include charges for 1+ domestic and international traffic, 8XX traffic, 500, 700, & 900 access traffic, 950 traffic, and etc. The rate elements may include the following rate categories:

Carrier Common Line
Local Switching
Transport
8XX Database Query
Last Resort LNP Queries

The Company assesses the per minute of use rate elements plus 8XX Data Base Query rates for originating 8XX Access services.

For Tandem Services, including for CMRS and Interconnected Wholesale Providers, the Company assesses traditional per minute of use switched access rate elements and 8XX Database Query charges, as applicable. The rate elements may include the following rate categories:

Tandem Switching
Transport
8XX Database Query

Ancillary access charges are billed in addition to the primary access charge rate categories listed above. Ancillary access rate elements are billed in addition to the rate element per minute of use charges and may include, but are not limited to, 500/900 Access Service, Inward Operator Services, Operator Pass Through Service, Billing Name and Address, and recording services.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.1 Carrier Common Line

The Carrier Common Line rate category includes the charges related to the use of common lines by Customers and end users for intrastate access.

3.2.2 Local Switching

The Local Switching rate category establishes the charges related to the use of local office switching equipment, the terminations in the local end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the use of common trunk port, the use of Signaling Transfer Point (STP), and the SS7 signaling function between the end office and the STP.

Where local end offices are appropriately equipped, international dialing may be provided. International dialing provides the capability of switching international calls with service prefix and address codes having more digits than are capable of being switched through a standard equipped end office.

3.2.3 Transport

The Transport rate category provides the transmission and transport termination facilities between the Customer premises and the switch(es) where the Customer traffic is switched to originate or terminate its communications. The rate components may include:

Transport - Termination
Transport - Facility
Interconnection Charge

The Company will work cooperatively with the Customer in determining 1) whether the service is to be directly routed to an end office switch or through an access tandem switch, and 2) the directionality of the service.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.3 Transport, (Cont'd.)

A. Transmission Paths

The number of Transport transmission paths provided is based on the Customer's order and is determined by the Company.

B. Interconnection

Interconnection of non-Company switched access transport facilities is available between an end office and a Customer point of presence where such facilities are provided.

3.2.4 Tandem Switching

The Tandem Switching category establishes the charges associated with "switching" the call through the Company's switching office from the "incoming" trunk group to the "outgoing" trunk group.

Tandem Switching charges apply when the Company passes a call between the Customer and another carrier, including CMRS providers and Interconnected wholesale providers. Tandem switching charges may include charges for multiplexing and associated trunk ports, where applicable.

3.2.5 8XX Data Base Query Service

8XX Data Base Query Service is a service offering utilizing originating trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an end user, the Company will perform Customer identification based on screening of the full ten-digits of the 8XX number to determine the Customer location (Carrier identification Code or destination routing number) to which the call is to be routed. This service is billed based on a per query charge.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.6 Local Routing Number (LRN) Query Service of Last Resort

LRN Query Service of Last Resort can be used when a call is routed to the Company's local or tandem switching office where the dialed telephone number is portable and a query has not been performed to identify the correct Carrier for routing of the call. A LRN query will be performed and the call will be re-routed to the correct Carrier. This service charge is a per query charge and will be billed to the Carrier originating the call.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.7 Inward Operator Services

A. General

Where available, Inward Operator Services enable Customers to be connected to the Company's operator services switch for the purpose of providing operator services to their end users.

B. Service Description

1. Busy Line Verification (BLV)

BLV is a service where, at the request of the Customer's operator, a Company operator will attempt to determine the status of an exchange service line (i.e., conversation in progress, available to receive a call or out of service) and report to the Customer's operator.

2. Busy Line Verification/Interrupt (BLVI)

BLVI is a service where, at the request of the Customer's operator, a Company operator determines and reports that a conversation is in progress on an exchange service line and subsequently interrupts such conversation to request that the conversation be terminated so that the Customer's end user can attempt to complete a call to the line.

C. Specifications

Inward Operator Services are provided over trunks between the Customer's premises and the Company's local switch. Where FGD trunks which carry other Customer traffic are used, the technical specifications for such trunks apply. The Company will be responsible for transporting this traffic from its local switch to its operator service switch when these are different.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.7 Inward Operator Services, (Cont'd.)

D. Undertaking of Company

In addition to the obligations of the Company, where available, set forth above, the following obligations apply only to the provision of Inward Operator Services:

1. The Company will provide BLV and BLVI for telephone numbers in its operating territory.

2. The Company operator will respond to one telephone number per call on requests for BLV or BLVI.

3. The Company will designate which operator service switch serves which NXX's and make such information available to the Customer.

SECTION 3 - SWITCHED ACCESS SERVICE, (Cont'd.)

3.2 Rate Categories, (Cont'd,)

3.2.8 Operator Pass-through Service

A. General

Operator Pass-through Service enables a Customer who provides operator services to receive calls passed through to it by the Company, within a specified LATA, for the purpose of operator assisted call completion or, for a Customer who does not provide operator service, Operator Pass-through Service enables end user calls to be passed through to either a Customer designated Operator Service Provider or a Company provided recording. Operator Pass-through Service is only available in end offices equipped with Feature Group D.

B. Service Description

Operator Pass-through Service provides end users with access to the operators of the Customer for operator assisted call completion, when the Customer provides operator services for end users for calls originating from a particular LATA and is capable of receiving calls passed through to it by the Company in that LATA.

The Company will, when requested by an end user, connect that end user to a specified Customer for Operator call completion provided that Customer offers operator services in the end user's originating LATA and is capable of receiving calls passed to it by the Company in that LATA.

If the Customer does not provide operator services for end users, at the option of the Customer, the Company will provide end users with access to a Customer designated Operator Services Provider or to a Company provided announcement which will direct the end user to contact their Presubscribed Interexchange Carrier for dialing instructions. For Customers who opt to designate an Operator Services Provider, only one Operator Services Provider may be designated within a specified LATA.

ACCESS SERVICE PRICE LIST

SECTION 4 - RATES AND CHARGES

4.1 Switched Access Service

4.1.1 Service Implementation

Installation Charge (Per Trunk)

	Entrance Facility
Installation Charge (per channel)	Nonrecurring Charge
2-wire	$308.95
each additional 2-wire	$119.49
4-wire	$314.69
each additional 4-wire	$125.19
first DS1	$866.97
each additional DS1	$486.83
first DS3	$870.50
each additional DS3	$427.88

4.1.2 Change Charges (per order)

Charge per Occurrence	Nonrecurring Charge
Service Date Change Charge	$10.00
Design Change Charge	$25.00
Expedited Order Charge	$100.00
Service Order Charge	$25.00
Access Carrier Name Abbreviation (ACNA) Change (per trunk)	$22.00
Billing Account Number (BAN) Change	$170.00
Customer Circuit Identification (CKR) Change	$22.00

SECTION 4 - RATES AND CHARGES, (Cont'd.)

4.1 Switched Access Service, (Cont'd.)

4.1.3 Cancellation Charges (per order)

Cancellation charge	ICB

4.1.4 Direct Connect Charges:

Entrance Facility	Monthly Recurring Charge
2-wire	$25.00
4-wire	$45.24
per DS1	$133.81
per DS3	$2,100.00

SECTION 4 - RATES AND CHARGES, (Cont'd.)

4.1 Switched Access Service, (Cont'd.)

4.1.5 Switching, Transport and Network Elements

Rate Element	Access Rate Per Minute of Use
Carrier Common Line (Originating)	$0.01868
Carrier Common Line (Terminating)	$0.02754
Local Switching (Originating)	$0.01439
Local Switching (Terminating)	$0.01439

4.1.6 Switching and Transport Elements

	Access Rate Per Minute of Use (Originating and Terminating)
Transport	
- Termination (each), per minute	$0.00022
- Facility, per minute per mile	$0.00015
Interconnection Charge	$0.00577
Tandem Switching, per minute	$0.00050

SECTION 4 - RATES AND CHARGES, (Cont'd.)

4.1 Switched Access Service, (Cont'd.)

4.1.7 Direct-Trunked Transport

Refer to the Company's Private Line Price list for full descriptions and rates associated with Dedicated Capacity Services.

4.1.8 Other Switched Access Charges

Rate Element		Access Rate
A.	8XX Data Base	
	8XX CIC or POTS Query - per Query	$0.000735
B.	LRN Query of Last Resort – per Query	$0.06
C.	BNA (Billing Name & Address) per 10-digit ANI requested	$0.2000
D.	Media Options Charges	
	Electronic Data Transfer (per record transferred)	$0.003
	CD or Email, per record	$0.003
E.	Automatic Number Identification	
	Per ANI delivered	$0.000080

SECTION 4 - RATES AND CHARGES, (Cont'd.)

4.2 Carrier Identification Code Opening Charge

4.2.1 General

A Customer may request the opening of its Carrier Identification Code (CIC) on the Company's switches to allow the Company's end users to select the Customer as their interLATA, IntraLATA, interstate and/or international service provider. A Charge is applicable for each switch in which the CIC is opened.

4.2.2 Rates and charges

CIC/ASR Charge per switch	$50.00

Issued by: Carolyn Ridley, Vice President - Regulatory Affairs
10475 Park Meadows Drive
Littleton, CO 80124

ACCESS SERVICE PRICE LIST

SECTION 5 - CUSTOMER SPECIFIC CONTRACTS

5.1 General

The Company may provide any of the services offered under this Access Service Price list, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this Access Service Price list do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under this Access Service Price list are not eligible for any promotional offerings which may be offered by the Company from time to time.

Contract terms and conditions pursuant to this section are available to any similarly situated Customer that places an order within 90 days of the contract effective date.

SECTION 6 - TELECOMMUNICATIONS SERVICE PRIORITY

6.1 General

Telecommunications Services Priority (TSP) is a priority restoration and provisioning service offered to Customers whose telecommunications needs meet national Security Emergency preparedness (NS/EP) specifications as determined by the TSP program Office. TSP services fall into two categories. Emergency and Essential Emergency Services are newly ordered services so critical as to require provisioning at the earliest possible time, without regard to the service users' cost. Essential Services are all other NS/EP services assigned restoration and/or provisioning priorities with the TSP system.

6.2 Ordering

In order to qualify for TSP services, the Customer must obtain a certificate from the TSP Program Office specifying the circuits and their level of restoration and provisioning priority. Customers can request assignment to the TSP System through the following agencies:

Customer	Contact
Federal Agencies	TSP program Office
State/Local Governments	Federal Emergency Management Agency
Foreign Governments	Departments of State or Defense
Private Industry	Through Federal Agency which has a contractual relationship involving NS/EP functions

TSP service is applicable to services which include local exchange service, private line service, switched access service and dedicated access service. The TSP Program Office makes the priority level assignments and issues the TSP authorization code reflecting the priority assignment associated with a request

The Customer provides the TSP authorization code, in addition to all the other details necessary to complete the order to the company to obtain TSP System Service.

SECTION 6 - TELECOMMUNICATIONS SERVICE PRIORITY, (Cont'd.)

6.3 Provisioning Priority

If the Customer requires service within a shorter time interval than the Company can provide, and the requested service qualifies for NS/EP, the Customer may elect to invoke NS/EP treatment and obtain the appropriate provisioning priority assignment from the TSP Program Office.

6.4 Restoration Priority

A TSP authorization code for restoration priority classifies the service as being among the nation's most important NS/EP telecommunications services. The Company will restore these services before services without restoration assignments in the order of priority assignments.

When the Company recognizes a TSP service as being out of service, unusable, or receives a trouble report, available resources will be dispatched to restore the service as quickly as practicable. A priority value of 1, 2, or 3 requires dispatch outside normal business hours if necessary to restore the service. A priority value of 4 or 5 only requires dispatch outside of normal business hours if the next business day is more than 24 hours away. If the value "0" has been assigned, then no restoration priority is applicable to this service.

SECTION 6 - TELECOMMUNICATIONS SERVICE PRIORITY, (Cont'd.)

6.5 Obligations of the Customer

6.5.1 In all instances, the Customer is responsible for obtaining the appropriate TSP authorization code and providing that code to the Company.

6.5.2 Only the Customer or its authorized agent as indicated in a letter of agency on file with the Company is allowed to order TSP system service.

6.5.3 All points of a multipoint service configuration must have the same restoration priority assignment and must satisfy the requirement of that assignment.

6.5.4 In obtaining TSP system service, the Customer consents to the release of certain information by the company to the federal government in order to maintain and administer the TSP System. Such information includes: the Customer's name, telephone number and mailing address, the TSP authorization code and the circuit or service identification number associated with the NS/EP service.

6.5.5 The Company will attempt to notify the customer of expected charges. The customer when invoking NS/EP treatment, recognizes that quoting charges and obtaining permission beforehand may not be practicable and may cause unnecessary delays and, as a result, grants the Company the right to quote and bill charges after provisioning the service.

6.5.6 During certain emergencies the Customer may request TSP assignments verbally and the company will accept such verbal notifications. The Customer must submit a written order to the company within two working days following the verbal request. If the written order is not received within two working days, all applicable rates and charges accumulated to date to provision TSP System service become immediately due and payable and the requested TSP priority is revoked.

6.5.7 The Customer must request and justify revalidation of all priority level assignments at least every three years.

6.5.8 Additionally, the NCS manual 3-1-1, "Telecommunications service Priority (TSP) System for National Security Preparedness (NS/EP Service User manual)" prescribes specific conditions which warrant NS/EP treatment and related procedures.

SECTION 6 - TELECOMMUNICATIONS SERVICE PRIORITY, (Cont'd.)

6.6 Obligations of the Company

6.6.1 The Company will allocate resources to ensure the best efforts to provide NS/EP services by the time required.

6.6.2 The Company will work TSP system services in the order of the priority level assignments. The priority sequence is as follows:

Restore NS/EP services assigned restoration priority 1
Provision Emergency NS/EP services
Restore NS/EP services assigned restoration priority 2, 3, 4 or 5
Provision NS/EP service assignment provisioning priority 1, 2, 3, 4 or 5.

6.6.3 The Company will work cooperatively with other providers of NS/EP services to ensure end to end service even if only a portion of the service is provided by the Company.

6.6.4 TSP service will be provided in accordance with the guidelines set forth in NCS manual 3-1-2, "Telecommunications Service Priority (TSP) System for National Security Preparedness (NSEP) Service Vendor Handbook."

SECTION 6 - TELECOMMUNICATIONS SERVICE PRIORITY, (Cont'd.)

6.7 Pricing

Four rate elements apply to TSP pricing:

6.7.1 Priority Installation Nonrecurring Charge applies in addition to other normal charges for the expedited installation of a TSP circuit.

Per circuit	ICB

6.7.2 Priority Restoration Nonrecurring Level Implementation Charge B applies when a circuit is first given a TSP restoration level.

Per Circuit	ICB

6.7.3 Priority Restoration Monthly maintenance Charge B applies to TSP circuits.

Per Circuit, per month	ICB

6.7.4 Priority Restoration Nonrecurring Level Change Charge B applies when a restoration level is modified on a TSP circuit.

Per change per Circuit	ICB

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

APPENDIX STAFF INT 4

Bates stamped pages TWTC Fla 000065 through TWTC Fla 000066

tw telecom of florida, l.p. Responses to Staff Interrogatory No. 4

Response dated: December 12, 2011

Qwest
Spirit of Service

March 7, 2008

Time Warner
Tina Davis
10475 Park Meadows Drive
Littleton, CO 80124

To: Tina Davis

Announcement Date:	**March 7, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.03.07.08.B.003020.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that <Company> may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[1] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to

[1] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.

5

Qwest Communications Company LLC's Objections And Responses To Staff's First Set Of Interrogatories (Nos. 1-26)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 5
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #5) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: DECEMBER 15, 2011

QWEST COMMUNICATIONS COMPANY LLC'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-26)

Qwest Communications Company, LLC, d/b/a CenturyLink QCC ("QCC) hereby submits its objections and responses to Staff's First Set of Interrogatories (Nos. 1-26), served on November 15, 2011.

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

REDACTED

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

REDACTED

INTERROGATORIES

1. Is the switched access service that QCC received from the respondent CLECs similar to the switched access service the respondent CLECs provided to other IXCs? Please explain any and all differences.

The switched access service provided by each CLEC to QCC is identical, let alone similar, to the switched access service provided to other interexchange carriers ("IXCs"). In its unanimous order granting QCC's complaint in a parallel proceeding, the Colorado Public Utilities succinctly agreed. In evaluating and rejecting the CLECs' various attempts to distinguish QCC from the CLECs' preferred IXCs, the Colorado PUC stated, in relevant part, that the "[w]e agree with the ALJ that QCC effectively rebutted any claims that differences in size or traffic volumes justified price differentiation, in this particular case. This is because the cost of providing switched access does not depend on the traffic volume, or which IXC is utilizing the service. *Further, the functionality, service elements, and the facilities over which the respondent CLECs provided switched access were identical in this case, regardless of whether a CLEC serviced QCC or one of the other IXCs." See* Decision No, C11-1216, Colorado PUC Docket No. 08F-259T (mailed Nov. 15, 2011) ("Colorado Order on Exceptions"), ¶75 (emphasis added).[1]

Respondents: QCC Legal;

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

[1] A copy of the Colorado Order on Exceptions is attached hereto. On December 5, 2011, several parties to the Colorado PUC proceeding applied for reconsideration of the Colorado Order on Exceptions. Those applications remain pending.

REDACTED

2. Describe the switched access service that QCC has received in Florida from the respondent CLECs.

Switched access is a service provided by a local exchange carrier ("LEC") which allows IXCs to reach the LEC's end user customer. When an end user dials a 1+ long distance call, the LEC is responsible for routing the call from the end user to the IXC point of presence ("POP"). The IXC pays originating switched access to the LEC for performance of this function. To complete the call, the IXC then hands the call off to a LEC which delivers it to the end user being called. IXCs pay terminating switched access to the LEC which terminates the call.

Depending on whether the call is directly routed to an end office or goes through a tandem switch, there are direct trunk transport charges or tandem switching and transmission charges, in addition to the end office elements, and common carrier line ("CCL") charges, if allowed in the particular state.

The switched access service provided is the same regardless of whether a call is interstate or intrastate in nature. The only things that vary (and determine the jurisdiction of the service) are the originating and terminating points of the call. If a long distance call begins in one state and terminates in another state, it is jurisdictionally interstate, is regulated by the FCC and is billed at interstate rates. A call which crosses a LATA boundary, but stays within a state, is jurisdictionally intrastate, is regulated by the state public service commission and is billed at intrastate rates.

Respondent: William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

REDACTED

3. Has QCC reviewed the respondent CLECs' price lists or tariffs that are or were on file with the Florida Public Service Commission (FPSC) during the timeframe the alleged rate discrimination occurred? If the response is yes:

Yes, prior to naming each CLEC in the complaint or amended complaint, QCC searched the CCMI/Telview database in order to review the CLECs' Florida price lists. QCC reviewed at least a portion of the price lists of each respondent except Flatel, Ernest and STS (which QCC could not locate). QCC also verified that each respondent CLEC is/was actually charging QCC a higher rate for intrastate switched access than the CLEC provided to the preferred IXCs via the secret agreements at issue in this case.

Respondent: QCC Legal

a. Do the price lists or tariffs specify terms or conditions that address switched access service rates?

Yes, although the CLECs' price lists vary. It should be noted that one unique aspect of switched access service is that the customer of the service, the IXC, does not choose to purchase it from the provider (here, the CLEC). That choice is indirectly made by the end user of long distance services, who selects her local exchange provider, be it the incumbent LEC, an independent LEC or a CLEC. Once that selection is made by the end user, the IXC (here, QCC) is bound to use and pay for the LEC's switched access service.

Respondent: QCC Legal

b. Do the price lists or tariffs specify terms or conditions for Individual Case Basis (ICB) pricing?

In some cases, yes. Certain of the CLEC respondents have included in their published price lists promises to provide equivalent treatment to similarly-situated customers in the event the CLEC enters into an ICB agreement. The precise wording of said promises varies from CLEC to CLEC, but can be found in the CLEC's price list. In its Amended Complaint, QCC identified (to the best of its ability) the specific price list provision pertinent to this issue for each CLEC.

By failing to provide QCC the equivalent rate treatment, let alone merely offering QCC the opportunity to enter into a similar ICB agreement, those CLECs violated their own price list promise. Those CLECs which made, and broke, a promise to provide equivalent treatment to similarly-situated customers in the context of ICBs were identified as part of QCC's third claim for relief. *See* Amended Complaint, ¶¶ 17-19.

Respondent: QCC Legal

REDACTED

c. Do the price lists or tariffs specify when ICB pricing for switches access service may be offered to IXCs?

See QCC's response to Interrogatory 3.b.

Respondent: QCC Legal

d. Do the price lists or tariffs specify when the respondent CLECs may offer switched access service to IXCs at rates other than those rates listed in the respondent CLECs' price lists or tariffs?

The CLECs' price lists vary in this regard.

Respondent: QCC Legal

e. How are the switched access service rates that the respondent CLECs offered to QCC discriminatory?

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

Each of the CLEC respondents charged QCC its published (albeit not Commission-approved) rates for bottleneck intrastate switched access. At the same time, each agreed to charge one or more other IXCs lower (often, substantially lower) rates for the identical service. Many continue to charge these IXCs the lower, off-price list rates. These discounts were accomplished via secret, confidential and unpublished agreements that were not shared with the Commission or with QCC, and were not made public.

As the provider subject to a statutory non-discrimination obligation, the CLEC had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. The CLECs did not do so, and did not even bother advising QCC that the CLECs had entered these discount arrangements for Florida switched access. Instead, they held the agreements secret, and charged QCC their much higher price list rates.

Respondent: QCC Legal

f. How did the respondent CLECs fail to abide by their price lists or tariffs on file with the FPSC that address switched access service?

See QCC's response to Interrogatory 3.e.

Respondent: QCC Legal

REDACTED

4. Has QCC reviewed any of the Individual Case Basis (ICB) agreements/contracts the respondent CLECs have entered into with other IXCs for switched access service? If so, is any part of the ICB agreements/contracts inconsistent with the terms and conditions stated in the respondent CLECs price lists or tariffs that were on file with the FPSC during the timeframe the alleged rate discrimination occurred? Please explain your answer.

Yes, to both questions insofar as they have been provided to QCC. Pursuant to the subpoenas issued by this Commission to IXCs AT&T, Sprint and MCI, QCC obtained copies of many secret ICB agreements between Florida CLECs and IXCs. As to each CLEC identified as a respondent herein, the CLEC charged or charges (pursuant to the agreements) a rate lower than the rate set forth in the CLEC's price list.

Respondents: QCC Legal;

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

REDACTED

5. Does QCC have any Individual Case Basis (ICBs) agreements or contracts with any of the respondent CLECs listed in the amended complaint? If yes:

QCC assumes that Staff is asking about ICBs in the context of intrastate switched access, and not in the context of unrelated services. With that understanding, QCC responds as follows.

QCC does not provide switched access services in Florida, and has not entered into any ICB switched access contracts as a *provider* of the service.

Whether or not QCC, as a *customer* of switched access, has entered into any ICBs with the CLEC providers of switched access is not relevant to this case. As the customer, QCC does not have an obligation to police the CLEC's adherence to its price list or to its obligation to avoid rate discrimination. At issue in this case is whether each individual CLEC respondent, as to *its* provision of intrastate switched access, abided by its statutory and price list obligations. QCC has not named the IXC counterparties to the secret agreements as respondents. To do so would make little sense, as the customers of the service (even a bottleneck service) are under no legal obligations insofar as how the service is priced (in absolute and relative terms) by the LEC.

When this issue was presented in the parallel Colorado proceeding, the Administrative Law Judge agreed with QCC and denied CLEC Eschelon Telecom's motion to compel. The ALJ stated as follows:

> 7. [Eschelon] Request 15 seeks information regarding whether QCC has ever reached a compromise whereby it paid less than billed for interstate or intrastate switched access services. Such inquiry is not reasonably calculated to lead to the discovery of admissible evidence.
>
> 8. Because there has been no showing that information sought in Requests 6, 9, and 15 has any relation whatsoever to what Qwest paid to Eschelon for services, the rates therefore, or the defenses plead, they are not reasonably calculated to lead to the discovery of admissible evidence.

See Decision No. R09-0403-1, Colorado PUC Docket No. 08F-259T (mailed Apr. 16, 2009) ¶¶ 7-8.

Respondents: QCC Legal;

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

REDACTED

a. When did QCC and the respondent CLECs enter into the ICB agreements/ contracts?

See response above.

Respondent: QCC Legal

b. Who initiated the ICB agreements/contracts with the respondent CLECs? Please explain how the agreements/contracts occurred.

See response above.

Respondent: QCC Legal

c. Does QCC have any ICB agreements or contracts with any Florida CLECs that are not respondents in this complaint?

See response above.

Respondent: QCC Legal

REDACTED

6. Explain your understanding of how ICBs or similar agreements/contracts are normally negotiated or entered into.

As worded, this question is difficult to precisely and comprehensively answer. ICBs are negotiated in numerous different contexts and by different parties with varying motivations. For instance, a provider of dedicated facilities (e.g., special access) may vary its pricing via ICB agreement depending on the volume of dedicated facilities being leased and the term commitment for which the customer is willing to subscribe. In part, such variable pricing could be justified by the difference in the provider's cost of providing services to each individual customer. In the context of switched access service, however, the cost of providing the service is fixed and does not vary from customer to customer. The facilities are common and identical, and each minute of use costs the CLEC provider the same to provide service to AT&T as it does to Sprint or to QCC. Thus, variable pricing is harder, if not impossible, to justify.

In the specific context of the secret discount agreements at issue in this case, the question is probably better suited for the CLECs which actually engaged in the negotiations. Because the issue of *how and why* the secret agreements were negotiated is directly relevant to evaluating whether the CLECs should have also extended the beneficial rate treatment to QCC (i.e., whether QCC was similarly situated to the preferred IXCs), QCC has asked each respondent to identify and produce relevant internal and external communications and analyses surrounding the negotiation of the agreements. In almost all cases, the CLECs (to date) have not produced the requested materials. *See* the CLECs' responses to QCC Document Requests 2.j. and 2.k.

Respondent: QCC Legal

REDACTED

7. What is meant by the term "similarly situated"?

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

The concept of "similarly situated" customers has roots in both economics and the law. In general terms and for the purpose at issue here, two customers are "similarly situated" (and thus entitled to equal rate treatment) if the customers' characteristics, and/or the provider's manner of serving the two customers, do not result in varying costs (on the part of the provider) to provide the service. It is QCC's contention that, in the absence of credible evidence put forth by the CLEC to establish that the cost of providing switched access differs across IXC customers, all IXCs are presumed to be similarly situated.

In the parallel Colorado proceeding, the Commission unanimously found that QCC and the IXCs receiving the preferential CLEC switched access rates were and are similarly situated. *See* Colorado Order on Exceptions, ¶¶ 74-75.

Respondents: QCC Legal;

Dennis L. Weisman, Ph.D.
Department of Economics
Waters Hall
Kansas State University
Manhattan, KS 66506

REDACTED

8. Explain how QCC is "similar situated" with other interexchange carriers (IXCs) in Florida that were charged lower rated for switched access service through ICBs, customer-specific contracts, off-tariff arrangements, etc., from Respondent CLECs.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

See QCC's response to Interrogatory No. 7. QCC was charged different, and higher, rates by each of the CLEC respondents for the *identical* bottleneck service. QCC is aware of no credible evidence – although it has sought it out in discovery – that any of the CLEC respondent's cost of providing switched access to QCC was different or higher than its cost to provide the *identical* service to the IXC(s) preferred under the CLEC's secret, off-price list agreements. QCC is unaware of any reasonable justification justifying the respondent CLECs' disparate rate treatment.

Respondents: QCC Legal;

Dennis L. Weisman, Ph.D.
Department of Economics
Waters Hall
Kansas State University
Manhattan, KS 66506

REDACTED

9. When did QCC first realize that the respondent CLECs were charging QCC rates from the respondent CLECs' price lists or tariffs that were higher than those rates charged to other similarly situated IXCs?

QCC assumes that Staff is asking QCC to respond to this Interrogatory in general terms, as opposed to requesting a specific, agreement-by-agreement accounting of when QCC obtained knowledge of each agreement. If Staff desires a specific accounting, QCC can construct one. With that understanding, QCC responds as follows.

As to each CLEC, QCC did not have a specific and actionable understanding that the CLEC was providing below-price list pricing to specific IXCs *in Florida* until QCC obtained copies of the agreements themselves. The timing of disclosure of those agreements varied, but almost none of the agreements at issue in this case were disclosed to QCC in a form allowing QCC to observe the CLEC's conduct in Florida until after the Commission issued the *subpoenas duces tecum* to IXCs AT&T, MCI and Sprint near the outset of this litigation. In reality, there is a very realistic chance that QCC *still* is not aware of all of the respondent CLECs' off-price list switched access agreements. To ensure that QCC receives a full accounting of each CLECs' agreements, QCC has asked each CLEC in discovery to identify and produce all such agreements. To date, QCC has not received comprehensive responses to these requests. *See* the CLECs' responses to QCC Interrogatory No. 1 and Document Request No. 2.a.

For Staff's reference, the timeliness of QCC's causes of action, as well as a discussion of the various statute of limitations arguments posed by the respondent CLECs in the parallel Colorado PUC proceeding, are discussed in the Colorado Order on Exceptions, ¶¶ 6-55.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

10. Identify the period that QCC believes it has been charged rates from the respondent CLECs' price lists or tariffs that were higher than those rates charged to other similarly situated IXCs.

QCC assumes that Staff is asking QCC to respond to this Interrogatory in general terms, as opposed to requesting a specific, agreement-by-agreement accounting of effective dates. If Staff desires a specific accounting, QCC can construct one. With that understanding, QCC responds as follows.

In general, QCC believes it was overcharged by each CLEC for the entire effective period of each off-price list switched access agreement entered by the CLEC. In many cases, this effective period extends well beyond the initial term of the agreement, as many (if not most) of the agreements have "evergreen" provisions that, following a set initial term, *permit* (but don't require) that either party can terminate the agreement upon specified notice. While a subset of the agreements at issue in this case have been terminated, many (if not most) of the agreements remain in effect.

QCC has asked each CLEC to identify a termination date (if any) and to produce proof of any such termination. To date, QCC has not received comprehensive responses to these requests. *See* the CLECs' responses to QCC Interrogatory No. 1.d. and Document Request No. 2.b. When QCC submits its direct testimony, it intends to very specifically identify each relevant agreement (by CLEC), the effective period of each such agreement and its computation of the overcharges paid by QCC during the effective period of the CLEC's secret agreement.

Respondents: QCC Legal;

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

REDACTED

11. Explain how QCC determined that the rates it was charged by the respondent CLECs were higher than the rates the respondent CLECs charged to other IXCs.

When QCC obtained copies of the secret Florida agreements – the vast majority of which were received from the IXCs via this Commission's *subpoenas duces tecum* – QCC compared the intrastate Florida rate set forth in the contract to the rate the same CLEC billed QCC for the *identical* Florida service.

Respondent: QCC Legal

REDACTED

12. In the amended complaint, QCC states it was charged the switched access service rates listed in the respondent CLECs' price lists or tariffs on file with the FPSC.

a. Did QCC request ICB pricing from the respondent CLECs? If yes, when?

As the provider subject to a statutory non-discrimination obligation, the CLEC had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs.

Furthermore, as the CLECs freely admit, the subject agreements were *secret*, intentionally protected by the contract parties by confidentiality provisions. QCC made several attempts over the period leading up to the filing of this and the parallel complaints to inquire with the CLECs as to the existence and terms of "off-tariff" pricing, but it was rebuffed. When QCC submits its direct testimony, it intends to chronicle its various attempts to obtain information regarding the CLECs' secret agreements (and equal treatment) prior to initiating litigation.

After considering the CLECs' argument that QCC had an obligation to *seek out* non-discriminatory treatment, the Colorado Commission held that the obligation to ensure non-discrimination sits with the CLEC providers of switched access. *See* Colorado Order on Exceptions, ¶¶ 50-53.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

b. If your answer to 12a is yes, how did QCC request ICB pricing from the respondent CLECs?

See QCC's response to Interrogatory No. 12.a.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

c. If your answer to 12a and 12b is yes and ICB pricing was not offered to QCC, what reasons did the respondent CLECs provide for not offering ICB pricing to QCC?

For the most part, the CLEC respondents did not make QCC aware that the CLECs had entered off-price list agreements with other IXCs. The existence and terms of the agreements were held secret, and QCC was not even afforded the opportunity to request each treatment, not that non-discrimination must be sought out. When QCC submits its direct testimony, it intends to chronicle its various attempts to obtain information regarding the CLECs' secret agreements and its request for equal rate treatment prior to initiating litigation. QCC will further chronicle how fruitless its efforts proved to be.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

13. Please identify any specific state or federal rule, statute, or commission order that the respondent CLECs violated and explain the violation.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

Please see QCC's Amended Complaint. QCC's Amended Complaint involves and specifies the state standards that the CLECs violated. These include (as enumerated at the time the Amended Complaint was filed), e.g., Sections 364.01, 364.04, 364.08 and 364.10, Florida Statutes. Because the services at issue in this complaint are jurisdictionally *intra*state, QCC has not alleged violation of federal rule, statute or order.

Respondent: QCC Legal

REDACTED

14. What are appropriate circumstances for a telecommunications company to enter into separate agreements or contracts with switched access customers that deviate from the telecommunications company's tariff or price lists?

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

QCC cannot identify every circumstance in which it would be appropriate for a telecom provider to enter into a switched access ICB. However, to be clear, QCC's complaint does not allege that it was unlawful *per se* for the CLECs to enter into the ICBs. To the contrary, paragraph 5 of QCC's Amended Complaint acknowledges that ICBs are permissible under Florida law in appropriate circumstances. Instead, QCC's complaint focuses on the CLECs' unlawful *subsequent* conduct of not extending the lower pricing to QCC, which is and was similarly situated to the preferred IXCs.

Respondent: QCC Legal

REDACTED

15. Please describe the switched access service QCC currently purchases or has purchased from each Respondent.

See QCC's response to Interrogatory No. 2.

Respondent: William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

REDACTED

16. Referring to page 8, paragraph 7, of QCC's amended complaint filed on October 11, 2010, please define "large quantities."

Every minute of intrastate long distance service provided by QCC is associated with a minute of originating intrastate switched access and a minute of terminating switched access. By way of example, QCC was billed for approximately [redacted] for Florida *intrastate* switched access by all LECs in 2010. Of that, approximately [redacted] were billed by Florida CLECs.

Respondent: Patrick J. Welch, Manager of Finance-Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

REDACTED

17. At the time QCC filed its amended complaint (October 11, 2010), were CLECs required to file with the FPSC:

a. price lists containing the rates, terms, and conditions for the provision of switched access service? List all statutes, rules, FPSC decisions, etcetera that supports your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

QCC does not believe that CLECs were required to file switched access price lists (see Rule 25-24.825, F.A.C.), but that CLECs were permitted to do so. On information and belief, each CLEC respondent in this case availed itself of the opportunity to file switched access price lists, and thus subjected itself to the obligation to abide by such published price lists. *See e.g.,* Section 364.04 (2010), F.S.

Respondent: QCC Legal

b. settlement agreements that are not part of any docketed matter before the FPSC? List all statutes, rules, FPSC decisions, etcetera that supports your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

QCC is not aware of any statute *directly requiring* that settlements from non-docketed disputes or other switched access ICBs be filed with the FPSC. However, in connection with discharging their obligation to avoid unlawful rate discrimination and to abide by their published tariffs, the CLECs certainly could have either modified their price list rates to reflect any lower switched access rates provided to favored IXCs, or could have appended the contracts (or a summary thereof) to their published price lists. By doing so, the CLECs would have arguably advised other IXCs, including QCC, that lower switched access rates were (potentially) available in Florida. By instead embargoing the existence and amount of the secret discount(s), the CLECs assured that QCC would not receive non-discriminatory treatment.

Respondent: QCC Legal

REDACTED

c. Individual Case Basis (ICB) contracts or customer-specific contracts? List all statutes, rules, FPSC decisions, etcetera that supports your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

See QCC's response to Interrogatory No. 17.b.

Respondent: QCC Legal

REDACTED

18. Other than the current dispute, has QCC filed any disputes with the FPSC regarding the rates it has been billed by any of the Respondent CLECs for switched access services? If so, please list the date the dispute was filed, the docket number if applicable, if it has been resolved, and how it was resolved.

To the best of our recollection, QCC has not filed any other formal Florida PSC complaints regarding switched access services provided by the respondent CLECs.

Respondent: QCC Legal

REDACTED

19. Has QCC filed any billing disputes with any of the Respondent CLECs regarding the rates it has been billed for the provision of switched access service? If so, please provide the details of that dispute including: when it was filed, if it has been resolved, and how was it resolved.

In the normal course of business, QCC audits the invoices it receives from providers (including CLECs) of switched access service. QCC routinely submits billing disputes to rectify ordinary billing errors. QCC is billed for switched access by over 700 CLECs nationwide, plus many ILECs. In an average month in 2011, QCC has submitted 320 separate billing disputes regarding switched access provided to QCC on a nationwide basis. Because of this large volume, it is difficult to comprehensively catalog each ordinary billing dispute submitted to each CLEC respondent. With that understanding, QCC is working on compiling a summary of its ordinary, Florida-related billing disputes with the respondent CLECs over the past five years. QCC intends to supplement this response when such information is compiled.

Respondent: Patrick J. Welch, Manager of Finance-Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

REDACTED

20. Excluding settlement agreements are you aware of any ICB contracts or customer-specific contracts that offer an IXC a lower rate than what a Respondent CLEC has in its price list? If so, please identify the parties to the agreement, the dates of the agreement, and the rate that is being charged for the provision of switched access service.

It is unclear whether Staff is only asking about agreements involving CLEC respondents, or is also asking about non-party CLECs. Because the latter would probably not be relevant to this proceeding, QCC assumes that Staff is only asking about agreements involving a CLEC party to this case. With that understanding QCC, responds as follows.

QCC would suggest that this information could best be provided by the CLECs themselves, as they (and not QCC) are parties to the agreements between themselves and other IXCs. Second, QCC is aware of the agreements it has been provided in connection with the subpoenas issued at the outset of this case. QCC has asked the CLEC respondents to identify and produce copies of all switched access ICBs. QCC has not received comprehensive responses to these requests. *See* the CLECs' responses to QCC Interrogatory No. 1 and Document Request No. 2.a.

Respondent: QCC Legal

REDACTED

21. Does QCC believe it is similarly situated to those IXCs that have been a party to a settlement agreement with one or more of the Respondent CLECs? Please explain your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

Absolutely. See QCC's response to Interrogatory Nos. 7 and 8.

Respondents: QCC Legal;

Dennis L. Weisman, Ph.D.
Department of Economics
Waters Hall
Kansas State University
Manhattan, KS 66506

REDACTED

22. Referring to the November 16, 2010, Answer of Access Point, Inc., page 8, paragraph 16, it states that confidential settlement agreements are unique situations and therefore are not available to other carriers.

a. Do you agree they are unique situations? Please explain your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

In discovery, QCC has asked each respondent (including Access Point) for information and documents which will permit QCC and the Commission to evaluate *why* the CLEC agreed to discount switched access as it did and whether it extended the same benefit to other IXCs, including QCC. QCC has not received comprehensive responses to these requests. *See* the CLECs' responses to Interrogatory No. 2.b. and 2.h. With the understanding that QCC's understanding of each CLEC's actions may evolve as the parties disclose information in discovery, QCC responds as follows.

In response to QCC's discovery, Access Point explains that it provided below-price list pricing to AT&T and Sprint refused to pay Access Point's switched access invoices, and that Access Point entered the discount agreements in order ensure collection of access charges from those two IXCs. QCC disagrees that AT&T's and Sprint's refusal to pay Access Point's switched access rates creates a distinction permitting discriminatory pricing for the identical bottleneck service. Access Point may be suggesting that it was entitled to distinguish between switched access customers AT&T and QCC (and Sprint and QCC) on the basis that AT&T and Sprint refused to pay Access Point's published rates. If this correctly describes Access Point's position, this Commission should not condone such self-help, and should not conclude that QCC *deserved* to receive inferior rate treatment *on the basis* that it did not withhold payment of Access Point's published rates. QCC should not have been disadvantaged on account of its *willingness* to pay the CLECs' price list rates. Endorsing that basis for discrimination would be absurd, and would encourage QCC and other IXCs to simply stop paying CLEC access charges until such time as the CLECs accommodate demands for lower rates.

Finally, no, a CLEC may not simply exempt itself from its non-discrimination obligations by claiming that its confidential agreement (which it intentionally made confidential) creates a "unique situation." There is little dispute that the CLECs entered into secret, discount switched access agreements that preferred certain IXCs, but not other IXCs (including QCC). Instead, the key question to be answered in this case is whether QCC is similarly situated to the IXCs that the CLECs preferred through the secret agreements. As discussed in length above, unless and until it becomes evident that the CLECs' cost of providing the preferred IXCs intrastate switched access was different and lower than their cost of providing the same service to QCC, the Commission must find that the CLECs engaged in unlawful rate discrimination. See QCC's responses to Interrogatory Nos. 7 and 8.

REDACTED

Respondent: QCC Legal

b. Do you believe the rates, terms, and conditions that are negotiated as part of a specific dispute settlement should be made available to other IXC carriers? Please explain your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

Yes, if the service is the same or similar to the service being provided the other IXC, the same going-forward rate should be provided to all similarly situated IXCs.

Respondent: QCC Legal

REDACTED

23. Referring to page 5, paragraph 18 of Granite Telecommunications, LLC's Answer to Amended Complaint of QCC filed on November 16, 2010, Granite asserts that its 2003 settlement agreement with AT&T was made known to QCC (and the general public) several years prior to the QCC complaint.

a. Did QCC know of the AT&T/Granite settlement agreement prior to filing its complaint with the FPSC? If so, when were you aware of the agreement?

During the course of the Minnesota Commission's investigation of Granite and other CLECs, QCC received a public copy of the *Granite-AT&T agreement* in late June 2006, well within the applicable statute of limitations relating to QCC's FPSC cause of action. Furthermore, Granite also had an additional ICB switched access arrangement (not provided to QCC prior to the filing of its complaints with the Colorado, California and Florida Commissions) which benefited Sprint. *See* Granite's response to QCC Interrogatory No. 1. In fact, QCC lacked actionable evidence that said arrangement applied *in Florida* until Sprint responded to the *subpoena duces tecum* in this proceeding. Until QCC became specifically aware that it had been discriminated against *in Florida* vis-à-vis Sprint, QCC's FPSC claim against Granite regarding the Sprint agreement did not accrue.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

24. Referring to page 6, paragraph 14 of Answer of Verizon Access to Amended Complaint filed on November 16, 2010. Did QCC review the January 2004 (AT&T/WorldCom) switched access settlement agreement filed with the Minnesota Department of Commerce in 2005? If so, do you believe you were similarly situated to AT&T? If not, why not?

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

QCC did not receive a public version of the MCI-AT&T switched access agreement (sufficient to reveal that the discount applied in Florida) until February 2008, when AT&T filed the counterpart agreement (with AT&T as CLEC and MCI as IXC) with the Minnesota PUC. To the best of our recollection, QCC was first provided a copy, albeit *under seal*, of the January 2004 MCI-AT&T switched access agreement on May 3, 2006, when an unredacted copy was provided in response to discovery in a Minnesota PUC proceeding. The agreement was provided pursuant to a protective order which prohibited QCC from using protected information/documents (including the MCI agreement) outside of that Minnesota Proceeding.

In the parallel Colorado PUC proceeding, the PUC unanimously held that (as a matter of law and policy) MCI's confidential disclosure in the Minnesota Proceeding *did not* trigger the accrual of QCC's claim against MCI in Colorado. Colorado Order on Exceptions, ¶¶ 27-35.

In answer to Staff's second question, yes, QCC and AT&T were similarly situated with regard to MCI's provision of intrastate switched access in Florida.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

25. Referring to pages 6-7, paragraph 15 of Answer of Verizon Access to Amended Complaint filed on November 16, 2010. Verizon Access states that the only communication known to Verizon Access was a generic form letter that was mailed by QCC on February 25, 2008.

a. Do you believe your February 25, 2008, letter was a good-faith effort to obtain information from Verizon Access regarding its off-tariff agreements? Please explain your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

Yes, although as discussed in response to Interrogatory Nos. 3.e. and 12.a., as the provider subject to a statutory non-discrimination obligation, MCI had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. QCC was not required to seek out (through "good faith" means or otherwise) or demand non-discriminatory treatment. Nevertheless, QCC (generally aware that many CLECs had entered into secret, discount agreements) did make some informal efforts to identify the CLECs and the contract terms offered by those CLECs. Those efforts, which will be specifically described in QCC's direct testimony, culminated in the 2008 letter that QCC sent to approximately 90 CLECs, including MCI. In most cases, the 2008 letters were ignored.

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

b. Other than the February 25, 2008 letter, has QCC submitted any other correspondence to Verizon Access regarding its off-tariff agreements? If so, please identify the date(s) the correspondence was sent, to whom it was sent, and the general contents of the correspondence.

By "correspondence," QCC assumes Staff is asking whether QCC ever made informal demand (outside of litigation) for copies of or equal treatment with any ICB switched access agreements. With that understanding, QCC responds as follows.

See QCC's response to Interrogatory No. 25.a. regarding MCI's obligation to provide QCC with non-discriminatory rate treatment. In further response, QCC is not aware of any informal correspondence with MCI preceding the 2008 demand letter.

REDACTED

Respondents: QCC Legal;

Lisa Hensley Eckert, Director-Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

REDACTED

26. Referring to page 9, paragraph 12 of Answer and Affirmative Defenses of Birch Communications, Inc. filed on November 16, 2010, Birch asserts that QCC is not a "similarly situated" carrier to any other IXC and identifies several reasons why. Do you agree with these assertions? If not, please explain your response.

To the extent this Interrogatory is seeking legal conclusions, QCC reserves the right to continue its legal analysis of this matter and to refine and present its legal analysis, as informed by all the facts that come to light as this matter proceeds, in appropriate briefing pleadings. With that understanding, QCC responds as follows.

No. Please see QCC's response to Interrogatory Nos. 7 and 8, including ¶¶ 74-75 of the Colorado Order on Exceptions.

First, there has been no showing that Birch's cost of providing intrastate switched access to QCC differs in any way from its cost of providing the identical service to any other IXC. In response to QCC's discovery, Birch admitted its belief that it did not perform a cost study or demand study at the time it entered its secret agreements. See Birch's response to QCC Interrogatory No. 2.l. and 2.m. As such, QCC is aware of no basis to establish that Birch's cost of providing switched access to QCC differs from its cost of providing the service to other IXCs.

Second, Birch's purchase of wholesale (long distance) services from QCC has no bearing whatsoever on either Birch's cost of providing switched access to QCC or on QCC's entitlement to non-discriminatory treatment. QCC does not believe it has a "unique traffic profile," as Birch ambiguously claims. QCC is a wholesale provider of long distance service to many customers. Those relationships do not diminish QCC's statutory right to enjoy non-discriminatory rate treatment with regard to CLEC-provided switched access services.

Third, as the Colorado Commission correctly concluded, absent evidence that differences in volumes affect the CLEC's cost of providing switched access to various IXCs, differing traffic volumes do not suggest a meaningful distinction among IXC customers of switched access. Colorado Order on Exceptions, ¶ 74.

Finally, QCC disagrees that "payment or dispute history" creates a distinction permitting discriminatory pricing for the identical bottleneck service. By "payment or dispute history," Birch may be suggesting that it was entitled to distinguish between switched access customers AT&T and QCC on the basis that AT&T refused to pay Birch's published rates. If this correctly describes Birch's position, this Commission should not condone such self-help, and should not conclude that QCC *deserved* to receive inferior rate treatment *on the basis* that it did not withhold payment of Birch's published rates. QCC should not have been disadvantaged on account of its *willingness* to pay the CLECs' price list rates. Endorsing that basis for discrimination would be absurd, and would encourage QCC and other IXCs to simply stop paying CLEC access charges until such time as the CLECs accommodate demands for lower rates.

REDACTED

Respondents: QCC Legal

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

RESPECTFULLY SUBMITTED on this 15th day of December, 2011.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
susan.masterton@centurylink.com

REDACTED

Decision No. C11-1216

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08F-259T

QCC COMMUNICATIONS COMPANY, LLC,

COMPLAINANT,

V.

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC, XO COMMUNICATIONS SERVICES, INC., TIME WARNER TELECOM OF COLORADO, L.L.C., GRANITE TELECOMMUNICATIONS, INC., ESCHELON TELECOM, INC., ARIZONA DIALTONE, INC., ACN COMMUNICATIONS SERVICES, BULLSEYE TELECOM, INC., COMTEL TELECOM ASSETS, LP, ERNEST COMMUNICATIONS, INC., LEVEL 3 COMMUNICATIONS, LLC AND LIBERTY BELL TELECOM, LLC, AND JOHN DOES 1-50 (CLECS WHOSE TRUE NAMES ARE UNKNOWN),

RESPONDENTS.

ORDER ADDRESSING EXCEPTIONS AND MOTION TO REOPEN THE RECORD

Mailed Date: November 15, 2011
Adopted Date: October 17, 2011

TABLE OF CONTENTS

I. BY THE COMMISSION 3
A. Statement 3
B. Background and Procedural History 4
C. Statute of Limitations 5
1. QCC v. MCIMetro 5
a. Background and the Minnesota Proceedings 5
b. Recommended Decision 7
c. QCC 9
d. MCIMetro 11

Colorado PUC E-Filings System

e. Discussion 12
2. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon v. QCC 16
a. Background and the Minnesota Proceedings 16
b. Recommended Decision 17
c. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon 18
d. QCC 20
e. Discussion 21
D. Discrimination 23
1. Recommended Decision 23
2. XO, TWT, Granite, BullsEye, Liberty Bell, and MCIMetro 25
3. QCC 27
4. Discussion 29
E. Reparations, Filed Rate Doctrine, and Discrimination to Other IXCs 31
1. Recommended Decision 31
2. Discrimination to Other IXCs 33
a. XO, Granite, and BullsEye 33
b. QCC 34
c. Discussion 34
3. Filed Rate Doctrine 34
f. XO, BullsEye, Granite, and TWT 34
b. QCC 36
c. Discussion 36
F. Proof of Damages 39
1. Granite, BullsEye, TWT, and XO 39
2. QCC 41
3. Discussion 41
G. Granite and BullsEye Miscellaneous Arguments 43
1. Unenforceability of Unfiled Agreements 43
2. Failure to File Notices of Dispute Pursuant to the Filed Tariffs 43
H. Eschelon Miscellaneous Arguments 44
1. Motion to Reopen the Record 44
a. Eschelon 44
b. QCC 44

090538 Hearing Exhibits 00155

c. Discussion 44
2. Non-Discrimination Requirements and Retrospective Settlements of Billing Disputes 45
a. Eschelon 45
b. QCC 45
c. Discussion 46
3. Procedure for Calculating Reparations 46
a. Eschelon 46
b. QCC 47
c. Discussion 47
4. Methodology for Calculating Reparations 48
a. Eschelon 48
b. QCC 48
c. Discussion 49
I. Comtel Miscellaneous Arguments 50
1. Comtel 50
2. QCC 51
3. Discussion 52
J. QCC Requests for Clarification 53
1. Granite Reparations 53
2. Interest 54
3. CLEC Filing Obligations 54
4. Typographical Error Regarding QCC Advocacy 55
II. ORDER 56
A. The Commission Orders That: 56
B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING October 17, 2011.57

I. BY THE COMMISSION

A. Statement

1. This matter now comes before the Commission for consideration of exceptions to Recommended Decision No. R11-0175 (Recommended Decision) filed on April 14, 2011 by the

090538 Hearing Exhibits 00156

following parties: Qwest Communications Corporation (Qwest or QCC); Time Warner Telecom of Colorado, LLC (TWT), Granite Telecommunications, Inc. (Granite); Comtel Telcom Assets, LP (Comtel); BullsEye Telecom, Inc. (BullsEye); Eschelon Telecom, Inc. (Eschelon), MCIMetro Access Transmission Services, LLC (MCIMetro); XO Communications Services, Inc. (XO); and Liberty Bell Telecom, LLC (Liberty Bell). Further, this matter comes before the Commission for consideration of a Motion to Reopen the Record (Motion) filed by Eschelon on April 14, 2011. On May 5, 2011, XO, BullsEye, Granite, MCIMetro, and QCC filed responses to exceptions, and on April 28, 2011, QCC filed a response to the Motion. Finally, QCC filed a notice of supplemental authority on August 4, 2011. Being fully advised in the matter and consistent with the discussion below, we address the exceptions below.

B. Background and Procedural History

2. In order for an interexchange carrier (IXC) (in this case QCC) to complete a long distance phone call for one of its customers, it needs to access the network of a local exchange carrier (LEC) (in this case respondent CLECs). For example, when a customer initiates a long distance call, the LEC routes that call from the customer to the IXC's point of presence. The IXC pays originating switched access to the LEC for performance of this function. To complete the call, the IXC hands the call off to a LEC who delivers it to the recipient. The IXC will then pay terminating switched access to the LEC who terminates the call.

3. QCC filed a formal complaint on June 20, 2008. In its complaint, QCC alleged that respondent Competitive Local Exchange Carriers (CLECs) entered into off-tariff agreements with IXCs other than QCC (including AT&T and/or Sprint) to provide intrastate switched access service on prices, terms, and/or conditions that differed from those on file with the Commission. These respondent CLECs, according to QCC, did not file their off-tariff agreements with the Commission before QCC filed its formal complaint, in violation of § 40-15-105(3), C.R.S.

090538 Hearing Exhibits 00157

In its formal complaint, QCC alleged undue discrimination, in violation of § 40-15-105(1), C.R.S., because the off-tariff agreements called for prices, terms, and conditions more favorable than the tariff prices, terms, and/or conditions paid by QCC.

4. The Commission referred this case to Administrative Law Judge (ALJ) G. Harris Adams. The ALJ held a hearing on July 27 and 28, 2010 and issued Recommended Decision No. R11-0175 on February 23, 2011. The ALJ concluded QCC's claims against MCIMetro were barred by the statute of limitations. However, the ALJ granted QCC's claims against the remaining respondent CLECs—TWT, Granite, Comtel, XO, BullsEye, Ernest Communications, Inc., Liberty Bell, and Eschelon. By way of remedy, the ALJ ordered these CLECs to pay reparations to QCC, based on the difference between the tariff rates that QCC paid during the relevant time periods and the off-tariff rates that CLECs charged to AT&T Communications of the Mountain States, Inc. (AT&T) and/or Sprint Communications Company, LP (Sprint).

5. On April 14, 2011, the parties filed exceptions to the Recommended Decision and Eschelon filed the Motion on the same date. The parties filed responses to exceptions, and QCC filed a response to the Motion on April 28, 2011.

C. Statute of Limitations

1. QCC v. MCIMetro

a. Background and the Minnesota Proceedings

6. In 2004, MCIMetro entered into off-tariff agreements with AT&T for switched access services. These contracts were nationwide in scope and specified a single, uniform rate for all switched access traffic, regardless of jurisdiction. The 2004 contracts expired on January 27, 2007 and therefore are no longer in effect. Under these contracts, MCIMetro charged AT&T a lower rate than what QCC was paying in accordance with MCIMetro's tariffs.

090538 Hearing Exhibits 00158

7. On June 16, 2004, the Minnesota Department of Commerce (Minnesota DOC) filed a complaint with the Minnesota Public Utilities Commission (Minnesota PUC) against 15 CLECs and AT&T, alleging the CLECs had entered into off-tariff agreements for switched access rates less than their tariff rates.

8. MCIMetro was a respondent in the action before the Minnesota PUC. The 2004 contracts were among the contracts at issue in that action. The parties to the instant action do not dispute that MCIMetro never offered to QCC the rates contained in the 2004 contracts between MCIMetro and AT&T. Instead, the key issue is the point in time at which QCC discovered the unfiled 2004 contracts and/or should have discovered them by exercising reasonable diligence.

9. On April 25, 2005, the Minnesota DOC filed comments in the matter pending before the Minnesota PUC, stating that MCIMetro and AT&T had entered into an agreement to provide switched access service that has not been filed with the Minnesota PUC. Minnesota DOC further alleged that MCIMetro provided rates that were lower than those in the tariff and offered to other IXCs. In the instant proceeding, QCC admitted that it asked to be added to the service list in the Minnesota PUC case in April 2005. QCC also admitted that it was aware of the 2004 off-tariff agreements in April 2005, although it lacked knowledge about the specific provisions.

10. In the instant proceeding, MCIMetro contended that QCC knew about the 2004 agreements and that QCC's cause of action to file the instant complaint accrued as early as April 2005, based upon the knowledge of QCC's counsel in the Minnesota PUC proceeding.

11. Further, QCC petitioned to intervene in the Minnesota PUC proceeding on or about February 27, 2006. On May 3, 2006, QCC received an unredacted copy of a document

090538 Hearing Exhibits 00159

identified as the "Second Unfiled Agreement," in response to a discovery request served in the Minnesota PUC proceeding. QCC, at that time became aware there were reciprocal MCIMetro agreements in jurisdictions other than Minnesota, including Colorado. In the instant proceeding, QCC emphasized that its access to the unredacted copy of the Second Unfiled Agreement was subject to a protective order, which prohibited QCC from using the information obtained in the Minnesota PUC proceeding outside of that proceeding.

12. QCC argued it became aware of the unfiled agreement between MCIMetro and AT&T when a companion agreement was made public as part of the Minnesota PUC docket on February 29, 2008. QCC also argues that the existence of this agreement or its applicability to Colorado was not confirmed until the agreement was produced to QCC on August 18, 2008, as part of the QCC subpoena served in the instant docket.

13. QCC commenced an action in a Minnesota state court in 2007, alleging that AT&T had violated the laws of several states, including Colorado, by executing off-tariff access agreements with CLECs such as MCIMetro.

b. Recommended Decision

14. The ALJ cited § 40-6-119(2), C.R.S., which states "[a]ll complaints concerning excessive or discriminatory charges shall be filed with the [C]ommission within two years from the time the cause of action accrues." The ALJ noted that the Commission previously held § 13-80-108(4), C.R.S., governed the accrual of a cause of action filed under § 40-6-119(2), C.R.S.[1] For its part, § 13-80-108(4), C.R.S., states "[a] cause of action for debt, obligation,

[1] *See*, Decision No. R03-0519, mailed May 15, 2003, at ¶¶ 46-54, in Docket No. 01F-071G (*Home Builders Association of Metropolitan Denver v. Public Service Company of Colorado*), and Decision No. C03-1093, mailed September 25, 2003, in the same docket.

090538 Hearing Exhibits 00160

money owed, or performance shall be considered to accrue on the date such debt, obligation, money owed, or performance becomes due." Recommended Decision, at ¶¶ 185-187.

15. The ALJ relied on the doctrine of equitable tolling, which provides that equity may toll a statute of limitations in certain circumstances. For example, equity may toll a statute when one party fails to make a legally required disclosure and the other party is prejudiced from this failure. The ALJ concluded equity will only toll an applicable statute of limitations period until the claims are discovered and/or should have been discovered by the exercise of reasonable diligence. *Id.*, at 190-198. He also rejected the argument that the doctrine of equitable tolling does not apply to the accruals of causes of action governed by § 13-80-108(4), C.R.S., because it does not contain the "is discovered or should have been discovered by the exercise of reasonable diligence language," like other subsections of § 13-80-108, C.R.S. Instead, the ALJ implicitly found equitable tolling doctrine is independent of the discovery rule and that it applies to and can toll causes of action that accrue under any subsection of § 13-80-108, C.R.S.

16. The ALJ disagreed with MCIMetro and other respondents that the instant cause of action accrued based on the proceedings before the Minnesota PUC. The ALJ found "awareness of the agreements and various proceedings did not give knowledge of facts essential to the cause of action varying from intrastate tariffs on file in Colorado." *Id.*, at ¶ 201. The ALJ found that, even though the 2004 contracts were nationwide in scope, QCC did not have knowledge of their applicability in Colorado before it received a copy of these agreements. For example, the ALJ noted that QCC's comments filed in 2005 with the Minnesota PUC reference only the Minnesota rules and law regarding intrastate access services within Minnesota, and do not address conduct or agreement affecting services in Colorado. Just because QCC was aware of conduct in other states regarding intrastate services is insufficient to show knowledge of facts essential to claims in Colorado, according to the ALJ. *Id.*, at ¶¶ 202-205.

090538 Hearing Exhibits 00161

17. The ALJ relied on the concept that equitable tolling expires once a party discovers and/or should have discovered its claims by the exercise of reasonable diligence. The ALJ noted that, on May 3, 2006, QCC received an unredacted copy of the document identified as "Second Unfiled Agreement" in response to a discovery request served in the Minnesota PUC proceeding. The ALJ found that, when QCC received an unredacted copy of that document via its counsel, it learned of the facts essential to the cause of action in Colorado against MCIMetro as to all of the rates, terms, and conditions that form the basis of the instant proceeding. *Id.*, at ¶ 211.

18. The ALJ disagreed with QCC's argument that the cause of action did not accrue because it received the "Second Unfiled Agreement" on May 3, 2006 subject to the restrictions against the use of that information outside of Minnesota. The ALJ stated there was no evidence QCC attempted to gain authorization to make use of the Second Unfiled Agreement to assert its cause of action. *Id.*, at ¶ 212. The ALJ concluded that equitable tolling expired on May 3, 2006, because, as of that time, MCIMetro's failure to provide notice of the 2004 agreements no longer contributed to the passing of the statutory period.

19. The ALJ thus dismissed QCC's claims against MCIMetro, because more than two years passed from the time the cause of action accrued on May 3, 2006 to the filing of the complaint on June 20, 2008.

c. QCC

20. In its exceptions, QCC raises three arguments in support of its overall contention that the ALJ erred in finding its claims against MCIMetro were time barred. First, QCC argues MCIMetro is precluded, as a result of its conduct, from relying on the statute of limitations. QCC relies on *Strader v. Beneficial Finance Co. of Aurora*, 551 P.2d 720, 724 (Colo. 1976), where the Colorado Supreme Court stated "a party will not be heard to plead the statute of limitations if he

090538 Hearing Exhibits 00162

himself is not in compliance with his statutory duty." QCC argues MCIMetro may not assert the statute of limitations defense, because MCIMetro never filed its off-tariff access agreements with the Commission, in violation of § 40-15-105(3), C.R.S.

21. Second, QCC argues it could not have lawfully utilized its knowledge about the MCIMetro-AT&T agreement on May 3, 2006 to initiate a complaint in Colorado. QCC stresses that its receipt of the Second Unfiled Agreement on May 3, 2006 was subject to the terms of a protective order issued by the Minnesota PUC. QCC argues it was precluded as a matter of law from using the Second Unfiled Agreement for any purpose outside of or beyond the scope of the Minnesota PUC proceeding. QCC contends it would have violated the terms of the Minnesota protective order had it filed a complaint in Colorado at that time. QCC contends the agreement was unavailable to QCC for use in this docket until 2008, when it obtained a public copy of the Second Unfiled Agreement. It is unreasonable to charge QCC with knowledge of the information contained in that document until that time, according to QCC.

22. Third, QCC contends the ALJ misapplied the statute of limitations by barring QCC's entire claim. This is because, even if MCIMetro is entitled to avail itself of a statute of limitations defense and QCC had actionable knowledge of the Second Unfiled Agreement on May 3, 2006, a significant portion of the claim still survives. QCC argues MCIMetro was in violation of the Colorado filing requirements for the entire period that its off-tariff agreement with AT&T was in effect—right up until its termination on January 27, 2007. In support of this argument, QCC relies on the *Home Builders* docket, where the Commission has held that § 40-6-119(2), C.R.S., permits reparations for the two-year period prior to the filing of a complaint, even if an older portion of the claim is time-barred. In *Home Builders*, the petitioner filed a complaint on February 23, 2001, requesting reparations for improper tariff charges going back to 1996. The Commission ruled that the statute of limitation barred the older portion of

090538 Hearing Exhibits 00163

these claims, but awarded reparations beginning on February 24, 1999, the full two-year-period preceding the filing of the complaint.

23. QCC concludes that, at a minimum, it is entitled to reparations from MCIMetro for the period between June 20, 2006 (two years before this complaint was filed) and January 27, 2007 (the date the secret agreement was terminated).

d. MCIMetro

24. In its response to exceptions, MCIMetro argues it is not precluded from relying on the statute of limitations defense. It relies on *Shell Western E&P, Inc. v. Dolores County Bd. of Comm'rs*, 948 P.2d 1002 (Colo. 1997) and *Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 855 (Colo. 1992) in support of the argument that a statute of limitations can be tolled "if a party fails to make a legally required disclosure *and the other party is prejudiced as a result*." (*emphasis added by MCIMetro*). In other words, a failure to make a legally required filing must contribute directly to the running of the statute of limitations. Even if a party conceals pertinent facts, the cause of action will nevertheless accrue once the plaintiff discovers the wrongdoing or by the exercise of reasonable diligence should have discovered it. MCIMetro argues that, since QCC knew about the facts essential to the cause of action no later than April 2005, MCIMetro's failure to file its 2004 agreements did not contribute to the running of the statute of limitations. The fact that MCIMetro failed to file its 2004 agreements with the Commission, in violation of the law, did not prejudice QCC, according to MCIMetro. MCIMetro concludes QCC's cause of action accrued in April 2005.

25. In response to QCC's second argument, MCIMetro states that the instant cause of action accrued in April 2005, long before QCC requested and obtained the off-tariff agreement between MCIMetro and AT&T itself. MCIMetro argues the notion of "actionable knowledge"

090538 Hearing Exhibits 00164

relied on by QCC finds no support in the Colorado law and QCC cites no support for this notion. MCIMetro points out QCC's receipt of the Second Unfiled Agreement on May 3, 2006 subject to a protective order did not prevent QCC from filing its lawsuit in a Minnesota state court in 2007 (before it obtained a public version of the document) or from discussing lower switched rates and switched access agreements with CLECs, including MCIMetro. MCIMetro concludes the ALJ properly ruled QCC's claims against MCIMetro were time barred and should be dismissed.

26. MCIMetro does not discuss QCC's third statute of limitations argument. Rather, it argues QCC is not entitled to any reparations for any time period within its complaint because it failed to prove MCIMetro unlawfully discriminated against it.

e. Discussion

27. The threshold issue is whether the doctrine of equitable tolling can toll causes of action accruing pursuant to § 13-80-108(4), C.R.S. The ALJ implicitly found it does. We agree. In *Patterson v. BP America Production Co.*, 240 P.3d 456, 460 (Colo. App. 2010), the Colorado Court of Appeals discussed a ruling that the court previously issued in the course of that litigation. The court determined § 13-80-108(4), C.R.S., applied to the plaintiffs' claims and reversed a lower court's ruling to the contrary. The court, however, did not reverse a lower court's ruling that there was a fact question as to whether or not the statute of limitations had been equitably tolled by the alleged fraudulent concealment. If the doctrine of equitable tolling doctrine did not apply to the accruals of causes of action under § 13-80-108(4), C.R.S., *per se*, as some of the respondent CLECs allege in the instant proceeding, then there would have been no fact question in *Patterson* as to whether the statute of limitations has been equitably tolled. We therefore find that the doctrine of equitable tolling can toll causes of action accruing pursuant to § 13-80-108(4), C.R.S., including the instant matter.

090538 Hearing Exhibits 00165

28. The court has applied the doctrine of equitable tolling to cases where the defendant's wrongful conduct prevented the plaintiff for asserting his or her claims in a timely manner. The principle behind the doctrine of equitable tolling is that a party should not benefit from its own wrongdoing. *See generally, Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094, 1096-97 (Colo. 1996).

29. Two Colorado Supreme Court cases, *Strader* and *Garrett*, discuss the application of the doctrine of equitable tolling in circumstances where, as here, a party fails to make a legally required disclosure. These cases are therefore applicable to this proceeding. In *Strader*, the lender was statutorily required to disclose the true interest rate to the plaintiff-borrower but failed to do so, even after being ordered to take corrective action by a regulatory agency. The borrower brought suit promptly after learning about the true interest rate. The court noted that the purpose of the Uniform Consumer Credit Code, including the disclosure requirement, was "to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost." *Strader*, 551 P.2d at 723. The court stated that "[w]here a party by its acts or omissions contributes to the running of a statute of limitations, the doctrine of equitable estoppel will prevent its raising that defense ... a party will not be heard to plead the statute of limitations if he himself is not in compliance with his statutory duty." *Id.*, at 724 (internal citations omitted). The court concluded the statute of limitations was tolled because the borrower had no prior knowledge of the true interest rate. *Id.*

30. In *Garrett*, the employer failed to provide the injured employee with a medical report necessary to seek a reopening of a workers' compensation claim. The employer and its insurance carrier received this medical report before the statute of limitations expired, but failed to provide the employee or his attorney with a copy of the report, despite a regulatory obligation

090538 Hearing Exhibits 00166

to reveal pertinent medical documents. The employee admitted to knowing about some contents of the report before the time the statute of limitation expired, but he denied knowledge of other parts of the report that suggested his medical condition worsened. The court began by noting that a medical report at issue in the case played a crucial role in supporting a petition to reopen a disability claim. *Garrett*, 826 P.2d at 853. The court ruled that, to determine whether the statute of limitations should be tolled, the factual record required further development regarding the extent of the employee's knowledge before the statute of limitations expired, to ascertain whether the employer's failure to furnish the medical report prejudiced the employee. *Id.*, at 854. The court thus remanded the matter to a lower court to consider these issues.

31. In this case, MCIMetro never filed its off-tariff switched access agreements with AT&T with the Commission, in violation of § 40-15-105(3), C.R.S., and we must still inquire whether QCC discovered the wrongdoing or should have discovered it by exercising reasonable diligence *before* the statute of limitations period expired.

32. We begin that inquiry by reviewing the public policy interests behind § 40-15-105(3), C.R.S. The General Assembly has declared that "it is the policy of the state of Colorado to promote a competitive telecommunications marketplace." *See,* § 40-15-101, C.R.S. Section 40-15-105(3), C.R.S., advances that public policy by requiring local exchange providers to file access contracts with the Commission, so that other purchasers of access services as well as the Commission can review the contracts to ensure compliance with the law. We agree with the ALJ that disclosure required by § 40-15-105(3), C.R.S., has a critical role in promoting a competitive telecommunications marketplace and that this must be taken into account in determining when or whether equitable tolling stopped and QCC's cause of action accrued. Recommended Decision, at ¶ 207.

090538 Hearing Exhibits 00167

33. We agree with the ALJ that awareness of the agreements at issue in the Minnesota PUC proceeding did not give QCC knowledge of facts essential to the cause of action regarding intrastate tariffs on file in Colorado. Even though the 2004 off-tariff agreements between AT&T and MCIMetro may have been nationwide, QCC did not have knowledge of their applicability in Colorado before it received a copy of these agreements. We therefore reject the argument of MCIMetro that the instant cause of action accrued in April 2005.

34. The issue of whether the instant cause of action accrued on May 3, 2006, when QCC received a copy of the "Second Unfiled Agreement" as part of discovery in the Minnesota PUC proceeding is a much closer question. It is true that document contained information about the off-tariff agreement that MCIMetro entered into with AT&T in Colorado. However, at that time, MCIMetro continued to violate its duty to file that off-tariff agreement with the Colorado Commission pursuant to § 40-15-105(3), C.R.S. QCC and its Colorado personnel and counsel thus continued to be deprived of an opportunity to review that agreement, even if its personnel and counsel in Minnesota were now able to do so. Further, even QCC's personnel and counsel in Minnesota were only able to review the "Second Unfiled Agreement" subject to a protective order, which precluded the use of that information for any purpose outside of the scope of the Minnesota PUC proceeding. In the Recommended Decision, the ALJ faults QCC for not seeking relief from the Minnesota PUC to obtain permission to make use of that document to assert its cause of action in Colorado. However, even if QCC took such steps and was successful, it still would not have obtained relief from the Minnesota PUC on the same day, on May 3, 2006, since it would have taken some time for MCIMetro to respond to any request for such relief and for the Minnesota PUC to rule on it. We therefore disagree with the ALJ that the instant cause of action accrued on May 3, 2006.

090538 Hearing Exhibits 00168

35. *Garrett* and *Strader* establish that the doctrine of equitable tolling is based on the basic principles of fairness. To arrive at a fair result in this case, we must balance, on one hand, the fact that MCIMetro continuously violated its duty to file its off-tariff agreement with AT&T with the Commission, as required by § 40-15-105(3), C.R.S., even after similar conduct came to light in other jurisdictions. The requirement on the part of the local exchange carriers, in this case MCIMetro, to file their off-tariff access agreements is not a mere formality. Rather, disclosure plays a critical role in promoting a competitive telecommunications marketplace envisioned by the legislature, just as disclosure played critical roles in the statutory schemes and public policies at issue in *Garrett* and *Strader*. We acknowledge that the ALJ was persuaded by the facts that QCC's personnel and counsel in Minnesota did not seek relief from the Minnesota PUC to be able to assert a potential cause of action in Colorado on May 3, 2006; did not obtain an order from the Minnesota PUC authorizing such relief before June 20, 2006; and did not pass along the information to their Colorado colleagues during that time period. It is difficult to impute knowledge of the Minnesota action in the short time period between May 3, 2006 and June 20, 2006. We are persuaded that MCImetro had an ongoing obligation to cease its illegal activities, balancing the equities, the statute of limitations was not tolled. Therefore, we grant QCC's exceptions on this ground.

2. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon v. QCC

a. Background and the Minnesota Proceedings

36. We incorporate the discussion regarding the Minnesota PUC proceeding in ¶¶ 6-13 above into this section of the Order. Eschelon and XO were parties in the Minnesota PUC proceeding discussed above; Liberty Bell, BullsEye, TWT, and Granite did not. Recommended Decision, at ¶¶ 122-153. The key contention on exceptions is the point in time at which QCC discovered or should have discovered, by exercising reasonable diligence,

090538 Hearing Exhibits 00169

the existence of the unfiled off-tariff agreements these respondents have entered into with AT&T and/or Sprint, as a result of QCC's participation in the Minnesota PUC proceeding or other means.

37. In May 2006, QCC signed a protective order enabling it to gain access to all trade secret information in the Minnesota PUC proceeding. Certain other documents became publicly available in the June/July time frame of 2006. *Id.*, at ¶ 127.

b. Recommended Decision

38. The ALJ found that QCC's claims against XO, Liberty Bell, BullsEye, Granite, Eschelon, and TWT were not barred by the statute of limitations. The ALJ implicitly found there was no evidence that, more than two years before QCC filed its formal complaint in this docket, it knew or should have known about unfiled off-tariff agreements these CLECs had entered into in Colorado.

39. The ALJ agreed with the CLECs that plaintiffs must exercise reasonable diligence in discovering the relevant circumstances of their claims. However, he rejected their arguments that QCC's claims in Colorado accrued based on the knowledge of claims in the Minnesota PUC proceeding that dealt with Minnesota intrastate access services. The ALJ ruled that, although the unfiled off-tariff agreements were nationwide in scope, general awareness of the agreements and various proceedings did not give knowledge of facts essential to the cause of action in Colorado. *Id.*, at ¶ 201. The ALJ also found that, in light of the public policy espoused by § 40-15-105(3), C.R.S., to promote a competitive marketplace and the critical importance of disclosure, the mere *potential* for discovery through alternative means (*i.e.*, means other than examining documents filed with the Commission) does not stop the equitable tolling of the statute of limitations. *Id.*, at ¶ 206. The ALJ concluded it would not have been reasonable for QCC to attribute the conduct

090538 Hearing Exhibits 00170

alleged in Minnesota to all carriers in all states. He rejected the argument that QCC should have employed legal process and discovery in the Minnesota PUC proceeding to have discovered the existence and scope of agreements affecting Colorado intrastate switched access. *Id.*, at ¶¶ 218-221.

c. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon

40. In their exceptions, XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon all contend the ALJ erred in ruling QCC's claims against them were not barred by the statute of limitations. Further, Granite and TWT argue that the doctrine of equitable tolling doctrine does not apply. These parties argue the accrual of claims filed under § 40-6-119(2), C.R.S., is governed by § 13-80-108(4), C.R.S., rather than § 13-80-108(8), C.R.S. Granite and TWT point out that § 13-80-108(4), C.R.S., does not contain the "is discovered or should have been discovered by the exercise of reasonable diligence language," like § 13-80-108(8), C.R.S., and other subsections of § 13-80-108, C.R.S.

41. In the alternative, the respondent CLECs point out that QCC, as the party seeking equitable tolling of the statute of limitations, bears the burden of proof. The respondent CLECs argue that QCC must demonstrate it was neither aware of the underlying cause of nor could have discovered the cause by exercising reasonable diligence. The respondent CLECs argue that QCC may not rely on their failure to file the agreements with the Commission, but must show what efforts it took to discover additional information.

42. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon contend that reasonable diligence would have enabled QCC to file its formal complaint well before June 20, 2006 (or two years before it actually filed the complaint). The respondent CLECs rely on the fact that, in the instant proceeding, QCC testified that it simply named as respondents all of the respondents from

090538 Hearing Exhibits 00171

the Minnesota PUC proceeding that also provide switched access in Colorado. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon point out that QCC did not have the off-tariff agreements themselves before filing its complaint and, therefore, could have filed the very same complaint much earlier. The respondent CLECs claim that QCC had the information sufficient to give it a reason for further inquiries in April 2005, when it first became aware of the investigation by the Minnesota DOC regarding unfiled access agreements and requested to be added to the service list in the Minnesota PUC proceeding. The CLECs also point out that QCC admitted it was able to review some of the secret agreements between AT&T and CLECs by April 2006.

43. More specifically, TWT points out that QCC was a participant to the Minnesota proceeding to which TWT was named as a respondent in 2005. For its part, XO points out that, beginning in April 2005, QCC knew about an agreement between XO and AT&T, under which AT&T was paying rates for intrastate switched access services in Minnesota that were lower than the tariff rates in that state. XO argues QCC should have investigated further at that point. XO also points out that, in April 2006, QCC filed comments in the Minnesota PUC proceeding and indicated it was aware of a broad-scale scheme by AT&T to pay below tariff switched access rates.

44. Finally, some respondent CLECs argue QCC failed to use reasonable diligence to learn of the existence of its claims against them, because it knew about its claims against another CLEC, MCIMetro. These respondent CLECs argue that, either via discovery in the Minnesota PUC proceeding or by filing its own complaint against MCIMetro with the Minnesota PUC and conducting discovery there, QCC could have learned of the names of other CLECs that had off-tariff access agreements with AT&T and/or Sprint in other states. The respondent CLECs argue QCC could have learned of its claims against them in Colorado in this manner.

090538 Hearing Exhibits 00172

45. XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon conclude that the ALJ interpreted the obligation to exercise reasonable diligence too narrowly. The respondent CLECs further conclude that merely reviewing the Commission files should not be sufficient, since this approach would have the effect of rewarding willful ignorance by discouraging the parties from following up on the information in their possession. Liberty Bell adds that QCC has extensive corporate and legal resources and thus cannot argue that it was duped or tricked into inaction.

d. QCC

46. In its consolidated response to exceptions, QCC argues, as a preliminary matter, that the respondent CLECs are precluded from its conduct from raising the statute of limitations defense. Relying on *Strader*, QCC argues the respondent CLECs may not rely on the statute of limitations, because they never filed their off-tariff access agreements with the Commission, in violation of § 40-15-105(3), C.R.S.

47. In the alternative, QCC argues that its cause of action accrued less than two years before it filed the formal complaint. It also rebuts the arguments that the cause of action accrued based upon the knowledge of the Minnesota PUC proceeding.

48. QCC states that, as a result of the Minnesota PUC proceeding, it received access to only two off-tariff agreements relevant to this case on June 23, 2006 (which was less than two years before QCC filed the instant complaint). These are the Granite-AT&T agreement and the XO-AT&T agreement. However, those respondents' off-tariff agreements with Sprint were not disclosed at that time.

49. QCC argues that the Minnesota PUC proceeding did not put QCC on notice such that it would be compelled to file a complaint in Colorado. QCC further argues it was bound by

090538 Hearing Exhibits 00173

the protective orders from using the confidential information obtained in that proceeding outside of Minnesota.

50. QCC argues it acted with reasonable diligence and was not required to divine, as a result of the Minnesota PUC proceeding, which CLECs have entered into below-tariff switched access agreements in Colorado and when. QCC argues this would have involved investigating the practices of over 700 CLECs nationwide and/or immediate initiation of complex litigation in Colorado and in other states to preserve its right to non-discriminatory treatment. QCC contends Colorado law does not require a potential plaintiff to assume such a heavy burden to protect its rights.

51. QCC concludes the ALJ correctly found the Minnesota PUC proceeding did not impose an extra-legal duty on QCC to uncover the unfiled off-tariff agreements that respondent CLECs may have entered into in Colorado, in order to preserve its Colorado rights with respect to those agreements. QCC argues any other result would trivialize and make meaningless the filing requirements of Colorado law. QCC concludes the burden was on the respondents to file their off-tariff agreements with the Commission as required by Colorado law, not on QCC to piece together information from other states to sleuth out the existence of these agreements in Colorado.

e. Discussion

52. We incorporate the discussion regarding the equitable tolling doctrine embodied in *Garrett* and *Strader*, as well as the applicability of that doctrine to accruals of causes of action under § 13-8-108(4), C.R.S., in ¶¶ 31-32 above into this section of the Order. Further, we affirm the ALJ's conclusion that QCC's claims against XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon have been equitably tolled during the two-year period preceding the filing of the

090538 Hearing Exhibits 00174

formal complaint. Unlike QCC's claims against MCIMetro, where QCC at least received a copy of the document containing information about the off-tariff agreement that MCIMetro entered into with IXCs other than QCC in Colorado (albeit subject to a protective order), there is no evidence at all that QCC received any documents, more than two years before it filed its formal complaint, about the off-tariff agreements entered into by any of the remaining respondent CLECs in Colorado.

53. It is true that, as a result of participating in the Minnesota PUC proceeding, QCC obtained access to off-tariff agreements that some CLECs entered into with AT&T and/or Sprint in various jurisdictions. From this proceeding, QCC may also have learned that the scheme was broad in scale. However, absent knowledge that a particular CLEC participated in this scheme in a particular jurisdiction during the relevant time period, the cause of action did not accrue against that particular CLEC in that particular jurisdiction. We agree with QCC and the ALJ that QCC was not required to divine, from the Minnesota PUC proceeding, which CLECs had entered into off-tariff switched access agreements in Colorado and when. QCC did not have a duty to search for off-tariff agreements that each of the respondent CLECs may have entered into in Colorado and to initiate expensive litigation, merely to preserve its Colorado rights with respect to these agreements. This is especially true in light of the public policy interests behind § 40-15-105(3), C.R.S., and the critical role of disclosure in promoting these policies. Given these public policies and the overall facts of this case, we find the ALJ's approach is reasonable. It takes into account, on one hand, the fact that the respondent CLECs violated their Colorado filing obligations and, on the other hand, does not encourage willful ignorance on the part of QCC.

54. Finally, the CLECs are correct that QCC filed its formal complaint in the instant action on June 20, 2008 before actually knowing that each of the remaining CLECs entered into off-tariff agreements in Colorado. Instead, QCC simply named all of the respondents from the

090538 Hearing Exhibits 00175

Minnesota PUC proceeding that also provide switched access in Colorado as respondents in the instant action. However, we find this is irrelevant as to whether QCC's claims against the CLECs have been equitably tolled. If QCC was not required to initiate costly litigation to preserve its rights, it also should not be penalized for not embarking upon the very same expensive and risky approach earlier.

55. For the foregoing reasons, we deny the exceptions of XO, Liberty Bell, BullsEye, Granite, TWT, and Eschelon on this ground.

D. Discrimination

1. Recommended Decision

56. The ALJ began his discussion on discrimination by citing the applicable statutes. First, § 40-3-102, C.R.S., gives the Commission authority "to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state." Further, § 40-15-105(1), C.R.S., states that "[n]o local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take any advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network." That statute also requires access charges to be cost-based, subject to a statutory cap. Subsection (3) of § 40-15-105, C.R.S., seeks to prevent predatory pricing by the providers in control of monopoly or bottleneck facilities by requiring disclosure of access contracts. Finally, the Commission may authorize reparation upon a complaint for excessive or discriminatory charges pursuant to § 40-6-119, C.R.S. Recommended Decision, at ¶¶ 258-262.

57. The ALJ cited to the testimony of Dr. Dennis L. Weisman, testifying on behalf of QCC, that the Commission should not permit a departure from uniform rates for a bottleneck monopoly service that is not competitively supplied, in the absence of a demonstrated variation

090538 Hearing Exhibits 00176

in the costs of providing the service. Dr. Weisman opined that the differences in rates that QCC paid under the tariffs and rates that AT&T and/or Sprint paid under the unfiled agreements could not be the result of cost variations because the service provided is essentially identical across carriers. The ALJ noted that LEC facilities constitute a monopoly bottleneck because there are no alternatives for an IXC such as QCC to reach an end user local customer for long distance call but through the switch of the local carrier. *Id.*, at ¶¶ 273-274.

58. The ALJ ruled that QCC has made a *prima facie* showing that the functionality, service elements, and facilities that LECs utilize to provide switched access services to IXCs are identical. The ALJ noted that all IXCs must use switched access services to reach a particular end-use customer. In addition, the facilities used by LECs to accommodate one IXC serve all IXCs. The ALJ also noted that LECs enjoy bottleneck monopoly control over switched access services provided to their end-use customers, regardless of the identity of the IXC or the volume of calls completed. *Id.*, at ¶ 278.

59. The ALJ also ruled that QCC made a *prima facie* showing that the relative size of any given purchaser of switched access services is not relevant to specific access services. This is because each call is separate and distinct and carried in identical fashion (assuming no dedicated facilities to a particular local switch or end-user). Therefore, every IXC is similarly situated on a call-by-call basis. *Id.*, at ¶ 278.

60. The ALJ noted that respondent CLECs tried to overcome the *prima facie* showing of discrimination. The ALJ disagreed with the arguments that the tariff rates paid by QCC and the below-tariff rates paid by other IXCs were two independent lawful rates and that QCC was ineligible for the lower rates. The ALJ noted that neither the Commission nor any IXC that has not entered into these unfiled switched access agreements ever had an opportunity to review and

090538 Hearing Exhibits 00177

consider these agreements. The ALJ concluded the agreements not filed with the Commission in violation of § 40-15-105, C.R.S., cannot form the basis of lawful rates. *Id.*, at ¶ 280. Further, he found that combining switched access services with other services in one single contract could not change the consideration of whether there was discrimination with respect to switched access services. In essence, the ALJ ruled that the proper inquiry involved segregating access services and the pricing thereof. *Id.*, at ¶ 284.

61. The ALJ ultimately concluded that the respondent CLECs failed to demonstrated any lawful basis for varying from tariff rates under access agreements not filed with the Commission, and thus were in violation of § 40-15-105, C.R.S.

2. XO, TWT, Granite, BullsEye, Liberty Bell, and MCIMetro

62. In their exceptions, Granite, BullsEye, Liberty Bell, XO, and TWT contend QCC failed to meet its burden of proof that it is similarly situated to AT&T and/or Sprint. The CLECs point out that whether or not QCC is similarly situated to these other IXCs depends on a variety of case-specific factors, such as the costs, types of service, and characteristics of the service. The CLECs contend that QCC presented no evidence regarding the CLECs' underlying costs to provide switched access service to QCC and other IXCs or the levels of traffic handled by QCC versus other carriers. The CLECs argue that the ALJ simply accepted QCC's policy based arguments as to why the Commission should not allow for different rates for switched access service, in the absence of demonstrated variation in the economic costs to provide the service, and made factual findings without any evidence that QCC was indeed similarly situated to other IXCs.

63. Granite, BullsEye, Liberty Bell, XO, and TWT argue that the witness for QCC, Dr. Weisman, merely speculated that there should not be a cost-difference in providing switched

090538 Hearing Exhibits 00178

access services to QCC versus other IXCs. The respondent CLECs further contend their witness, Dr. August H. Ankum, refuted these speculations by testifying that switched access costs do vary by volume. The CLECs argue that they presented persuasive evidence that during the relevant time period QCC was not similarly situated to the other carriers because of its traffic volume. The respondent CLECs argue that they submitted evidence that the toll traffic revenues and market shares of AT&T and/or Sprint were substantially larger than those of QCC during the relevant time periods. The respondent CLECs argue that it was reasonable to offer lower per unit charges for larger volumes of switched access given these circumstances. The CLECs point to the testimony of Dr. Ankum for the proposition that, if an IXC has a sufficiently large traffic volume or a substantial market share, it may eventually avoid access charges through joint marketing of services with affiliate LECs. Thus, it is reasonable for a LEC to offer reduced rates to avoid losing a large customer.

64. TWT further argues that the Recommended Decision failed to examine the unique circumstances surrounding the off-tariff agreement between TWT and AT&T. TWT argues that nothing in § 40-15-105, C.R.S., requires the Commission to segregate the switched access services that TWT provided to AT&T from other parts of the TWT-AT&T off-tariff agreement.

65. In its response to exceptions, MCIMetro contends that its 2004 contracts with AT&T were reciprocal and bilateral. MCIMetro argues that QCC was not similarly situated to AT&T because it was legally and operationally unable to enter into an identical reciprocal arrangement and undertake the same reciprocal obligation to which MCIMetro and AT&T had agreed. This is because, among other things, QCC does not (and is not legally able to) provide switched access service in Colorado. MCIMetro concludes that QCC was not entitled to the benefits of the 2004 contracts in the form of lower rates because it was not able to meet the corresponding obligations of these contracts.

090538 Hearing Exhibits 00179

3. QCC

66. In its consolidated response to exceptions, QCC contends that it has met is burden of proof regarding rate discrimination. QCC points out that each respondent CLEC admitted it had on file with the Commission, during all relevant time periods, a tariff establishing its lawful rates for intrastate switched access. QCC further points out that each respondent CLEC (except Comtel)[2] also admitted it charged QCC these tariff rates, but charged other IXCs below-tariff rates for the same service pursuant to the unfiled agreements. QCC argues that this rate disparity resulted in QCC being significantly overcharged in comparison to the preferred IXCs.

67. QCC further argues that respondent CLECs did not provide a lawful justification for their admitted discrimination and that it was similarly situated to the preferred IXCs (such as AT&T and Sprint) with regard to the provision of intrastate switched access services in Colorado for three reasons. First, QCC argues that the switched access service itself was absolutely identical, because the functionality, service elements provided to QCC and AT&T were identical, as were the facilities over which the service was provided. Second, the bottleneck nature of the service is identical regardless of whether the CLEC originates the call on behalf of QCC or AT&T. Third, the cost of providing switched access services to QCC is identical to the cost of providing these services to AT&T or Sprint.

68. QCC rebuts the arguments presented by CLECs that differences in size or traffic volumes justify different treatment in this case. QCC points out that none of the respondent CLECs sponsored testimony or offered any evidence establishing that differing traffic volumes result in different costs in the context of switched access. In addition, QCC cites to the testimony of its witnesses Ms. Lisa Hensley-Eckert and Dr. Weisman that there is no theoretical

[2] We discuss Comtel in more detail in ¶¶ 120-127 below.

090538 Hearing Exhibits 00180

or quantifiable basis upon which to conclude that volume discounts are cost-justified or otherwise appropriate in the context of switched access. QCC explains each minute of switched access costs the CLEC providing that access the same. In addition, QCC points out that none of the unfiled agreements calling for a lower off-tariff rate ties the discount to AT&T or Sprint to the purchase of a specific volume of switched access services. To the contrary, all unfiled agreements grant the discount in unlimited fashion, regardless of whether the favored IXC purchases a minute of switched access or one million minutes.

69. Further, QCC contends that any arguments that preferential treatment to AT&T and Sprint was justified by the larger size of these IXCs also fail because QCC is comparable in size to these IXCs. QCC states it is the third largest IXC in the nation and has a greater market share than AT&T in the West.

70. Further, in response to TWT's argument that QCC and AT&T are not similarly situated, QCC argues TWT introduced this new theory for the first time on exceptions. QCC argues it was denied an opportunity to rebut this new defense during the hearing and the ALJ was not able to assess this argument in the Recommended Decision. QCC also argues the Commission should find that a CLEC cannot lawfully distinguish between its IXC customers as far as pricing for bottleneck switched access services.

71. Finally, in response to MCIMetro's contention that its 2004 contracts with AT&T were reciprocal and bilateral, which allegedly justifies differential rate treatment, QCC concludes the record more than supports the findings and conclusions in the Recommended Decision with respect to MCIMetro.

090538 Hearing Exhibits 00181

4. Discussion

72. We agree with the ALJ that QCC has established a *prima facie* showing of discrimination prohibited by § 40-15-105(1), C.R.S. QCC has demonstrated that respondent CLECs entered into off-tariff switched access agreements to provide intrastate switched access services to other IXCs but did not provide equivalent treatment to QCC for the same services. Indeed, the respondents have not seriously disputed this point during the hearing.

73. We also agree with the ALJ that LEC facilities are a monopoly bottleneck since there are no alternatives for an IXC to reach a given end user customer for a long distance call but through the switch of the LEC that provides the local service to that end user. Indeed, as the ALJ and Dr. Weisman pointed out, the Federal Communications Commission (FCC) previously found and determined that switched access is a bottleneck monopoly service that is not competitively supplied. This is because, once a given end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls and it becomes the bottleneck for IXCs wishing to complete calls to, or carry calls from, that end user.[3] We also agree with Dr. Weisman that the FCC has not subsequently overturned or modified its 2001 order finding switched access is a bottleneck monopoly service. Further, § 40-15-105(1), C.R.S., acknowledges the special nature of access services by requiring these services by a LEC to be non-discriminatory and cost-based. We take note of the ALJ's discussion of the legislative history of the statute, at ¶ 261 of the Recommended Decision, and agree that the legislature was especially concerned about the discrimination for these services.

[3] *See*, Recommended Decision, at ¶ 274, and Rebuttal Testimony of Dennis L. Weisman, filed October 13, 2009, at p. 13, lines 8-16, *citing* Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146 (rel. April 27, 2001), at ¶ 130.

090538 Hearing Exhibits 00182

74. It is true, as respondent CLECs contend, that the legislature intended for intrastate switched access rates to vary, because it allowed negotiated off-tariff agreements with respect to this service. It is also true that differentiation in price for the same service alone is insufficient to establish discrimination; instead, a complainant must establish undue or unreasonable preference or advantage among similarly situated parties. However, we find, as did the ALJ, that the record evidence does not establish a lawful basis for price differentiation in this case.

75. We agree with the ALJ that QCC effectively rebutted any claims that differences in size or traffic volumes justified price differentiation, in this particular case. This is because the cost of providing switched access does not depend on the traffic volume, or which IXC is utilizing that service. Further, the functionality, service elements, and the facilities over which the respondent CLECs provided switched access were identical in this case, regardless of whether a CLEC serviced QCC or one of the other IXCs. It is true the costs of providing some services can vary by volume, especially if dedicated facilities are involved; however, these circumstances are not present here. Further, we find most persuasive QCC's argument that none of the unfiled off-tariff agreements ties the discount to the IXC to the purchase of specific volumes of switched access service. To the contrary, all of the unfiled agreements at issue in the instant proceeding grant the discount in unlimited fashion, regardless of how much switched access a favored IXC purchases. This alone is fatal to the claim that differences in size or traffic volumes justify price differentiation in this case. Likewise, we are persuaded by QCC's argument that the preferential treatment to AT&T and Sprint was not justified by the larger size of these IXCs. This is because QCC is actually comparable in size to these IXCs in the relevant markets.

76. Finally, we disagree with TWT and MCIMetro that unique circumstances specific to their off-tariff agreements with AT&T justified the preferential treatment. As an initial matter,

090538 Hearing Exhibits 00183

we agree with QCC that TWT introduced this argument for the first time on exceptions and that neither QCC nor the ALJ have had an opportunity to address the same. Further, we find that the statutes presume that, in evaluating a claim of discrimination for providing switched access, the Commission would consider this service on a stand-alone basis. Otherwise, the regulated entities would be able to obscure their discriminatory conduct simply by executing off-tariff agreements covering multiple services. Last, we agree with QCC that the fact that the 2004 agreements between AT&T and MCIMetro were reciprocal and bilateral does not justify price differentiation in this case, for reasons stated in ¶ 71 above.

77. For the above stated reasons, we deny the exceptions filed by XO, TWT, Granite, BullsEye, Liberty Bell, and MCIMetro on this ground.

E. Reparations, Filed Rate Doctrine, and Discrimination to Other IXCs

1. Recommended Decision

78. The filed rate doctrine prohibits a regulated entity from charging rates for services different from the rates filed with the regulatory authority. *U.S. West Communications v. City of Longmont*, 948 P.2d 509, 516 (Colo. 1997). In this docket, XO, Liberty Bell, BullsEye, Granite, and TWT have argued that an award of reparations to QCC would be unlawful because, among other things, it would discriminate against IXCs other than QCC, AT&T, and Sprint; and violate the filed rate doctrine. The ALJ relied on prior Commission decisions issued in Docket No. 01F-071G (*Home Builders Ass'n of Metro. Denver v. Public Service Co. of Colorado*) in addressing these arguments. In the *Home Builders* docket, the Commission analyzed the filed rate doctrine and the prohibition against retroactive ratemaking, as applied in a reparation action based upon tariff violations. In that docket, according to the ALJ, the Commission harmoniously construed §§ 40-6-119(1), 40-6-108(1)(d), and 40-3-102, C.R.S. Recommended Decision, at ¶ 247. These three statutes state, respectively, that: (1) the Commission may order reparations

090538 Hearing Exhibits 00184

provided that no discrimination will result from such reparation; (2) the Commission is not required to dismiss a complaint if there are no direct damages to the complainant; and (3) the Commission is charged with regulating rates, charges, and tariffs of every public utility and enforcing the same.

79. The ALJ, relying on the *Home Builders* decisions, determined that the filed rate doctrine does not preclude the Commission from awarding reparations for tariff violations. *Id.*, at ¶ 251. The ALJ reasoned that a contrary finding "...would deprive this Commission of much of its power to protect customers from unfair rates." *Id.*, at ¶ 248. The ALJ further noted that, in Decision No. C03-1292, mailed November 19, 2003 in Docket No. 01F-071G, the Commission found that, if a utility misleads the Commission or fails to follow the explicit standards set forth in its tariffs, the rule against retroactive ratemaking and the filed rate doctrine were not available as defenses to an order of reparations. This is because these two doctrines were not intended to permit a utility to subvert the Commission's ratemaking authority or its own tariffs. Otherwise, the utility would be able to charge any rate despite the requirements of its own tariffs, refund nothing if caught, and no incentive would exist for a utility to comply with its own tariff. *Id.*, at ¶ 249.

80. The ALJ found that respondent CLECs knew of the requirements to file rates and switched access agreements in accordance with their own tariffs and Colorado law. The CLECs thus were on notice that failure to do so could result in a finding that their rates were unreasonable or discriminatory, subjecting them to reparations under § 40-6-119, C.R.S. *Id.*, at ¶¶ 250-251. The ALJ also noted that the filed rates at issue in the instant proceeding went into effect by operation of law and stated that the filed rate doctrine does not bar reparations except when the underlying tariff has been affirmatively approved by this Commission.

090538 Hearing Exhibits 00185

81. The ALJ concluded that the filed rate doctrine, as applied under Colorado law, does not preclude the Commission from remedying unjust discrimination through reparations. This is the case because each respondent CLEC filed rates with the Commission for switched access service but instead charged different rates that were not filed with the Commission and thus were not subject to the Commission's consideration.

2. Discrimination to Other IXCs

a. XO, Granite, and BullsEye

82. In their exceptions, XO, Granite, and BullsEye argue that the Commission lacks authority to award reparations in this case, because this would result in further discrimination against other IXCs. These respondents point out that there are dozens of other IXCs (besides QCC, AT&T, and/or Sprint) that operate in Colorado and pay the tariffed rates. Therefore, permitting QCC to obtain the below tariff rates would only exacerbate the discrimination toward those other IXCs. The respondent CLECs point to § 40-6-119(1), C.R.S., which states:

> When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.

83. The respondent CLECs argue an award of reparations in this case would result in discrimination, in violation of § 40-6-119(1), C.R.S., and QCC has not met its burden of proof to the contrary. The CLECs argue that the ALJ, in the Recommended Decision, essentially adopted the principle that two wrongs make a right. The respondent CLECs suggest the proper remedy here would be to order the CLECs to bill AT&T and/or Sprint the additional amounts due under the tariff rates for the relevant time periods (*i.e.,* disgorgement) and file currently effective off-tariff access agreements with the Commission.

090538 Hearing Exhibits 00186

b. QCC

84. In response, QCC argues that, if the Commission were to accept the argument that an award of reparations would result in further discrimination, it would then accept and endorse the current level of unlawful discrimination. QCC contends this claim, when taken to its logical conclusion, means that a customer aggrieved by rate discrimination is never entitled to be made whole through an award of reparations, so long as there are any other similarly situated parties. This argument would also mean that the ability of any customer to protect its rights by enforcing the non-discrimination and reparations statutes would be frustrated, if not completely eliminated, argues QCC. QCC points out it can only prosecute a complaint on its own behalf and argues it should not be penalized just because other IXCs failed to do the same.

c. Discussion

85. We agree with QCC on this issue and deny the exceptions filed by XO, Granite, and BullsEye on this ground. We agree that the above argument presented by the respondent CLECs, when taken to its logical conclusion, would frustrate the ability of any complainant to enforce the non-discrimination and reparations statutes in Title 40, so long as any other similarly situated parties chose not to prosecute a complaint. We also agree with QCC that it can only pursue a complaint on its own behalf and should not be penalized if other IXCs chose not to file their own complaints against respondent CLECs.

3. Filed Rate Doctrine

f. XO, BullsEye, Granite, and TWT

86. In their exceptions, XO, BullsEye, Granite, and TWT argue the filed rate doctrine prohibits QCC from obtaining reparations in this docket. That doctrine, as noted above, prohibits a regulated entity from charging rates different than the rates contained in the tariffs filed with the regulatory authority. Therefore, according to the above respondent CLECs,

090538 Hearing Exhibits 00187

any claims that a customer (in this case QCC) is entitled to a rate other than the rate on file with the Commission, are preempted. The respondent CLECs argue an award of reparations to QCC would cause the very harm the filed rate doctrine serves to prevent, *i.e.*, price discrimination and uncertainty. The respondent CLECs conclude that two wrongs do not make a right.

87. The respondent CLECs also argue that the *Home Builders* precedent, which the ALJ relied on, does not apply here. The *Home Builders* case dealt with the failure of Public Service Company of Colorado (Public Service) to review and recalculate a "construction allowance" in its tariffs or request a waiver, despite a requirement within its tariffs to do so. The Commission has ordered Public Service to pay reparations to the complainant for overcharges resulting from the failure to update a construction allowance, since Public Service failed to comply with its own tariffs. The respondent CLECs argue that they, unlike Public Service, have strictly followed their tariffs in dealing with QCC. If anything, according to the respondent CLECs, it is QCC that has not followed tariff provisions regarding rate disputes or negotiation of off-tariff rates.

88. The respondent CLECs further argue that the ALJ erred by finding tariff rates may be challenged simply because they went into effect by operation of law, rather than affirmatively approved by the Commission. How a particular tariff went into effect is irrelevant, according to the respondent CLECs.

89. Finally, some of the respondent CLECs point out that, when the Minnesota PUC investigated a QCC affiliate for entering into unfiled off-tariff agreements, the QCC affiliate also argued that reparations were not available as a remedy. These respondents contend that, in *QCC Corp., v. Minnesota Pub. Utils. Comm'n*, 427 F.3d 1061 (8th Cir. 2005), the Eighth Circuit Court of Appeals ruled that reparations were not available as a remedy under the filed

090538 Hearing Exhibits 00188

rate doctrine and analogous state law. They conclude that this Commission likewise must find that QCC's request for reparations is barred by the filed rate doctrine and instead do what QCC advocated for before the Minnesota PUC: require all parties to pay tariff rates.

b. QCC

90. In its response to exceptions, QCC argues that the ALJ properly interpreted the filed rate doctrine in the Recommended Decision. QCC argues that the holding of *Home Builders* case—that the filed rate doctrine does not permit a regulated entity to violate its own tariffs or precludes the Commission from awarding reparations when violations occur—is squarely on point. QCC contends any other result would deprive the Commission of its power to protect customers and to remedy discriminatory conduct. QCC states any attempt to distinguish the *Home Builders* case from the instant proceeding fails. Even though the complainant in the *Home Builders* case was charged more than the tariffed rate and QCC was not, this is irrelevant, according to QCC. This is because the Commission has awarded reparations in various circumstances in the past. QCC further argues the Commission has applied the *Home Builders* principles to award reparations in an unfiled agreements case very similar to this one (through a Commission-approved settlement), Docket No. 02I-572T.

91. QCC further argues that the filed rate doctrine does not bar reparations in this case because the tariffs went into effect by operation of law and therefore were never affirmatively approved by the Commission. QCC urges the Commission to affirm the ALJ on this point.

c. Discussion

92. The filed rate doctrine, also known as the filed tariff doctrine, prohibits regulated entities, in this case XO, BullsEye, Granite, and TWT, from charging rates for their services that are different from the rates filed with the regulatory authority, in this case the Commission.

090538 Hearing Exhibits 00189

See, U.S. West Communications, 948 P.2d at 516. This doctrine prevents the regulated entities from engaging in price discrimination as between their ratepayers. Further, this doctrine preserves the exclusive role of regulatory agencies in approving reasonable rates for regulated services, which role these agencies are most competent to perform. *See, e.g., Fax Telecommunicaciones, Inc. v. AT&T*, 138 F.3d 479 (2nd Cir. 1998).

93. In the Recommended Decision, the ALJ relied heavily on the prior Commission decisions issued in the *Home Builders* docket. In that case, Public Service had a tariff sheet and a gas extension policy on file with the Commission. These filings required a review and recalculation of construction allowances at least once a year, unless Public Service obtained authorization for a waiver of the recalculation requirement from the Commission. Public Service failed to update the construction allowance or request a waiver of the recalculation requirement for at least five years before the Home Builders Association filed its formal complaint. The Commission found that the last approved construction allowance of $360.00 stopped being just and reasonable when Public Service failed to update it or request a waiver of the recalculation requirement, in violation of its tariffs. The Commission found that Public Service, by failing to do so, continuously prevented the Commission from making an informed decision about the reasonableness of the construction allowance. *See* Decision No. C02-0687, Docket No. 01F-071G, issued June 19, 2002, pp. 21-26. The Commission further found that, "...if a utility misleads us or fails to follow the explicit standards of its own tariff [by failing to update construction allowance or requesting a waiver, despite explicit tariff requirements to that effect], the ... filed rate doctrine [is] not available as a defense to an order of reparations." Otherwise, the utility would be able to charge any sort of rate despite the requirements of its own tariffs, refund nothing if caught, and no incentive would exist for a utility to comply with its own tariff. *See* Decision No. C03-1292, Docket No. 01F-071G, issued November 19, 2003, at ¶ 22.

090538 Hearing Exhibits 00190

94. In the instant case, it is true that XO, BullsEye, Granite, and TWT, unlike Public Service, have strictly followed their tariffs in dealing with QCC. However, by failing to file their off-tariff agreements with AT&T and/or Sprint with the Commission, in violation of § 40-15-105(3), C.R.S., the respondent CLECs continuously prevented the Commission from making an informed decision on whether their filed tariff rates were just and reasonable. In our view, *Home Builders* stands for the proposition that the filed rate doctrine does not apply when the regulated entity prevents the Commission from making an informed decision on whether the filed rates are just and reasonable—regardless of the way in which it is done. The holding of *Home Builders* is so narrow as the respondent CLECs suggest and is not limited to circumstances where the utility fails to follow the terms of its own tariffs. We find that the filed rate doctrine is not a defense in this case.

95. Further, the CLECs are incorrect when they state *QCC Corp., v. Minnesota Pub. Utils. Comm'n*, 427 F.3d 1061, 1067 (8th Cir. 2005) stands for the proposition that reparations are not available as a remedy under both the filed rate doctrine and analogous state law. In that case, the Eighth Circuit Court of Appeals struck down an award of reparations by the Minnesota PUC in another unfiled agreements case because the Minnesota PUC had no authority under Minnesota law to award reparations. The court, however, did not discuss whether the filed rate doctrine also barred reparations. It is well-settled that this Commission, unlike the Minnesota PUC, has the authority to order reparations. *See, e.g., Peoples Natural Gas v. Pub. Utils. Comm'n*, 698 P.2d 255 (Colo. 1985); *Archibold v. Pub. Utils. Comm'n*, 58 P.3d 1031 (Colo. 2002). Therefore, *QCC Corp., v. Minnesota Pub. Utils. Comm'n* is inapposite here.

96. Finally, we agree with the ALJ and Qwest that the filed rate doctrine does not bar an award of reparations in this case because the filed tariffs at issue went into effect by operation of law and were never affirmatively approved by the Commission. In *Arizona Grocery Co. v.*

090538 Hearing Exhibits 00191

Atchison Topeka and Santa Fe Ry. Co., 284 U.S. 370, 390 (1931), the United States Supreme Court held that, where a regulatory agency has, after a hearing, declared what is the maximum reasonable rate to be charged by a regulated entity, it may not, at a later time declare its own finding as to reasonableness erroneous, or subject the regulated entity which conformed thereto to the payment of reparation measured by what the agency now holds it should have decided in the earlier proceeding to be a reasonable rate. The Commission previously explained that *Arizona Grocery* stood for the proposition that, where rates have been prescribed by the Commission, no reparations are permitted. Thus, reparations under § 40-6-119, C.R.S., can only apply in cases where the Commission has not, by order, previously established the rates, but rather where the rates were established by the utility filing rates which became effective without Commission action. Decision No. C89-178, issued February 10, 1989 in Investigation and Suspension Docket No. 1766. The Commission later affirmed the distinction between rates that are allowed to go into effect by operation of law and rates that have been closely examined and tested at a hearing. Decision No. C94-1115, mailed August 31, 1995 in Docket No. 94S-060CY. This distinction is an additional reason for our holding the filed rate doctrine does not bar an award of reparations in the instant proceeding.

97. In conclusion, we reject the argument presented by XO, BullsEye, Granite, and TWT that the filed rate doctrine precludes an award of reparations in this case and hence deny their exceptions on this ground.

F. Proof of Damages

1. Granite, BullsEye, TWT, and XO

98. In their exceptions, Granite, BullsEye, TWT and XO contend that QCC failed to make a *prima facie* case that the alleged discrimination caused it to suffer injury and/or undue harm. These CLECs argue that, in order to sustain a claim for discrimination, a plaintiff must

090538 Hearing Exhibits 00192

show it suffered an actual injury resulting from the allegedly discriminatory rate given to other carriers under the unfiled agreements. These CLECs cite to *Cheesman v. QCC Communications Int'l, Inc.*, 2008 WL 2037675, at *2 (D.Colo. 2008) and *Spa Universaire v. QCC Communications Int'l, Inc.*, 2007 WL 2694918, at *8 (D.Colo. 2007) in support of these arguments.

99. Granite, BullsEye, TWT, and XO contend that QCC's allegation of injury based on the price difference between the tariff rates and the off-tariff rates paid by other IXCs is insufficient as a matter of law. Instead, according to the CLECs, QCC had the burden of showing that the unfiled agreements caused reduced profits to QCC, a reduced market share, or a forced reduction in prices. Granite, BullsEye, TWT, and XO argue QCC was required to prove actual economic harm from their allegedly discriminatory conduct. In support of this claim, the CLECs rely on *ICC v. United States*, 289 U.S. 385, 390 (1933), where the U.S. Supreme Court ruled that, to sustain a discrimination claim, "... the difference between one rate and another is not the measure of the damages ... The question is not how much better off the complainant would be today if it had paid a lower rate. The question is how much worse it is because others have paid less." The respondent CLECs further contend that § 40-15-101, C.R.S., itself supports the same proposition, because it does not prohibit differences in rates, but instead proscribes the subjecting of customers to a "competitive disadvantage." The respondent CLECs conclude QCC failed to show it was economically harmed by the alleged discrimination, since it only generally discussed price discrimination and the potential for anti-competitive outcomes during the hearing.

100. The respondent CLECs also contend that the failure to file an off-tariff agreement, without more, does not constitute discrimination. The statutory requirement to file an off-tariff agreement does not mean a third party may enforce a violation of this requirement or that there is

090538 Hearing Exhibits 00193

a private right for reparations, according to the respondent CLECs. They argue that, in any case, QCC has not proven an injury from the failure to file the off-tariff agreements itself. The CLECs conclude the only relief appropriate from the failure to file off-tariff agreements, if any, would be to find any remaining unfiled agreements invalid and require the other IXCs to pay the tariff rate. In the alternative, the CLECs suggest the Commission can take an enforcement action directly against the CLECs for failure to file off-tariff agreements.

2. QCC

101. In its response to exceptions, QCC points out Colorado law expressly prohibits unreasonable rate discrimination. It argues that Colorado law also empowers the Commission to remedy violations by issuing reparations. QCC emphasizes its complaint is about discrimination and not economic compensatory damages for lost profits or market shares, so it does not need to prove these types of damages. QCC contends that the showing of economic damages is not, and has never been a requirement for proving a violation of Colorado rate discrimination laws. It is not relevant, according to QCC, whether this element is required to also demonstrate a violation of federal non-discrimination laws. QCC argues that, if a plaintiff must prove economic damages to obtain relief under § 40-15-105, C.R.S., then the plain language within that statute prohibiting discrimination would have no meaning.

3. Discussion

102. In the Recommended Decision, the ALJ found there was no need to refer to the federal law on rate discrimination in order to interpret the Colorado law pertaining to the same topic. Recommended Decision, at ¶ 302. In other words, the ALJ found that just because proof of actual damages (such as, among other things, reduced profits, reduced market share, or forced reduction in prices) is required to prove discrimination under federal law, this is not necessarily

090538 Hearing Exhibits 00194

true under § 40-6-119, C.R.S. The ALJ found the Colorado Legislature provides for Colorado claims that are independent of the applicable federal law.

103. We begin our analysis of this subject by reviewing the pertinent statutes. Section 40-15-105(1), C.R.S., states:

> No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network [...]

Section 40-6-119(1), C.R.S., states:

> When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.

104. We find that the plain language of these two statutes does not require a plaintiff to prove economic damages such as reduced profits, a reduced market share, or a forced reduction in prices to sustain a claim of discrimination. It is irrelevant whether economic damages must be shown to sustain a discrimination claim under federal laws. It is well-established that, where the legislature could have restricted the application of a statute, but chose not to, the courts (and the agencies) may not read additional restrictions into the statute. *See, e.g., Dubois v. Abrahamson*, 214 P.3d 586, 588 (Colo. App. 2009). In addition, competitive disadvantage is only one of the outcomes prohibited by § 40-15-105(1), C.R.S. It is not required to sustain a claim under that statute. This is because § 40-15-105(1), C.R.S., has a disjunctive "or," not a conjunctive "and" before the term "competitive disadvantage." Finally, § 40-6-108(1)(d), C.R.S., further supports our finding that a plaintiff is not required to prove economic damages to sustain a discrimination claim. That statute plainly states that the Commission is not required to dismiss a complaint

090538 Hearing Exhibits 00195

because there are no direct damages to the complainant. For the above reasons, we deny the exceptions filed by Granite, BullsEye, TWT, and XO on this issue.

G. Granite and BullsEye Miscellaneous Arguments

1. Unenforceability of Unfiled Agreements

105. In their exceptions, Granite and BullsEye argue QCC is not entitled to reparations as a result of the unfiled agreements between the CLECs and other IXCs, since these agreements are void and unenforceable. Granite and BullsEye contend the ALJ failed to analyze this issue in the Recommended Decision.

106. In its consolidated response, QCC argues it is irrelevant whether the unfiled off-tariff agreements are void and unenforceable between the contracting parties. Rather, according to QCC, the relevant fact is that the respondent CLECs gave preferential treatment to other IXCs without a lawful justification.

107. We agree with QCC that, just because the unfiled off-tariff agreements are void and unenforceable between the contracting parties, does not change the fact that the respondent CLECs extended preferential treatment to IXCs other than QCC. We also note that the argument presented by Granite and BullsEye, if taken to its logical conclusion, would frustrate the ability of any plaintiff to obtain reparations or other remedies arising from any unlawful contract, since an unlawful contract often is unenforceable as between the contracting parties. That argument would also limit the ability of any plaintiff to enforce § 40-15-105(3), C.R.S. For the foregoing reasons, we deny the exceptions filed by Granite and BullsEye on this issue.

2. Failure to File Notices of Dispute Pursuant to the Filed Tariffs

108. In their exceptions, Granite and BullsEye argue that QCC waived all claims because it failed to file notices of dispute, as required by the tariffs filed by these CLECs.

090538 Hearing Exhibits 00196

The terms of the filed tariffs, according to Granite and BullsEye, carry the force of law. These respondent CLECs allege that QCC's failure to dispute its claims with the companies is fatal and that the ALJ failed to address this issue in the Recommended Decision.

109. In its consolidated response to exceptions, QCC argues that billing dispute provisions in the filed tariffs cannot trump statutory non-discrimination and filing obligations or establish a condition precedent to pursuing statutory claims. We agree with QCC and hence deny exceptions filed by Granite and BullsEye on this issue.

H. Eschelon Miscellaneous Arguments

1. Motion to Reopen the Record

a. Eschelon

110. In its Motion filed on April 14, 2011, Eschelon argues that the Commission should reopen the record to admit certain evidence. The Motion is supported by an affidavit.

b. QCC

111. In its response to the Motion, QCC argues that the Commission should deny the Motion, both as to its timing and the factual support. QCC contends the Motion is untimely. QCC argues that admitting this new information into the record would deprive it of due process with respect to the new information or, in the alternative, would delay this proceeding. It contends this alone should prevent the Commission from finding good cause exists to grant the Motion. In addition, QCC argues that the new evidence does not prove what Eschelon claims it does.

c. Discussion

112. We agree that admitting the information contained in the confidential version of the Motion would either deprive QCC of due process with respect to that information or would

delay a final decision in this proceeding. In addition, we agree with the substantive arguments made by QCC in its response to the Motion. The new evidence does not prove what Eschelon claims it does, since the affidavit supporting the Motion is incomplete as to the crucial piece of information. We therefore deny the Motion.

2. Non-Discrimination Requirements and Retrospective Settlements of Billing Disputes

a. Eschelon

113. In its exceptions, Eschelon argues the ALJ erred in applying the statutory filing and nondiscrimination provisions to off-tariff access agreements that have no prospective effect. Eschelon states it has terminated its off-tariff access agreements with Sprint and AT&T in 2005. However, after that time, AT&T refused to pay the tariffed rates, so Eschelon was forced to enter into a series of settlement agreements that resolved, on a retrospective basis, all billing disputes raised by AT&T. Eschelon explains it has entered into these settlements on a quarterly basis. It also argues that it entered into these settlement agreements not because the claims asserted had merit, but because AT&T was a much larger adversary. Eschelon contends the statutory filing and non-discrimination requirements do not apply to retrospective settlements of billing disputes, only to forward-looking agreements; otherwise, the parties would be discouraged from entering into settlements.

b. QCC

114. In its response to exceptions, QCC argues that, even though the Eschelon-AT&T settlement agreements do not contain forward looking terms, these settlement agreements were contrived to mask Eschelon's continued adherence to the below-tariff rates. Indeed, according to QCC, the settlement agreements themselves contemplate their serial nature and even Eschelon itself characterized the settlements as a *systematic* attempt to resolve billing disputes

090538 Hearing Exhibits 00198

(emphasis added). QCC argues a party would not describe a backwards looking settlement as systematic unless a prospective arrangement has also been reached. QCC also states there was no that evidence Eschelon took any collection action against AT&T or filed any complaint to enforce its tariffed rates.

c. Discussion

115. We deny the exceptions filed by Eschelon on this point. First, Eschelon cites no legal authority supporting the proposition that statutory filing and nondiscrimination provisions do not apply to retrospective settlement agreements. In any case, we agree with QCC that these so-called retrospective settlement agreements were really prospective in substance, as evidenced by their systematic nature.

3. Procedure for Calculating Reparations

a. Eschelon

116. In the Recommended Decision, the ALJ found that, following a final Commission decision approving the initial reparations, QCC may file a motion to increase the calculation of reparations and must file for a decrease in the calculation of reparations if certain conditions are met. In its exceptions, Eschelon contends that the ALJ does not describe any procedure for the determination of such motions. Eschelon also argues this portion of the Recommended Decision would have the effect of authorizing a modification of a Commission order based upon evidence submitted after the record of the proceeding has closed and evidence that has not been subject to cross-examination, discovery, or rebuttal evidence. It argues that the Commission should, at the very least, clarify that any adjustment of the reparations calculation that is based on any evidence that is not already in the record be subject to discovery and cross-examination, as necessary to protect due process. Eschelon finally argues that, in the event any respondent CLEC believes a

090538 Hearing Exhibits 00199

reduction in the calculation of reparations is appropriate, it should be given the ability to request appropriate relief. Eschelon concludes that the procedure recommended by the ALJ for calculating reparations is contrary to due process.

117. In their responses to exceptions, TWT and XO echo these concerns.

b. QCC

118. In its response to exceptions, QCC argues that the process for updating reparations calculations envisioned by the ALJ is reasonable. QCC argues that the modifications to the process proposed by the CLECs are unnecessary and apparently are intended to further protract this litigation. QCC also states that, once it files a motion to update the reparations calculations, the Recommended Decision already contemplates the CLECs will have an opportunity to respond. QCC finally argues that nothing in the Recommended Decision precludes an adversely affected respondent from filing its own motion to update the reparations.

c. Discussion

119. To the extent Eschelon, TWT, and XO argue the process for updating reparations, as proposed by the ALJ in the Recommended Decision, would only delay a final decision in this proceeding, we agree. The Commission and the respondent CLECs do not know what sorts of updates Qwest may propose and therefore cannot foresee whether additional evidentiary hearings on the matter may be required. We believe a better course of action would be for Qwest to seek the types of relief it would seek via the process envisioned by the ALJ in a separate proceeding. We therefore grant the exceptions filed by Eschelon, as to this issue, and strike ordering ¶¶ 5(f) and 5(g) from the Recommended Decision.

090538 Hearing Exhibits 00200

4. Methodology for Calculating Reparations

a. Eschelon

120. Eschelon argues it has presented evidence during the hearing, largely unrebutted, which established that QCC substantially overstated its reparations calculation. Eschelon further argues that the ALJ failed to discuss that evidence in the Recommended Decision. Instead, according to Eschelon, the ALJ merely concluded that "Eschelon did not rebut the calculation as to manual invoices." Recommended Decision, at ¶ 81. Eschelon argues that it has thoroughly rebutted QCC's manual invoice theory and established that QCC overstated the amount of access charges billed during the relevant time period. Eschelon explains that, in performing its analysis, QCC relied on its internal records, which included electronic and manual invoices. Eschelon contends that this overstatement was caused, in part, by certain assumptions that QCC made regarding the time periods for which it had only manual invoices. Rather than reviewing the manual invoices, QCC merely assumed the proportion of intrastate and interstate access minutes was the same as for the electronic invoices. Eschelon states that, in his testimony, Dr. Ankum explained that this assumption resulted in grossly overstated intrastate amounts. Eschelon further argues that QCC failed to respond to these concerns. Eschelon also claims that this was not the only deficiency in QCC's calculation of reparations.

b. QCC

121. In its consolidated response to exceptions, QCC states that it has thoroughly specified and summarized its reparations calculations, CLEC by CLEC, in its Statement of Position.

122. QCC argues its methodology was simple and reasonable. QCC states its witness Derek Canfield calculated the difference between what QCC was charged by each respondent CLEC (at the tariff rates) and what it would have been charged during the same periods if

090538 Hearing Exhibits 00201

QCC had been granted the same preferential rates as AT&T and/or Sprint pursuant to the unfiled agreements. QCC points out that the ALJ approved these calculations after reviewing various criticisms lodged by various respondent CLECs during the hearing. QCC argues Eschelon offers nothing new on exceptions, but instead repeats the same critiques of QCC's methodology that QCC earlier rebutted.

c. Discussion

123. We note that the respondent CLECs have not presented any method of calculating reparations into the record; QCC was the only party to do so. In the Recommended Decision, at ¶ 307, the ALJ found that QCC has reasonably approximated a calculation of the variance in rates during the time the off-tariff agreements were in effect.

124. In his rebuttal testimony, Mr. Canfield addressed Eschelon's criticisms regarding the assumptions made regarding the time periods for which QCC had only manual invoices. Mr. Canfield disagreed that there was a flaw in these assumptions. Further, he testified that 91 percent of his analysis was based upon the electronic bill data and offered to update his analysis if Eschelon were to produce the bill data that makes up the other 9 percent. Mr. Canfield also testified that, absent copies of invoices that Eschelon submitted to AT&T and a confirmation that these rates were indeed paid, he was left to calculate the rates based upon the language of the agreement between those two entities. Further, he disagreed with Dr. Ankum that there was a qualitative difference between electronic and manual invoices. Mr. Canfield testified that the manual invoices were for the same switched access services and listed the same billing account numbers as the electronic invoices; the only difference is the time period(s) represented by the particular invoices. He also offered to update his analysis if the CLECs were able to produce the bill data that makes up those manual invoices. Further, in his rebuttal testimony, Mr. Canfield states he removed the duplicate invoices he discovered upon his review

090538 Hearing Exhibits 00202

of the manual invoice calculations. Finally, he rebuts Dr. Ankum's allegation that QCC failed to take into account tandem switching charges in calculating Eschelon's settlement agreement rate.

125. We have reviewed the testimony of witnesses Canfield and Ankum regarding the methodology of calculating reparations, particularly the assumptions made by QCC regarding the manual invoices. We find that QCC offered a reasonable methodology of calculating reparations into the record. The ALJ found that methodology to be credible, especially since the respondents did not offer alternative methodologies into the record. We find that the ALJ is in the best position to judge the credibility of the witnesses and will defer to the ALJ in his weighing of evidence and credibility determinations. We agree with QCC that Eschelon does not present anything new on exceptions, but rather repeats the arguments already considered by the ALJ. We therefore deny the exceptions filed by Eschelon on this ground.

I. Comtel Miscellaneous Arguments

1. Comtel

126. In its exceptions, Comtel contends that QCC should not be awarded any damages or reparations against it. Comtel explains that it had no off-tariff agreements relating to switched access service in Colorado, unlike other respondent CLECs, and that it should have never been included as a respondent in this docket. Comtel contends that the only evidence that QCC offered regarding its claims against Comtel were agreements to which Excel Communications (Excel) or VarTec Telecom (VarTec) allegedly were parties. Comtel states it acquired the assets of these two CLECs through a bankruptcy sale in 2006 and that this was a limited asset acquisition overseen by a bankruptcy court. Comtel argues it was not a party to the VarTec and Excel off-tariff agreements and it did not acquire or assume them with its limited asset acquisition in the bankruptcy court.

090538 Hearing Exhibits 00203

127. Comtel also points out that QCC had already entered into a settlement agreement with Comtel in the bankruptcy court proceeding. Comtel concludes that QCC's claim is legally barred by an order of the bankruptcy court approving the settlements. Comtel disagrees with the ALJ's finding that it is responsible for the VarTec and Excel agreements because its tariffs and invoices utilize the names of these old entities. Comtel argues that this finding is in direct conflict with the bankruptcy court order and applicable law and violates QCC's stipulation with Comtel.

128. Comtel finally states that it has billed all IXCs in Colorado in accordance with its filed tariffs over all relevant time periods. Comtel admits it discovered its billing system contained an inadvertent error which had caused Comtel to bill AT&T an erroneous rate from June of 2006 to December of 2008. Comtel states it back-billed AT&T for the undercharges upon discovering the error. Comtel argues that it is irrelevant whether AT&T had paid the back-bill. Otherwise, a carrier would become liable for discrimination just because one of its customers does not pay its bills.

2. QCC

129. In its response to exceptions, QCC argues that Comtel holds itself out to the public as Excel and VarTec, not as a distinct entity. For example, according to QCC, Comtel's tariffs and billing correspondence continue to reflect these names, four years after the bankruptcy purchase. QCC also states that VarTec and Excel entered into an off-tariff agreement with AT&T and that this agreement did not terminate with the bankruptcy court proceeding in 2006. Instead, Comtel continued to charge AT&T the contract rate until after Comtel was named as respondent in the instant docket. QCC also argues that, despite a back-bill, AT&T has never paid the difference between the two rates. Given these facts, QCC argues that the ALJ properly

090538 Hearing Exhibits 00204

concluded that Comtel should be liable for reparations to the same extent as other respondent CLECs.

3. Discussion

130. The stipulation that QCC and Comtel entered into as part of the bankruptcy court proceeding (Hearing Exhibit 125) only released QCC's claims through the effective date of that agreement. That stipulation does not preclude any claims arising *after* its effective date, or June 6, 2006. The stipulation, at ¶ 14, states "[a]ny disputes under the QCC Agreements for invoices dated after the Effective Date shall be governed solely by such respective QCC Agreement and shall be unaffected by this Stipulation and Order."

131. Further, given the totality of circumstances in this case, we agree with QCC and the ALJ that Comtel holds itself out to the public as Excel and VarTec. For example, its tariffs and billing correspondence continue to reflect these names. Further, Comtel continued to charge AT&T the rate provided in the off-tariff agreements that Excel and VarTec had entered into with AT&T *after* the bankruptcy sale. We disagree with Comtel that, if the Recommended Decision is upheld, a carrier may become liable for discrimination just because one of its customers did not pay its bills. Here, the customer (AT&T) did not simply not pay its bills. Rather, Comtel actually billed the customer the incorrect rate, which happened to be the same rate as previously charged under the unfiled off-tariff agreements. We therefore agree with QCC and the ALJ that the VarTec and Excel off-tariff agreements did not terminate from the bankruptcy proceeding in 2006 but continued after the stipulation.

132. We deny the exceptions filed by Comtel on this point, in part, and grant, in part. We note the ALJ ordered Comtel to pay reparations as a result of the Excel and VarTec off-tariff agreements that both began shortly before June 6, 2006, the effective date of the stipulation that

090538 Hearing Exhibits 00205

the parties entered into through the bankruptcy court proceeding. However, the time period and therefore the amount of reparations that must be adjusted is *de minimis*. We therefore uphold the entirety of the reparations amounts that the ALJ ordered Comtel to pay to QCC.

J. QCC Requests for Clarification

1. Granite Reparations

133. QCC points out that the ALJ accepted QCC's reparations calculations concerning its claim against Granite, in ¶ 86 of the Recommended Decision. However, at footnote 276, the ALJ concludes that the record does not include sufficient data to support a reparations calculation as applied to Granite. QCC urges the Commission to correct this apparent inconsistency within two sections of the Recommended Decision. QCC also argues that the Commission should amend the ALJ's finding that reparations owed by Granite should be terminated as of November 2008, when Granite filed its off-tariff agreement in Docket No. 08M-335T. This is because, according to QCC, Granite did not offer QCC the discounted rates reflected in its off-tariff agreements and thus that filing had no legal or practical significance.

134. We will grant this request for clarification, in part. We agree with QCC that the information in the record supports the reparations calculation with respect to Granite, as stated in ¶ 86 of the Recommended Decision. We will therefore amend footnote 276 and ordering ¶ 5 of the Recommended Decision accordingly. Further, the fact that Granite filed its off-tariff access agreement in November 2008 does not negate its responsibility for earlier time periods. On the other hand, we will defer to the ALJ's conclusions regarding the legal significance of the November 2008 filing.

090538 Hearing Exhibits 00206

2. Interest

135. In its exceptions, QCC states that ordering ¶ 5 of the Recommended Decision is unclear on how interest should be applied to the reparations calculations. QCC argues it is not clear whether the interest will date back to the accrual of the claims or whether the interest will be assessed only if respondent CLECs fail to make the required payments of reparations within the 60 days permitted under the Recommended Decision. QCC requests that the Recommended Decision be clarified on this point. QCC further argues that interest on all reparations amounts should date back to the accrual of each overcharge, regardless of when each respondent CLEC submits payment. Qwest argues this will ensure it is made whole.

136. We agree that an order of interest on the reparations dating back to the accrual of each overcharge is appropriate, as it will make Qwest closest to the position it would have been but for the discrimination. We therefore find that the interest in this matter shall date back to the accrual of each overcharge and should be calculated using the customer deposit rate(s) in effect during the relevant time periods from the accrual of overcharge to the date of the final Order in this matter.

3. CLEC Filing Obligations

137. QCC argues that ¶ QCC 310 of the Recommended Decision should be clarified, to require respondent CLECs to file their off-tariff access agreements in Docket No. 11M-002T. QCC points out that, in ¶ 310, the Recommended Decision strives to alleviate the root cause of the discrimination by requiring the respondent CLECs to file their effective access agreements in Docket No. 08M-0335T. The Commission established that repository docket soon after QCC commenced the instant litigation in 2008. QCC points out that, since that time, the Commission has opened new repository dockets each year, including Docket No. 11M-002T, to receive off-tariff switched access agreements filed in 2011. QCC suggests that the Commission direct

090538 Hearing Exhibits 00207

the CLECs to file their off-tariff access agreements in the 2011 repository docket instead of Docket No. 08M-335T, to ensure consistency and avoid confusion.

138. We agree with QCC that its proposal will avoid confusion. We therefore grant QCC's request for clarification on this issue and direct respondent CLECs to file their off-tariff access agreements in Docket No. 11M-002T.

4. Typographical Error Regarding QCC Advocacy

139. QCC requests the Commission clarify ¶ 183 of the Recommended Decision. It states that the Recommended Decision purports to characterize QCC's position regarding the level of reasonable inquiry required of potential complaints in conjunction with the application of the discovery rule regarding the statute of limitations. QCC argues that, while likely a mere typographical error, the Recommended Decisions states "QCC argues the level of reasonable inquiry only requires that a prospective complainant look *beyond* documents readily available in the public domain." Emphasis added. In its Opening Statement of Position, QCC pointed to various authorities in support of its argument that the "exercise of reasonable diligence" *does not require* a prospective complainant to look beyond documents readily available in the public domain. In order to avoid confusion and the potential misuse of this language by other parties regarding QCC's position both in this docket and in litigation in other states, QCC requests that the word "beyond" in ¶ 183 of the Recommended Decision be replaced by the word "to," consistent with its advocacy.

140. We find this request for clarification reasonable and therefore grant the same.

090538 Hearing Exhibits 00208

II. ORDER

A. The Commission Orders That:

1. Exceptions to Recommended Decision No. R11-0175 (Recommended Decision) filed on April 14, 2011 by QCC Communications Corporation are granted.

2. Exceptions to the Recommended Decision filed on April 14, 2011 by Time Warner Telecom of Colorado, LLC, are denied.

3. Exceptions to the Recommended Decision filed on April 14, 2011 by Granite Telecommunications, Inc., are denied.

4. Exceptions to the Recommended Decision filed on April 14, 2011 by Comtel Telcom Assets, LP, are granted, in part, and denied, in part.

5. Exceptions to the Recommended Decision filed on April 14, 2011 BullsEye Telecom, Inc., are denied.

6. Exceptions to the Recommended Decision filed on April 14, 2011 by Eschelon Telecom, Inc. (Eschelon) are granted, in part, and denied, in part.

7. Exceptions to the Recommended Decision filed on April 14, 2011 by MCIMetro Access Transmission Services, LLC, are denied.

8. Exceptions to the Recommended Decision filed on April 14, 2011 by XO Communications Services, Inc., are denied.

9. Exceptions to the Recommended Decision filed on April 14, 2011 by Liberty Bell Telecom, LLC, are denied.

10. The Motion to Reopen the Record filed on April 14, 2011 by Eschelon is denied.

11. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

090538 Hearing Exhibits 00209

12. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING October 17, 2011.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

090538 Hearing Exhibits 00210

Qwest Communications Company LLC's Objections & Responses To Staff's First Set Of Interrogatories (No. 16)

(Confidential)

6

Qwest Communications Company LLC's Objections And Supplemental Response To Staff's First Set Of Interrogatories (No. 19)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 6
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #6) CONFIDENTIAL

7

Qwest Communications Company, LLC Responses To Staff's First Request For Production Of Documents (Nos. 1-3)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 7
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #7)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: DECEMBER 15, 2011

QWEST COMMUNICATIONS COMPANY, LLC RESPONSES TO STAFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-3)

Qwest Communications Company, LLC, d/b/a CenturyLink QCC ("QCC") hereby submits its objections and responses to Staff's Request for Production of Documents (Nos. 1-3), served on November 15, 2011.

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

DOCUMENTS REQUESTED

1. Please provide a copy of each document responsive to interrogatory No. 3.

Pursuant to QCC's discussions with Staff, QCC will not respond to this Document Request at this time. If, following its review of QCC's direct testimony, Staff still seeks documents responsive to this Document Request, Staff will inform QCC.

2. Please provide a copy of each document responsive to interrogatory No. 4.

Pursuant to QCC's discussions with Staff, QCC will not respond to this Document Request at this time. If, following its review of QCC's direct testimony, Staff still seeks documents responsive to this Document Request, Staff will inform QCC.

3. Please provide a copy of each document responsive to interrogatory No. 12.

In response to Interrogatory No. 12, QCC referred to a series of informal attempts to obtain copies of and equal treatment with CLEC switched access ICBs. QCC intends to chronicle such efforts in greater detail in its direct testimony. The final informal step QCC took before initiating regulatory litigation in Colorado, California, New York and Florida was to send a demand letter to approximately 90 CLECs in early 2008. The letters were substantively identical to one another. Attached, by way of example, is a copy of QCC's February 25, 2008 letter to PAETEC.

RESPECTFULLY SUBMITTED on this 15th day of December, 2011.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
susan.masterton@centurylink.com

Qwest
Spirit of Service

February 25, 2008

Lori Blakely
PAETEC COMMUNICATIONS - PAETECIL
ONE PAETEC PLAZA
FAIRPORT, NY 14450-4212
USA

To: Lori Blakely

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that PAETEC Communications may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[23] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[23] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

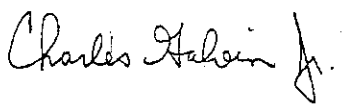
Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,



Charlie Galvin Jr.
Qwest Communications

QCC POD 000002

8

Qwest Communications Company LLC's Responses To Staff's Second Set Of Interrogatories (Nos. 27-37) & Second Request For Production Of Documents (No. 4)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 8
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #8)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, Inc. d/b/a EarthLink Business;; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: AUGUST 21, 2012

QWEST COMMUNICATIONS COMPANY LLC'S RESPONSE TO STAFF'S SECOND SET OF INTERROGATORIES (NOS. 27-37) AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NO. 4)

Qwest Communications Company, LLC ("QCC" or "Qwest") by and through its undersigned counsel, submits the following responses to Staff's Second Set of Interrogatories (Nos. 27-37) and Second Request for Production of Documents (No. 4) (collectively "Requests," individually "Request") to Qwest Communications Company, LLC.

INTERROGATORIES

Staff Interrogatory No. 27

The following questions refer to Witness Woods' Direct Testimony.

27. Please refer to page 4. Does QCC agree with the statement that "there is no such thing as a 'tariff' for CLEC-provided intrastate switched access in Florida?" Please explain

RESPONSE: QCC does not believe this question can be answered with a simple "yes" or "no." The Commission's Rule 24-25.825, Florida Administrative Code, refers to the rate schedules filed by CLECs as price lists rather than tariffs. The rule has required CLECs to file price lists only for basic services, but has permitted them to file price lists for other services as well. The majority of the CLECs who are respondents to this complaint have filed rate schedules for their switched access services. The form of these schedules looks very similar to the tariffs filed by incumbent local exchange companies and the schedules have been variously identified by the filing CLECs as "price lists" or "tariffs." (See, Exhibits WRE-7, 10, 13, 16, 19, 25, 28, 32, 35, 38, 41 and 44 to the Direct Testimony of William Easton.)

Respondent: QCC Legal

Staff Interrogatory No. 28

28. Please refer to page 15. Does QCC agree with the assertion that the Florida Legislature has not imposed any regulatory requirements (including the filing of "tariffs" or contracts and rate setting) on the provision of switched access services provided by CLECs?

RESPONSE: No. Mr. Wood is attempting to redirect the focus of QCC's complaint by raising the straw man issue of regulatory rate setting. QCC has not alleged that the Florida Commission sets CLEC switched access rates, and its claims are in no way dependent on such an allegation. At issue in this case is the relative rate treatment of QCC vis-à-vis other IXCs preferred by the respondent CLECs. See Rebuttal Testimony of William Easton, pp. 2-3. In that regard, the Florida Legislature did prohibit unreasonable rate discrimination and still prohibits anti-competitive behavior. Further, the Legislature did not exempt CLECs from the prohibitions set out in the statutes underlying QCC's claims in this matter.

Respondent: QCC Legal

Staff Interrogatory No. 29

29. Please refer to page 60. Witness Woods asserts that the proper remedy for the discrepancy in charges would be to retroactively charge the IXCs in the off-tariff agreements additional fees to make them match the filed price lists. Does Qwest agree with this assertion? Please explain.

RESPONSE: No. See the Rebuttal Testimony of William Easton, p. 6, and the Rebuttal Testimony of Professor Dennis Weisman, pp. 16-19.

Respondent: QCC Legal

Staff Interrogatory No. 30

The following questions refer to Witness Reynolds' Direct Testimony.

30. Please refer to page 5. QCC's stated position is that it was unaware of the unfiled agreements between the CLECs and IXCs until April 15, 2005. Witness Reynolds asserts that QCC had knowledge of the agreements of the affiliated companies had entered into during WorldCom's bankruptcy proceeding as early as February 23, 2004. Please explain the discrepancy in timing.

RESPONSE: Please see the Rebuttal Testimony of William Easton, pp. 23-31.

Respondent: QCC Legal

Staff Interrogatory No. 31

31. Please refer to page 14, lines 14-19. Is Witness Reynolds' assertion that QCC was a party in the WorldCom Bankruptcy proceeding accurate?

    a. Was QCC a creditor in this proceeding?

RESPONSE:

QCC was one of the many creditors in the WorldCom Bankruptcy proceeding. Please see pp. 23-31 of William Easton's rebuttal testimony for a discussion of the WorldCom Bankruptcy proceeding and QCC's role in it.

Respondent: QCC Legal

Staff Interrogatory No. 32

32. Please refer to page page 15, lines 15-20, and page 16, lines 1-2. Witness Reynolds stated that WorldCom filed a motion with the bankruptcy court seeking approval of its settlement agreement with AT&T. Witness Reynolds' further stated that the Settlement Motion and related pleading were publically filed and made available to QCC and that all parties were also notified that the court would hold a hearing to consider WorldCom's motion.

a. Was QCC made aware of WorldCom's Settlement Motion?

b. Was QCC specifically notified that the court would hold a hearing to consider WorldCom's Settlement Motion?

RESPONSE:

a. QCC cannot definitively state whether or not it received settlement motion. See QCC's response to Interrogatory No. 33a. However, given that the switched access agreement was filed under seal, QCC was not aware of the contents of the confidential switched access agreements referenced briefly therein. The motion itself simply states the parties are entering into new bilateral switched access contracts. Nothing in the motion would give a reasonable reader any indication that this global settlement agreement included an off-price list intrastate switched access component effective in Florida. Nothing in the motion would put a third party on notice that MCI intended to establish below-price list intrastate rates available only to AT&T and to no other IXCs. In short, the innocuous statement buried in the single-spaced text on page 7 of the motion (1 of 17 filed that month) that the parties were agreeing to "a two year bi-lateral switched access contract" is so general and so vague as to have no reasonable meaning. In fact, a fair reading of the motion to approve the global settlement would lead the reader to assume the settlement was much narrower than that and that the parties were addressing access issues only as related to "UNE-P services." Please see the Rebuttal Testimony of William Easton, pp. 28-29.

b. Please see QCC's response to Interrogatory 33a.

Respondent: QCC Legal

Staff Interrogatory No. 33

33. Please refer to page 16, lines 6-20. Witness Reynolds indicated that QCC was served with the Debtor's Settlement Motion, which informed the parties of the basic terms of the WorldCom AT&T Settlement.

a. Was QCC served with the Debtors' Settlement Motion?

b. If so, did the Settlement Motion list the basic terms of the WorldCom AT&T Settlement?

RESPONSE:

a. QCC cannot definitively state whether or not it received settlement motion. In response to MCI discovery in the parallel Colorado proceeding, QCC provided a lengthy explanation as to the efforts it went to determine whether or not it had actually received the bankruptcy motion in 2004. Please see attached response to discovery request in the parallel Colorado proceeding.

b. Please see QCC's response to Interrogatory No. 32a. The motion certainly did not identify that MCI would be providing AT&T (but no other IXC) discounted switched access rates in Florida.

Respondent: QCC Legal

Staff Interrogatory No. 34

34. Please refer to page 16, lines 14-16. Witness Reynolds stated that the United States Bankruptcy Court of the Southern District of New York permitted the parties in the bankruptcy proceeding to file responses or objections to the WorldCom AT&T Settlement Motion.

a. Did QCC have the ability to submit a response or file an objection the WorldCom AT&T Settlement Motion?

b. If so, did QCC file a response or an objection to the motion?

RESPONSE:

a. Assuming Qwest was aware of the motion, it would have had the ability to object to the Settlement Motion. But, again, the motion itself was innocuous, and did not explain that MCI would be providing AT&T (but no other IXC) discounted switched access rates in Florida. Further, as explained in detail Mr. Easton's rebuttal testimony, Qwest's efforts and resources were (reasonably) focused on resolving its own large claims vis-à-vis the complex WorldCom bankruptcy.

b. No, not to QCC's knowledge.

Respondent: QCC Legal

Staff Interrogatory No. 35

35. Please refer to page 47. Witness Reynolds contends that QCC never approached its business partners at Verizon Access to inquire about entering into a similar arrangement for the pricing of switched access.

    a. Does QCC agree with the above statement?

RESPONSE: As the provider subject to a statutory non-discrimination obligation, MCI had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to issue requests or make demand in order to obtain non-discriminatory treatment. That said, on February 25, 2008, QCC mailed to Verizon a demand letter specifically requesting copies of any off-tariff switched access agreements, and requesting equivalent rate treatment.

Respondents: QCC Legal

Candace Mowers, Qwest Public Policy Manager
1801 California Street, 10th Floor
Denver, CO 80202

Staff Interrogatory No. 36

36. Please refer to page 23, lines 10-19 of Witness Reynolds Direct Testimony.

a. Does QCC agree that it was not similarly situated and thus ineligible to adopt the same agreement as MCI & AT&T?

b. If QCC does not agree, please explain how QCC believes itself to be similarly situated to the other IXCs?

RESPONSE:

a. No. QCC believes it was similarly situated to AT&T and should have received the same discount that AT&T received from MCI.

b. As demonstrated in QCC's pre-filed testimony, QCC and AT&T were similarly situated in relation to MCI's provision of intrastate switched access service in Florida between 2004 and 2007. First, it is undisputed that the service provided to AT&T and to QCC by MCI (albeit at significantly different rates) was functionally identical. Second, QCC is unaware of any study, analysis or assertion that MCI's cost of providing that identical service to different IXCs differed in any way. As Dr. Weisman demonstrates and explains, price discrimination for wholesale (input) services that are subject to non-discrimination obligations is presumptively unreasonable if there is no difference in the provider's cost of supplying the service as among various customers. QCC is aware of no other distinction (between AT&T and QCC) that would justify MCI's highly preferential treatment of AT&T. MCI claims that QCC is not similarly situated to AT&T because it was not in a position to enter the same "reciprocal" arrangement that MCI and AT&T agreed to. However, reciprocity, in and of itself, is not a reasonable basis for discrimination unless it can be demonstrated that there exists a credible, economic basis for the differences in rate treatment. MCI has failed to demonstrate a credible economic basis for its rate discrimination. (See Weisman Rebuttal Testimony pp. 21-24). In addition, although MCI claims that its agreement with AT&T was reciprocal, the reality is that the agreements were not truly reciprocal, except perhaps in name. (See Easton Direct Testimony pp. 31-34).

Respondent: QCC Legal

Staff Interrogatory No. 37

The following questions refer to page 21 of Witness Woods' Direct Testimony and page 20 of Witness Reynolds' Direct Testimony.

37. Both Witnesses' assert that QCC bears the burden of proving that it is "under like circumstances," or, similarly situated to other IXCs. Does QCC agree that it bears the burden of proof?

RESPONSE: As the complainant, QCC bears the burden of proof *in this proceeding*. However, in rate discrimination cases, courts and commissions generally apply a burden shifting mechanism to the determination of whether two customers are similarly situated or in like circumstances. In this case, a *prima facie* case is established once QCC establishes that the respondents entered into off-price list switched access agreements and failed to provide equivalent rate treatment to QCC for the same or similar service. Once QCC has established these basic facts, the burden of going forward then shifts to each Respondent to establish that the price differentiation was reasonable and lawful. This is the same analytical framework employed by the FCC when considering Section 202 discrimination claims.[1] See QCC's Response to Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds (filed Dec. 8, 2010), at pp. 4-6.

In the parallel Colorado proceeding, the Commission similarly (both in rejecting the CLECs' dispositive motions and in its ultimate decision on the merits after hearing) held that QCC had established its *prima facie* case of rate discrimination and that the CLECs had failed to justify their conduct. *See* Order Addressing Exceptions and Motion to Reopen the Record, Colorado PUC Decision No. C11-1216 (Nov 15, 2011), at ¶¶ 72-77.

As QCC has explained its pre-filed testimony, the key issue to determining whether two customers are similarly situated is whether the provider's marginal cost of providing the relevant service differs as between the two customers. Through discovery, QCC has asked each respondent to produce any cost or elasticity studies performed regarding the respondent's provision of switched access. No respondent produced any such study. The respondent, and not QCC, is obviously in the superior position to establish and demonstrate its cost of providing the service. QCC has similarly asked each respondent to identify in all ways QCC and the preferred IXCs were not similarly situated. QCC then addressed each of those alleged justifications in pre-filed testimony. Again, the CLEC (and not QCC) ultimately possesses more information as to the ways in which QCC and the preferred IXCs differ, from the perspective of the CLEC.

---

[1] *In the Matter of the Offshore Telephone Company v. South Central Bell Telephone Company and AT&T, MEMORANDUM OPINION AND ORDER, 2 FCC Rcd 4546 (Aug. 7, 1987), ¶ 32.* Federal courts employ the identical 3-step analysis to resolve Section 202(a) discrimination claims. *Nat'l Communications Ass'n v. AT&T Corp.*, 238 F.3d 124, 129 (2d Cir. 2001).

Respondent: QCC Legal

DOCUMENTS REQUESTED

4. Please provide a copy of any response or objection that QCC filed regarding the WorldCom AT&T Settlement Motion.

RESPONSE: Not applicable.

DATED this 21st day of August, 2012.

/s/Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST
COMMUNICATIONS COMPANY, LLC D/B/A
CENTURYLINK QCC

STATE OF COLORADO)
)
COUNTY OF DENVER)

Before me, the undersigned authority, personally appeared Candace Mowers, who being duly sworn deposes and says:

That she occupies the position of Public Policy Manager and is the person who has furnished the answer to Interrogatory Number 35 of Staff's Second Set of Interrogatories, and further says that said answers are true and correct to the best of her knowledge and belief.

WITNESS my hand and seal this 26th day of September, 2012.

Candace D Mowers
Signature

Marjorie O Herlth
Marjorie O. Herlth - Notary Public
State of Colorado

My Commission Expires: 9/25/2013

9

Qwest Communications Company, LLC's Objections and Responses To Broadwing Communications, LLC's First Set Of Interrogatories (Nos. 1-18), Second Document Requests (Nos. 4-21) And First Request For Admissions (Nos. 1-4) To Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 9
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #9) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: March 19, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND REPSONSES TO BROADWING COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1-18), SECOND DOCUMENT REQUESTS (NOS. 4-21) AND FIRST REQUEST FOR ADMISSIONS (NOS. 1-4) TO QWEST COMMUNCIATIONS COMPANY, LLC

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its objections and responses to Broadwing Communications, LLC's First Set of Interrogatories (Nos. 1-18), Second Document Requests (Nos. 4-21) and First Request for Admissions (Nos. 1-4) (collectively "Requests," individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

Broadwing Interrogatory No. 1

In paragraph 10 f. ii. of its Complaint, QCC alleges that it "made demand on Broadwing, via Level 3, its corporate parent, to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Broadwing/Level 3 have not honored QCC's requests."

a. Please describe in detail each specific "demand" or "request" QCC made to Broadwing or Level 3 to "disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs."

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and requests information already in Broadwing/Focal's possession or custody. As the provider subject to a statutory non-discrimination obligation, Broadwing/Focal had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to issue requests or make demand in order to obtain non-discriminatory treatment. Without waiver of its objections, QCC responds as follows.

On March 7, 2008, QCC mailed to Level 3 a demand letter specifically requesting copies of any off-tariff switched access agreements, and requesting equivalent rate treatment.

Respondents: QCC Legal

Candace Mowers, Qwest Public Policy Manager
1801 California Street, 10th Floor
Denver, CO 80202

b. Please state all facts showing that Broadwing or Level 3 "have not honored" QCC's requests described in QCC's responses to subparts a and b above.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and seeks information already in Broadwing/Focal's possession or control. Without waiver of its objections, QCC responds as follows.

At no time before or after receiving QCC's March 2008 demand letter has Broadwing/Focal

retroactively provided, or offered to retroactively provide, QCC the same intrastate switched access discount enjoyed by one or more other IXCs. Broadwing/Focal has denied that QCC and the other IXCs were similarly situated and has denied that QCC is entitled to refunds.

Respondent: QCC Legal

Broadwing Interrogatory No. 2

From January 2000 through the present, identify all dates on which QCC contacted Broadwing to request a lower rate for switched access services, seek to negotiate an agreement for switched access services, and/or seek information regarding rates that other IXCs were paying for switched access services.

QCC objects to this data request on the basis that it seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC is unaware of having ever requested negotiation of an agreement similar to those entered into between Broadwing/Focal and the other (preferred) IXCs, with the exception of QCC's March 7, 2008 demand letter to Level 3. However, as the provider subject to a statutory non-discrimination obligation, Broadwing/Focal had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to commence negotiations in order to obtain non-discriminatory treatment.

Respondents: QCC Legal;

Patrick J. Welch, Manager of Finance-Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

Broadwing Interrogatory No. 3

In the prayer for relief, paragraph B, of QCC's Amended Complaint, QCC seeks "reparations, with applicable interest" from Broadwing. Please answer the following concerning this statement:

a. Please provide the specific period of time for which QCC seeks such reparations from Broadwing by identifying with specificity both the beginning date and end date.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that Broadwing/Focal provided intrastate switched access services in Florida to one or more other interexchange carriers ("IXCs") at rates lower than the rate XO charged QCC.

Respondent: QCC Legal

b. Please provide QCCs estimates of amounts QCC believes it is entitled to recover in reparations in this case from Broadwing and the methodology used to calculate such estimates.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of Broadwing/Focal's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. To assist in its efforts to calculate the Broadwing/Focal refund amount, QCC requested copies of several Focal invoices from Broadwing/Focal in its October 21, 2011 First Set of Interrogatories and Document Requests. See QCC Document Request No. 7. Broadwing/Focal refused to provide the requested documents. Regarding QCC's methodology, in brief summary, QCC's methodology for calculating the principal amount of Broadwing/Focal's overcharge will be to compare the amounts QCC paid Broadwing/Focal for intrastate switched access in

Florida to the amount it would have paid Broadwing/Focal for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through Broadwing/Focal's secret switched access agreements.

Respondent: QCC Legal

c. **Please identify and describe, by month, all amounts and rates QCC actually paid to Broadwing during the period for which QCC seeks reparations and the amounts and rates QCC alleges it should have paid to Broadwing. The response should list the following by month:**

(1) The total Florida intrastate switched access minutes QCC contends that Broadwing billed QCC, broken down by originating and terminating minutes of use ("MOUs");

(2) The total amount QCC contends Broadwing billed QCC for Florida intrastate switched access services;

(3) The total amount QCC contends it paid Broadwing for intrastate switched access services:

(4) The dates such amounts QCC contends it paid Broadwing;

(5) The rate(s) or the average per minute of use rate QCC contends it actually paid Broadwing for the switched access services for which QCC seeks reparations;

(6) The rate(s) or the average per minute of use rate QCC contends in this proceeding it should have paid Broadwing, and the specific Broadwing agreement from which this rate is derived;

(7) The total amounts QCC contends it should have paid Broadwing; and

(8) The difference between (2) and (7).

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, requires a special study and seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

See QCC's response to Broadwing Interrogatory No. 1-3(b).

Respondent: QCC Legal

Broadwing Interrogatory No. 4

State all facts that support QCC's claim in paragraph 10 f. ii. of its Amended Complaint that QCC is an IXC "under like circumstances" as AT&T and Sprint during the period from 2000 through the present for the purpose of entering into the agreements identified in Broadwing's response to QCC Interrogatory No. 1.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC cannot reasonably identify "all facts" supporting QCC's contention that it is similarly situated or "under like circumstances" to AT&T and Sprint, although that subject will be addressed in QCC's pre-filed direct testimony in this case. These facts include that Broadwing/Focal provided QCC and other IXCs the identical bottleneck service at different rates without reasonable justification. QCC is aware of no credible evidence that Broadwing/Focal's economic cost of providing switched access service differs among IXCs. QCC is aware of no other relevant, distinguishing facts or factors permitting Broadwing/Focal to offer preferential rate treatment to other IXCs, but not to QCC.

Respondent: QCC Legal

Broadwing Interrogatory No. 5

In the second unnumbered paragraph on page 2 of its Complaint, QCC alleges that Broadwing (as a Respondent CLEC) "failed to make [the] same rates, terms and conditions [in its contract service agreements] available to QCC."

a. Please state all facts demonstrating that, between January 2000 and the present, QCC and its affiliates would have been willing to enter into "the same" contractual arrangements set forth in the agreements identified in Broadwing's response to QCC's Interrogatory No. 1.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, calls for speculation and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

In its pre-filed direct testimony, QCC will address Broadwing/Focal's failure to make the switched access discounts it provided to other IXCs available to QCC. Obviously, because Broadwing/Focal held secret the existence and terms its secret discount arrangements, QCC was denied the opportunity to consider whether it would be "willing to enter into the same contractual arrangements set forth in each of these agreements," assuming *arguendo* that QCC would have even faced the obligation to do so. QCC cannot reasonably turn back time and proclaim "all facts" demonstrating that, during the time period Broadwing/Focal provided discounts on switched access to other IXCs, QCC would have hypothetically been willing to accept certain terms. However, in the case of the Focal agreement at issue in this case, QCC is aware of no facts establishing that QCC would not have accepted any relevant terms related to switched access service.

Respondent: QCC Legal

b. Please state all facts demonstrating that, between January 2000 and the present, QCC and its affiliates would have been willing to obtain service under all of the terms and conditions in the agreements identified in Broadwing's response to QCC's Interrogatory No. 1.

See QCC's objections and response to Broadwing Interrogatory No. 1-5(a).

Respondent: QCC Legal

c. Please state all facts demonstrating that, between January 2000 and the present, QCC and its affiliates would have been legally and operationally capable of obtaining service under all of the terms and conditions in the agreements identified in Broadwing's response to QCC's Interrogatory No. 1.

QCC objects to this Request to the extent it calls for a legal conclusion. QCC further objects to this Request on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Without waiver of its objections, QCC responds as follows.

QCC cannot reasonably state "all facts" demonstrating its legal and operational capability to accept the benefit of Broadwing/Focal's secret switched access agreements. QCC has been authorized to provide intrastate IXC service in Florida since 1999. See Commission Order PSC-99-0439-FOF-TX, dated March 3, 1999 which can obtained at the following link:

http://www.psc.state.fl.us/dockets/orders/SingleDisplay.aspx?OrderNumber=PSC-99-0439&Method=ByNumber

QCC is unaware of what other legal or operational capabilities were or would have been required in order to accept Broadwing/Focal's discount, as provided pursuant to its secret agreements. If Broadwing clarifies what capabilities it believes were required, QCC can address those.

Respondent: QCC Legal

Broadwing Interrogatory No. 6

Please state all facts that support QCC's claim that it was entitled to the same rates, terms and conditions as those provided by Broadwing to AT&T and Sprint in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and seeks information already in Broadwing/Focal's possession or custody. QCC further objects to the extent the Request is seeking a legal conclusion. Without waiver of its objections, QCC responds as follows.

QCC cannot reasonably identify "all facts" supporting QCC's contention that it was entitled to equal rate treatment as other Florida IXCs, although that subject will be addressed in QCC's pre-filed direct testimony in this case. These facts include that Broadwing/Focal provided QCC and other IXCs the identical bottleneck service at different rates without reasonable justification. QCC is aware of no credible evidence that Broadwing/Focal's economic cost of providing switched access service differs among IXCs. QCC is aware of no other relevant, distinguishing facts or factors permitting Broadwing/Focal to offer preferential rate treatment to other IXCs, but not to QCC.

Respondent: QCC Legal

Broadwing Interrogatory No. 7

From January 2000 through the present, for each instance in which QCC has ever requested and/or negotiated individual case basis ("ICB") arrangements or "settlement agreements" with customers or carriers for intrastate switched access and/or other services in Florida, at rates, terms or conditions that differ from those contained in the applicable services' filed price lists or tariffs with the commission, identify:

a. The services at issue and/or encompassed in the agreement;

b. Whether QCC or the party with whom it entered into the ICB agreement or settlement agreement, offered the rates, terms or conditions contained in the agreement to other similarly situated customers or carriers. c. Whether QCC or the other party filed the ICB agreement or settlement agreement with the Commission.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Whether or not QCC, as a *customer* of switched access, has entered into (or offered) any ICBs with the CLEC providers of switched access is not relevant to this case. As the customer, QCC does not have an obligation to police the CLEC's adherence to its price list or to its obligation to avoid rate discrimination. At issue in this case is whether Broadwing/Focal, as to *its* provision of intrastate switched access, abided by its statutory and price list obligations. QCC has not named the IXC counterparties to the secret agreements as respondents. To do so would make little sense, as the customers of the service (even a bottleneck service) are under no legal obligations insofar as how the service is priced (in absolute and relative terms) by the LEC. Without waiver of its objections, QCC responds as follows.

QCC does not provide switched access services in Florida, and has not entered into any ICB switched access contracts as a provider of the service.

Respondent: QCC Legal

Broadwing Interrogatory No. 8

QCC's response to Staffs First Set of Interrogatories, No. 25, explains that QCC was "generally aware that many CLECs had entered into secret, discount agreements," and that QCC made "informal efforts" to identify the CLECs. Identify the date(s) on which QCC became "generally aware" of the existence of ICB arrangements between competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") for the provision of switched access services, and QCC's efforts to identify the CLECs that were involved.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to determine whether Broadwing/Focal, as to *its* provision of intrastate switched access, abided by its statutory and price list obligations. QCC's generalized knowledge of the possible existence of switched access ICBs – without knowing the identity of the ICB parties, the terms of the discount and the geographical reach of the agreement – is not relevant to the proceeding. Without waiver of its objections, QCC responds as follows.

While the Minnesota Department of Commerce filed the complaint initiating Docket No. 04-235 in June 2004, QCC and its ILEC affiliate, Qwest Corporation, did not become aware of the nature and scope of the proceeding until April 2005, when the Minnesota Public Utility Commission issued its Notice of Settlement and Request for Comment ("Notice") (issued April 15, 2005). However, the Notice did not identify all carriers involved in the investigation and did not provide significant detail regarding the CLEC practices at issue. This is the first notice in the Docket that the MPUC issued to all Telecommunications Carriers in Minnesota, including Qwest. Qwest asked to be added to the service list on April 29, 2005.

Soon after receiving the notice of settlement, Qwest began seeking information (including public copies of the actual agreements) regarding the below tariff rates to ascertain the potential impact on QCC as an IXC. Qwest sent an initial Data Practices Act request to the Department on May 31, 2005 seeking the ICB contracts as public information. Despite these efforts, Qwest did not receive copies of any of the agreements which it was allowed to use outside of the Minnesota dockets until June 23, 2006, and then received only six documents. On or about June 30, 2006, QCC received "public" copies of several other agreements. Focal's agreements were not included among either batch of agreements. QCC also attempted to get copies of the agreements directly from the CLECs, and attempted to determine if they were willing to offer Qwest the same rates, terms, and conditions. Qwest did so by sending substantively-identical letters to approximately ninety CLECs in early 2008.

Respondent: Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

Broadwing Interrogatory No. 9

Please state the date and circumstances under which QCC first: a. became aware that Broadwing and/or Focal Communications Corporation may have entered into an agreement with one or more IXCs that included a rate for switched access services that differed from the rate charged to QCC; b. became aware of the existence of each agreement identified by Broadwing in its response to QCC Interrogatory No. 1; and c. received a copy of each agreement identified by Broadwing in its response to QCC Interrogatory No. 1.

See QCC's objections and response to Broadwing Interrogatory No. 8. As explained, QCC first became aware of the proceeding on or after April 15, 2005, when it received the Notice of Settlement and Request for Comment from the Minnesota Commission. That Notice did not specifically identify Focal, and QCC cannot pinpoint when it became specifically aware that Focal was a subject of the Commission's investigation. In August 2005, Qwest filed comments in Minnesota PUC Case No. 04-235. Those comments responded to the April 25, 2005 comments of the Department of Commerce (which were filed prior to Qwest asking to be added to the service list), which specifically identified Focal. Thus, it seems fair to surmise that QCC became aware of the Focal arrangements (at least as to their existence, if not their terms and scope) by August 2005.

QCC has been unable to pinpoint specifically when it obtained copies (either on a confidential or public basis) of the Focal agreements. QCC does not believe it received copies capable of being used in this Florida proceeding until AT&T and Sprint responded to the Commission in the instant matter. As discussed in reference to Broadwing Interrogatory No. 1, QCC made demand of Level 3 for any off-tariff agreements in March 2008, but Level 3/Broadwing did not produce copies at that time.

Respondent: Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

Broadwing Interrogatory No. 10

Please identify and describe all disputes that QCC initiated with Broadwing since January 1, 2000, in response to bills from Broadwing for *any* services in Florida (including switched access services), on the grounds that Broadwing should have charged QCC a different rate, including the grounds for each dispute, the date that QCC first raised each dispute, the amount(s), if any, QCC withheld as a result of the dispute, and the ultimate resolution or current status of the dispute.

QCC objects on the basis that this Request is overly broad, unduly burdensome and seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is not reasonably calculated to lead to the discovery of admissible evidence. As the provider subject to a statutory non-discrimination obligation, Broadwing/Focal had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to other IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even setting aside that Broadwing/Focal kept its switched access discount agreement secret, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to lodge billing disputes in order to obtain non-discriminatory treatment. Furthermore, to the extent that Broadwing is inquiring about disputes falling outside the time period relevant to the proceeding and is inquiring about disputes unrelated to intrastate switched access, the Request is clearly irrelevant. Without waiver of its objections, QCC responds as follows.

QCC did not locate any Florida switched access disputes with Focal between 2001 and 2006.

Respondents: QCC Legal;

Patrick J. Welch, Manager of Finance-Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

Broadwing Interrogatory No. 11

State whether QCC has conducted an analysis of any "detriment" that it alleges it incurred in paragraphs 13 and 16 of its amended complaint, as a result of Broadwing's alleged violations in this complaint, including whether such analysis includes quantification of lost profits or lost customers/market share.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in conjunction with QCC's pre-filed testimony. QCC further objects on the basis that the Request, insofar as it seeks information about lost profits or "incurred losses," is not reasonably calculated to lead to the discovery of admissible evidence. The relief QCC seeks is not premised on lost revenue or market share, but instead measures the amount which QCC was overcharged (for the switched access services it was provided by the Respondents) relative to the IXCs preferred by the secret discount agreements at issue in this case. Without waiver of its objections, QCC responds as follows.

See QCC's response to Broadwing Interrogatory No. 3.

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

Broadwing Interrogatory No. 12

Explain why any alleged harm or detriment that QCC has incurred from the alleged ICB agreements has not been reduced or mitigated by QCC's settlement with AT&T that resulted in withdrawal of QCC's 2007 complaint in Minnesota state court against AT&T with regard to the ICB agreements that are at issue in this proceeding.

QCC objects to this Request on the basis that it is vague, ambiguous and calls for a legal conclusion. Without waiver of its objections, QCC responds as follows.

[redacted]

Respondent: QCC Legal

REDACTED

Broadwing Interrogatory No. 13

Given that QCC alleged in paragraph 73 of its 2007 complaint against AT&T in Minnesota state court that it incurred "loss of market share" in the wholesale market for intrastate interexchange services as a result of these agreements, that relief for such harm "cannot be remedied in any other forum," and that "[t]here is no adequate remedy for such damages to be had in the administrative agencies in the Filed-Rate States" such as Florida, explain why QCC now contends that it may seek relief before the Commission.

QCC objects to this Request on the basis that it is vague, ambiguous and calls for a legal conclusion.

Broadwing Interrogatory No. 14

From January 2000 through the present, describe each instance where QCC has ever purchased termination services from an alternate source to bypass a CLEC's switched access services in Florida or any other state. For each instance, indicate if the rates charged by the provider of termination services to the CLEC's end users, were less than the CLEC's filed intrastate switched access rates.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to determine whether Broadwing/Focal has abided by its statutory obligations in connection with its provision of intrastate switched access. Whether, and to what extent, QCC has purchased has purchased alternate "bypass" services bears no connection to determining whether Broadwing/Focal has acted unlawfully. The Request is also clearly beyond the scope of this proceeding insofar as it seeks information regarding QCC's purchases of services outside of Florida. Without waiver of its objections, QCC responds as follows.

While QCC will not attempt to describe "each instance" in which it has purchased alternate termination services to bypass a CLEC's switched access services in Florida, QCC offers the following general description.

Switched access termination is a monopoly service, and there is no legitimate switched termination service which would bypass a CLEC's switch, assuming that the local end user has selected the CLEC as its local exchange carrier. CLEC switched access services could be avoided should the end-user customer be directly connected to an IXC via a private line service, thus bypassing the CLEC switch. Such arrangements may be warranted where traffic volumes are significant enough to justify the cost of purchasing a private line service.

Respondent: QCC Legal

William R. Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

Broadwing Interrogatory No. 15

For the period from January 2000 through the present, state whether QCC has ever received a request for, offered, and/or negotiated different rates, terms or conditions to carriers or customers for the same type of service (e.g., local exchange service, switched access service, interexchange) in Florida, and for each instance in which it has done so, identify the circumstances or conditions under which QCC received a request for, offered, and/or negotiated differing rates, terms or conditions for the same service to customers or carriers, including:

a. The services at issue

b. Whether, among other things, volume discounts, promotional offerings, and settlements of claims or billing disputes were at issue

c. Whether QCC made those offerings to other similarly situated carriers or customers, and if so, how were those carriers or customers notified of the availability of those rates, terms or conditions?

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Whether or not QCC, as a *customer* of switched access, has entered into (or offered) any ICBs with the CLEC providers of switched access is not relevant to this case. As the customer, QCC does not have an obligation to police the CLEC's adherence to its price list or to its obligation to avoid rate discrimination. At issue in this case is whether Broadwing/Focal, as to *its* provision of intrastate switched access, abided by its statutory and price list obligations. QCC has not named the IXC counterparties to the secret agreements as respondents. To do so would make little sense, as the customers of the service (even a bottleneck service) are under no legal obligations insofar as how the service is priced (in absolute and relative terms) by the LEC. Without waiver of its objections, QCC responds as follows.

See QCC's response to Broadwing Interrogatory No. 7.

Respondent: QCC Legal

Broadwing Interrogatory No. 16

Once QCC became a party to the Minnesota docket 04-235 on April 29, 2005, did QCC review all filings in that docket? Identify the name, title, and employer of the person(s) responsible for reviewing the filings or otherwise monitoring or following regulatory actions in Minnesota.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Determining whether (seven years ago) QCC reviewed "all pleadings" once it became a party to the Minnesota proceeding cannot reasonably be reconstructed. Furthermore, the purpose of this proceeding is to determine whether Broadwing/Focal has abided by its statutory obligations in connection with its provision of intrastate switched access in Florida. Whether, and when, QCC reviewed pleadings in Minnesota docket 04-235 bears no connection to determining whether Broadwing/Focal acted lawfully. QCC further objects on the basis that the Request seeks information protected by attorney client privilege and the work product doctrine. Information regarding the extent and timing of counsel's review of filings is privileged. Without waiver of its objections, QCC responds as follows.

Regarding confidential materials (including copies of the relevant ICB agreements), QCC did not have access to those materials until it filed its agreement to be bound by the protective order in the proceeding. That occurred in May 2006. Thereafter, while QCC probably looked at some of the earlier-filed materials, it has no specific recollection of how many and when.

Regarding non-confidential materials, QCC probably looked at some of the earlier-filed materials after April 29, 2005, but has no specific recollection of how many and when. Once becoming aware of the docket, QCC's primary focus was seeking information (including public copies of the actual agreements) regarding the below tariff rates to ascertain the potential impact on QCC as an IXC.

Regarding the names of individuals responsible for reviewing Minnesota filings, Qwest employed two in-house regulatory attorneys (Jason Topp and Joan Peterson) as well a regulatory director (JoAnn Hanson) at the time. Minnesota was a very active state for regulatory issues in that time period. For example, there were 2,072 Initial Filings made with the Minnesota PUC in 2004. After an Initial Filing, numerous other documents were filed in each matter. Of the 2,072 Initial Filings in 2004, 386 involved Qwest (generally Qwest Corporation) as a direct party.

Respondents: QCC Legal

Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

Broadwing Interrogatory No. 17

Please describe the process QCC has used since January 1, 2000, to review filings made with the Florida Public Utilities Commission ("Florida Commission") or otherwise monitor or follow regulatory actions that affect or are potentially of interest to QCC in Florida. In your description, please include the following information:

a. Whether QCC reviews all filings made with the Florida Commission, and if not, how QCC determines which filings to review and why;

b. The source from which QCC derives information about filings that are made with the Florida Commission and obtains copies of the filings themselves (e.g., via the Florida Commission's website, public records requests, physical review of the filings at the Florida Commission's office, etc.);

c. The identity, title, and employer of the person(s) responsible for reviewing the filings or otherwise monitoring or following regulatory actions in Florida;

d. The extent to which QCC reviews and investigates the filings it reviews and how QCC determines whether to investigate any filings it reviews;

e. Any and all changes that QCC has made to the process since January 1, 2000, including a description of the change and the date the change was implemented;

f. A copy of all records of QCC's review of any filings or the results of any investigations of those filings.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to determine whether Broadwing/Focal has abided by its statutory obligations in connection with its provision of intrastate switched access in Florida. QCC's manner of reviewing Florida Commission filings bears no connection to determining whether Broadwing/Focal has acted lawfully. QCC further objects to the Request to the extent it seeks information protected by the attorney client privilege or work product doctrine. Without waiver of its objections, QCC responds as follows.

Regarding tariff/price list rate changes, QCC subscribes to Telview, a service that updates carriers' state tariffs and informs its subscribers when tariff transmittal letters are filed. QCC's Facility Cost organization has responsibility for being aware of published rate changes.

Regarding general regulatory filings filed prior to the closing of the Qwest-CenturyLink merger in April 2011, QCC's public policy and law departments had responsibility for such review. QCC reviewed initial filings in dockets which are expected to result in a compliance obligation being created or amended which impacts all CLECs or IXCs. QCC also reviewed filings in various dockets according to

the subject matter of the docket. In many instances, QCC would monitor, but not participate in, dockets for which the subject matter is new to the telecommunications industry or resulting order could be trend setting for the telecommunications industry.

QCC is on the Florida Public Service Commission's carrier mailing list and receives copies of various applications, petitions, etc. QCC subscribed to electronic publications such as State Newswire and TR Daily.. QCC also monitored various rulemaking dockets via a subscription to Netscan or State Net.

Regarding general regulatory filings filed since April 2011, CenturyLink's state regulatory team (located in Tallahassee) is responsible for monitoring Commission filings on behalf of QCC and its CenturyLink affiliates. In summary, the state regulatory team does so by monitoring the FPSC's web page for docket activity, Commission Conference Agendas, Internal Affairs Agendas and entries on the Commission calendar. As stated earlier for QCC, CenturyLink's state regulatory team in Tallahassee is on the Commission's carrier mailing list and receives emails and or paper copies of filings that are specific to CenturyLink or that were determined to be of interest to all telecommunications companies.

QCC cannot accurately or reasonably reconstruct how many filings (of those made with the Commission since January 1, 2001) it has reviewed. It assuredly has not reviewed "all filings made with the Florida Commission" since January 1, 2001.

Respondents: QCC Legal

Patrick J. Welch, Manager of Finance-Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

Sandra Khazraee, Director State Regulatory Affairs
315 S. Calhoun Suite 500
Tallahassee, FL 32301

Broadwing Interrogatory No. 18

QCC's response to Staff's Interrogatory No. 23 states, in part, that "QCC received a public copy of the Granite-AT&T agreement in late June, 2006, well within the applicable statute of limitations relating to QCC's FPSC cause of action." Please identify the "applicable statute of limitations" referenced in QCC's response.

QCC objects to this Request on the basis that it calls for a legal conclusion.

Without waiver of its objections, QCC responds as follows the applicable statute of limitations can be found in Ch. 95, Florida Statutes, and case law interpreting and applying the statutory provisions.

REQUESTS FOR PRODUCTION

Broadwing Request for Production No. 4

Please produce copies of all of QCC's responses to data requests propounded by other parties in this proceeding.

QCC will provide copies of its responses provided to other parties' data requests in this docket.

Broadwing Request for Production No. 5

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 1.

See QCC's objections and response to Broadwing Interrogatory No. 1. Further, QCC attaches a copy of its March 7, 2008 demand letter to Level 3.

Broadwing Request for Production No. 6

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 2, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 2.

Broadwing Request for Production No. 7

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 3, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 3.

Broadwing Request for Production No. 8

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 4, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 4.

Broadwing Request for Production No. 9

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 5, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 5.

Broadwing Request for Production No. 10

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 6, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 6.

Broadwing Request for Production No. 11

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 7, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 7.

Broadwing Request for Production No. 12

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 8, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 8. Copies of the notices and pleadings filed in the Minnesota Commission investigations can be viewed on that Commission's public website:

https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&searchType=new&userType=public

Broadwing Request for Production No. 13

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatories No. 9, including but not limited to any such analyses, memoranda, communications, or notes that relate to analysis of QCC's alleged harm.

See QCC's objections and responses to Broadwing Interrogatory No. 9 and Request for Production No. 12.

Broadwing Request for Production No. 14

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 10, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 10.

Broadwing Request for Production No. 15

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 11, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory Nos. 3 and 11.

Broadwing Request for Production No. 16

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 12, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 12. Without waiver of its objections, QCC responds as follows.

A copy of a confidential document provided in response to API Document Request No. 20, which is responsive to this Request, is included with this Response. The document has been partially redacted and has been designated "Lawyers Only".

Broadwing Request for Production No. 17

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 13, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 13.

Broadwing Request for Production No. 18

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 14, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory No. 14.

Broadwing Request for Production No. 19

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 15, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and response to Broadwing Interrogatory Nos. 7 and 15 and Request for Production No. 11.

Broadwing Request for Production No. 20

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 16, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

See QCC's objections and responses to Broadwing Interrogatory No. 16 and Request for Production No. 12.

Broadwing Request for Production No. 21

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatories No.17, including but not limited to any such analyses, memoranda, communications, or notes that relate to analysis of QCC's alleged harm.

See QCC's objections and response to Broadwing Interrogatory No. 17.

REQUESTS FOR ADMISSIONS

Broadwing Request for Admissions No. 1

From January 1, 2000, through the present, QCC has never contended that the rates billed to QCC by Broadwing for switched access services in Florida were or are unjust or unreasonable.

QCC objects to this Request on the basis that it is overly broad and unduly burdensome. QCC cannot reasonably reconstruct all of its contentions, whether written or otherwise, in the past twelve years. QCC further objects to the Request on the basis that is not reasonably calculated to lead to the discovery of admissible evidence. QCC's allegations in this complaint concern Broadwing/Focal's failure to abide by its statutory obligations, and stem from Broadwing/Focal's failure to extend to QCC the beneficial rate treatment provided to other IXCs via secret agreements. QCC's complaint offers no opinion as to the lawfulness, reasonableness or justness of Broadwing/Focal's price list rates. Without waiver of its objections, QCC responds as follows.

QCC admits that it in this proceeding it has neither formulated nor asserted any contentions regarding the lawfulness, reasonableness or justness of Broadwing/Focal's intrastate switched access price list rates although QCC does assert that the application of Broadwing/Focal's intrastate switched access price list rates to QCC, while charging other similarly situated carriers lower rates for the identical service, is discriminatory and violates Florida law.

Broadwing Request for Admissions No. 2

From January 1, 2000, through the present, QCC has never contended that the rates in Broadwing's or Focal Communications Corporation's price list or tariff for switched access services in Florida violate Florida law.

QCC objects to this Request on the basis that it is overly broad and unduly burdensome. QCC cannot reasonably reconstruct all of its contentions, whether written or otherwise, in the past twelve years. QCC further objects to the Request on the basis that is not reasonably calculated to lead to the discovery of admissible evidence. QCC's allegations in this complaint concern Broadwing/Focal's failure to abide by its statutory obligations, and stem from Broadwing/Focal's failure to extend to QCC the beneficial rate treatment provided to other IXCs via secret agreements. QCC's complaint offers no opinion as to the lawfulness, reasonableness or justness of Broadwing/Focal's price list rates. Without waiver of its objections, QCC responds as follows.

QCC admits that in this proceeding it has neither formulated nor asserted any contentions regarding the lawfulness, reasonableness or justness of Broadwing/Focal's intrastate switched access price list rates. although QCC does assert that the application of Broadwing/Focal's intrastate switched access price list rates to QCC, while charging other similarly situated carriers lower rates for the identical service, is discriminatory and violates Florida law.

Broadwing Request for Admissions No. 3

Focal Communications Corporation's Florida Telecommunications Price List No. 2, "Regulations and Schedule of Intrastate Charges Governing the Provision of Switched Access Services for Connection to Communications Facilities Within the State of Florida," has been on file with the Florida Public Service Commission since at least October 12, 2001.

Admit.

Broadwing Request for Admissions No. 4

Broadwing's Florida Telecommunications Price List No. 3, "Regulations and Schedule of Intrastate Charges Governing the Provision of Switched Access Services for Connection to Communications Facilities Within the State of Florida," has been on file with the Florida Public Service Commission since at least May 17, 2005.

Admit.

RESPECTFULLY SUBMITTED on this 19th day of March, 2012.

/s/ Susan S. Masterton
Susan S. Masterton CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301 850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Communications Company LLC's Objections & Responses to Broadwing's Interrogatory (No. 12)

(Confidential)

10

Qwest Communications Company, LLC's Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) And Second Document Requests (No. 7) To Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 10
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #10) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: May 11, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND SUPPLEMENTAL RESPONSE TO BROADWING COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NO. 3) AND SECOND DOCUMENT REQUESTS (NO. 7) TO QWEST COMMUNCIATIONS COMPANY, LLC

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its objections and supplemental response to Broadwing Communications, LLC's First Set of Interrogatories (No. 3) and Second Document Requests (No. 7) (collectively "Requests," individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

Broadwing Interrogatory No. 3

In the prayer for relief, paragraph B, of QCC's Amended Complaint, QCC seeks "reparations, with applicable interest" from Broadwing. Please answer the following concerning this statement:

a. Please provide the specific period of time for which QCC seeks such reparations from Broadwing by identifying with specificity both the beginning date and end date.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that Broadwing/Focal provided intrastate switched access services in Florida to one or more other interexchange carriers ("IXCs") at rates lower than the rate XO charged QCC.

Respondent: QCC Legal

b. Please provide QCCs estimates of amounts QCC believes it is entitled to recover in reparations in this case from Broadwing and the methodology used to calculate such estimates.

INITIAL RESPONSE: QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of Broadwing/Focal's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. To assist in its efforts to calculate the Broadwing/Focal refund amount, QCC requested copies of several Focal invoices from Broadwing/Focal in its October 21, 2011 First Set of Interrogatories and Document Requests. See QCC Document Request No. 7. Broadwing/Focal refused to provide the requested documents. Regarding QCC's methodology, in brief summary, QCC's

methodology for calculating the principal amount of Broadwing/Focal's overcharge will be to compare the amounts QCC paid Broadwing/Focal for intrastate switched access in Florida to the amount it would have paid Broadwing/Focal for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through Broadwing/Focal's secret switched access agreements.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. QCC hereby provides its draft refund analysis. See QCC's supplemental response to Broadwing Document Request No. 7. The analysis is still in draft form, and is subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

c. Please identify and describe, by month, all amounts and rates QCC actually paid to Broadwing during the period for which QCC seeks reparations and the amounts and rates QCC alleges it should have paid to Broadwing. The response should list the following by month:

(1) The total Florida intrastate switched access minutes QCC contends that Broadwing billed QCC, broken down by originating and terminating minutes of use ("MOUs");

(2) The total amount QCC contends Broadwing billed QCC for Florida intrastate switched access services;

(3) The total amount QCC contends it paid Broadwing for intrastate switched access services:

(4) The dates such amounts QCC contends it paid Broadwing;

(5) The rate(s) or the average per minute of use rate QCC contends it actually paid Broadwing for the switched access services for which QCC seeks reparations;

(6) The rate(s) or the average per minute of use rate QCC contends in this proceeding it should have paid Broadwing, and the specific Broadwing agreement from which this rate is derived;

(7) The total amounts QCC contends it should have paid Broadwing; and

(8) The difference between (2) and (7).

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, requires a special study and seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

See QCC's response to Broadwing Interrogatory No. 3(b).

Respondent: QCC Legal

REQUESTS FOR PRODUCTION

Broadwing Request for Production No. 7

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 3, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

INITIAL RESPONSE: See QCC's objections and response to Broadwing Interrogatory No. 3.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. See the attached draft refund calculation, and QCC's supplemental response to Broadwing Interrogatory No. 3. The attached is confidential and provided pursuant to the parties' Non-Disclosure Agreement.

RESPECTFULLY SUBMITTED on this 11th day of May, 2012.

/s/ Susan S. Masterton
Susan S. Masterton CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301 850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Communications Company, LLC's Supplemental Response To Broadwing's Document Request (No. 7) (entire document – QCC Bates stamp Nos. 002903 through 002906)

(Confidential)

11

Qwest Communications Company, LLC's Objections and First Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 18), and Second Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) and Second Document Requests (No. 7) To Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 11
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #11) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: June 4, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND FIRST SUPPLEMENTAL RESPONSE TO BROADWING COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NO. 18), AND SECOND SUPPLEMENTAL RESPONSE TO BROADWING COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NO. 3) AND SECOND DOCUMENT REQUESTS (NO. 7) TO QWEST COMMUNCIATIONS COMPANY, LLC

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its Objections and First Supplemental Response to Broadwing Communications, LLC's First Set of Interrogatories (No. 18), and Second Supplemental Response to Broadwing Communications, LLC's First Set of Interrogatories (No. 3) and Second Document Requests (No. 7) (collectively "Requests," individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

Broadwing Interrogatory No. 3

In the prayer for relief, paragraph B, of QCC's Amended Complaint, QCC seeks "reparations, with applicable interest" from Broadwing. Please answer the following concerning this statement:

a. Please provide the specific period of time for which QCC seeks such reparations from Broadwing by identifying with specificity both the beginning date and end date.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that Broadwing/Focal provided intrastate switched access services in Florida to one or more other interexchange carriers ("IXCs") at rates lower than the rate XO charged QCC.

Respondent: QCC Legal

b. Please provide QCCs estimates of amounts QCC believes it is entitled to recover in reparations in this case from Broadwing and the methodology used to calculate such estimates.

INITIAL RESPONSE: QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of Broadwing/Focal's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. To assist in its efforts to calculate the Broadwing/Focal refund amount, QCC requested copies of several Focal invoices from Broadwing/Focal in its October 21, 2011 First Set of Interrogatories and Document Requests. See QCC's second supplemental response to Broadwing Document Request No. 7. Broadwing/Focal

refused to provide the requested documents. Regarding QCC's methodology, in brief summary, QCC's methodology for calculating the principal amount of Broadwing/Focal's overcharge will be to compare the amounts QCC paid Broadwing/Focal for intrastate switched access in Florida to the amount it would have paid Broadwing/Focal for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through Broadwing/Focal's secret switched access agreements.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. QCC hereby provides its draft refund analysis. See QCC's supplemental response to Broadwing Document Request No. 7. The analysis is still in draft form, and is subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

SECOND SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. Since the time QCC provided its Supplemental Response on May 11, 2012, QCC has discovered that its previous understanding of the application of Broadwing/Focal's off-price list agreements was incorrect. Accordingly, QCC has revised its draft refund analysis and provides that revised draft refund analysis herewith. See QCC's second supplemental response to Broadwing Document Request No. 7. The attached analysis remains in draft form, and subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

c. **Please identify and describe, by month, all amounts and rates QCC actually paid to Broadwing during the period for which QCC seeks reparations and the amounts and rates QCC alleges it should have paid to Broadwing. The response should list the following by month:**

(1) **The total Florida intrastate switched access minutes QCC contends that Broadwing billed QCC, broken down by originating and terminating minutes of use ("MOUs");**

(2) **The total amount QCC contends Broadwing billed QCC for Florida intrastate switched access services;**

(3) The total amount QCC contends it paid Broadwing for intrastate switched access services:

(4) The dates such amounts QCC contends it paid Broadwing;

(5) The rate(s) or the average per minute of use rate QCC contends it actually paid Broadwing for the switched access services for which QCC seeks reparations;

(6) The rate(s) or the average per minute of use rate QCC contends in this proceeding it should have paid Broadwing, and the specific Broadwing agreement from which this rate is derived;

(7) The total amounts QCC contends it should have paid Broadwing; and

(8) The difference between (2) and (7).

INITIAL RESPONSE: QCC objects to this Request on the basis that it is overly broad, unduly burdensome, requires a special study and seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

SUPPLEMENTAL RESPONSE: See QCC's response to Broadwing Interrogatory No. 3(b).

Respondent: QCC Legal

Broadwing Interrogatory No. 18

QCC's response to Staff's Interrogatory No. 23 states, in part, that "QCC received a public copy of the Granite-AT&T agreement in late June, 2006, well within the applicable statute of limitations relating to QCC's FPSC cause of action." Please identify the "applicable statute of limitations" referenced in QCC's response.

INITIAL RESPONSE: QCC objects to this Request on the basis that it calls for a legal conclusion.

Without waiver of its objections, QCC responds as follows the applicable statute of limitations can be found in Ch. 95, Florida Statutes, and case law interpreting and applying the statutory provisions.

SUPPLEMENTAL RESPONSE: QCC objects to this Request on the basis that it calls for a legal conclusion.

Without waiver of its objections, QCC further responds as follows. The Commission has not resolved which statute of limitations, if any, applies to a complaint proceeding such as the instant case. The Commission could look to Ch. 95, Florida Statutes, and case law interpreting and applying the statutory provisions, but it is not certain that Ch. 95 applies to this proceeding. The Commission may find that no limitations period applies regarding QCC's claim or, given the secretive nature of the CLECs' conduct, it may determine that the applicable limitations period, if any, did not begin to run until QCC knew or should have known that it was being discriminated against by a CLEC regarding intrastate switched access in Florida. Ultimately, this is a legal question that is inappropriate for discovery.

Respondent: QCC Legal

REQUESTS FOR PRODUCTION

Broadwing Request for Production No. 7

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 3, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

INITIAL RESPONSE: See QCC's objections and response to Broadwing Interrogatory No. 3.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. See the attached draft refund calculation, and QCC's supplemental response to Broadwing Interrogatory No. 3. The attached is confidential and provided pursuant to the parties' Non-Disclosure Agreement.

SECOND SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. See the attached draft refund calculation, and QCC's second supplemental response to Broadwing Interrogatory No. 3. The attached is Lawyers Only confidential and provided pursuant to the parties' Non-Disclosure Agreement.

RESPECTFULLY SUBMITTED on this 4th day of June, 2012.

/s/ Susan S. Masterton
Susan S. Masterton CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301 850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Communications Company, LLC's Response To Broadwing's Second Document Request No. 7 (entire document; Bates stamp Nos. 002928-002930)

(Confidential)

12

Qwest Communications Company, LLC's Objections and Third Supplemental Supplemental Response To Broadwing Communications, LLC's First Set Of Interrogatories (No. 3) and Second Document Requests (No. 7) To Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 12
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #12) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: June 6, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND THIRD SUPPLEMENTAL RESPONSE TO BROADWING COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NO. 3) AND SECOND DOCUMENT REQUESTS (NO. 7) TO QWEST COMMUNCIATIONS COMPANY, LLC

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its Objections and Third Supplemental Response to Broadwing Communications, LLC's First Set of Interrogatories (No. 3) and Second Document Requests (No. 7) (collectively "Requests," individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly

burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

Broadwing Interrogatory No. 3

In the prayer for relief, paragraph B, of QCC's Amended Complaint, QCC seeks "reparations, with applicable interest" from Broadwing. Please answer the following concerning this statement:

a. Please provide the specific period of time for which QCC seeks such reparations from Broadwing by identifying with specificity both the beginning date and end date.

QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that Broadwing/Focal provided intrastate switched access services in Florida to one or more other interexchange carriers ("IXCs") at rates lower than the rate XO charged QCC.

Respondent: QCC Legal

b. Please provide QCCs estimates of amounts QCC believes it is entitled to recover in reparations in this case from Broadwing and the methodology used to calculate such estimates.

INITIAL RESPONSE: QCC objects to this Request on the basis that it seeks information already in Broadwing/Focal's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of Broadwing/Focal's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. To assist in its efforts to calculate the Broadwing/Focal refund amount, QCC requested copies of several Focal invoices from Broadwing/Focal in its October 21, 2011 First Set of Interrogatories and Document Requests. See QCC's second supplemental response to Broadwing Document Request No. 7. Broadwing/Focal refused to provide the requested documents. Regarding QCC's methodology, in brief

summary, QCC's methodology for calculating the principal amount of Broadwing/Focal's overcharge will be to compare the amounts QCC paid Broadwing/Focal for intrastate switched access in Florida to the amount it would have paid Broadwing/Focal for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through Broadwing/Focal's secret switched access agreements.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. QCC hereby provides its draft refund analysis. See QCC's supplemental response to Broadwing Document Request No. 7. The analysis is still in draft form, and is subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

SECOND SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. Since the time QCC provided its Supplemental Response on May 11, 2012, QCC has discovered that its previous understanding of the application of Broadwing/Focal's off-price list agreements was incorrect. Accordingly, QCC has revised its draft refund analysis and provides that revised draft refund analysis herewith. See QCC's second supplemental response to Broadwing Document Request No. 7. The attached analysis remains in draft form, and subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

THIRD SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. Since the time QCC provided its Second Supplemental Response, QCC has further refined its calculation of the Broadwing/Focal overcharge. Accordingly, QCC has revised its draft refund analysis and provides that revised draft refund analysis herewith. See QCC's third supplemental response to Broadwing Document Request No. 7. The attached analysis remains in draft form, and subject to revision. Further, it states only the principal amount of Broadwing/Focal's overcharge, and does not include interest, which QCC contends is also due as a result of Broadwing/Focal's discriminatory conduct.

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

c. **Please identify and describe, by month, all amounts and rates QCC actually paid to Broadwing during the period for which QCC seeks reparations and the amounts and rates QCC alleges it should have paid to Broadwing. The response should list the following by month:**

(1) **The total Florida intrastate switched access minutes QCC contends that Broadwing billed QCC, broken down by originating and terminating minutes of use ("MOUs");**

(2) **The total amount QCC contends Broadwing billed QCC for Florida intrastate switched access services;**

(3) **The total amount QCC contends it paid Broadwing for intrastate switched access services:**

(4) **The dates such amounts QCC contends it paid Broadwing;**

(5) **The rate(s) or the average per minute of use rate QCC contends it actually paid Broadwing for the switched access services for which QCC seeks reparations;**

(6) **The rate(s) or the average per minute of use rate QCC contends in this proceeding it should have paid Broadwing, and the specific Broadwing agreement from which this rate is derived;**

(7) **The total amounts QCC contends it should have paid Broadwing; and**

(8) **The difference between (2) and (7).**

INITIAL RESPONSE: QCC objects to this Request on the basis that it is overly broad, unduly burdensome, requires a special study and seeks information already in Broadwing/Focal's possession or custody. Without waiver of its objections, QCC responds as follows.

SUPPLEMENTAL RESPONSE: See QCC's response to Broadwing Interrogatory No. 3(b).

Respondent: QCC Legal

REQUESTS FOR PRODUCTION

Broadwing Request for Production No. 7

Produce copies of all documents that are responsive, relate to, and/or support QCC's response to Interrogatory No. 3, including but not limited to any correspondence, communications, agreements, memoranda, related to this interrogatory.

INITIAL RESPONSE: See QCC's objections and response to Broadwing Interrogatory No. 3.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows. See the attached draft refund calculation, and QCC's supplemental response to Broadwing Interrogatory No. 3. The attached is confidential and provided pursuant to the parties' Non-Disclosure Agreement.

SECOND SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. See the attached draft refund calculation, and QCC's second supplemental response to Broadwing Interrogatory No. 3. The attached is Lawyers Only confidential and provided pursuant to the parties' Non-Disclosure Agreement.

THIRD SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC further supplements its response as follows. See the attached draft refund calculation, and QCC's third supplemental response to Broadwing Interrogatory No. 3. The attached is Lawyers Only confidential and provided pursuant to the parties' Non-Disclosure Agreement.

RESPECTFULLY SUBMITTED on this 6th day of June, 2012.

/s/ Susan S. Masterton
Susan S. Masterton CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301 850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Communications Company, LLC's Supplemental Response To Broadwing Communications LLC's Second Document Request (No. 7) (entire document; Bates stamp Nos. 002931-002940)

(Confidential)

13

Response Of BullsEye Telecom, Inc. to First Set Of Interrogatories (1-8) and Document Requests (1-5) From Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 13
PARTY Florida Public Service Commission Staff
DESCRIPTION BullsEye (Staff's Exhibit #13)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of

QWEST COMMUNICATIONS COMPANY, LLC,

Docket No. 090538-TP

Against

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50.

RESPONSE OF BULLSEYE TELECOM, INC. TO FIRST SET OF INTERROGATORIES (1-8) AND DOCUMENT REQUESTS (1-5) FROM QWEST COMMUNICATIONS COMPANY, LLC

BullsEye Telecom, Inc. ("BullsEye"), by and through its undersigned counsel, hereby responds to the *First Set of Interrogatories (1-8) and Document Requests (1-5) from Qwest Communications Company, LLC* ("QCC").

Information in these responses was supplied by Peter LaRose, BullsEye Telecom, Inc., and counsel.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

The following General Objections, which includes the reservation of rights provided below, are incorporated into each of the responses set forth herein:

1. BullsEye objects to each and every discovery request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. BullsEye does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these discovery requests. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive BullsEye's right to retract such disclosure.

2. BullsEye objects to each and every discovery request to the extent it seeks to impose an obligation on BullsEye to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such requests are overly broad, unduly burdensome, confusing, beyond the scope of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Similarly, BullsEye further objects to the definition of "You" and "Your" in the instructions to QCC's discovery requests as overly broad by including past and present affiliates and subsidiaries or any predecessor of interest (including its affiliates and subsidiaries) of BullsEye.

3. BullsEye objects to QCC's definition of "identify," in the instructions to the discovery requests, as overly broad, unduly burdensome, and not relevant.

4. BullsEye objects to the definition of "document," "documents," or "documentation" in QCC's instructions to the discovery requests as overly broad, unduly burdensome, and not relevant.

5. BullsEye objects to the definition of "relates to" or "relating to" in the instructions to the discovery requests as overly broad, unduly burdensome, and not relevant.

6. BullsEye objects to each and every discovery request that seeks to obtain "all," "each," or "every" document, item or other such piece of information to that extent that such discovery is overly broad and unduly burdensome.

7. BullsEye objects to each and every discovery request to the extent it seeks information not in the possession, custody or control of BullsEye, or already in QCC's possession, custody or control. To the extent BullsEye provides any requested information or documents, BullsEye shall only produce information within its sole possession, custody or control.

090538 Hearing Exhibits00314

8. BullsEye objects to each and every discovery request to the extent it seeks information or documents not in the possession of BullsEye, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent QCC seeks to require BullsEye to create documents not already in existence.

9. BullsEye objects to each and every discovery request to the extent it purports to require BullsEye to provide information beyond what is available to BullsEye at the present time through reasonable diligence or inquiry.

10. BullsEye objects to each and every discovery request to the extent it seeks information regarding or relating to BullsEye beyond the State of Florida.

11. BullsEye objects to QCC's definitions and instructions to the discovery requests and to the discovery requests themselves to the extent they require or purport to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-22, 25-40, and 28106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

12. BullsEye objects to QCC's Instruction No. 3 as unduly burdensome, overly broad and on the grounds that it requests the provision of information that is not required by the Commission's applicable discovery rules or requirements.

13. BullsEye objects each and every discovery request to the extent it seeks to impose a duty on BullsEye to respond or supplement its response in excess of the duty imposed by the Commission's applicable discovery rules or requirements.

14. BullsEye objects to each and every discovery request to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

15. BullsEye objects to each and every discovery to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

16. BullsEye objects to each and every discovery request to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

17. BullsEye objects to each and every discovery request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or not relevant to the subject matter of this action.

18. BullsEye objects to each and every discovery request to the extent it purports to require BullsEye to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

19. BullsEye objects to objects to each and every discovery request to the extent the time periods for which information is sought extends beyond the time periods on which the claims of QCC are based and the applicable statute of limitations because such discovery is overly broad, unduly burdensome, and not relevant.

20. BullsEye objects to each and every discovery request to the extent it seeks information from periods of time not relevant to this proceeding.

21. BullsEye objects to each and every discovery request as unduly burdensome to the extent that the burden on BullsEye to answer or produce documents sought by a discovery request is the same or less than the burden to QCC of obtaining the same information on its own.

22. BullsEye objects to each and every discovery request to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

23. BullsEye objects to each and every discovery request to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or non-disclosure agreement entered into between QCC and BullsEye in this proceeding. Any responsive confidential information or material will be provided to QCC upon execution of a mutually acceptable non-disclosure agreement and, at the same time, to Staff, subject to a claim for confidentiality in accordance with the Commission's rules. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

24. BullsEye objects to each and every discovery request insofar as it calls for production of electronically stored information ("ESI") in native format as unduly burdensome. BullsEye will produce electronically stored information in a "reasonably usable format." BullsEye further objects to the production of ESI to the extent it is not reasonably accessible because of undue burden or cost. BullsEye further objects to each and every discovery request to the extent it calls for the production of ESI in more than one form.

25. BullsEye objects to each and every discovery request insofar as it calls for production of all metadata for all electronically stored information, as production of all metadata for all responsive and non-privileged ESI is overbroad, unduly burdensome and calls for the production of information that is neither relevant to any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence.

26. BullsEye objects to each and every discovery request to the extent that it requests that BullsEye search for and produce ESI contained on disaster recovery or archival media, legacy systems, or deleted, fragmented, shadowed or temporary data on the grounds that such

090538 Hearing Exhibits00316

information is not reasonably accessible due to the cost and burden of restoring, accessing, reviewing and producing such data.

27. Any information and/or documents that BullsEye provides in response to a discovery request reflects BullsEye's present knowledge, information and belief, and may be subject to change or modification based on, among other things, BullsEye's further discovery, or on facts or circumstances which may subsequently come to BullsEye's attention.

28. Any information or documents BullsEye produces should not be construed as an acknowledgement that the Commission has jurisdiction over QCC's Complaint and Amended Complaint that initiated this proceeding. BullsEye expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of QCC's Complaint and Amended Complaint.

29. BullsEye has made a reasonable effort to respond to each and every discovery request as it understands and interprets such request. If QCC should assert an interpretation of any discovery request that differs, BullsEye reserves the right to supplement or amend its objections.

30. BullsEye reserves its right to supplement its responses to each and every Data discovery request for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that BullsEye may subsequently obtain.

31. In responding to discovery requests, BullsEye expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any discovery request on any ground including, but not limited to, the ground that the document, information or discovery request is irrelevant and immaterial to the issues in this action. Nothing in BullsEye's responses to any discovery request should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the discovery requests. Moreover, the fact that BullsEye has responded to all or part of any of the discovery requests is not intended and shall not be construed as a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

32. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservations of rights, are incorporated into each of BullsEye's responses, and any objection or response by BullsEye to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

090538 Hearing Exhibits00317

DEFINITION OF SPECIFIC OBJECTIONS TO QWEST'S DATA REQUESTS

Many of the specific objections that BullsEye makes are applicable to several of QCC's discovery requests. For this reason, BullsEye provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. *Not Relevant*: The discovery request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. *Unduly Burdensome*: The discovery request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) QCC can obtain the data through publicly available information.

3. *Overly Broad*: The discovery request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. *Vague and Ambiguous*: The discovery request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the BullsEye cannot reasonably determine the intended meaning, scope or limits of QCC's discovery request.

5. *Calls for a Legal Conclusion*: The discovery request calls for a conclusion of law.

090538 Hearing Exhibits00318

BULLSEYE RESPONSES TO INTERROGATORIES

Interrogatory No. 1. *Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."*

BULLSEYE RESPONSE:

BullsEye objects to this interrogatory since it is not likely to produce relevant or admissible evidence, given that, *inter alia*, the Florida Public Service Commission does not have subject matter jurisdiction over QCC's claims in this proceeding and does not have authority to award the relief sought by QCC.

BullsEye also objects to this request given that it seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Moreover, BullsEye objects to the request as Overly Broad, Unduly Burdensome, and Not Relevant, since the request seeks, *inter alia*, information relating to time periods beyond the statute of limitations period applicable to QCC's claims.

Without waiving, and subject to all stated objections, BullsEye identifies the following agreement: a nationwide settlement agreement between BullsEye and AT&T Corp. ("AT&T Agreement").

Interrogatory No. 2. *For each agreement identified in response to No. 1:*

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that it seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

BullsEye further objects to this request as Unduly Burdensome given that QCC can identify the information requested through review of BullsEye's agreement made available to QCC and the BullsEye filed price list, which is a publicly available document.

Without waiving and subject to the objections stated herein, please refer to the AT&T Agreement and BullsEye's price list on file with the Commission for their rates, terms and conditions.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving and subject to all stated objections, BullsEye responds that it was coerced by AT&T to enter the settlement agreement. Prior to entering the agreement, AT&T unlawfully withheld all access charge payments under BullsEye's filed tariffs and price lists on a nationwide basis. AT&T refused to make any payments to BullsEye, unless BullsEye agreed to enter a settlement agreement under rates, terms and conditions demanded by AT&T.

c. Identify the precise date on which the agreement became effective.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections, please refer to the AT&T Agreement for its effective date.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

090538 Hearing Exhibits00320

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections: Not Relevant.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye also objects to this request given that it seeks confidential and proprietary information. All of the information requested under this interrogatory is confidential and proprietary information.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye further objects to this request on the grounds that any appendices or summaries are readily available to QCC.

Without waiving, and subject to all stated objections, BullsEye refers QCC to BullsEye's price list on file with the Florida Public Service Commission.

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye further objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections, BullsEye states that the existence of AT&T's off-tariff agreements for switched access was made publicly known in a 2004 proceeding before the Minnesota Public Utilities Commission. The existence of the agreement has also been made publicly known in proceedings before the Colorado Public Utilities Commission, California Public Utilities Commission and Florida Public Service Commission, to which QCC is a party

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous, and specifically objects to QCC's offensive use of the term "similarly situated." BullsEye further objects to this request as calling for a Legal Conclusion.

This request is likewise improper to the extent it seeks to shift QCC's burden of proof to demonstrate that QCC is similarly situated to AT&T.

Without waiving, and subject to all stated objections, BullsEye responds that it is unable to respond to this request since QCC, as Complainant, has not met its burden of proof, has not yet responded to any discovery on this question, and has failed even to assert the existence of facts that may support any valid claim.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart i., above.

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye further objects to this request as Overly Broad, Unduly Burdensome and Not Relevant.

Without waiving and subject to the objections stated herein, BullsEye refers QCC to the AT&T Agreement for its terms.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

BULLSEYE RESPONSE:

BullsEye objects to this request pursuant to the same specific objections provided in response to Interrogatory No. 1 above, and further objects to this request as Not Relevant.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 2(b) above.

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart l., above.

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

Without waiving and subject to all stated objections, BullsEye identifies the following employees:

Peter LaRose, Vice President, Finance
BullsEye Telecom, Inc.
25900 Greenfield Road, Suite 330
Oak Park, MI 48237

William H. Oberlin, CEO
BullsEye Telecom, Inc.
25900 Greenfield Road, Suite 330
Oak Park, MI 48237

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as Overly Broad, Unduly Burdensome and Not Relevant.

Without waiving and subject to all stated objections, BullsEye states that the existence of AT&T's agreements was made publicly known in a 2004 proceeding before the Minnesota Public Utilities Commission.

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

090538 Hearing Exhibits00324

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

BULLSEYE RESPONSE:

Please see the response to subpart q., above.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

BullsEye further objects to this request as being improper to the extent it seeks to shift QCC's burden of proof.

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

BULLSEYE RESPONSE:

Please see the response to subpart s., above.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same objections provided in response to Interrogatory No. 1 above.

BullsEye further objects to this request on the grounds that it Calls for a Legal Conclusion. This request is likewise improper to the extent it seeks to shift QCC's burden of proof.

Without waiving and subject to all stated objections, BullsEye responds that it is unable to respond to this request since QCC, as Complainant, has not met its burden of proof, has not yet responded to any discovery on this question, and has failed even to assert the existence of facts that may support any valid claim.

Interrogatory No. 4. If your response to Interrogatory No. 3 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it originating intrastate switched access.

BULLSEYE RESPONSE:

Please see the objections and response provided above in response to Interrogatory No. 3.

Interrogatory No. 5. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it terminating switched access in connection with an intrastate, long distance call?

BULLSEYE RESPONSE:

Please see the objections and response provided above in response to Interrogatory No. 3.

Interrogatory No. 6. If your response to Interrogatory No. 5 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it terminating intrastate switched access.

BULLSEYE RESPONSE:

Please see the objections and response provided above in response to Interrogatory No. 3.

Interrogatory No. 7. At any time during the effective [*sic*] of the agreements identified in response to Interrogatory No. 1, did you file suit to or otherwise seek to have the agreements deemed void, unlawful or unenforceable? Did you ever refuse to perform under the agreement? If your answer to either or both of the following is in the affirmative, fully identify all such efforts and identify all documents supporting your answer.

BULLSEYE RESPONSE:

BullsEye objects to the form of the interrogatory. Each question listed under Interrogatory No. 7 will be regarded as a separate interrogatory.

With respect to the first question, BullsEye objects to this request to the extent it seeks to shift QCC's burden of proof. BullsEye further objects to the question as Not Relevant since the question of whether BullsEye filed suit or otherwise sought to have an agreement officially deemed void, unlawful or unenforceable has no bearing on whether an agreement is – as a matter of fact and law – void, unlawful, or unenforceable.

090538 Hearing Exhibits00326

Without waiving, and subject to all stated objections, BullsEye responds as follows:

QCC has already itself taken the position noted. QCC did file suit and affirmatively asserted in its court complaint against AT&T, that a contract inconsistent with a filed price list is void and unenforceable as a matter of law, and violative of the filed rate doctrine. Furthermore, that same QCC complaint asserted, that the AT&T Agreement was improperly extracted through coercion. Under both theories, QCC sought "a declaration that [AT&T's] off-tariff agreements for special pricing for intrastate switched access service have been and are void, illegal and unenforceable in the Filed-Rate States [including, specifically, Florida]." QCC obtained a settlement agreement with AT&T under those claims.

BullsEye has raised this issue in current proceedings to which QCC is a party before the Public Utilities Commission of Colorado, California Public Utilities Commission and Florida Public Service Commission.

With respect to the second question, BullsEye objects to this request to the extent it seeks to shift QCC's burden of proof. BullsEye further objects to this question as Not Relevant since the question of whether BullsEye ever refused to perform under an agreement has no bearing on whether an agreement is – as a matter of fact and law – void, unlawful, or unenforceable. Again, QCC itself has already affirmatively asserted that the AT&T Agreement is "void, unlawful, and unenforceable," irrespective of whether any BullsEye refused to perform.

Without waiving, and subject to all stated objections, please see the response to Interrogatory 2(b).

With respect to the document request, BullsEye objects to the QCC request to the extent it seeks production of information or material protected by the attorney-client privilege, attorney work product doctrine and/or any other applicable privilege or protection.

BullsEye also objects to the document request to the extent that it requires or purports to require the disclosure of information that is confidential and proprietary to BullsEye. Confidential and proprietary material shall not be produced until a non-disclosure agreement or protective order has been entered.

Without waiving and subject to all stated objections, BullsEye responds that all documents supporting this response have been publicly filed in the proceedings referenced above, to which QCC is or was a party. BullsEye refers QCC to the record of those proceedings for the documents responsive to this request.

Interrogatory No. 8. Fully explain and identify all facts and documents supporting your affirmative defense alleging that Qwest's Amended Complaint is barred, in whole or in part, by doctrines of waiver, estoppel, laches and/or unclean hands.

BULLSEYE RESPONSE:

BullsEye objects to this request since it improperly solicits attorney work product and is impermissibly Vague and Ambiguous. To answer this question, BullsEye's counsel would have to undertake a legal analysis of available information and then render a legal opinion as to what information may or may not fall within the scope of a given affirmative defense, and thus be responsive to the question. Requiring BullsEye to undertake legal analysis in order to respond to discovery is objectionable and improper. Further, the question is impermissibly vague as the BullsEye is left to guess what specific information would be responsive or not responsive to the request.

Without waiving and subject to all stated objections, BullsEye responds that, at this early stage of the case, BullsEye has not completed discovery and has not yet decided all of the arguments (legal and otherwise) it will and will not present to the Commission in defense of its position. BullsEye intends to propound discovery on QCC in furtherance of this purpose.

Notwithstanding the above, and in a good faith attempt to answer, BullsEye responds that a list of sources that may contain information responsive to this interrogatory would include, without limitation: (1) QCC's January 2007 civil suit against AT&T, filed in the Fourth District Court for the State of Minnesota, (2) the record of the proceeding before the Minnesota Public Utility Commission in Case Nos. C-04-235 and C-05-1282, (3) the contents, supporting documents and references in the CLEC motions (and in particular, the dispositive motions) filed in Docket No. 08F-259T before the Colorado Public Utilities Commission, (4) the hearing transcript and exhibits in Colorado Public Utilities Commission Docket No. 08F-259T, and (5) BullsEye's price list on file with the Florida Public Service Commission. All of the foregoing materials are public record and already in QCC's possession, or are otherwise readily available to QCC.

BULLSEYE RESPONSES TO DOCUMENT REQUESTS

Document Request No. 1. *Please produce copies of all responses to discovery requests propounded by other parties in this proceeding.*

BULLSEYE RESPONSE:

BullsEye objects to this request under the objections stated in this document and in any other objections raised in response to such discovery requests propounded by other parties in this proceeding.

Without waiving and subject to all stated objections, BullsEye responds that it has not responded to any other discovery requests at this time.

Document Request No. 2. *For each agreement identified in response to Interrogatory No. 1:*

a. Produce an unredacted copy of the agreement.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that it seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered and executed by the parties.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome given that QCC has the information requested.

Without waiving and subject to all stated objections, QCC has already issued a subpoena to AT&T for a copy of the AT&T Agreement, and is, on information and belief, in possession of the AT&T Agreement.

b. If the agreement has terminated, produce all documents relating to the termination of the agreement.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory No. 2(d) above.

090538 Hearing Exhibits00329

c. If your answer to Interrogatory No. 2 subpart f. is in the affirmative, produce a copy of the transmittal document(s), including pleadings if applicable, you used when filing the agreement with the Commission.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1and 2(f) above.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome, as the request seeks public documents equally available to QCC.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory No. 2(f) above.

d. If your answer to Interrogatory No. 2 subpart g. is in the affirmative, produce a copy of any documents supporting your contention that you made the agreement, or the terms of the agreement, publicly known.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(g) above.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome, as the request seeks public documents equally available to QCC.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory 2(g) above and the record of the proceedings referred to therein.

e. If your answer to Interrogatory No. 2 subpart h. is in the affirmative, produce a copy of all documents supporting your contention that you offered equivalent rates, terms and conditions to other IXCs.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(h) above.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome, as the request seeks public documents equally available to QCC.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory 2(h) and BullsEye's filed price list.

090538 Hearing Exhibits00330

f. If your answer to Interrogatory No. 2 subpart j. is in the affirmative, please produce all documents reflecting that you performed such an evaluation.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(j) above.

Without waiving and subject to all stated objections, BullsEye refers to the response to Interrogatory No. 2(j) above.

g. If your answer to Interrogatory No. 2 subpart k. is in the affirmative, produce any documents establishing the limitations/requirements.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(k) above.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 2(k) above.

h. If your answer to Interrogatory No. 2 subpart l. is in the affirmative, produce a copy of the cost study, as well as all workpapers and documents pertaining to the cost study.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(l) above.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 2(l) above.

i. If your answer to Interrogatory No. 2 subpart m. is in the affirmative, produce a copy of all such demand studies, as well as all workpapers and documents pertaining to the studies produced.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(m) above.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 2(m) above.

090538 Hearing Exhibits00331

j. Produce all communications between you (and its affiliates) and the IXC (and its affiliates) in conjunction with the negotiation of the agreement.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1.

BullsEye further objects to this request as Overly Broad, Unduly Burdensome and Not Relevant, to the extent that it seeks information relating to companies that are not parties to this proceeding.

Moreover, BullsEye objects to this request given that it seeks confidential and proprietary information. Any responsive, non-privileged and non-protected confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

k. Produce all documents relating to the negotiation of agreement, and any extensions thereof, including all correspondence, memoranda, studies or analyses.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome.

Moreover, BullsEye objects to this request given that it seeks confidential and proprietary information. Any responsive, non-privileged and non-protected confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Document Request 2(j) above.

l. Produce all documents supporting your response to Interrogatory No. 2 subpart p.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(p) above.

Without waiving and subject to all stated objections, please refer to the public record of the proceedings referenced in BullsEye's response to Interrogatory No. 2(p).

090538 Hearing Exhibits00332

m. Produce all documents supporting your response to Interrogatory No. 2 subpart r.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(r) above.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory No. 2(r) above.

n. Produce all documents supporting your response to Interrogatory No. 2 subpart t.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 2(t) above.

Without waiving and subject to all stated objections, please refer to BullsEye's response to Interrogatory No. 2(t) above.

Document Request No. 3. *For the time period during which the agreements identified in response to Interrogatory No. 1 were in effect, produce copies of all versions, even if since replaced, of your Commission price list(s) relating to your provision of intrastate switched access services. To clarify, the time period QCC is referring is the period that you provided the IXC the rates, terms and conditions under the agreements identified in response to Interrogatory No. 1.*

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome, as it seeks information already available to QCC.

Without waiving and subject to all stated objections, BullsEye refers QCC to the documents on file with the Commission.

Document Request No. 4. *Produce all documents identified and supporting your response to Interrogatory No. 7.*

BULLSEYE RESPONSE:

090538 Hearing Exhibits00333

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 7 above.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 7 and the records of the proceedings referenced therein.

Document Request No. 5. *Produce all documents identified and supporting your response to Interrogatory No. 8.*

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory Nos. 1 and 8 above.

BullsEye further objects to this request as Overly Broad and Unduly Burdensome to the extent it requests BullsEye to produce documents not in BullsEye's possession.

BullsEye further objects to QCC's use of the terms "identified and supporting" as Vague and Ambiguous.

Without waiving and subject to all stated objections, BullsEye responds that, at this early stage of the case, BullsEye has not completed discovery and has not yet decided on all of the arguments (legal and otherwise) it will and will not present to the Commission in defense the QCC claims. BullsEye intends to propound discovery on QCC in furtherance of this purpose.

Without waiving and subject to all stated objections, and in a good faith attempt to answer, please refer to the documents identified in response to Interrogatory No. 8.

Dated: December 2, 2011

/s Andrew M. Klein

Andrew M. Klein*
Allen C. Zoracki*
KLEIN LAW GROUP PLLC
1250 Connecticut Ave. NW, Suite 200
Washington, DC 20036
Phone: (202) 289-6955
Fax: (202) 289-6997
Email: AKlein@KleinLawpllc.com

Counsel for Respondent
BullsEye Telecom, Inc.

* Designated as a qualified representative in Docket No. 100008-OT

090538 Hearing Exhibits00334

CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 2nd day of December, 2011, to the following:

Florida Public Service Commission
Theresa Tan
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

Qwest Communications Company, LLC
Adam L. Sherr
Associate General Counsel
Qwest
1600 7th Avenue, Room 1506
Seattle, WA 98191
Tel: 206-398-2507
Fax: 206-343-4040
Email: Adam.Sherr@qwest.com

Qwest Communications Company, LLC
Michael G. Cooke
Ruden McClosky
401 E. Jackson St., Suite 2700
Tampa, FL 33606
Telephone: (813) 222-6685
Facsimile: (813) 314-6985
michael.cooke@ruden.com

tw telecom of florida, l.p.
XO Communications Services, Inc.
Windstream NuVox, Inc.
Birch Communications, Inc.
DeltaCom, Inc.
Matthew J. Feil
Gunster Yoakley & Stewart, P.A.
215 S. Monroe Street, Suite 618
Tallahassee, FL 32301
mfeil@gunster.com

Broadwing Communications, LLC
Marsha E. Rule
Rutledge, Ecenia & Purnell
P.O. Box 551
Tallahassee, FL 32302-0551
marsha@reuphlaw.com

MCImetro Access Transmission Service
d/b/a VerizonAccess Transmission Services
Dulaney O'Roark
VerizonAccess Transmission Services
Six Concourse Pkwy, NE, Ste 800
Atlanta, GA 30328
De.oroark@verizon.com

XO Communications Services, Inc.
Jane Whang
Davis Wright Tremain
Suite 800
505 Montgomery Street
San Francisco, California 94111-6533
JaneWhang@dwt.com

Granite Telecommunications, LLC
Andrew M. Klein
Allen C. Zoracki
Klein Law Group, PLLC
1250 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20036
aklein@kleinlawpllc.com
azoracki@kleinlawpllc.com

Navigator Telecommunications, LLC
Michael McAlister, General Counsel
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P. O. Box 13860
North Little Rock, AR 72113
mike@navtel.com

Lightyear Network Solutions, Inc.
John Greive, Vice President of Regulatory Affairs & General Counsel
Lightyear Network Solutions, LLC
1901 Eastpoint Parkway
Louisville, KY 40223
john.greive@lightyear.net

PAETEC Communications, Inc. and
US LEC of Florida, LLC d/b/a PAETEC Business Services
John B. Messenger, Vice President and Associate General Counsel
PAETEC Communications, Inc.
One PaeTec Plaza
600 Willowbrook Office Park
Fairpoint, NY 14450
john.messenger@paetec.com

Ernest Communications, Inc.
General Counsel
5275 Triangle Parkway, Suite 150
Norcross, GA 30092
lhaag@earnestgroup.com

STS Telecom, LLC
Alan C. Gold
1501 Sunset Drive
2nd Floor
Coral Gables, FL 33143
agold@acgoldlaw.com

Access Point, Inc.
Lightyear Network Solutions, LLC
Navigator Telecommunications, LLC
PAETEC Communications, Inc.
US LEC of Florida, LLC d/b/a PAETEC Business Services
Eric J. Branfman
Philip J. Macres
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806
eric.branfman@bingham.com
Philip.macres@bingham.com

Access Point, Inc.
Richard Brown
Chairman-Chief Executive Officer
Access Point, Inc.
1100 Crescent Green, Suite 109
Cary, NC 27518-8105
Richard.brown@accesspointinc.com

Flatel, Inc.
c/o Adriana Solar
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 100
West Palm Beach, Florida 33409
asolar@flatel.net
flatel@aol.com

Budget Prepay, Inc.
c/o NRAI Services, Inc.
2731 Executive Park Drive, Suite 4
Weston, Florida 33331

/s Allen C. Zoracki
Allen C. Zoracki

14

Response Of BullsEye Telecom, Inc. To Interrogatories No. 9-19 And Document Request No. 6-11 From Qwest Communications Company, LLC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 14
PARTY Florida Public Service Commission Staff
DESCRIPTION BullsEye (Staff's Exhibit #14)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., SATURN TELECOMMUNICATIONS SERVICES, INC. (D/B/A EARTHLINK BUSINESS), US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50.	Docket No. 090538-TP Dated: September 28, 2012

RESPONSE OF BULLSEYE TELECOM, INC. TO INTERROGATORIES NO. 9-19 AND DOCUMENT REQUEST NO. 6-11 FROM QWEST COMMUNICATIONS COMPANY, LLC

BullsEye Telecom, Inc. ("BullsEye"), by and through its undersigned counsel, hereby responds to the *Second Set of Interrogatories (9-19) and Document Requests (6-11) from Qwest Communications Company, LLC* ("QCC").

Information in these responses was supplied by Peter LaRose, BullsEye Telecom, Inc., and counsel.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

The following General Objections, which includes the reservation of rights provided below, are incorporated into each of the responses set forth herein:

1. BullsEye objects to each and every discovery request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. BullsEye does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these discovery requests. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive BullsEye's right to retract such disclosure.

2. BullsEye objects to each and every discovery request to the extent it seeks to impose an obligation on BullsEye to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such requests are overly broad, unduly burdensome, confusing, beyond the scope of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence. Similarly, BullsEye further objects to the definition of "You" and "Your" in the instructions to QCC's discovery requests as overly broad by including any past and present affiliates and subsidiaries or any predecessor of interest (including its affiliates and subsidiaries) of BullsEye.

3. BullsEye objects to QCC's definition of "identify," in the instructions to the discovery requests, as overly broad, unduly burdensome, and not relevant.

4. BullsEye objects to the definition of "document," "documents," or "documentation" in QCC's instructions to the discovery requests as overly broad, unduly burdensome, and not relevant.

5. BullsEye objects to the definition of "relates to" or "relating to" in the instructions to the discovery requests as overly broad, unduly burdensome, and not relevant.

6. BullsEye objects to each and every discovery request that seeks to obtain "all," "each," or "every" document, item or other such piece of information to that extent that such discovery is overly broad and unduly burdensome.

7. BullsEye objects to each and every discovery request to the extent it seeks information not in the possession, custody or control of BullsEye, or already in QCC's possession, custody or control. To the extent BullsEye provides any requested information or documents, BullsEye shall only produce information within its sole possession, custody or control.

090538 Hearing Exhibits00339

8. BullsEye objects to each and every discovery request to the extent it seeks information or documents not in the possession of BullsEye, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent QCC seeks to require BullsEye to create documents not already in existence.

9. BullsEye objects to each and every discovery request to the extent it purports to require BullsEye to provide information beyond what is available to BullsEye at the present time through reasonable diligence or inquiry.

10. BullsEye objects to each and every discovery request to the extent it seeks information regarding or relating to BullsEye beyond the State of Florida.

11. BullsEye objects to QCC's definitions and instructions to the discovery requests and to the discovery requests themselves to the extent they require or purport to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-22, 25-40, and 28106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or by the Order Establishing Procedure issued in this proceeding, or as may be subsequently modified by the Prehearing Officer.

12. BullsEye objects to each and every discovery request to the extent such request exceeds the limit on the number of requests established under the Order Establishing Procedure issued in this proceeding.

13. BullsEye objects to QCC's Instruction No. 3 as unduly burdensome, overly broad and on the grounds that it requests the provision of information that is not required by the Commission's applicable discovery rules or requirements.

14. BullsEye objects each and every discovery request to the extent it seeks to impose a duty on BullsEye to respond or supplement its response in excess of the duty imposed by the Commission's applicable discovery rules or requirements.

15. BullsEye objects to each and every discovery request to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

16. BullsEye objects to each and every discovery to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

17. BullsEye objects to each and every discovery request to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

18. BullsEye objects to each and every discovery request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or not relevant to the subject matter of this action.

19. BullsEye objects to each and every discovery request to the extent it purports to require BullsEye to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

20. BullsEye objects to objects to each and every discovery request to the extent the time periods for which information is sought extends beyond the time periods on which the claims of QCC are based and the applicable statute of limitations because such discovery is overly broad, unduly burdensome, and not relevant.

21. BullsEye objects to each and every discovery request to the extent it seeks information from periods of time not relevant to this proceeding.

22. BullsEye objects to each and every discovery request as unduly burdensome to the extent that the burden on BullsEye to answer or produce documents sought by a discovery request is the same or less than the burden to QCC of obtaining the same information on its own.

23. BullsEye objects to each and every discovery request to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

24. BullsEye objects to each and every discovery request to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or non-disclosure agreement entered into between QCC and BullsEye in this proceeding. Any responsive confidential information or material will be provided to QCC under the parties' Stipulated Confidentiality and Protective Agreement. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

25. BullsEye objects to each and every discovery request insofar as it calls for production of electronically stored information ("ESI") in native format as unduly burdensome. BullsEye will produce any electronically stored information in a "reasonably usable format." BullsEye further objects to the production of ESI to the extent it is not reasonably accessible because of undue burden or cost. BullsEye further objects to each and every discovery request to the extent it calls for the production of ESI in more than one form.

26. BullsEye objects to each and every discovery request insofar as it calls for production of all metadata for all electronically stored information, as production of all metadata for all responsive and non-privileged ESI is overbroad, unduly burdensome and calls for the

production of information that is neither relevant to any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence.

27. BullsEye objects to each and every discovery request to the extent that it requests that BullsEye search for and produce ESI contained on disaster recovery or archival media, legacy systems, or deleted, fragmented, shadowed or temporary data on the grounds that such information is not reasonably accessible due to the cost and burden of restoring, accessing, reviewing and producing such data.

28. Any information and/or documents that BullsEye provides in response to a discovery request reflects BullsEye's present knowledge, information and belief, and may be subject to change or modification based on, among other things, BullsEye's further discovery, or on facts or circumstances which may subsequently come to BullsEye's attention.

29. Any information or documents BullsEye produces should not be construed as an acknowledgement that the Commission has jurisdiction over QCC's Complaint and Amended Complaint that initiated this proceeding. BullsEye expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of QCC's Complaint and Amended Complaint.

30. BullsEye has made a reasonable effort to respond to each and every discovery request as it understands and interprets such request. If QCC should assert an interpretation of any discovery request that differs, BullsEye reserves the right to supplement or amend its objections.

31. BullsEye reserves its right to supplement its responses to each and every Data discovery request for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that BullsEye may subsequently obtain.

32. In responding to discovery requests, BullsEye expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any discovery request on any ground including, but not limited to, the ground that the document, information or discovery request is irrelevant and immaterial to the issues in this action. Nothing in BullsEye's responses to any discovery request should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the discovery requests. Moreover, the fact that BullsEye has responded to all or part of any of the discovery requests is not intended and shall not be construed as a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

33. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservations of rights, are incorporated into each of BullsEye's responses, and any

objection or response by BullsEye to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

DEFINITION OF SPECIFIC OBJECTIONS TO QWEST'S DATA REQUESTS

Many of the specific objections that BullsEye makes are applicable to several of QCC's discovery requests. For this reason, BullsEye provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. *Not Relevant*: The discovery request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. *Unduly Burdensome*: The discovery request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) QCC can obtain the data through publicly available information.

3. *Overly Broad*: The discovery request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. *Vague and Ambiguous*: The discovery request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the BullsEye cannot reasonably determine the intended meaning, scope or limits of QCC's discovery request.

5. *Calls for a Legal Conclusion*: The discovery request calls for a conclusion of law.

090538 Hearing Exhibits00343

RESPONSES TO INTERROGATORIES

Interrogatory No. 9. Have you at any time petitioned the Florida Commission, pursuant to Section 364.337(2), F.S., or otherwise, for a waiver of Florida Statutes ss. 364.08, 364.10(1) or any other section? If your answer is other than an unqualified "no," for each such petition:

a. Identify the date and docket number of such petition.

b. Identify the disposition of such petition.

c. Identify all statutes and rules BullsEye sought waiver from.

RESPONSE: BullsEye objects to this request as Not Relevant. The conduct alleged by QCC in this proceeding does not violate Florida law, such that no waiver of any statutory requirement is relevant. Without waiving, and subject to all stated objections, BullsEye responds that it has not petitioned for a waiver of any statutory requirement.

Interrogatory No. 10. At page 7, line 16 of his Rebuttal Testimony, Mr. LaRose describes BullsEye as a "small competitive carrier" which relies on the timely collection of access charge revenues. Separately for each year that the AT&T Agreement was and has been in effect, identify BullsEye's total annual revenues nationwide and in Florida for all services.

RESPONSE: BullsEye objects to this request as Not Relevant, Unduly Burdensome, and Overly Broad. BullsEye further objects to QCC's request for revenue information unrelated to Florida intrastate services. BullsEye's "total annual revenues nationwide and in Florida for all services" for each year are of no probative value in this proceeding.

Without waiving, and subject to all stated objections, BullsEye refers QCC to its invoices for Florida switched access services already in QCC's possession, and to publicly available data, which reflect that BullsEye is indeed a small competitive carrier. Moreover, QCC has itself has already acknowledged, in the complaint filed in the 2007 QCC v. AT&T Lawsuit, that BullsEye and other CLECs were small in size as compared to AT&T, such that AT&T was able to create significant leverage over BullsEye and CLECs, and indeed coerce such entities, by withholding switched access charges on a nationwide basis.

Interrogatory No. 11. At pages 7 and 8 of his Rebuttal Testimony, Mr. LaRose describes a dispute between BullsEye and AT&T. Fully describe the nature of the dispute, and identify all documents (internal and external) relating to the dispute.

RESPONSE: BullsEye objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

090538 Hearing Exhibits00344

BullsEye objects to this request as it purports to seek information in the possession of AT&T, that QCC may have in its possession through discovery in the 2007 QCC v. AT&T Lawsuit (but has failed to produce despite discovery requests in this proceeding), and is thus information not in BullsEye's possession.

Without waiving, and subject to all stated objections, BullsEye refers to the relevant testimony of Mr. LaRose. AT&T withheld access payments from BullsEye in all jurisdictions nationwide and maintained that it would not make such payments to BullsEye unless BullsEye entered a settlement agreement on terms demanded by AT&T. The duration and amount of the dispute is reflected in the testimony of Mr. LaRose.

With respect to documents, without waiving, and subject to all stated objections, BullsEye refers QCC to the AT&T settlement agreement produced by AT&T to QCC under subpoena, the public record of the proceedings referred to in Mr. LaRose's testimony and in QCC's Amended Complaint, and to QCC's complaint in the 2007 QCC v. AT&T Lawsuit that describes the nature of the dispute. Given the passage of time occasioned by QCC's delay in initiation of this proceeding (during which QCC spent at least a year suing AT&T based on a position diametrically opposed to the position QCC advocates here), there are no other documents available for production.

Interrogatory No. 12. Fully describe how and why BullsEye agreed to accept the amount identified at page 8, line 15 of Mr. LaRose's Rebuttal Testimony in light of the withheld amount identified at page 8, line 1.

RESPONSE: BullsEye objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, BullsEye refers to the relevant testimony of Mr. LaRose, which fully explains the reasons why BullsEye entered the settlement agreement. In sum, BullsEye accepted that amount to obtain outstanding and prospective payments.

Interrogatory No. 13. Regarding the AT&T-BullsEye dispute that led to the 2004 agreement:

a. Did BullsEye ever file a formal complaint (civil or regulatory) regarding AT&T's conduct? If your answer is other than an unqualified "no," please fully identify and describe all such formal complaints and explain their dispositions.

b. Did BullsEye ever seek to involve, or solicit the assistance of, state public utility commission staffs regarding AT&T's conduct? Did BullsEye ever seek to involve, or solicit the assistance of, state attorneys general regarding AT&T's conduct? If your answer to one or both of these questions is other than an unqualified "no," please fully explain BullsEye's efforts in this regard and the disposition of such efforts.

RESPONSE: BullsEye objects to this request as Not Relevant and Overly Broad. BullsEye further objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, BullsEye was under no obligation under Florida law to "file a formal complaint" or "solicit the assistance of" the entities listed. Indeed, the Florida Public Service Commission has encouraged the resolution of disputes through settlement. As stated in the testimony of Mr. LaRose, litigation against AT&T was not a feasible option. The response to subparts (a) and (b) is thus "no."

Interrogatory No. 14. Regarding the AT&T-BullsEye dispute that led to the 2004 agreement, did BullsEye ever seek to work in coalition (sharing in cost and effort) with other "small competitive carriers" to oppose AT&T's conduct? If your answer to one or both of these questions is other than an unqualified "no," please fully explain BullsEye's efforts in this regard and the disposition of such efforts.

RESPONSE: Please see the objections and response to Interrogatory No. 13 above.

Interrogatory No. 15. Prior to the time of entering the 2004 agreement or any time since, has BullsEye analyzed the cost of extending the switched access rate treatment provided under the AT&T agreement to all IXCs? If your answer is other than an unqualified "no," fully explain the results of all such analyses.

RESPONSE: BullsEye objects to this request as Not Relevant and Overly Broad. BullsEye further objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, BullsEye responds that the Florida Public Service Commission has encouraged the resolution of disputes through settlement, and the conduct alleged by QCC in this proceeding does not violate Florida law. Moreover, BullsEye's approved Price List provides that BullsEye may enter individual agreements based on factors other than cost. As such, the response is "no."

Interrogatory No. 16. Identify all information, analyses and other documents demonstrating that BullsEye's cost of providing intrastate switched access to AT&T is different than its cost of providing intrastate switched access to QCC.

RESPONSE: BullsEye objects to this request as Unduly Burdensome, Overly Broad, and Not Relevant as far as relation to jurisdictions outside of Florida. BullsEye further objects to this

090538 Hearing Exhibits00346

request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, BullsEye responds that QCC has the burden of proof in this proceeding and yet has produced no cost data or analyses. Florida law does not require competitive carriers such as BullsEye to price switched access service based on cost or otherwise perform cost studies for switched access, and as a result there are no such cost studies. Moreover, BullsEye's approved Price List provides that BullsEye may enter individual agreements based on factors other than cost.

Interrogatory No. 17. At page 13 of his Rebuttal Testimony, Mr. LaRose states that "AT&T had a greater incentive to target for acquisition of BullsEye's end-user customers." Did BullsEye and AT&T ever enter an agreement or arrangement (written or unwritten) ensuring that AT&T would not target for acquisition of BullsEye's end user customers? If your answer is other than an unqualified "no," fully describe and identify all such arrangements. Further, describe whether such arrangement was conditioned on the 2004 switched access agreement remaining in effect.

RESPONSE: BullsEye objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure. Without waiving, and subject to all stated objections, BullsEye responds "no."

Interrogatory No. 18. Was BullsEye ever identified by the Minnesota Department of Commerce ("DOC") or otherwise involved in any way in Minnesota Dockets C04-235, C05-1282 or C06-498. If your answer is other than an unqualified "no," fully describe your involvement in the proceeding and identify any documents submitted by BullsEye in connection with those proceeding or the DOC's related investigations.

RESPONSE: BullsEye objects to this request as Unduly Burdensome, Overly Broad, and to some extent Not Relevant. BullsEye further objects to this request to the extent it purports to seek information in the possession of the Minnesota Department of Commerce, and thus is not in BullsEye's possession, and to the extent any such information is equally available to QCC. BullsEye further objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, AT&T publicly represented in the Minnesota DOC Dockets -- in 2004 -- that it had hundreds of agreements with CLECs nationwide. QCC was aware of and active in the DOC proceedings, which took place in a State that is part of Qwest's ILEC region, and brought suit against AT&T (and thereafter filed this action) based on information gleaned from those proceedings. QCC's knowledge on the subject is of far more relevance, yet QCC has failed and refused to produce information and documents

as required by discovery requests issued in this case. To the best of BullsEye's current knowledge, the response is "no."

Interrogatory No. 19. At page 24 of his Rebuttal Testimony, Mr. LaRose indicates that "BullsEye disagrees with the financial analyses presented by Qwest." Identify all computational errors you believe Mr. Canfield made in connection with Exhibits DAC-5 and DAC-6.

RESPONSE: BullsEye objects to this request as Vague and Unduly Burdensome. BullsEye further objects to this request to the extent it seeks disclosure of information or material subject to the attorney-client privilege or work product doctrine, or that is otherwise exempt from disclosure.

Without waiving, and subject to all stated objections, BullsEye responds that QCC's calculations are not related to any remedy that may be considered in this proceeding and are of no legal significance. Whether there exist computational errors is thus entirely irrelevant.

RESPONSES TO DOCUMENT REQUESTS

Document Request No. 6. If your answer to Interrogatory No. 9 was other than an unqualified "no," please produce all documents relating to all waiver petitions.

RESPONSE: Not applicable.

Document Request No. 7. Produce all documents identified in response to Interrogatory No. 11.

RESPONSE: Please refer to the objections and response to Interrogatory No. 11.

Document Request No. 8. If your answer to Interrogatory No. 15 is other than an unqualified "no," please produce all documents relating to such analyses.

RESPONSE: Not applicable.

Document Request No. 9. Produce all documents identified in response to Interrogatory No. 16.

RESPONSE: Please refer to the objections and response to Interrogatory No. 11.

Document Request No. 10. Produce all documents related to all arrangements with AT&T, as described in response to Interrogatory No. 17.

090538 Hearing Exhibits00348

RESPONSE: Please refer to the objections and response to Interrogatory No. 17.

Document Request No. 11. Produce all documents supporting your response to Interrogatory No. 19.

RESPONSE: Please refer to the objections and response to Interrogatory No. 19.

Dated: September 28, 2012

/s Andrew M. Klein

Andrew M. Klein*
Allen C. Zoracki*
KLEIN LAW GROUP PLLC
1250 Connecticut Ave. NW, Suite 200
Washington, DC 20036
Phone: (202) 289-6955
AKlein@KleinLawpllc.com
AZoracki@KleinLawpllc.com

Counsel for Respondent
BullsEye Telecom, Inc.

* Designated as a qualified representative in Docket No. 100008-OT

090538 Hearing Exhibits00349

CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 28th day of September, 2012, to the following:

Florida Public Service Commission
Theresa Tan
Jessica Miller
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us
jemiller@psc.state.fl.us

Qwest Communications Company, LLC d/b/a CenturyLink QCC
Adam L. Sherr
Associate General Counsel
Qwest
1600 7th Avenue, Room 1506
Seattle, WA 98191
Tel: 206-398-2507
Fax: 206-343-4040
Email: Adam.Sherr@qwest.com

Qwest Communications Company, LLC d/b/a CenturyLink QCC
Susan S. Masterton
CenturyLink
315 S. Calhoun St., Suite 500
Tallahassee, FL 32301
Tel: 850-599-1560
Fax: 850-224-0794
susan.masterton@centurylink.com

tw telecom of florida, l.p.
XO Communications Services, Inc.
Windstream NuVox, Inc.
DeltaCom, Inc.
Saturn Telecommunications Services, Inc.
PAETEC Communications, Inc.
US LEC of Florida, LLC d/b/a PAETEC Business Services
Matthew J. Feil
Gunster Yoakley & Stewart, P.A.
215 S. Monroe Street, Suite 618
Tallahassee, FL 32301
mfeil@gunster.com

Broadwing Communications, LLC
Marsha E. Rule
Rutledge, Ecenia & Purnell
P.O. Box 551
Tallahassee, FL 32302-0551
marsha@reuphlaw.com

MCImetro Access Transmission Service
d/b/a VerizonAccess Transmission Services
Dulaney O'Roark
VerizonAccess Transmission Services
Six Concourse Pkwy, NE, Ste 800
Atlanta, GA 30328
De.oroark@verizon.com

Granite Telecommunications, LLC
Andrew M. Klein
Allen C. Zoracki
Klein Law Group, PLLC
1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036
aklein@kleinlawpllc.com
azoracki@kleinlawpllc.com

Navigator Telecommunications, LLC
Michael McAlister, General Counsel
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P. O. Box 13860
North Little Rock, AR 72113
mike@navtel.com

Verizon Access Transmission Services
Rebecca A. Edmonston
106 East College Avenue, Suite 710
Tallahassee, FL 32301-7721
rebecca.edmonston@verizon.com

Earthlink Business
Paula W. Foley
5 Wall Street
Burlington, MA 01803
pfoley@corp.earthlink.com

tw telecom of florida l.p.
Carolyn Ridley
2078 Quail Run Drive
Bowling Green, KY 42104
carolyn.ridley@twtelecom.com

Budget Prepay, Inc.
Alan C. Gold
Alan C. Gold, P.A.
1501 Sunset Drive, 2nd Floor
Coral Gables, FL 33143
agold@acgoldlaw.com

Flatel, Inc.
c/o Adriana Solar
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 100
West Palm Beach, Florida 33409
asolar@flatel.net
flatel@aol.com

Ernest Communications, Inc.
General Counsel
5275 Triangle Parkway
Suite 150
Norcross, GA 30092
lhaag@ernestgroup.com

Broadwing Communications, Inc.
Michael J. Shortely, III
Vice President – Legal
Level 3 Communications
225 Kenneth Drive
Rochester, NY 14623
michael .shortley@level3.com

Budget Prepay, Inc.
Lakisha Taylor
1325 Barksdale Blvd., Suite 200
Bossier City, LA 71111-4600
davidd@budgetprepay.com

Pennington Law Firm
Howard Adams
P.O. Box 10095
Tallahassee, FL 32302
gene@penningtonlaw.com

Windstream NuVox, Inc.
Bettye Willis
13560 Morris Rd., Suite 2500
Milton, GA 30004
bettye.j.willis@windstream.com

Windstream NuVox, Inc.
Ed Krachmer
4001 Rodney Parham Rd.
MS: 1170-B1F03-53A
Little Rock, AR 72212
edward.krachmer@windstream.com

/s Allen C. Zoracki
Allen C. Zoracki

15

Qwest Communications Company, LLC's Objections and Response To BullsEye Telecom, Inc.'s First Set Of Interrogatories (Nos. 1-4), Document Requests (Nos. 1-9) and Requests To Admit (Nos. 1-10)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 15
PARTY Florida Public Service Commission Staff
DESCRIPTION BullsEye (Staff's Exhibit #15)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; BullsEye Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: FEBRUARY 13, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND REPSONSE TO BULLSEYE TELECOM, INC.'S FIRST SET OF INTERROGATORIES (NOS. 1-4), DOCUMENT REQUESTS (NOS. 1-9) AND REQUESTS TO ADMIT (NOS. 1-10)

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its objections and responses to BullsEye Telecom, Inc. ("BullsEye") First Set of Interrogatories (Nos. 1 – 4), Document Requests (Nos. 1 – 9) and Requests to Admit (Nos. 1 – 10) (collectively "Requests", individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

090538 Hearing Exhibits00355

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

090538 Hearing Exhibits00356

INTERROGATORIES

BullsEye Interrogatory No. 1

Identify each specific IXC as to which QCC contends or intends to prove it is similarly situated for purposes of QCC's claims against BullsEye, and as to each IXC state all facts upon which QCC intends to rely in this proceeding to prove that QCC is similarly situated to such IXC for purposes of QCC's claim against BullsEye in this proceeding.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and seeks information already in BullsEye's possession or custody. Without waiver of its objections, QCC responds as follows.

BullsEye publicly disclosed in its response to QCC Interrogatory No. 1 that it entered into switched access agreements with IXC AT&T. If QCC obtains information suggesting that BullsEye's preferential rate treatment extended to other IXCs in addition to AT&T, QCC's contentions in this proceeding would likely change.

QCC cannot reasonably identify "all facts" supporting QCC's contention that it is similarly situated to the IXCs BullsEye favored with switched access discounts, although that subject will be addressed in QCC's pre-filed direct testimony in this case. These facts include that BullsEye provided QCC and AT&T the identical bottleneck service at different rates without reasonable justification. QCC is aware of no credible evidence that BullsEye's economic cost of providing switched access service differs among IXCs. QCC is aware of no other relevant, distinguishing facts or factors permitting BullsEye to offer preferential rate treatment to AT&T, but not to QCC.

Respondent: QCC Legal

BullsEye Interrogatory No. 2

During the period from January 1, 2002 to present, state whether QCC delivered any wireless-originating traffic to BullsEye in Florida. If the answer is anything other than an unqualified "no", identify the entities that originated such traffic and specify the quantity (in MOU, on an annual basis) of wireless-originating traffic that QCC delivered to BullsEye in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, seeks information already in BullsEye's possession or custody and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

In all likelihood, yes. However, QCC cannot precisely or definitively respond to this Request (nor provide the detail the Request seeks). The information needed to fully address these questions rests in BullsEye's Call Detail Records (CDRs) and in the records of wireless companies.

Respondents: QCC Legal

Christopher Inman, QCC Director Facility Cost
1801 California Street, Ste 620
Denver, CO 80202

BullsEye Interrogatory No. 3

During the period from January 1, 2002 to present, state whether QCC delivered any VoIP-originating traffic to BullsEye in Florida. If the answer is anything other than an unqualified "no", identify the entities that originated such traffic and specify the quantity (in MOU, on an annual basis) of VoIP-originating traffic that QCC delivered to BullsEye in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, seeks information already in BullsEye's possession or custody and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

In all likelihood, yes. However, QCC cannot precisely or definitively respond to this Request (nor provide the detail the Request seeks). The information needed to fully address these questions rests in BullsEye's Call Detail Records (CDRs) and in the records of the VoIP companies.

Respondents: QCC Legal

Christopher Inman, QCC Director Facility Cost
1801 California Street, Ste 620
Denver, CO 80202

BullsEye Interrogatory No. 4

In QCC's Amended Complaint, Prayer for Relief, paragraph B, QCC seeks "reparations, with applicable interest" from BullsEye. Identify the specific period of time for which QCC seeks such reparations from BullsEye, the amount that QCC claims it is entitled to recover in reparations in this case from BullsEye, and the methodology used to calculate such amounts.

QCC objects to this Request on the basis that it seeks information already in BullsEye's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in the coming weeks in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that BullsEye provided intrastate switched access services in Florida to one or more other IXCs at rates lower than the rate BullsEye charged QCC.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of BullsEye's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. However, QCC did (prior to amending the complaint herein) prepare a preliminary snapshot calculation based on readily-available information. That calculation is confidential and will be provided when a non-disclosure agreement or protective order is entered. In brief summary, QCC's methodology for calculating the principal amount of BullsEye's overcharge is to compare the amounts QCC paid BullsEye for intrastate switched access in Florida to the amount it would have paid BullsEye for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through BullsEye's secret switched access agreements.

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

DOCUMENT REQUESTS

BullsEye Document Request No. 1

Produce copies of all QCC responses to any and all discovery requests of other parties in this proceeding.

QCC will provide copies of its responses provided to other parties' data requests in this docket.

BullsEye Document Request No. 2

Produce all Documents received under subpoena in this proceeding relating to BullsEye.

QCC will produce the requested documents (which were provided to QCC pursuant to NDA) when a non-disclosure agreement or protective order is entered.

BullsEye Document Request No. 3

Produce all Documents that were reviewed or relied upon in providing QCC's response to Interrogatory Numbers 1-4.

See QCC's objections and response to BullsEye Interrogatory No. 1-4. Without waiver of its objections, QCC responds as follows.

QCC will produce its preliminary snapshot analysis (described in response to BullsEye Interrogatory No. 1-4) when a non-disclosure agreement or protective order is entered.

BullsEye Document Request No. 4

Produce all Documents, including, without limitation, internal correspondence and memoranda, that relate to or reflect QCC's and QCC affiliates' review and participation in Minnesota Public Utilities Commission Docket Nos. C-04-235 and C-05-1282.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects on the basis that the Request seeks information in the public domain and/or already in BullsEye's possession or custody. QCC further objects to the extent the Request seeks documents protected by attorney-client privilege and/or the work product doctrine. Without waiver of its objections, QCC responds as follows.

The Minnesota Public Utilities Commission maintains records on its public website. See https://www.edockets.state.mn.us/EFiling/edockets.

090538 Hearing Exhibits00364

BullsEye Document Request No. 5

Produce all Documents, including without limitation pleadings, discovery, internal correspondence, memoranda, and settlement agreements, that relate to the QCC v. AT&T Lawsuit.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects to the extent the Request seeks documents available in the public domain and documents protected by the attorney-client privilege and/or the work product doctrine. Without waiver of its objections, QCC responds as follows.

QCC will produce one or more responsive documents when a non-disclosure agreement or protective order is entered.

BullsEye Document Request No. 6

Produce all Documents relating to agreements between QCC and AT&T that relate to any arrangement or agreement between AT&T and a LEC regarding switched access rates and/or services.

See QCC's objections and response to BullsEye Document Request No. 1-5.

090538 Hearing Exhibits00366

BullsEye Document Request No. 7

Produce all Documents relating to agreements between QCC and/or QCC affiliates and IXCs that relate to the provision of switched access services in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this docket is to determine whether BullsEye has abided by its statutory obligations with regard to its provision of intrastate switched access. Whether or not QCC or its affiliates and "IXCs" have entered into agreements "that related to the provision of switched access services in Florida" bears no relevance to determining whether BullsEye has acted unlawfully.

BullsEye Document Request No. 8

Produce all Documents relating to interconnection or commercial agreements that QCC has with any telecommunications carrier related to the provision of interexchange services in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this docket is to determine whether BullsEye has abided by its statutory obligations with regard to its provision of intrastate switched access. Whether or not QCC or its affiliates and "IXCs" have entered into agreements "interconnection or commercial agreements" related to the provision of IXC service in Florida bears no relevance to determining whether BullsEye has acted unlawfully.

BullsEye Document Request No. 9

Produce all Documents relating to any QCC statement, position or belief – whether in the QCC v. AT&T Lawsuit or otherwise – that an agreement which deviates from or conflicts with the rates or terms of a filed tariff or price list is void, unlawful, invalid, or otherwise unenforceable.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this docket is to determine whether BullsEye has abided by its statutory obligations with regard to its provision of intrastate switched access. The documents BullsEye seeks bear no relevance to determining whether BullsEye has acted unlawfully. Further, BullsEye's request for "all Documents relating to any QCC statement, position or belief" is so unreasonably broad and undefined that QCC cannot reasonably respond. QCC further objects to the extent the Request seeks documents protected by attorney client privilege and/or the work product doctrine.

REQUESTS TO ADMIT

QCC is requested to admit the truthfulness of the following statements:

BullsEye Request to Admit No. 1

QCC does not serve as an underlying provider of BullsEye's switched access services in Florida.

QCC objects to this Request on the basis that it is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects on the basis that the Request seeks information already in BullsEye's possession or custody. Without waiver of its objections, QCC responds as follows.

Admit. QCC does not provide switched access services in Florida, and thus cannot be BullsEye's underlying provider of switched access.

090538 Hearing Exhibits00370

BullsEye Request to Admit No. 2

QCC does not serve as an underlying provider of BullsEye's local exchange services in Florida.

QCC objects to this Request on the basis that it is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects on the basis that the Request seeks information already in BullsEye's possession or custody. Without waiver of its objections, QCC responds as follows.

Admit.

BullsEye Request to Admit No. 3

In Paragraph 3 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **AT&T flouted state tariff requirements and coerced nascent competitive local exchange companies ("CLECs") to provide off-tariff rates with various threats and incentives, including withholding compensation from the CLECS [sic] for services provided to AT&T until the CLECs agreed to accept contracts for illegal and discriminatory intrastate switched-access rates and charges.**

QCC objects to this Request on the basis that the Complaint in the QCC v. AT&T Lawsuit speaks for itself. It is inappropriate for BullsEye to ask Qwest to admit or deny incorrect or incomplete quotations from a document that is in the public domain and which apparently is already in BullsEye's possession. To the extent that BullsEye wants to rely on the Complaint as evidence in this proceeding it can seek to have the document admitted either through testimony or as an exhibit at the hearing.

BullsEye Request to Admit No. 4

In Paragraph 4 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **The Minnesota Department of Commerce uncovered AT&T's conduct and initiated administrative proceedings against AT&T. The Minnesota Public Utilities Commission determined that AT&T had a duty as a long-distance telephone company (also known as an interexchange carrier or "IXC") to pay tariffed amounts for intrastate switched access.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

BullsEye Request to Admit No. 5

In Paragraph 35 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **Over the years, AT&T used the financial leverage gained through its size, and the volume of its intrastate calls originated or terminated with CLECs, to refuse to pay CLECs for access services at lawful tariffed rates and to induce, coerce, or persuade the CLECs to enter into agreements for the purpose of avoiding lawful tariffed access charges.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

090538 Hearing Exhibits00374

BullsEye Request to Admit No. 6

In Paragraph 36 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **For the Filed-Rate States [including Florida], AT&T unilaterally decided to engage in self-help through confidential, coerced deals that afforded discriminatory pricing in its favor rather than to obtain lawful revisions to tariffs in compliance with applicable law.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

BullsEye Request to Admit No. 7

In Paragraph 37 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **AT&T's conduct caused disadvantage and harm not only to the CLECs, but also to AT&T's competitors and to the public.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

BullsEye Request to Admit No. 8

In Paragraph 73 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **Qwest brings this action to obtain relief for harm that cannot be remedied in any other forum. Qwest has incurred loss of market share in the wholesale market for intrastate inter-exchange service as a direct result of AT&T's practices since 1998. There is no adequate remedy for such damages to be had in the administrative agencies in the Filed-Rate States.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

BullsEye Request to Admit No. 9

In Paragraph 119 of the QCC Complaint in the QCC v. AT&T Lawsuit, QCC stated as follows:

> **Qwest is entitled to a declaration that Defendants' off-tariff agreements for special pricing for intrastate switched-access service have been and are void, illegal and unenforceable in the Filed-Rate States.**

See QCC's objections to BullsEye Request for Admission No. 1-3.

BullsEye Request to Admit No. 10

In the QCC Complaint in the QCC v. AT&T Lawsuit, QCC identified the State of Florida as a Filed-Rate State.

See QCC's objections to BullsEye Request for Admission No. 1-3.

RESPECTFULLY SUBMITTED on this 13th day of February, 2012.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS
COMPANY, LLC D/B/A CENTURYLINK QCC

090538 Hearing Exhibits00380

16

Qwest Communications Company, LLC's Objections and Supplemental Response To BullsEye Telecom, Inc.'s First Set Of Interrogatories (No. 4), Document Requests (Nos. 2, 3, and 5)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 16
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #16)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; BullsEye Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: FEBRUARY 24, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND SUPPLEMENTAL REPSONSE TO BULLSEYE TELECOM, INC.'S FIRST SET OF INTERROGATORIES (NO. 4) AND DOCUMENT REQUESTS (NOS. 2, 3, and 5)

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its objections and supplemental responses to BullsEye Telecom, Inc. ("BullsEye") First Set of Interrogatories (No. 4) and Document Requests (Nos. 2, 3, and 5) (collectively "Requests", individually "Request").

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to

this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

BullsEye Interrogatory No. 4

In QCC's Amended Complaint, Prayer for Relief, paragraph B, QCC seeks "reparations, with applicable interest" from BullsEye. Identify the specific period of time for which QCC seeks such reparations from BullsEye, the amount that QCC claims it is entitled to recover in reparations in this case from BullsEye, and the methodology used to calculate such amounts.

INITIAL RESPONSE: QCC objects to this Request on the basis that it seeks information already in BullsEye's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in the coming weeks in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that BullsEye provided intrastate switched access services in Florida to one or more other IXCs at rates lower than the rate BullsEye charged QCC.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of BullsEye's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. However, QCC did (prior to amending the complaint herein) prepare a preliminary snapshot calculation based on readily-available information. That calculation is confidential and will be provided when a non-disclosure agreement or protective order is entered. In brief summary, QCC's methodology for calculating the principal amount of BullsEye's overcharge is to compare the amounts QCC paid BullsEye for intrastate switched access in Florida to the amount it would have paid BullsEye for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through BullsEye's secret switched access agreements.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC responds as follows.

QCC is providing the confidential preliminary BullsEye calculation spreadsheet as a supplement to its response to Document Request No. 3.

090538 Hearing Exhibits00384

Respondents: QCC Legal;

Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

DOCUMENT REQUESTS

BullsEye Document Request No. 2

Produce all Documents received under subpoena in this proceeding relating to BullsEye.

INITIAL RESPONSE: QCC will produce the requested documents (which were provided to QCC pursuant to NDA) when a non-disclosure agreement or protective order is entered.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC responds as follows.

Copies of the confidential documents responsive to this Request are included with this Response.

090538 Hearing Exhibits00386

BullsEye Document Request No. 3

Produce all Documents that were reviewed or relied upon in providing QCC's response to Interrogatory Numbers 1-4.

INITIAL RESPONSE: See QCC's objections and response to BullsEye Interrogatory No. 1-4. Without waiver of its objections, QCC responds as follows.

QCC will produce its preliminary snapshot analysis (described in response to BullsEye Interrogatory No. 1-4) when a non-disclosure agreement or protective order is entered.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC responds as follows.

Copies of the confidential documents responsive to this Request are included with this Response.

BullsEye Document Request No. 5

Produce all Documents, including without limitation pleadings, discovery, internal correspondence, memoranda, and settlement agreements, that relate to the QCC v. AT&T Lawsuit.

INITIAL RESPONSE: QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects to the extent the Request seeks documents available in the public domain and documents protected by the attorney-client privilege and/or the work product doctrine. Without waiver of its objections, QCC responds as follows.

QCC will produce one or more responsive documents when a non-disclosure agreement or protective order is entered.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC responds as follows.

Copies of the confidential documents responsive to this Request are included with this Response. At the request of AT&T, the document has been partially redacted and has been designated "Lawyers Only".

RESPECTFULLY SUBMITTED on this 24th day of February, 2012.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

090538 Hearing Exhibits00389

17

Qwest Communications Company, LLC's Objections & Response To BullsEye Telecom, Inc.'s Second Set Of Document Requests (Nos. 10-12)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 17
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #17) CONFIDENTIAL

18

Qwest Communications Company, LLC's Objections & Responses To BullsEye Telecom, Inc.'s Second Set Of Interrogatories (Nos. 5-22) And Third Set Of Document Requests (Nos. 13-24)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 18
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #18) CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; BullsEye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, Inc. d/b/a EarthLink Business; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: OCTOBER 1, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND RESPONSES TO BULLSEYE TELECOM, INC.'S SECOND SET OF INTERROGATORIES (NOS. 5-22) AND THIRD SET OF DOCUMENT REQUESTS (NOS. 13-24)

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") submits its responses to BullsEye Telecom, Inc. ("BullsEye") Second Set of Interrogatories (Nos. 5-22) and Third Set of Document Requests (Nos. 13-24) to Qwest Communications Company, LLC d/b/a CenturyLink QCC (collectively "Requests", individually "Request").

All general objections made in previous responses to information requests are incorporated by reference.

INTERROGATORIES

BullsEye Interrogatory No. 5

The Direct Testimony of Dennis L. Weisman refers on page 14 to an IXC's use of an "underlying third-party carrier" to terminate traffic to a customer of a CLEC. Since 2002, has QCC used an underlying third-party carrier to terminate intrastate interexchange traffic in Florida?

RESPONSE: QCC objects on the basis that request is not reasonably calculated to lead to the discovery of admissible evidence. This complaint case focuses on whether BullsEye engaged in unlawful rate discrimination with regard to its provision of intrastate switched access to QCC in Florida. Yet, this request is not limited to the termination of intrastate long distance calls or to calls for which BullsEye charged QCC for intrastate switched access. To the extent QCC handed calls to third party underlying carriers to carry and terminate calls, those calls (and the minutes of use associated with those calls) would not be captured in QCC's analysis of BullsEye's overcharge. While those underlying carriers (which bear the responsibility of obtaining switched access from the serving LEC) may possess claims against BullsEye based on those calls, those calls and potential claims are not directly relevant to this proceeding. The request also seeks information beyond the relevant time frame of QCC's claims against BullsEye. That relevant time frame is defined by the periods that BullsEye were actively providing secret discounts to other IXCs for intrastate switched access. Without waiver of its objections, QCC responds as follows.

Yes, QCC has used termination services provided by underlying carriers.

Respondent: QCC Legal;

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1505
Seattle, WA 98191

BullsEye Interrogatory No. 6

Identify all agreements, contracts, arrangements, or understandings between QCC and an underlying third-party carrier to terminate intrastate interexchange traffic in Florida, entered into or operated under since 2002.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 5. QCC further objects on the basis that the request is overly broad and unduly burdensome. To the extent QCC has any such agreements, contracts, arrangements or understandings with BullsEye, the request seeks information already in BullsEye's possession or control. As to any other such agreements, contracts, arrangements or understandings, this extremely burdensome request is not relevant in any way to a determination of whether BullsEye acted unlawfully as to its provision of intrastate switched access to QCC.

Respondent: QCC Legal

BullsEye Interrogatory No. 7

For each agreement, contract, arrangement, or understanding identified in response to Interrogatory No. 6, identify the following:

a. The underlying third-party carrier;

b. The period during which the agreement, contract, arrangement, or understanding was in effect;

c. The rates, terms and conditions under which QCC purchased or the third-party provided termination services for intrastate interexchange traffic in Florida;

d. All CLECs to which traffic was terminated in Florida under such agreement, contract, arrangement or understanding, and

e. The volume of traffic handled.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 6.

Respondent: QCC Legal

BullsEye Interrogatory No. 8

For each calendar year from 2002 to present, identify the quantity of Florida intrastate access traffic that QCC sent to an underlying third-party carrier for termination in terms of minutes and as a percentage of QCC's overall volume of Florida intrastate access traffic. Set forth in detail all calculations and underlying data reviewed by QCC to provide its response to this Interrogatory.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 6.

Respondent: QCC Legal

BullsEye Interrogatory No. 9

For each calendar year from 2002 to present, identify the amount of Florida intrastate access traffic that QCC sent to an underlying third-party carrier for termination to each CLEC that has been named as a Respondent to this proceeding (including all CLECs that are no longer in the proceeding).

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 6.

Respondent: QCC Legal

BullsEye Interrogatory No. 10

On page 17 of the QCC Rebuttal Testimony of William R. Easton, Mr. Easton refers to agreements between QCC and CLECs. As to each such agreement, or similar such arrangements or understandings, identify:

a. Each CLEC and any other LEC with whom QCC had such an agreement, arrangement, or understanding;

b. The period during which the agreement, arrangement, or understanding was in effect;

c. The rates, terms and conditions relating to payment, non-payment and/or waiver of access charges, and

d. The total value of such waivers, agreements, arrangements, or understandings.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and (to the extent it seeks information regarding arrangements with BullsEye) seeks information already in your custody and control. QCC further objects on the basis that this request is not reasonably calculated to lead to the discovery of admissible evidence. This case relates to whether BullsEye violated Florida law with regard to its provision of intrastate switched access in Florida. To the extent BullsEye is seeking detailed information regarding agreements between QCC and other CLECs, such information bears no relation to this matter. Facts and circumstances related to QCC's provision of an unrelated, unregulated service to other parties is wholly irrelevant to whether BullsEye violated Florida law in connection with its provision of intrastate switched access to QCC. Further, the request seeks information beyond Florida.

Respondent: QCC Legal

BullsEye Interrogatory No. 11

In any instance where QCC had an agreement, arrangement or understanding with a LEC under which QCC obtained waivers of or was otherwise not assessed switched access charges, identify on a monthly basis the actual net rate (a) charged to, and (b) paid by, QCC for originating access and terminating access.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 10.

Respondent: QCC Legal

BullsEye Interrogatory No. 12

In any instance where QCC claims that QCC was charged for switched access by a CLEC despite the existence between QCC and the CLEC containing a waiver of switched access charges, did QCC pay such charges to the CLEC? If so, identify all such amounts.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 10.

Respondent: QCC Legal

BullsEye Interrogatory No. 13

Has QCC or its affiliates performed any cost studies for switched access services in any jurisdiction? If so, how many different such cost studies has QCC or its affiliates performed for switched access services from 1996 to present?

RESPONSE: QCC objects to his request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The request is not limited to intrastate switched access in Florida. Without waiver of its objections, QCC responds as follows.

QCC does not provide switched access in Florida, and is not aware of having conducted any cost studies regarding the provision of Florida switched access.

Respondent: QCC Legal

BullsEye Interrogatory No. 14

State in detail all considerations upon which QCC settled the QCC v. AT&T Lawsuit.

RESPONSE: QCC objects to this request on the basis that its overly broad, unduly burdensome, vague and ambiguous. QCC further objects to the extent it seeks information protected by attorney client privilege and the work product doctrine. QCC further objects on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Asking QCC to catalog all "considerations" regarding a complex settlement with AT&T is unreasonable, and bears no relation to the claims in this case. The question before the Commission in this docket is whether BullsEye unlawfully discriminated against QCC in its provision of intrastate switched access in Florida. How and why QCC settled a number of disputes with AT&T bears no connection to the subject matter of this case. Without waiver of its objects, QCC responds as follows.

QCC's settlement agreement with AT&T speaks for itself. The settlement resolved numerous issues between the companies relating to numerous subjects. A precise analysis of the various puts and takes involved in the settlement would invade attorney-client privilege and the work product doctrine.

Respondent: QCC Legal

BullsEye Interrogatory No. 15

Identify the amount of damages claimed by QCC in the QCC v. AT&T Lawsuit relating to intrastate access charges, specifying:

a. The amount claimed for each year included within the claim, and

b. Whether the amount claimed included any claim attributable to the State of Florida relating to intrastate access charges, and if so that amount and the justification therefor.

RESPONSE: QCC objects to this request on the basis that it seeks information protected by attorney client privilege and the work product doctrine. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. The question before the Commission in this docket is whether BullsEye unlawfully discriminated against QCC in its provision of intrastate switched access in Florida. QCC's calculation of civil damages in connection with the AT&T litigation bears no connection to the subject matter of this case. Without waiver of its objects, QCC responds as follows.

QCC never presented evidence of civil damages in the AT&T litigation, and as such did not attribute any specific amount to the State of Florida. QCC's complaint in that case, a copy of which BullsEye possesses, states that QCC requested that the Court enter judgment for "damages in an amount yet to be determined greater than $50,000."

Respondent: Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

BullsEye Interrogatory No. 16

With regard to the settlement of the QCC v. AT&T Lawsuit, identify whether QCC attributed any amount to the State of Florida, on a jurisdictional, tax, accounting, or other basis, and if so identify such amount and the justification therefor.

RESPONSE: QCC objects to this request on the basis that it seeks information protected by attorney client privilege and the work product doctrine. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. The question before the Commission in this docket is whether BullsEye unlawfully discriminated against QCC in its provision of intrastate switched access in Florida. The attribution or allocation of settlement amounts in connection with the AT&T litigation bears no connection to the subject matter of this case. Without waiver of its objects, QCC responds as follows.

[BEGIN CONFIDENTIAL]

[redacted]

[END CONFIDENTIAL]

Respondent: QCC Legal

REDACTED

BullsEye Interrogatory No. 17

State whether QCC contends or believes that AT&T's off-tariff agreements for switched access service were void, illegal, and/or unenforceable in Florida prior to July 1, 2011.

RESPONSE: QCC objects to this request on the basis that it calls for a legal conclusion.

Respondent: QCC Legal

BullsEye Interrogatory No. 18

To the extent QCC does not currently contend or believe that AT&T's off-tariff agreements for switched access service were void, illegal, and/or unenforceable in Florida prior to July 1, 2011, specify the date on which QCC ceased to believe in the accuracy of that assertion and identify the facts upon which QCC currently relies.

RESPONSE: QCC objects to this request on the basis that it calls for a legal conclusion.

Respondent: QCC Legal

BullsEye Interrogatory No. 19

QCC has responded to prior discovery with the following statement:

In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized.

Please identify:

a. The record retention requirements of the Commission or the Federal Communications Commission to which QCC makes reference;
b. QCC's record retention policy in effect for the period of QCC's claim, and
c. Information and documents that are no longer available for production in this proceeding due to record retention policies, employee moves, reorganizations, or any other reason.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects to the extent it calls for a legal conclusion. Without waiver of its objections, QCC responds as follows.

QCC attaches copies of its former and present records retentions policies. The attached are confidential, and provided pursuant to the parties' non-disclosure agreement. QCC cannot identify information and documents that are no longer available. The records retention requirements of the Florida Commission are publicly available and can be found in its rules governing telecommunications companies at ch. 25-4, Florida Administrative Code. The records retention requirements of the FCC are publicly available and can be found at Part 42 of the FCC's rules.

Respondent: QCC Legal

BullsEye Interrogatory No. 20

QCC has responded to prior discovery with the following statement:

> QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome.
>
> Please identify:
>
> a. Each subsidiary, affiliate or persons that QCC knows or reasonably believes to have information relating to the subject matter of this proceeding, and which of such information has been produced, and
> b. Whether QCC includes TEOCO, QCC consultants, and expert witnesses within the categories that QCC excludes from the scope of discovery.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. Seeking an identification of each subsidiary, affiliate and person with knowledge relevant to this proceeding is grossly unreasonable. Without waiver of its objections, QCC responds as follows.

QCC has responded to scores (if not hundreds) of discovery requests in this proceeding, and its responses have included information provided by TEOCO and each of its witnesses (employee and non-employee alike). QCC does not understand what BullsEye means by "excludes from the scope of discovery."

Respondent: QCC Legal

BullsEye Interrogatory No. 21

Identify the role and responsibilities of TEOCO relative to QCC's receipt of, charges incurred for, contracts relating to, and disputes concerning intrastate switched access in Florida.

RESPONSE: QCC objects to this request on the basis that it is vague and ambiguous. Without waiver of its objections, QCC responds as follows.

TEOCO provides multiple services related to the receipt, payment and auditing of intrastate switched access in Florida, including maintenance and support, invoice automation, backstop bill auditing (QCC reviews and audits invoices first and then TEOCO provides a second review of invoices) and individual projects as directed by QCC.

Respondent: Julie Tammen, TEOCO Corporation
10955 Lowell Ave., Ste 705
Overland Park, KS 66210

BullsEye Interrogatory No. 22

Identify any financial interest of TEOCO relative to the outcome of this proceeding.

RESPONSE: TEOCO has no financial interest tied to the outcome of this proceeding. All services performed by TEOCO with this proceeding are governed by a professional services statement of work and billed at an hourly rate on a monthly basis.

Respondent: Julie Tammen, TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

DOCUMENT REQUESTS

BullsEye Document Request No. 13

Produce all documents that were reviewed or relied upon in providing QCC's response to Interrogatory Nos. 5-22, with the exception of number 13.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects to the extent the request seeks information protected by attorney client privilege and/or the work product doctrine. QCC also objects to the extent the request seeks information in the public domain or that is already in BullsEye's possession or custody.

BullsEye Document Request No. 14

Produce all documents that relate to or reflect information requested under Interrogatory Nos. 5-22, with the exception of number 13.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects to the extent the request seeks information protected by attorney client privilege and/or the work product doctrine. QCC also objects to the extent the request seeks information in the public domain or that is already in BullsEye's possession or custody.

BullsEye Document Request No. 15

Produce a copy of any contract, agreement, arrangement or understanding identified in response to Interrogatory No. 6.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 6.

BullsEye Document Request No. 16

Produce all documents and calculations relating to the amount of damages claimed by QCC in the QCC v. AT&T Lawsuit.

RESPONSE: See QCC's objections and response to BullsEye Interrogatory No. 15.

BullsEye Document Request No. 17

On page 17 of the Rebuttal Testimony of William R. Easton, Mr. Easton refers to agreements between QCC and CLECs. Produce all documents relating to or reflecting the agreements referred to by Mr. Easton.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. This complaint case focuses on whether BullsEye engaged in unlawful rate discrimination with regard to its provision of intrastate switched access to QCC in Florida. The documents sought through this request do not bear any connection to that determination. Without waiver of its objections, QCC responds as follows.

See QCC's response, as amended, to Birch Interrogatory No. 1.

BullsEye Document Request No. 18

Produce all contracts, agreements, arrangements or understandings between QCC and TEOCO relating to the subject matter of this proceeding.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

TEOCO's services in connection with this proceeding are governed by Statement of Work No. 6, a copy of which is attached. The attached is confidential and provided pursuant to the parties' non-disclosure agreement.

BullsEye Document Request No. 19

Produce all contracts, agreements, arrangements or understandings between QCC and Dennis L. Weisman relating to the subject matter of this proceeding.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

QCC does not have a written contract with Dr. Weisman regarding this proceeding.

BullsEye Document Request No. 20

Produce all documents that Dennis L. Weisman reviewed or relied upon in performing his work as an expert witness for QCC in this proceeding. As part of your response, provide a list of all documents actually reviewed by Mr. Weisman in preparing his Direct and Rebuttal testimony submitted in this case.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects to this request to the extent it seeks information in the public domain. Without waiver of its objections, QCC responds as follows.

Dr. Weisman relied upon the following, all of which are publicly available.

1. Alfred E. Kahn, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS, Vol. I, New York: John Wiley and Sons, 1970.

2. James C. Bonbright, PRINCIPLES OF PUBLIC UTILITY RATES, New York: Columbia University Press, 1961.

3. George J. Stigler, THE THEORY OF PRICE, New York: Macmillan Publishing, 1966, p. 209.

4. Federal Communications Commission, *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, SEVENTH REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (April 27, 2001).*

5. Jonathan E. Nuechterlein and Philip J. Weiser, DIGITAL CROSSROADS: AMERICAN TELECOMMUNICATIONS POLICY IN THE INTERNET AGE, Cambridge MA: The MIT Press, 2005.

6. Brief for Amicus Curiae Federal Communications Commission. In the United States Court of Appeals for the Third Circuit. Nos. 11-2268 (consolidated with 11-2568) & 11-1204 (consolidated with 11-2569) PAETEC Communications, Inc., et al., v. MCI Communications Services, Inc. D/B/A Verizon Business Services; Verizon Global Networks Inc. Case: 11-2268, Filed 3/14/2012.

7. Thomas Kuhn, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS, Chicago: University of Chicago Press, 1962.

8. Glen O. Robinson and Dennis L. Weisman, "Designing Competition Policy for Telecommunications." *The Review of Network Economics*, Vol. 7(4), December 2008, pp. 509-546.

9. *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 430 (2d Cir. 1945).

10. Antitrust MODERNIZATION COMMISSION, REPORT AND RECOMMENDATIONS, Washington D.C. 2007.

11. Alfred E. Kahn and William E. Taylor, "The Pricing of Inputs Sold to Competitors: A Comment," *Yale Journal on Regulation*, Volume 11, 1994, pp. 225-240.

12. *QCC v. MCImetro, et al,* Docket No. 08F-259T, Decision No. C11-1216 (mailed Nov. 15, 2011).

13. In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched Access Services, DOCKET NO. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235, Minnesota Public Utilities Commission, *2007 Minn. PUC LEXIS 146* October 26, 2007, Issued.

14. Dennis L. Weisman, "A 'Principled' Approach to the Design of Telecommunications Policy," *Journal of Competiton Law & Economics*, Vol. 6(4), December 2010, pp. 927-956.

15 Peter Temin, THE FALL OF THE BELL SYSTEM. New York: Cambridge University Press, 1987.

16. Alfred E. Kahn and William B. Shew, "Current Issues in Telecommunications Regulation: Pricing," *Yale Journal on Regulation*, Vol. 4, 1997.

17. Federal Communications Commission, FCC 86-504, In the Matter of Exchange Network Facilities for Interstate Access, CC Docket No. 78-371, *Memorandum Opinion and Order*, Released November 14, 1986.

18. Gerald W. Brock, TELECOMMUNICATIONS POLICY FOR THE INFORMATION AGE, Harvard University Press: Cambridge MA, 1994.

19. Mark S. Fowler, Albert Halprin, and James D. Schlichting. "'Back To The Future': A Model For Telecommunications," *Federal Communications Law Journal*, Vol. 38(2), 1986.

20. Jean Tirole, INDUSTRIAL ORGANIZATION, Cambridge MA: The MIT Press, 1988.

21. Michael Katz, "The Welfare Effects of Third-Degree Price Discrimination in Intermediate Good Markets," *The American Economic Review*, Vol. 77(1), March 1987, pp. 154-167.

22. Patrick Degraba, Input Market Price Discrimination and the Choice of Technology," *The American Economic Review*, Vol. 80(5), December 1990, pp. 1246-1253.

23. Commonwealth of Massachusetts, Department of Telecommunications and Cable, D.T.C. 10-2, In re Petition of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts Inc., CTC Communications Corp., and Lightship Telecom, LLC for Exemption from Price Cap on Intrastate Switched Access Rates as Established in D.T.C. 07-9. Final Order, January 5, 2011.

24. Glen O. Robinson and Thomas B. Nachbar, COMMUNICATIONS REGULATION, St. Paul MN: Thompson-West, 2008.

25. *QCC v. MCImetro, et al,* Docket No. 08F-259T, Decision No. C11-1216 (mailed June 21, 2012), Recommended Decision of Administrative Law Judge G. Harris Adams on Remand ("Colorado Remand Order").

26. W. Kip Viscusi, John. E. Harrington, Jr. and John M. Vernon. ECONOMICS OF REGULATION AND ANTITRUST, MIT Press, 2005.

27. Federal Communications Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, MEMORANDUM OPINION AND ORDER. Adopted: June 15, 2010, Released: June 22, 2010.

28. QWEST COMMUNICATIONS COMPANY, LLC'S REPSONSE TO TW TELECOM OF FLORIDA, L.P.'S INC.'S FIRST SET OF INTERROGATORIES (NOS. 1-8), DOCUMENT REQUESTS (NOS. 1- 5) AND REQUEST FOR ADMISSION DOCKET NO. 090538-TP PAGE 22, TWTC Request for Admission No. 5.

29. Direct Testimony and Rebuttal Testimony in this Proceeding.

BullsEye Document Request No. 21

Produce all documents and correspondence of Mr. Patrick Welch relating to this proceeding.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that the documents are protected by attorney client privilege and/or work product doctrine. Mr. Welch is a director of the corporate organization that is the client in this proceeding. Communications with him relating to this proceeding are privileged. QCC further objects to the extent the request seeks documents relating to confidential settlement communications.

BullsEye Document Request No. 22

Produce all documents and correspondence of Ms. Lisa Hensley Eckert relating to this proceeding.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that the documents are protected by attorney client privilege and/or work product doctrine. BullsEye's request for "all documents" regarding a case that has been open for 3 years is vastly overbroad and unreasonable.

BullsEye Document Request No. 23

Produce all documents constituting or relating to agreements, contracts and settlements entered by CenturyLink and AT&T since 2004 concerning intrastate switched access in Florida.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. To the extent BullsEye is seeking information about QCC affiliates, as well as about companies who were not QCC affiliates until very recently, the requests are irrelevant and beyond any reasonable scope of discovery.

BullsEye Document Request No. 24

Produce all documents constituting or relating to agreements, contracts and settlements entered by CenturyLink and any LEC since 2004 concerning intrastate switched access in Florida.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. To the extent BullsEye is seeking information about QCC affiliates, as well as about companies who were not QCC affiliates until very recently, the requests are irrelevant and beyond any reasonable scope of discovery.

RESPECTFULLY SUBMITTED on this 1st day of October, 2012.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Communications Company, LLC's Objections & Responses To BullsEye Interrogatories (Nos. 16 and 19); and document request (No. 18), Bates stamp Nos. 003004-003040, entire document

(Confidential)

19

TW Telecom Of Florida, L.P's Objections And Responses To Qwest Communications Company, LLC's First Set Of Interrogatories And Document Requests

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 19
PARTY Florida Public Service Commission Staff
DESCRIPTION TWTC (Staff's Exhibit #19)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: December 2, 2011

TW TELECOM OF FLORIDA, L.P.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC's FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS

tw telecom of florida, l.p. ("TWTC") hereby submits its objections and responses to Qwest Communications Corporation, LLC's ("Qwest" or "QCC") First Set of Interrogatories and Document Requests (collectively "Data Requests" and individually "Data Request") dated October 21, 2011 that are associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

TWTC makes the General Objections, which also includes the reservation of rights, provided below to each and every Data Request and also incorporates each of the General

RECEIVED
DEC - 6 2011
FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF THE GENERAL COUNSEL

Objections, which also includes the reservation of rights, into each and every specific objection to each Data Request.

1. TWTC objects to each and every Data Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. TWTC does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these Data Requests. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive TWTC's right to retract such disclosure.

2. TWTC objects to each and every Data Request to the extent it seeks to impose an obligation on TWTC to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such Data Request is overly broad, unduly burdensome, confusing, beyond the scope of this litigation, not reasonably calculated to lead to the discovery of admissible evidence. In that connection, TWTC further objects to the definition of "You" and "Your" in the instructions to the Data Requests as overly broad by including past and present affiliates and subsidiaries or any predecessor of interest (including its affiliates and subsidiaries) of TWTC. No such information or documents are being produced.

3. TWTC objects to the definition of "identify" with respect to a document in the instructions to the Data Requests to the extent that the definition is overly broad, unduly burdensome, and not relevant.

4. TWTC objects to the definition of "document," "documents," or "documentation" in the instructions to the Data Requests to the extent that the instruction is overly broad, unduly burdensome, and not relevant.

5. TWTC objects to the definition of "relates to" or "relating to" in the instructions to the Data Requests to the extent that the instruction is overly broad, unduly burdensome, and not relevant.

6. TWTC objects to each and every Data Request that seek to obtain "all," "each," or "every" document, item or other such piece of information to that extent that such discovery is overly broad and unduly burdensome.

7. TWTC objects to each and every Data Request to the extent it seeks information not in the possession, custody or control of TWTC or already in Qwest's possession, custody or control. To the extent the TWTC provides any requested information or documents, TWTC shall only produce information within its sole possession, custody or control.

8. TWTC objects to each and every Data Request to the extent it seeks information or documents not in the possession of TWTC, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent the Qwest seeks to require TWTC to create documents not already in existence.

9. TWTC objects to each and every Data Request to the extent it purports to require TWTC to provide information beyond what is available to TWTC at the present time through reasonable diligence or inquiry.

10. TWTC objects to each and every Data Request to the extent it seeks information or documents regarding or relating to TWTC beyond the State of Florida. Because the Commission's jurisdiction is limited to certain intrastate telecommunications services provided

within the State of Florida, any Data Request that seeks such information is therefore unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. No such information or documents are being produced.

11. TWTC objects to Qwest's definitions and instructions to the Data Requests and to the Data Requests themselves to the extent they require or purport to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified or as may be subsequently modified by the Prehearing Officer.

12. TWTC objects to Instruction No. 3 and Instruction 1 (second sentence) as unduly burdensome, overly broad and on the grounds that it requests the provision of information that is not required by the Commission's applicable discovery rules or requirements.

13. TWTC objects each and every Data Request to the extent it seeks to impose a duty on TWTC to supplement its response greater than that imposed by the Commission's applicable discovery rules or requirements.

14. TWTC objects to each and every Data Request to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

15. TWTC objects to each and every Data Request to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

16. TWTC objects to each and every Data Request to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

17. TWTC objects to each and every Data Request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or are not relevant to the subject matter of this action.

18. TWTC objects to each and every Data Request to the extent it purports to require TWTC to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

19. TWTC objects to objects to each and every Data Request to the extent the time periods for which information is sought extends beyond the time periods on which the claims of Qwest are based and the applicable statute of limitations because such discovery is overly broad, unduly burdensome, and not relevant.

20. TWTC objects to each and every Data Request to the extent it seeks information from periods of time not relevant to this proceeding.

21. TWTC objects to each and every Data Request as unduly burdensome to the extent that the burden on TWTC to answer or produce documents sought by a Data Request is the same or less than the burden to Qwest of obtaining the same information on its own.

22. TWTC objects to each and every Data Request to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

23. TWTC objects to each and every Data Request to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or

non-disclosure agreement entered into between Qwest and TWTC in this proceeding. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

24. TWTC objects to each and every Data Request insofar as it calls for production of electronically stored information ("ESI") in native format as unduly burdensome. TWTC will produce electronically stored information in a "reasonably usable format." TWTC further objects to the production of ESI to the extent it is not reasonably accessible because of undue burden or cost. TWTC further objects to each and every Data Request to the extent it calls for the production of electronically stored information in more than one form.

25. TWTC objects to each and every Data Request insofar as it calls for production of all metadata for all electronically stored information, as production of all metadata for all responsive and non-privileged electronically stored information is overbroad, unduly burdensome and calls for the production of information that is neither relevant to any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence.

26. TWTC objects to each and every Data Request to the extent that it requests that TWTC search for and produce electronically stored information contained on disaster recovery or archival media, legacy systems, or deleted, fragmented, shadowed or temporary data on the grounds that such information is not reasonably accessible due to the cost and burden of restoring, accessing, reviewing and producing such data.

27. Any information and/or documents TWTC provides in response to a Data Request reflects TWTC's present knowledge, information and belief, and may be subject to change or

modification based on, among other things, TWTC's further discovery, or on facts or circumstances which may subsequently come to TWTC's attention.

28. Any information or documents TWTC produces should not be construed as an acknowledgement that the Commission has jurisdiction over Qwest's Complaint that initiated this proceeding. TWTC expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of Qwest's Complaint.

29. TWTC has made a reasonable effort to respond to each and every Data Request as it understands and interprets such Data Request. If Qwest should assert an interpretation of any Data Request that differs, TWTC reserves the right to supplement or amend its objections.

30. TWTC reserves its right to supplement its responses to each and every Data Request for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that TWTC may subsequently obtain.

31. In responding to Data Requests, TWTC expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any Data Request on any ground including, but not limited to, the ground that the document, information or Data Request is irrelevant and immaterial to the issues in this action. Nothing in TWTC's responses to any Data Request should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the Data Requests. Moreover, the fact that TWTC has responded to all or part of any of the Data Requests is not intended and shall not be construed as

a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

32. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservation of rights, are incorporated into each of TWTC's responses, and any objection or response by TWTC to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

DEFINITION OF SPECIFIC OBJECTIONS TO QWEST'S DATA REQUESTS

Many of the specific objections that TWTC makes are applicable to several of Qwest's Data Requests. For this reason, TWTC provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. "Not Relevant" or "Irrelevant": The Data Request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. "Unduly burdensome": The Data Request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) Qwest can obtain the data through publicly available information.

3. "Overly broad": The Data Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. "Vague and ambiguous": The Data Request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the TWTC cannot reasonably determine the intended meaning, scope or limits of Qwest's Data Request.

5. "Calls for a Legal Conclusion": The Data Request calls for a conclusion of law.

RESPONSES TO DATA REQUESTS

TWTC's responses to Qwest's Data Requests incorporate the above general objections and are provided subject to and without waiving those objections. Additional specific objections are provided below.

INTERROGATORIES

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

Any responsive agreements, and other requested documents related thereto, are confidential information and will only be provided to Qwest upon execution of a mutually acceptable non-disclosure agreement. Such documents will be provided to the Commission staff at the same time, subject to a claim for confidentiality in accordance with the Commission's rules. TWTC may therefore supplement this response and any related responses at a later date, as appropriate. TWTC also objects to the scope of this Data Request as seeking information outside the relevant time period for the applicable statute of limitations, expired agreements, settlement agreements and agreements consistent with a price list, and is therefore not relevant. Without waiving and subject to the general and specific objections, TWTC identifies the following agreements:

090538 Hearing Exhibits00436

(1) Agreement dated January 1, 2001, between AT&T Corp. and tw holdings, inc., as amended ("AT&T/TWTC Agreement").
(2) Switched Access Service Agreement dated September 1, 2002, between Xspedius Management Co., LLC and AT&T Corp. ("AT&T/XC Agreement").

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

Interrogatory No. 2. For each agreement identified in response to No. 1:

In response to all subparts to Interrogatory No. 2, TWTC refers QCC to its response to Interrogatory No. 1 above.

Further, aside from the general objections stated above, TWTC also asserts the specific objections shown below for particular subparts to Interrogatory No. 2.

Answers to Interrogatory No. 2 subparts provided by: Counsel and Carolyn Ridley, V.P. Regulatory, TWTC.

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

For any time period prior to August 24, 2008, the agreements speak for themselves and can be compared to the applicable price lists. For the period after August 24, 2008, the intrastate switched access rates applicable under both agreements were the filed price list rates of TWTC in Florida. See also TWTC response to Interrogatory No. 1 above.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

See TWTC response to Interrogatory No. 1 above. For the AT&T/tw Agreement, the rates were agreed to only in conjunction with a total revenue commitment set forth in the AT&T/tw Agreement. To the extent the AT&T/tw Agreement resulted in the application of rates different from price list rates in periods prior to August 24, 2008, the rates, terms and conditions of the AT&T/tw Agreement resulted from a lengthy negotiation to resolve significant disputes between the parties under a previous agreement. In addition, the provisions regarding switched access were dependent upon all of the other provisions of the AT&T/TWTC Agreement, which also encompassed purchases of other, non-intrastate service, most notably a revenue

commitment on a "take or pay" basis that required AT&T to pay the difference between the applicable commitment in any contract year and its actual purchases of eligible services under the AT&T/TWTC Agreement.

For the AT&T/XC Agreement, TWTC acquired XC in November 2006 and does not have knowledge of the reasons for decisions or negotiation strategies related to that agreement.

c. Identify the precise date on which the agreement became effective.

The AT&T/TWTC Agreement became effective on January 1, 2001. The AT&T/XC Agreement states that it was effective September 1, 2002. See also TWTC response to Interrogatory No. 1 above.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

Effective August 24, 2008, the TWTC price list rates for switched access services apply under both the AT&T/TWTC Agreement and the AT&T/XC Agreement. This was reflected as of invoices rendered November 2008. The agreements remain in effect except for the provisions addressing switched access pricing. See also Response to Interrogatory No. 1 above.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

TWTC objects on the grounds that information responsive to this request, is unduly burdensome to produce, is carrier proprietary information and is not relevant. Without waiving and subject to the general and specific objections stated, TWTC states that any responsive documents it may produce will be confidential information and will not be provided to Qwest without a mutually acceptable non-disclosure agreement. TWTC may therefore supplement this response and any related responses at a later date, as appropriate.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

TWTC objects to the foregoing as irrelevant. Appending or filing agreements is not required by Florida law and failure to append/file does not constitute a violation of

law. Without waiving and subject to its general and specific objections, TWTC responds in the negative.

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

TWTC objects to the foregoing as irrelevant. Publication of agreements is not required by Florida law and failure to publish does not constitute a violation of law.

Without waiving and subject to its general and specific objections, TWTC responds that it filed a copy of the AT&T/TWTC Agreement, with certain confidential portions redacted, with the Securities Exchange Commission as Exhibit 10.1 to its Quarterly Report on Form 10-Q for the quarter ended June 30, 2005. The document is available to the public through the EDGAR filing system and can be accessed on www.sec.gov. It is apparent from the document text posted there that the agreement addresses switched access service. See:

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to the AT&T/TWTC Agreement, as there were no other IXCs similarly situated to AT&T. TWTC does not have knowledge of whether XC made or did not make an offer to any other IXC and no other IXC would have qualified.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Subject to and without waiving its general or specific objections, TWTC states that, at a minimum, Qwest was not similarly situated in terms of its ability to make a revenue commitment at similar levels, Qwest's overall spend with TWTC was and remains significantly less and because the AT&T/TWTC Agreement was part of a broader settlement to resolve a number of prior disputes between TWTC and AT&T.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Subject to and without waiving its general or specific objections, TWTC refers to its answer to Interrogatory No. 2(i) and states that in the case of the AT&T/TWTC Agreement, in particular, there would have been no need for such an evaluation, since AT&T and Qwest are patently and obviously not similarly situated. As to the AT&T/XC Agreement, TWTC does not know if such an evaluation was done at the time agreements became effective.

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

As to the AT&T/TWTC Agreement, no, to the first portion of the question, and yes, to the second. Nonetheless, the AT&T/TWTC Agreement and AT&T/XC Agreement speak for themselves. Therefore, TWTC refers to its answer to Interrogatory No. 1.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative for the AT&T/TWTC Agreement and that it does not have knowledge as to the AT&T/XC Agreement.

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative for the AT&T/TWTC Agreement and that it does not have knowledge as to the AT&T/XC Agreement.

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

TWTC objects to the foregoing as vague and ambiguous and as not relevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC states that for the original AT&T/TWTC Agreement in 2001, George Bykowski and Jill Greenblat were negotiators for TWTC. Mr. Bykowski is not presently employed by TWTC. For the Sixteenth Amendment to the AT&T/TWTC Agreement, whereby TWTC price list rates for switched access became applicable, the TWTC negotiators were Mr. Tom Marx and Mr. Graham Taylor. With respect to the AT&T/XC Agreement, we do not have knowledge of employees or agents who participated in negotiation. Mr. Marx, Mr. Taylor and Ms. Greenblat may only be contacted through counsel.

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to regulatory commissions for both the AT&T/TWTC Agreement and the AT&T/XC Agreement, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement.

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

Not applicable. See response to Interrogatory No. 2(o).

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to regulatory commissions for both the AT&T/TWTC Agreement and the AT&T/XC Agreement, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement. TWTC further states that

it would not disclose one customer's agreement to another customer unless required by law to do so. Moreover, in this instance, Qwest is not similarly situated, and Qwest never indicated it has any interest in negotiating a comprehensive agreement for switched access and other services that included a revenue commitment similar to AT&T's.

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

Not applicable. See response to Interrogatory No. 2(q).

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement. Qwest therefore knew of the agreement at that time, if not from the SEC filing, then from the Minnesota proceedings regarding CLEC switched access agreements (see In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Access Against AT&T Regarding Negotiated Contracts for Switched Access Services, Minnesota Public Utilities Commission, Docket No. 04-235 (2004). TWTC further responds that Qwest never indicated it has any interest in negotiating a comprehensive agreement for switched access and other services that included a revenue commitment similar to AT&T's.

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

Not applicable. See response to subpart (s) above.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

TWTC states that, at this early stage of the case, TWTC objects to this request on the grounds that it improperly seeks TWTC's position on an issue that has not been raised to date in this proceeding. Without waiving and subject to the general and specific objections, TWTC states it has not yet fully analyzed or taken a position on this issue in the context of this docket. TWTC has also not completed discovery and has not yet decided all of the arguments (legal and otherwise) it will and will not present to the Commission in defense of its position. TWTC intends to propound discovery on Qwest in furtherance of this purpose. This notwithstanding, and in a good faith attempt to answer, TWTC responds as follows. An IXC makes a business decision on whether and how it will enter markets based on a number of factors including, but not limited to, access costs. An IXC also makes a business decision on whether to serve and where it will serve as a stand-alone IXC or as both an IXC and a CLEC, and in which markets.

Answer provided by: Counsel and Carolyn Ridley, V.P. Regulatory, TWTC

Interrogatory No. 4. If your response to Interrogatory No. 3 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it originating intrastate switched access.

See response to Interrogatory No. 3 above.

Interrogatory No. 5. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it terminating switched access in connection with an intrastate, long distance call?

See response to Interrogatory No. 3 above.

Interrogatory No. 6. If your response to Interrogatory No. 5 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it terminating intrastate switched access.

See response to Interrogatory No. 3 above.

Interrogatory No. 7. At any time during the effective of the agreements identified in response to Interrogatory No. 1, did you file suit to or otherwise seek to have the agreements deemed void, unlawful or unenforceable? Did you ever refuse to perform under the agreement? If your answer to either or both of the following is in the affirmative, fully identify all such efforts and identify all documents supporting your answer.

TWTC objects to all of the questions contained in this Data Request as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding.

Answer provided by: Counsel

Interrogatory No. 8. Fully explain and identify all facts and documents supporting your affirmative defense alleging that Qwest's Amended Complaint is barred, in whole or in part, by doctrines of waiver, estoppel, laches and/or unclean hands.

TWTC poses the specific objections that this question improperly solicits attorney work product and is impermissibly vague and ambiguous. To answer this question, TWTC's counsel, if he/she has not done so already, would have to undertake a legal analysis of available information and then render a legal opinion as to what information may or may not fall within the scope of a given affirmative defense and be responsive to the question. Requiring TWTC to undertake legal analysis in order to respond to discovery is objectionable and improper. Further, the question is impermissibly vague as TWTC is left to guess what specific information would be responsive or not responsive to the question.

Without waiving, and subject to, the foregoing general and specific objections TWTC states that, at this early stage of the case, TWTC has not completed discovery and has not yet determined all of the arguments (legal and otherwise) it will and will not present to the Commission in defense of its position. TWTC intends to propound discovery on Qwest in furtherance of this purpose. This notwithstanding, and in a good faith attempt to answer, TWTC responds as follows. A list of sources which may contain information responsive to this question would include, but not be limited to: (1) Qwest's January 2007 civil suit against AT&T, filed in the Fourth District Court for the State of Minnesota, (2) the contents, supporting documents and references in the CLEC motions (and in particular, the dispositive motions) filed in Docket No. 08F-259T before the Colorado Public Utilities Commission, (3) the hearing transcript and exhibits in Docket No. 08F-259T, (4) any applicable price list.

All of the foregoing materials are public record and already in Qwest's possession or are otherwise readily available to Qwest and are, therefore, unduly burdensome to reproduce and are not reproduced herein.

Answer provided by: Counsel and Carolyn Ridley, V.P. Regulatory, TWTC.

DOCUMENT REQUESTS

Document Request No. 1. Please produce copies of all responses to discovery requests propounded by other parties in this proceeding.

Not applicable. Any future responses will be provided consistent with Commission procedures and subject to appropriate measures for confidentiality.

Document Request No. 2. For each agreement identified in response to Interrogatory No. 1:

TWTC refers to its response to Interrogatory No. 1 above, as well as to the general and specific objections and responses stated above for the Interrogatory or Interrogatory subparts which QCC cross-references below.

a. Produce an unredacted copy of the agreement.

TWTC refers to its response to Interrogatory No. 1 above

b. If the agreement has terminated, produce all documents relating to the termination of the agreement.

TWTC refers to its response to Interrogatory No. 1 above

c. If your answer to Interrogatory No. 2 subpart f. is in the affirmative, produce a copy of the transmittal document(s), including pleadings if applicable, you used when filing the agreement with the Commission.

Not applicable.

d. If your answer to Interrogatory No. 2 subpart g. is in the affirmative, produce a copy of any documents supporting your contention that you made the agreement, or the terms of the agreement, publicly known.

Not applicable.

e. If your answer to Interrogatory No. 2 subpart h. is in the affirmative, produce a copy of all documents supporting your contention that you offered equivalent rates, terms and conditions to other IXCs.

Not applicable.

f. If your answer to Interrogatory No. 2 subpart j. is in the affirmative, please produce all documents reflecting that you performed such an evaluation.

Not applicable.

g. If your answer to Interrogatory No. 2 subpart k. is in the affirmative, produce any documents establishing the limitations/requirements.

TWTC refers to its response to Interrogatory No. 1. Any responsive documents will speak for themselves.

h. If your answer to Interrogatory No. 2 subpart l. is in the affirmative, produce a copy of the cost study, as well as all workpapers and documents pertaining to the cost study.

Not applicable.

i. If your answer to Interrogatory No. 2 subpart m. is in the affirmative, produce a copy of all such demand studies, as well as all workpapers and documents pertaining to the studies produced.

Not applicable.

j. Produce all communications between you (and its affiliates) and the IXC (and its affiliates) in conjunction with the negotiation of the agreement.

TWTC objects to the foregoing as vague and ambiguous, unduly burdensome, soliciting documents from persons who are not parties to this proceeding, and as not relevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. See also response to Interrogatory No. 1.

k. Produce all documents relating to the negotiation of agreement, and any extensions thereof, including all correspondence, memoranda, studies or analyses.

TWTC objects to the foregoing as vague and ambiguous, unduly burdensome, soliciting documents from persons who are not parties to this proceeding, and as not relevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. See also response to Interrogatory No. 1.

l. Produce all documents supporting your response to Interrogatory No. 2 subpart p.

Not applicable.

m. Produce all documents supporting your response to Interrogatory No. 2 subpart r.

Not applicable.

n. Produce all documents supporting your response to Interrogatory No. 2 subpart t.

See response to Interrogatory No. 2 (s) above.

Document Request No. 3. For the time period during which the agreements identified in response to Interrogatory No. 1 were in effect, produce copies of all versions, even if since replaced, of your Commission price list(s) relating to your provision of intrastate switched access services. To clarify, the time period QCC is referring is the period that you provided the IXC the rates, terms and conditions under the agreements identified in response to Interrogatory No. 1.

TWTC refers to its response to Interrogatory No. 1 above. The responsive documents are voluminous and unduly burdensome to reproduce and are available to Qwest from the Commission. If it becomes apparent that information is not available through the Commission for some reason, TWTC will undertake efforts to produce or allow inspection of responsive documents

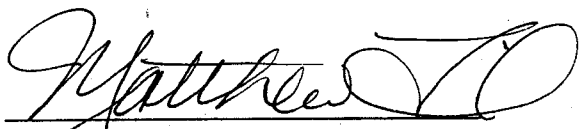
Document Request No. 4. Produce all documents identified and supporting your response to Interrogatory No. 7.

See the response to Interrogatory No. 7 above.

Document Request No. 5. Produce all documents identified and supporting your response to Interrogatory No. 8.

See the response to Interrogatory No. 8 above.

Respectfully submitted this 2nd day of December, 2011

By: 

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@ gunster.com
(850) 521-1708

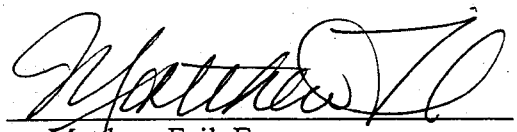
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 2nd day of December, 2011.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Eric J. Branfman/Philip J. Macres Bingham Law Firm 2020 K Street, NW Washington, DC 20006 eric.branfman@bingham.com Philip.macres@bingham.com
Mr. Chris Bunce Birch Communications, Inc. 2300 Main Street, Suite 600 Kansas City, MO 64108-2415 Chris.bunce@birch.com	Mr. Greg Diamond Broadwing Communications, Inc. c/o Level 3 Communications 1025 Eldorado Boulevard Broomfield, CO 80021-8869 Greg.Diamond@level3.com
Budget PrePay, Inc. 1325 Barksdale Boulevard Suite 200 Bossier City, LA 71111-4600	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Jane Whang Davis Wright Tremaine LLP 505 Montgomery Street, Suite 800 San Francisco, CA 94111 janewhang@dwt.com	Paula Foley One Communications, an Earthlink Business Company 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com
Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511	Flatel, Inc. Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307
Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com

John Greive Lightyear Network Solutions, LLC 1901 Eastpoint Parkway Louisville, KY 40223-4145 john.greive@lightyear.net	Michael McAlister Navigator Telecommunications, LLC P.O. Box 13860 North Little Rock, AR 72113-0860 mike@navtel.com
John B. Messenger PaeTec Communications, Inc. One PaeTec Plaza 600 Willowbrook Office Park Fairport, NY 14450-4233 john.messenger@paetec.com	Richard Brown Access Point, Inc. 1100 Crescent Green, Suite 109 Cary, NC 27511 Richard.brown@accesspointinc.com
Mr. Douglas Hsiao Qwest Communications Company, LLC 1801 California Street, 10th Floor Denver, CO 80202-2632 doug.hsiao@qwest.com	Alex M. Duarte Qwest Communications Company, LLC 421 SW Oak Street, Suite 810 Portland, OR 97204 Alex.Duarte@qwest.com
Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@qwest.com	Jason D. Topp Qwest Communications, LLC 200 South Fifth Street, Room 2200 Minneapolis, MN 55402 Jason.Topp@qwest.com
Michael G. Cooke Ruden Law Firm 215 South Monroe Street, Suite 815 Tallahassee, FL 32301 Michael.Cooke@Ruden.com	Marsha Rule Rutledge Law Firm Post Office Box 551 Tallahassee, FL 32302 marsha@reuphlaw.com
Alan C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 acgold@acgoldlaw.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Brenda Merritt Division of Regulatory Analysis Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 bmerritt@psc.state.fl.us	Mr. David Christian Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 david.christian@verizon.com

Dulaney L. O'Roark III Verizon 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) de.oroark@verizon.com	Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 Edward.Krachmer@windstream.com
Mr. John Ivanuska XO Communications Services, Inc. 10940 Parallel Parkway, Suite K - #353 Kansas City, KS 66109-4515 john.ivanuska@xo.com Kris.Shulman@xo.com	James White Windstream NuVox, Inc. 4651 Salisbury Road, Suite 151 Jacksonville, FL 32256-6187 Bettye.j.willis@windstream.com

By: 

Matthew Feil, Esq.

20

TW Telecom of Florida, L.P's First Supplement to Interrogatory No. 1 From Qwest Communications Company, LLC's First Set of Data Requests

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 20
PARTY Florida Public Service Commission Staff
DESCRIPTION TWTC (Staff's Exhibit #20)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: March 30, 2012

TW TELECOM OF FLORIDA, L.P.'S FIRST SUPPLEMENT TO INTERROGATORY NO. 1 FROM QWEST COMMUNICATIONS COMPANY, LLC'S FIRST SET OF DATA REQUESTS

tw telecom of florida, l.p. ("TWTC" or "Company") hereby submits its first supplement to Interrogatory No. 1 to Qwest Communications Corporation, LLC's ("Qwest" or "QCC") First Set of Interrogatories dated October 21, 2011. The original response was served December 2, 2011.

This First Supplement is in addition to the December 2, 2011, original answer to Interrogatory No. 1, and the general objections and the definitions for specific objections stated in the December 2, 2011, are incorporated herein by reference.

090538 Hearing Exhibits00453

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

INITIAL RESPONSE: Any responsive agreements, and other requested documents related thereto, are confidential information and will only be provided to Qwest upon execution of a mutually acceptable non-disclosure agreement. Such documents will be provided to the Commission staff at the same time, subject to a claim for confidentiality in accordance with the Commission's rules. TWTC may therefore supplement this response and any related responses at a later date, as appropriate. TWTC also objects to the scope of this Data Request as seeking information outside the relevant time period for the applicable statute of limitations, expired agreements, settlement agreements and agreements consistent with a price list, and is therefore not relevant. Without waiving and subject to the general and specific objections, TWTC identifies the following agreements:

(1) Agreement dated January 1, 2001, between AT&T Corp. and tw holdings, inc., as amended ("AT&T/TWTC Agreement").
(2) Switched Access Service Agreement dated September 1, 2002, between Xspedius Management Co., LLC and AT&T Corp. ("AT&T/XC Agreement").

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

FIRST SUPPLEMENTAL RESPONSE: This supplement is in addition to the initial response above.

A copy of the aforementioned agreements are being provided to Qwest subject to the parties' Stipulated Confidentiality and Protective Agreement as CONFIDENTIAL Appendix Qwest Int.1. A copy of same is being filed with the Commission subject to a Claim for Confidentiality.

For reference purposes, the pages of CONFIDENTIAL Appendix Qwest Int 1 are numbered TWTC Fla 000067 through TWTC Fla 000194 for the AT&T/TWTC Agreement and pages 000195 through 000199 for the AT&T/XC Agreement. Portions of the former agreement which are unrelated to Florida have been redacted.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC, Counsel (objection)

Respectfully submitted this 30th day of March, 2012

By: 

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@ gunster.com
(850) 521-1708

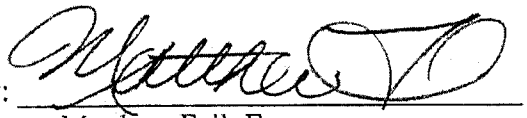
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 30th day of March, 2012.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Eric J. Branfman/Philip J. Macres Bingham Law Firm 2020 K Street, NW Washington, DC 20006 eric.branfman@bingham.com Philip.macres@bingham.com
Mr. Chris Bunce Birch Communications, Inc. 2300 Main Street, Suite 600 Kansas City, MO 64108-2415 Chris.bunce@birch.com	Mr. Greg Diamond Broadwing Communications, Inc. c/o Level 3 Communications 1025 Eldorado Boulevard Broomfield, CO 80021-8869 Greg.Diamond@level3.com
Richard Brown Access Point, Inc. 1100 Crescent Green, Suite 109 Cary, NC 27511 Richard.brown@accesspointinc.com	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Adam C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com	Paula W. Foley One Communication – Earthlink 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com
Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net
Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com

John Greive Lightyear Network Solutions, LLC 1901 Eastpoint Parkway Louisville, KY 40223-4145 john.greive@lightyear.net	Michael McAlister Navigator Telecommunications, LLC P.O. Box 13860 North Little Rock, AR 72113-0860 mike@navtel.com
John B. Messenger PaeTec Communications, Inc. One PaeTec Plaza 600 Willowbrook Office Park Fairport, NY 14450-4233 john.messenger@paetec.com	Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com
Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Marsha Rule Rutledge Law Firm Post Office Box 551 Tallahassee, FL 32302 marsha@reuphlaw.com
Ms. Kristin U. Shulman XO Communications 810 Jorie Blvd., Suite 200 Oak Brook, IL 60523 kris.shulman@xo.com	Brenda Merritt Division of Regulatory Analysis Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 bmerritt@psc.state.fl.us
Dulaney L. O'Roark III Verizon Florida, LLC 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) de.oroark@verizon.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Jane J. Whang Davis Wright Tremaine, LLP 505 Montgomery Street, Suite 800 San Francisco, CA 94111-6533 janewhang@dwt.com	Ms. Rebecca A. Edmonston Mr. Woodrow Simmons Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 rebecca.edmonston@verizon.com woodrow.simmons@verizon.com

Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 Edward.Krachmer@windstream.com	James White Windstream NuVox, Inc. 4651 Salisbury Road, Suite 151 Jacksonville, FL 32256-6187 Bettye.j.willis@windstream.com
	Ms. Bettye Willis 13560 Morris Rd., Suite 2500 Milton, GA 30004 Bettye.j.willis@windstream.com

By: 

Matthew Feil, Esq.

21

TW Telecom Of Florida, L.P's First Supplement To Interrogatory No. 2(s) From Qwest Communications Company, LLC's First Set Of Data Requests

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 21
PARTY Florida Public Service Commission Staff
DESCRIPTION TWTC (Staff's Exhibit #21)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: August 3, 2012

TW TELECOM OF FLORIDA, L.P.'S FIRST SUPPLEMENT TO INTERROGATORY NO. 2(s) FROM QWEST COMMUNICATIONS COMPANY, LLC'S FIRST SET OF DATA REQUESTS

tw telecom of florida, l.p. ("TWTC" or "Company") hereby submits its first supplement to Interrogatory No. 2(s) to Qwest Communications Corporation, LLC's ("Qwest" or "QCC") First Set of Interrogatories dated October 21, 2011. The original response was served December 2, 2011.

This First Supplement replaces in its entirety the December 2, 2011, original answer to Interrogatory No. 2(s), and the general objections and the definitions for specific objections stated in the December 2, 2011, are incorporated herein by reference.

090538 Hearing Exhibits00460

2 s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

FIRST SUPPLEMENTAL RESPONSE:

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and the issues subject to adjudication in this proceeding. Filing, disclosing or producing copies of agreements are not required by Florida law and failure to file, disclose or produce does not constitute a violation of law. Indeed, Qwest itself is a party to undisclosed agreements for switched access pricing. Without waiving and subject to its general and specific objections, TWTC responds that the AT&T/TWTC Agreement was disclosed to the public in June 2005 as provided in TWTC's answer to Interrogatory No. 2(g), Qwest knew from the Minnesota proceedings in 2004 that AT&T had hundreds of agreements nationwide and Qwest had ample opportunity since that time to request individual case pricing for any services it purchases through contracts with TWTC but Qwest failed to do so. TWTC further responds that Qwest has steadfastly refused to indicate that it has any interest in negotiating a comprehensive agreement for switched access and other services that includes a revenue commitment similar to AT&T's.

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC; obejction by counsel.

Respectfully submitted this 3rd day of August, 2012

By: 

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@ gunster.com
(850) 521-1708

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 3rd day of August, 2012.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Ms. Bettye Willis 13560 Morris Rd., Suite 2500 Milton, GA 30004 Bettye.j.willis@windstream.com
Mr. Greg Diamond Broadwing Communications, Inc. c/o Level 3 Communications 1025 Eldorado Boulevard Broomfield, CO 80021-8869 Greg.Diamond@level3.com	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Adam C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com	Paula W. Foley Earthlink Business 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com
Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net
Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com
Marsha Rule Rutledge Law Firm Post Office Box 551 Tallahassee, FL 32302 marsha@reuphlaw.com	David Stotelmyer Navigator Telecommunications, LLC. P.O. Box 13860 North Little Rock, AR 72113 david@navtel.com

Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com
Budget PrePay, Inc. Lakisha Taylor 1325 Barksdale Blvd., Suite 200 Bossier City, LA 71111-4600 davidd@budgetprepay.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us BSalak@psc.state.fl.us	Ms. Rebecca A. Edmonston Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 rebecca.edmonston@verizon.com
Dulaney L. O'Roark III Verizon Florida, LLC 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) de.oroark@verizon.com richard.b.severy@verizon.com	Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 Edward.Krachmer@windstream.com

By: _____
Matthew Feil, Esq.

22

TW Telecom of Florida, L.P's Objections And Responses To Qwest Communications Company, LLC's Second Set Of Interrogatories, Second Set Of Document Requests and First Set of Requests For Admission

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 22
PARTY Florida Public Service Commission Staff
DESCRIPTION TWTC (Staff's Exhibit #22)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: September 28, 2012

TW TELECOM OF FLORIDA, L.P.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC's SECOND SET OF INTERROGATORIES, SECOND SET OF DOCUMENT REQUESTS AND FIRST SET OF REQUESTS FOR ADMISSION

tw telecom of florida, l.p. ("TWTC") hereby submits its objections and responses to Qwest Communications Corporation, LLC's ("Qwest" or "QCC") Second Set of Interrogatories (Nos. 9 – 12), Second Set of Document Requests (Nos. 6 – 9) and First Set of Requests for Admission (Nos. 1 – 2) (collectively "Data Requests" and individually "Data Request") dated August 27, 2012, that are associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

TWTC makes the General Objections, which also includes the reservation of rights, provided below to each and every Data Request and also incorporates each of the General

090538 Hearing Exhibits00465

Objections, which also includes the reservation of rights, into each and every specific objection to each Data Request.

1. TWTC objects to each and every Data Request to the extent it seeks information that is privileged or otherwise exempt from discovery, including but not limited to documents or information protected by the attorney-client privilege, the common interest principle, the work-product doctrine, or the trade-secrets doctrine. TWTC does not intend to, and expressly does not, waive any such privileges or protections in producing documents or otherwise responding to these Data Requests. The inadvertent disclosure or production of any privileged or otherwise protected information shall not be deemed or construed to constitute a waiver of the right to assert any applicable privilege or protection with respect to any such information or any other information or matter and shall not preclude or waive TWTC's right to retract such disclosure.

2. TWTC objects to each and every Data Request to the extent it seeks to impose an obligation on TWTC to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such Data Request is overly broad, unduly burdensome, confusing, beyond the scope of this litigation, not reasonably calculated to lead to the discovery of admissible evidence. In that connection, TWTC further objects to the definition of "You" and "Your" in the instructions to the Data Requests as overly broad by including past and present affiliates and subsidiaries or any predecessor of interest (including its affiliates and subsidiaries) of TWTC. No such information or documents are being produced.

3. TWTC objects to the definition of "identify" with respect to a document in the instructions to the Data Requests to the extent that the definition is overly broad, unduly burdensome, and not relevant.

090538 Hearing Exhibits00466

4. TWTC objects to the definition of "document," "documents," or "documentation" in the instructions to the Data Requests to the extent that the instruction is overly broad, unduly burdensome, and not relevant.

5. TWTC objects to the definition of "relates to" or "relating to" in the instructions to the Data Requests to the extent that the instruction is overly broad, unduly burdensome, and not relevant.

6. TWTC objects to each and every Data Request that seek to obtain "all," "each," or "every" document, item or other such piece of information to that extent that such discovery is overly broad and unduly burdensome.

7. TWTC objects to each and every Data Request to the extent it seeks information not in the possession, custody or control of TWTC or already in Qwest's possession, custody or control. To the extent the TWTC provides any requested information or documents, TWTC shall only produce information within its sole possession, custody or control.

8. TWTC objects to each and every Data Request to the extent it seeks information or documents not in the possession of TWTC, including, but not limited to, information or documents in the possession of outside counsel, consultants, or vendors or to the extent the Qwest seeks to require TWTC to create documents not already in existence.

9. TWTC objects to each and every Data Request to the extent it purports to require TWTC to provide information beyond what is available to TWTC at the present time through reasonable diligence or inquiry.

10. TWTC objects to each and every Data Request to the extent it seeks information or documents regarding or relating to TWTC beyond the State of Florida. Because the Commission's jurisdiction is limited to certain intrastate telecommunications services provided

within the State of Florida, any Data Request that seeks such information is therefore unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. No such information or documents are being produced.

11. TWTC objects to Qwest's definitions and instructions to the Data Requests and to the Data Requests themselves to the extent they require or purport to require disclosure of information or production of documents beyond the scope of discovery permissible under Chapter 120, Florida Statutes. (F.S.), and the relevant provisions of Chapter 364, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified or as may be subsequently modified by the Prehearing Officer.

12. TWTC objects to Instruction No. 3 and Instruction 1 (second sentence) as unduly burdensome, overly broad and on the grounds that it requests the provision of information that is not required by the Commission's applicable discovery rules or requirements.

13. TWTC objects each and every Data Request to the extent it seeks to impose a duty on TWTC to supplement its response greater than that imposed by the Commission's applicable discovery rules or requirements.

14. TWTC objects to each and every Data Request to the extent it is duplicative, repetitive, redundant, unreasonably cumulative, or otherwise excessive, oppressive or harassing.

15. TWTC objects to each and every Data Request to the extent it is overly broad, unduly burdensome, or as written, would be unduly expensive or time consuming to provide a response.

16. TWTC objects to each and every Data Request to the extent that it is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to more than one interpretation but are not properly defined or explained for the purpose of the request.

17. TWTC objects to each and every Data Request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence or are not relevant to the subject matter of this action.

18. TWTC objects to each and every Data Request to the extent it purports to require TWTC to set forth or state legal conclusion(s) or position(s) applicable to specific legal or factual issues.

19. TWTC objects to objects to each and every Data Request to the extent the time periods for which information is sought extends beyond the time periods on which the claims of Qwest are based and the applicable statute of limitations because such discovery is overly broad, unduly burdensome, and not relevant.

20. TWTC objects to each and every Data Request to the extent it seeks information from periods of time not relevant to this proceeding.

21. TWTC objects to each and every Data Request as unduly burdensome to the extent that the burden on TWTC to answer or produce documents sought by a Data Request is the same or less than the burden to Qwest of obtaining the same information on its own.

22. TWTC objects to each and every Data Request to the extent it seeks information protected from disclosure by a third-party's rights of privacy, contractual right to confidentiality, otherwise contains third-party confidential information, or any similar federal, state, judicial or Commission recognized protection or privilege.

23. TWTC objects to each and every Data Request to the extent it seeks the disclosure of information or documents that contain or constitute trade secrets, proprietary information, competitively sensitive material, or other confidential business information without appropriate restrictions on disclosure and dissemination as may be embodied in a protective order and/or

non-disclosure agreement entered into between Qwest and TWTC in this proceeding. Any inadvertent disclosure of trade secrets, proprietary information, competitively sensitive material, or other confidential business information shall not constitute a waiver of the trade secrets, proprietary, competitively sensitive, and/or confidential nature of the material.

24. TWTC objects to each and every Data Request insofar as it calls for production of electronically stored information ("ESI") in native format as unduly burdensome. TWTC will produce electronically stored information in a "reasonably usable format." TWTC further objects to the production of ESI to the extent it is not reasonably accessible because of undue burden or cost. TWTC further objects to each and every Data Request to the extent it calls for the production of electronically stored information in more than one form.

25. TWTC objects to each and every Data Request insofar as it calls for production of all metadata for all electronically stored information, as production of all metadata for all responsive and non-privileged electronically stored information is overbroad, unduly burdensome and calls for the production of information that is neither relevant to any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence.

26. TWTC objects to each and every Data Request to the extent that it requests that TWTC search for and produce electronically stored information contained on disaster recovery or archival media, legacy systems, or deleted, fragmented, shadowed or temporary data on the grounds that such information is not reasonably accessible due to the cost and burden of restoring, accessing, reviewing and producing such data.

27. Any information and/or documents TWTC provides in response to a Data Request reflects TWTC's present knowledge, information and belief, and may be subject to change or

modification based on, among other things, TWTC's further discovery, or on facts or circumstances which may subsequently come to TWTC's attention.

28. Any information or documents TWTC produces should not be construed as an acknowledgement that the Commission has jurisdiction over Qwest's Complaint that initiated this proceeding. TWTC expressly reserves the right to oppose or otherwise challenge the Commission's jurisdiction over all or portions of Qwest's Complaint.

29. TWTC has made a reasonable effort to respond to each and every Data Request as it understands and interprets such Data Request. If Qwest should assert an interpretation of any Data Request that differs, TWTC reserves the right to supplement or amend its objections.

30. TWTC reserves its right to supplement its responses to each and every Data Request for any reason, including, but not limited to: information learned during discovery; to present additional facts and/or contentions; to raise any applicable objections based upon information subsequently obtained or developments in the law; to address developments in the underlying action, or any other relevant information that TWTC may subsequently obtain.

31. In responding to Data Requests, TWTC expressly reserves its right to object to the admission into evidence of any and all documents or information made available in response to any Data Request on any ground including, but not limited to, the ground that the document, information or Data Request is irrelevant and immaterial to the issues in this action. Nothing in TWTC's responses to any Data Request should be construed as an admission respecting the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization of any kind contained in the Data Requests. Moreover, the fact that TWTC has responded to all or part of any of the Data Requests is not intended and shall not be construed as

a waiver of any objections and all such objections are reserved, including, but not limited to, these General Objections, which also includes the reservation of rights.

32. As noted above, for avoidance of any doubt, the General Objections, which also includes the reservation of rights, are incorporated into each of TWTC's responses, and any objection or response by TWTC to any instruction or request is made without waiver of, and subject to, these General Objections, which also includes the reservation of rights.

DEFINITION OF SPECIFIC OBJECTIONS TO QWEST'S DATA REQUESTS

Many of the specific objections that TWTC makes are applicable to several of Qwest's Data Requests. For this reason, TWTC provides the following definitions of those objections and, where applicable, repeats only the defined term in stating its specific objections.

1. "Not Relevant" or "Irrelevant": The Data Request is not relevant to any specific claims, defenses, issues or questions presented in this proceeding and is not reasonably calculated to lead to the discovery of data relevant to resolution of these issues. Not Relevant also includes, but is not limited to, information outside of the relevant time period for the statute of limitations applicable to this complaint and therefore, not likely to produce relevant, admissible information.

2. "Unduly burdensome": The Data Request is unduly burdensome in that providing the requested data (i) would require an unreasonable expenditure of time and resources to search for documents or information, (ii) is cumulative and/or has only a limited likelihood of leading to the discovery of data relevant to resolution of the specific issue and either (a) the value of providing the data is outweighed by the burden of production or (b) Qwest can obtain the data through publicly available information.

3. "Overly broad": The Data Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. "Vague and ambiguous": The Data Request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the TWTC cannot reasonably determine the intended meaning, scope or limits of Qwest's Data Request.

5. "Calls for a Legal Conclusion": The Data Request calls for a conclusion of law.

RESPONSES TO DATA REQUESTS

TWTC's responses to Qwest's Data Requests incorporate the above general objections and are provided subject to and without waiving those objections. Additional specific objections are provided below.

INTERROGATORIES

Interrogatory No. 9. Have you at any time petitioned the Florida Commission, pursuant to Section 364.337(2), F.S., or otherwise, for a waiver of Florida Statutes ss. 364.08, 364.10(1) or any other section? If your answer is other than an unqualified "no," for each such petition:

a. Identify the date and docket number of such petition.

b. Identify the disposition of such petition.

c. Identify all statutes and rules TWT sought waiver from.

TWTC objects to this request because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. TWTC further objects to the request because the reference to "any other section" is vague and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

Notwithstanding the foregoing objections, TWTC responds by stating that it has not requested a waiver per repealed Section 364.337(2), F.S. Carriers typically request waivers of affirmative obligations (*e.g.*, requirement to file tariffs or meet service quality standards), whereas the sections listed in this question are of a different nature (*i.e.*, they contain prohibitions). Further, CLECs have always been subject to a reduced level of regulatory oversight pursuant to section 367.01, F.S., and the commission's rules governing CLECs (Rule 25-30.800 et seq., F.A.C.). The Commission never imposed the referenced repealed statutes on CLECs, and certainly never imposed them in the manner Qwest proposes in this case. In fact, the Commission specifically rejected an IXC's request to require CLECs to file all access rates, as well as its argument that such filing was necessary to avoid discrimination for "monopoly" access services. Instead, the Commission elected to promulgate rules that reflected its decision to subject CLECs to a lesser level of regulatory oversight and to provide CLECs the flexibility to offer different business arrangements to different customers, based upon each customer's circumstances. Therefore, there was no need for a waiver because there was no affirmative obligation to be waived.

In addition, even if the statutes had been applied to CLECs, a waiver was unnecessary and would have served no purpose because Qwest is not and never has been "in like circumstances" to other IXCs who were charged different rates, nor have said other IXCs received "undue or unreasonable preference" relative to access rates charged to Qwest.

Answer by: Counsel.

Interrogatory No. 10. With regard to the testimony of Joint CLEC witness Don Wood:

a. Did Mr. Wood fully review TWT's 2001 agreement with AT&T?

Yes.

Answer by: Don J. Wood.

b. Did Mr. Wood assess all reasons motivating TWT to enter the agreement? If so, fully explain his findings.

The contract speaks for itself. Mr. Wood's testimony, and the analysis underlying that testimony, is based on the language of the agreement. See also the prefiled rebuttal testimony of Ms. Rochelle Jones.

Answer by: Don J. Wood; Rochelle D. Jones.

c. Did Mr. Wood assess all reasons why QCC and AT&T were not similarly situated (during the effective period of the agreement)? If so, fully explain his findings.

No. As noted in Mr. Wood's direct and rebuttal testimony, the phrase "similarly situated" does not appear in the Florida statutes cited in the Qwest Complaint. Because Qwest retains the burden to demonstrate that is was "under like circumstances" during the effective period of the agreement, Mr. Wood has not undertaken the task of determining "all reasons why QCC and AT&T were not similarly situated." At a minimum, such a list would include (1) the fact that Qwest did not dispute the level of TWTC's switched access rates in Florida, and (2) the fact that Qwest has never expressed a willingness to accept all terms and conditions in the referenced TWTC/AT&T Agreement, including but not limited to the multi-million dollar take-or-pay revenue commitment.

Answer by: Don J. Wood; Rochelle D. Jones

d. Did Mr. Wood assess any differences in TWT's cost of providing switched access to QCC as opposed to AT&T? Did Mr. Wood conduct any quantitative analysis of TWT's cost of providing switched access and how such cost is affected by AT&T's purchase of other services? If so, fully explain his findings.

No. The rates for CLEC-provided switched access services are not regulated based on cost in Florida. As a result, such an analysis would have no relevance to this proceeding.

Answer by: Don J. Wood

e. At page 45, lines 11-12 of his Rebuttal Testimony, Mr. Wood states that "my review of the contracts at issue reveals that some contracts do include volume (and corresponding revenue) commitments." Identify each contract Mr. Wood is referring to when he references "some contracts" in this regard.

TWTC objects to the extent the question is posed to TWTC but does not pertain to TWTC and is therefore not relevant. Notwithstanding and subject to that objection, TWTC answers as follows.

The contract related to TWTC that includes "volume (and corresponding revenue) commitments" is the January 1, 2001 Agreement between Time Warner Telecom and AT&T Corp.

Answer by: Don J. Wood & objection by counsel

f. At page 49, line 1 of his Rebuttal Testimony, Mr. Wood refers to the "CLECs who previously were billed based on a contract." Was the use of the term "CLECs" in error, and did Mr. Wood mean "IXCs" instead?

Yes.

Answer by: Don J. Wood

g. At page 52, lines 8-10 of his Rebuttal Testimony, Mr. Wood states "Mr. Canfield would need to calculate Qwest's financial obligations when operating pursuant to the same contracts as other IXCs." Identify each of AT&T's financial obligations created by the 2001 AT&T-TWT agreement that Mr. Wood believes Mr. Canfield should have incorporated in his overcharge calculations.

In order to properly make the calculation he purports to perform, Mr. Canfield would need to fully reflect the financial obligations set forth in §30 and elsewhere in the TWTC/AT&T Agreement. Mr. Canfield would also need to make any adjustment necessary to reflect, among other things, the "on-net building" provision in §5, and any costs incurred by Qwest to comply with §29B.

Answer by: Don J. Wood

Interrogatory No. 11. Setting aside TWT's belief that QCC is not entitled to relief in this case, identify all computational errors you believe Mr. Canfield made in connection with Exhibits DAC-25 and DAC-26.

It is unclear what Qwest intends the phrase "computational errors" to mean in this context. In order to produce meaningful results, any analysis must, at a minimum, (1) be based on a conceptually relevant inquiry, and (2) must be based on reliable and verifiable data. Mr. Canfield's "computations" fail to meet either of these requirements for several reasons.

First, the results of Mr. Canfield's "computations" are inconsistent with the description of the analysis in his testimony. While he describes his results as "overcharges" in his testimony, Qwest has presented no evidence that it was at any time overcharged by TWTC. In order to calculate an overcharge, Mr. Canfield would need to compare the standard (i.e. not negotiated) switched access rates in TWTC's voluntarily-filed price list with the rates actually paid by Qwest, and show that the rates actually paid exceed the corresponding rate in the price list. Mr. Canfield does not perform this calculation.

Second, Mr. Canfield's "computations" – the calculation of Qwest's alleged damages – are inconsistent with Dr. Weisman's theory of damages. According to Dr. Weisman, Qwest could, in theory, suffer harm because its ability to compete in the retail markets for long distance services could be impacted by the rates for switched access charges paid to TWTC. In order to

quantify damages pursuant to Dr. Weisman's theory, Mr. Canfield would need to calculate the amount of lost profits that Qwest incurred as a direct result of the switched access rates that it paid to TWTC. Mr. Canfield does not provide any calculation of lost profits in his testimony or exhibits.

Third, Mr. Canfield's "computations" do not represent an option that was available to any IXC at any time. He does not calculate the financial impact to Qwest of operating under any contract that actually existed between TWTC and any IXC. Instead, he creates an entirely fictional (imputed) contract in which switched access rates are offered at a discount to an IXC with no corresponding obligations for the IXC receiving the discount. As noted in response to 10. g. above, in order to properly make the calculation he purports to perform Mr. Canfield would need to, at a minimum, fully reflect the financial obligations set forth in §30 of the TWTC/AT&T Agreement, and would also need to make any adjustments necessary to reflect the "on-net building" provision in §5 and any costs incurred by Qwest to comply with §29B. Mr. Canfield makes none of these adjustments.

Fourth, Mr. Canfield's "computations," even subject to the caveats above, are excessive because they include alleged amounts that apply to Qwest claims outside the statute of limitations period, which are barred from recovery. This would include all values prior to December 2005, i.e. 4 years prior to Qwest's filing its complaint against TWTC.

Fifth, when summarizing his analysis in testimony, Mr. Canfield states that he "quite simply applied the discounts provided by the respondent CLECs to their preferred IXC customers to the switched access minutes of use billed by the respective CLEC to QCC in the state of Florida" (Supplemental Direct Testimony of Derek Canfield, p. 6). Such a statement implies a degree of accuracy and certainty that simply does not exist for the data relied upon by Mr. Canfield in his "computations." As Mr. Canfield admits in his testimony and in the notes to his exhibits, significant uncertainty exists regarding quantity billed, the precise access elements billed, the rates charged by CLECs to IXCs pursuant to agreements, and whether the units included in the analysis are actually associated with Florida. As a result, Mr. Canfield's analysis is not properly characterized as a "calculation," but instead consists of a combination of assumptions and proxies used to create an estimate of a value that has no conceptual meaning as either an "overcharge" or as a quantification of damages.

Finally, TWTC notes that in order to help validate the correctness and consistency of Mr. Canfield's calculations, TWTC posed Document Request No. 14 to QCC, which stated:

> For each CLEC agreement QCC received from the IXCs under subpoena in this proceeding, **provide all versions of all QCC calculations** which reflect whether or not QCC was overcharged for switched access. (Emphasis added.)

TWTC believe that QCC has not fully responded to this discovery request. Therefore, TWTC further qualifies its answer based on any information not provided by QCC.

Answer by: Don J. Wood and Counsel

Interrogatory No. 12. For each Request for Admission you answer other than an unqualified "Admit," fully explain your response and identify all facts and documents supporting your response.

See TWTC's Responses to QCC Requests for Admission Nos. 1 and 2.

Answer by: Counsel

DOCUMENT REQUESTS

Document Request No. 6. If your answer to Interrogatory No. 9 was other than an unqualified "no," please produce all documents relating to all waiver petitions.

See TWTC's Responses to QCC Interrogatory No. 9.

Document Request No. 7. Produce all documents supporting your response to Interrogatory No. 10.

See TWTC's Responses to QCC Interrogatory No. 10.

Document Request No. 8. Produce all documents supporting your response to Interrogatory No. 11.

See TWTC's Responses to QCC Interrogatory No. 11.

Document Request No. 9. Produce all documents supporting your response to Interrogatory No. 12.

See TWTC's Responses to QCC Interrogatory No. 12.

REQUESTS FOR ADMISSION

Request for Admission No. 1. Appendix E to the 2001 TWT-AT&T agreement was not publically disclosed as a part of the SEC filing Ms. Jones describes at page 10 of her Rebuttal Testimony.

Admit to the extent that all of Appendix E is not attached to the SEC filing, but denied to the extent that the other portions of the SEC filing, including but not limited to pages 8 and 9 of Exhibit RDJ-2, make it clear that multi-state intrastate switched access rates were part of the agreement.

Request for Admission No. 2. The version of the 2001 TWT-AT&T agreement filed with the SEC does not publically identify or describe that TWT would charge AT&T off-tariff or off-price list rates for intrastate switched access.

CLEC access services are not tariffed and therefore that portion of the Request which references any "off-tariff" service is irrelevant and therefore objectionable. To the extent not objectionable, the Request is denied. The Request refers to "off-price list rates," but the price list contains a set of standard rates, which apply in the absence of a negotiated rate, and a provision for a negotiated rate. Therefore, there was nothing in the TWTC/AT&T agreement that was "off" or "not in" the price list. The SEC filing put the public and QCC on notice that there was a negotiated switched access rate between TWTC and AT&T. The negotiated rate itself was confidential and part of a private business arrangement between the parties.

Respectfully submitted this 28th day of September, 2012

By: 

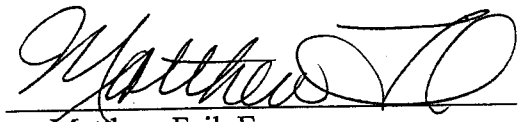
Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@ gunster.com
(850) 521-1708

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 28th day of September, 2012.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Ms. Bettye Willis 13560 Morris Rd., Suite 2500 Milton, GA 30004 Bettye.j.willis@windstream.com
Michael J. Shortley, III Vice President – Legal Level 3 Communications 225 Kenneth Drive Rochester, New York, 14623 michael.shortley@level3.com	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Alan C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com	Paula W. Foley Earthlink Business 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com
Ernest Communications, Inc. 5275 Triangle Parkway Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net
Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com
Marsha Rule Rutledge Law Firm Post Office Box 551 Tallahassee, FL 32302 marsha@reuphlaw.com	David Stotelmyer Navigator Telecommunications, LLC. P.O. Box 13860 North Little Rock, AR 72113 david@navtel.com

Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com
Budget PrePay, Inc. Lakisha Taylor 1325 Barksdale Blvd., Suite 200 Bossier City, LA 71111-4600 davidd@budgetprepay.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us BSalak@psc.state.fl.us	Ms. Rebecca A. Edmonston Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 rebecca.edmonston@verizon.com
Dulaney L. O'Roark III Verizon Florida, LLC 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) de.oroark@verizon.com richard.b.severy@verizon.com	Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 Edward.Krachmer@windstream.com

By: 
Matthew Feil, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Filed: October 4, 2012

TWTC'S NOTICE OF FILING
AFFIDAVITS SUPPORTING DISCOVERY RESPONSES

tw telecom of florida, l.p., ("TWTC") hereby files and serves notice that on this day it has filed the attached affidavits of Don J. Wood and Rochelle D. Jones supporting the discovery responses described therein.

RESPECTFULLY SUBMITTED this 4th day of October, 2012.

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
850-521-1708
mfeil@gunster.com

AFFIDAVIT

STATE OF NEW YORK)

COUNTY OF New York)

I hereby certify that on this 1 day of Oct, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared ROCHELLE D. JONES, who is personally known to me OR provided _____ as identification, and she acknowledged before me that she provided the responses to the applicable portions of the following interrogatories, including any supplements thereto, in FPSC Docket No. 090538-TP, and that such are true and correct based on his/her personal knowledge:

Qwest Interrogatories Nos. 10(b) and 10(c). Rochelle D Jones

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 1st day of Oct, 2012.

Notary Public
State of Florida, at Large

My Commission Expires:

RAY CHIANG
Notary Public, State of New York
No. 01CH6198017
Qualified in Queens County
Commission Expires December 8, 2012

AFFIDAVIT

STATE OF GEORGIA)

COUNTY OF Cobb)

I hereby certify that on this 2nd day of October, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared DON J. WOOD, who is personally known to me OR provided Drivers License as identification, and he acknowledged before me that he provided the responses to the applicable portions of the following interrogatories, including any supplements thereto, in FPSC Docket No. 090538-TP, and that such are true and correct based on his/her personal knowledge:

Qwest Interrogatories Nos. 10(a), 10(b), 10(c), 10(d), 10(e), 10(f), 10(g), and 11.

Don J. Wood

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 2nd day of October, 2012.

Notary Public
State of Georgia

My Commission Expires:
August 24, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 4th day of October, 2012.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Ms. Bettye Willis 13560 Morris Rd., Suite 2500 Milton, GA 30004 Bettye.j.willis@windstream.com
Michael J. Shortley, III Vice President – Legal Level 3 Communications 225 Kenneth Drive Rochester, New York, 14623 michael.shortley@level3.com	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Alan C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com	Paula W. Foley Earthlink Business 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com
Ernest Communications, Inc. 5275 Triangle Parkway Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net
Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com
Marsha Rule Rutledge Law Firm Post Office Box 551 Tallahassee, FL 32302 marsha@reuphlaw.com	David Stotelmyer Navigator Telecommunications, LLC. P.O. Box 13860 North Little Rock, AR 72113 david@navtel.com

Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com
Budget PrePay, Inc. Lakisha Taylor 1325 Barksdale Blvd., Suite 200 Bossier City, LA 71111-4600 davidd@budgetprepay.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us BSalak@psc.state.fl.us	Ms. Rebecca A. Edmonston Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 rebecca.edmonston@verizon.com
Dulaney L. O'Roark III Verizon Florida, LLC 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) de.oroark@verizon.com richard.b.severy@verizon.com	Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 Edward.Krachmer@windstream.com

By: _____
Matthew Feil, Esq.

23

Qwest Communications Company, LLC's Objections & Responses To TW Telecom Of Florida, L.P.'s First Set Of Interrogatories (Nos. 1-8), Document Requests (Nos. 1-5) and Requests For Admission

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 23
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #23) CONFIDENTIAL

RECEIVED
FEB - 1 2012
FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF THE GENERAL COUNSEL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: JANUARY 30, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND REPSONSES TO TW TELECOM OF FLORIDA, L.P.'S FIRST SET OF INTERROGATORIES (NOS. 1 - 8), DOCUMENT REQUESTS (NOS. 1- 5) AND REQUESTS FOR ADMISSION

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), by and through its undersigned counsel, submits its objections and responses to tw telecom of florida, l.p. ("TWTC") First Set of Interrogatories (Nos. 1 - 8), Document Requests (Nos. 1 - 5) and Requests for Admission (collectively "Requests", individually "Request")

GENERAL OBJECTIONS

1. QCC objects to the discovery requests to the extent they purport to impose obligations that go beyond the obligations imposed the Florida Rules of Civil Procedure or the Rules of the Commission.

2. QCC interprets the discovery requests to apply to QCC's intrastate operations in Florida and limits its responses accordingly. To the extent that any request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, QCC objects to such requests as irrelevant, overly broad, and unduly burdensome.

3. QCC objects to the discovery requests to the extent they seek to impose an obligation on QCC to respond on behalf of subsidiaries, affiliates or other persons that are not parties to this case on the grounds that such requests are irrelevant, overly broad, and unduly burdensome. Unless otherwise stated in these responses, the responses are provided only on behalf of QCC.

4. QCC objects to the discovery requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, the work-product doctrine or other applicable privileges or doctrines

5. QCC objects to the discovery requests to the extent they seek confidential business, financial, or other proprietary documents or information. Notwithstanding this objection, to the extent a request seeks proprietary confidential business information which is not otherwise privileged or subject to objection, QCC will make such information available to the Commission Staff in accordance with applicable Commission procedures to protect such information from disclosure and will make such information available to other parties in accordance with appropriate Protective Agreements.

6. QCC objects to the discovery requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

7. QCC objects to the discovery requests to the extent that they are vague and ambiguous, particularly to the extent that they use terms that are undefined or vaguely defined, or that are subject to multiple interpretations.

8. QCC objects to the discovery requests to the extent they are overly broad, unduly burdensome, and, as written, would require undue expense or time to provide a response.

9. QCC is a large organization with employees located in many different locations across the United States. In the course of its business, QCC creates countless documents that are not subject to record retention requirements of the Commission or the Federal Communications Commission. The information and documents are kept in numerous locations and may be moved from site to site as employees change jobs or as the business is reorganized. QCC will conduct a reasonable and diligent search of company files that are reasonably expected to contain the requested information. To the extent that the discovery requests purport to require more, QCC objects on the grounds that compliance would impose an undue burden or expense.

INTERROGATORIES

TWTC Interrogatory No. 1

For the period of time for which Qwest seeks "reparations with applicable interest" per its Complaint in this proceeding, identify, by year, the total amount of money Qwest spent on all TWTC services, separately identifying money spent on switched access services in Florida and switched access services nationally, and money spent on all other services in Florida and all other services nationally.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to examine whether TWT abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. Whether, and to what extent QCC purchased unrelated services (including unregulated services and nonjurisdictional services purchased outside of Florida) bears no reasonable connection to determining whether TWT acted lawfully. QCC further objects on the basis that the Request seeks information already in TWT's possession or custody.

TWTC Interrogatory No. 2

Describe all economic impacts, positive and negative, in the state of Florida which you believe will result from QCC's successful prosecution of its claims in this proceeding.

QCC objects to this Request on the basis that is overly broad, unduly burdensome, vague and ambiguous. QCC intends to present expert testimony in its pre-filed direct testimony regarding the potential economic impacts of unreasonable rate discrimination in the context of bottleneck input services such as switched access. That testimony is not yet complete, however, and it would be unreasonable to require QCC to present its complete analysis at this time QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. QCC is not seeking economic damages in this case, and QCC's complaint herein is not premised on the proof of economic damage in the form of lost profits or market share. Without waiver of its objections, QCC responds as follows.

QCC has not conducted a comprehensive empirical analysis to measure the aggregate economic impact of "successful prosecution of its claims in this proceeding." Rather, the focus of QCC's economic analysis is placed on the market distortions that can result from discriminatory pricing of switched access services in the state of Florida. The harmful effects of these economic distortions are discussed below.

In order for competition in downstream markets (in the present case, the long-distance market that uses switched access as a critical input) to be economic in the sense that it promotes competition on the merits, all similarly situated, downstream competitors must have access to upstream inputs under comparable terms and conditions. This is the well-known principle of competitive parity.

> We have in various forums expounded what we have referred to as the principles of competitive parity in cases of bottleneck monopoly, the purpose and effect of which are to ensure that the competition between the controller of the bottleneck facility—or supplier of the essential input—and its actual and potential rivals is efficient. That is to say, rules framed in accordance with those principles should produce a distribution of responsibility for performing the contested function among the several rivals on the basis of their respective costs and so minimize the total cost of supplying the contested service (footnote omitted).[1]

[1] Alfred E. Kahn and William E. Taylor, "The Pricing of Inputs Sold to Competitors: A Comment," *Yale Journal on Regulation*, Volume 11, 1994, p. 227.

Should these parity principles be violated, competitors that are less efficient in producing the downstream components of the service may be unduly favored in a manner that violates competitive neutrality. Discriminatory pricing that affords selected long-distance carriers discounts for switched access can sacrifice productive efficiency. This is the case because such practices can serve to preclude the least-cost ("most efficient") provider from being the least-price provider. Price discrimination for intermediate goods (inputs) is likely to be particularly pernicious in this regard due to the risk of efficiency distortions in the downstream market.

A stylized, numerical example may prove instructive. Assume that the production of each minute of long-distance telephone service requires one unit each of switched access, intercity transmission and retailing, the latter two inputs being self-supplied by the long-distance carrier. Suppose there are two similarly situated long-distance carriers, Carrier A and Carrier B, with per-unit costs of intercity transmission of 3 cents and 4 cents, respectively. In addition, both carriers incur costs of one cent per-minute for retailing. Carrier A pays the tariffed rate for switched access of 4 cents per minute while Carrier B is the beneficiary of a discount on switched access and hence pays only 1 cent per minute. The incremental cost per long-distance minute is thus 8 cents for Carrier A and 6 cents for Carrier B.

The potential distortionary effect arises from the fact that Carrier B can set a price between 6 cents and 8 cents per minute and yet still (profitably) under-price Carrier A in the market even though Carrier A is the more efficient provider of long-distance telephone service (i.e., Carrier A has a lower unit cost of provisioning intercity transmission). It is in this sense that discrimination in the pricing of switched access services can lead to an economic distortion (and possibly inefficient foreclosure) because it precludes the least-cost provider from serving as the least-price provider. Such an outcome is inconsistent with the time-honored principle that economic regulation should serve to emulate a competitive market outcome (i.e., promote economic efficiency).

Respondent: Professor Dennis L. Weisman
Department of Economics
Kansas State University
Waters Hall, RM 246
Manhattan, KS 66506

TWTC Interrogatory No. 3

Describe all economic impacts, positive and negative, in the state of Florida which you believe will result from QCC's un-successful prosecution of its claims in this proceeding.

QCC objects to this Request on the basis that is overly broad, unduly burdensome, vague and ambiguous. QCC intends to present expert testimony in its pre-filed direct testimony regarding the potential economic impacts of unreasonable rate discrimination in the context of bottleneck input services such as switched access. That testimony is not yet complete, however, and it would be unreasonable to require QCC to present its complete analysis at this time. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. QCC is not seeking economic damages in this case, and QCC's complaint herein is not premised on the proof of economic damage in the form of lost profits or market share. Without waiver of its objections, QCC responds as follows.

QCC has not conducted an empirical analysis to measure the aggregate economic impact of "un-successful prosecution of its claims in this proceeding." See QCC's response to TWT Interrogatory No. 2.

Respondent: Professor Dennis L. Weisman
Department of Economics
Kansas State University
Waters Hall, RM 246
Manhattan, KS 66506

TWTC Interrogatory No. 4

Describe each and every verbal and written communication between QCC and TEOCO Corporation relating to: (1) CLEC switched access rates in Florida, (2) any of the claims made by QCC in this case, (3) any of the claims made by QCC in Docket No. 08F-259T before the Colorado Public Utilities Commission, (4) any of the claims made by QCC in Case No. C.08-08006 before the California Public Utilities Commission and (5) any attempts by QCC to obtain CLEC switched access rates other than at the CLEC's price list rate in Florida, whether through dispute, demand, negotiated agreement or otherwise.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence. TWT's request for "each and every" communication between QCC and TEOCO, indeed including each and every communication relating to the Colorado and California proceeding, is simply unreasonable. QCC further objects on the basis that the Request seeks information protected by attorney client privilege and the attorney work product doctrine. The employees of TEOCO, a vendor of QCC, serve as functional employees through the scope of their duties. TEOCO acts as an extension of QCC's Facility Cost group, and thus communications between QCC counsel and TEOCO are protected by attorney client privilege, and communications between QCC and TEOCO regarding anticipated or pending litigation are protected by the attorney work product doctrine. A TEOCO employee will provide pre-filed direct (factual) testimony on behalf of QCC in this matter. As such, his work papers will certainly be subject to discovery, as would any other witness's non-privileged work papers.

TWTC Interrogatory No. 5

In the Prayer for Relief, paragraph B, of Qwest's Amended Complaint, Qwest seeks "reparations, with applicable interest" from TWTC. Please answer the following concerning this statement:

a. Please provide the specific period of time for which Qwest seeks such reparations from TWTC by identifying with specificity both the beginning date and ending date.

QCC objects to this Request on the basis that it seeks information already in TWT's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC seeks refunds, with applicable interest, for the entire periods that TWT provided intrastate switched access services in Florida to one or more other interexchange carriers ("IXCs") at rates lower than the rate TWT charged QCC. TWT publicly disclosed those dates in its response to QCC Interrogatory Nos. 2(c) and 2(d) as January 1, 2001 – August 24, 2008 (AT&T agreement). If QCC obtains information suggesting that TWT's preferential rate treatment of AT&T occurred during other times, the refund period may change.

Respondent: QCC Legal

b. Please provide Qwest's estimates of amounts Qwest believes it is entitled to recover in reparations in this case from TWTC and the methodology used to calculate such estimates.

QCC objects to this Request on the basis that it seeks information already in TWT's possession or custody. QCC further objects on the basis that the Request is overly burdensome at this juncture of the proceeding. As described below, QCC intends to provide this calculation in its pre-filed direct testimony, but has not yet completed its analysis. It would be unreasonably burdensome for QCC to conduct a special analysis in response to this Request and then to conduct another analysis in the coming weeks in conjunction with QCC's pre-filed testimony. Without waiver of its objections, QCC responds as follows.

QCC intends to provide a refund analysis (including both the quantification of the principal amount of TWT's overcharges and a description of QCC's computation methodology) in conjunction with its pre-filed direct testimony in this case. QCC has not finalized that analysis at this time. And, unlike with other respondents, QCC did not (prior to amending the complaint herein) prepare a preliminary snapshot calculation. This is because the TWT-AT&T agreement was not provided to QCC (prior to the amended complaint) in response to the Commission subpoena. Regarding QCC's

methodology, in brief summary, QCC's methodology for calculating the principal amount of TWT's overcharge will be to compare the amounts QCC paid TWT for intrastate switched access in Florida to the amount it would have paid TWT for the identical services had QCC received the rate treatment enjoyed by those IXCs favored through TWT's secret switched access agreements.

Respondent: QCC Legal

c. **Please identify and describe, by month, all amounts and rates Qwest actually paid to TWTC during the period for which Qwest seeks reparations and the amounts and rates Qwest alleges it should have paid to the TWTC. The response should list the following by month:**
   - **(1) the total Florida intrastate switched access minutes Qwest contends that TWTC billed Qwest, broken down by originating and terminating minutes of use ("MOUs");**
   - **(2) the total amount Qwest contends TWTC billed Qwest for Florida intrastate switched access services;**
   - **(3) the total amount that Qwest contends it paid TWTC for Florida intrastate switched access services;**
   - **(4) the dates such amounts Qwest contends it paid TWTC;**
   - **(5) the rate(s) or the average per minute of use rate Qwest contends it actually paid TWTC for the switched access services for which Qwest seeks reparations;**
   - **(6) the rate(s) or the average per minute of use Tate Qwest contends in this proceeding that it should have paid TWTC;**
   - **(7) the total amount amounts Qwest contends it should have paid to TWTC; and**
   - **(8) the difference between (2) and (7).**

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, requires a special study and seeks information already in TWT's possession or custody. Without waiver its objections, QCC responds as follows.

See QCC's response to TWT Interrogatory No. 1b.

Respondent: QCC Legal

TWTC Interrogatory No. 6

Describe the method or methods by which Qwest identified who to name as a respondent in this proceeding and who not to name as a respondent in this proceeding.

QCC objects to this Request on the basis that it seeks information protected by the attorney client privilege and the attorney work product doctrine. QCC further objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to examine whether TWT abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. QCC's "methodology" for including or excluding CLECs as respondents bears no reasonable connection to determining whether or not TWT acted unlawfully.

Without waiver of its objections, QCC responds as follows. Generally, QCC's final determination of which CLECs should be joined as respondents stemmed from the agreements disclosed to QCC in conjunction with the Commission-issued subpoenas. QCC received scores of agreements from the subpoenaed IXCs, and analyzed each individually to determine whether, and to what extent, QCC was overcharged by each CLEC for intrastate switched access service in Florida.

Respondent: QCC Legal

TWTC Interrogatory No. 7

For the period of time for which Qwest seeks "reparations with applicable interest," describe all CLEC services Qwest offered in the state of Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, seeks information in the public domain (in QCC's published Price List) and is not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to examine whether TWT abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. The types of services offered by QCC in Florida bears no connection to whether TWT acted unlawfully with regard to its provision of switched access. Without waiver of its objections, QCC responds as follows.

The CLEC services provided by QCC include those in QCC's published price list, as amended from time to time. These services include the following: business Line (flat and message); PBX trunk; DID trunk termination; and optional features such as call waiting, call forwarding, three-way calling, speed call, caller id, call return, repeat dialing, call hold, call pickup, and remote call forwarding. In addition, QCC provided non-basic intraLATA outbound usage (toll), directory assistance, operator assistance, directory listings, emergency services, telecommunication relay service, presubscription, vanity telephone numbers and management reporting. In March 2007, QCC also began providing local dedicated services, including metro private line and related services.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

TWTC Interrogatory No. 8

For the period of time for which Qwest seeks "reparations with applicable interest," describe all IXC services Qwest offered in the state of Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, seeks information in the public domain (in QCC's published Price List) and is not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to examine whether TWT abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. The types of services offered by QCC in Florida bears no connection to whether TWT acted unlawfully with regard to its provision of switched access. Without waiver of its objections, QCC responds as follows.

The IXC services provided by QCC include those in QCC's published price list, as amended from time to time. These services include the following: direct dialed outbound (1+) and inbound (toll free) calling; calling card; prepaid card (eliminated in 2007); directory assistance; operator assistance; and dedicated services.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

REQUESTS FOR THE PRODUCTION OF DOCUMENTS

TWTC Request for Production No. 1

Provide all monthly billing disputes for Florida intrastate switched access services based on QCC's claims in this proceeding which QCC filed with TWTC.

QCC objects on the basis that this Request is overly broad, unduly burdensome, vague, ambiguous and seeks information already in TWT's possession or custody. QCC further objects on the basis that the Request is not reasonably calculated to lead to the discovery of admissible evidence. As the provider subject to a statutory non-discrimination obligation, TWT had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to AT&T in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even setting aside that TWT kept its switched access discount agreement secret, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to lodge billing disputes in order to obtain non-discriminatory treatment.

Respondent: QCC Legal

TWTC Request for Production No. 2

Provide all documents which reflect verbal or written communications described in Interrogatory No. 4 above.

See QCC's objections to TWT Interrogatory No. 4.

TWTC Request for Production No. 3

For the period of time for which Qwest seeks "reparations with applicable interest," provide all regulatory assessment fee returns submitted by Qwest in Florida for CLEC and IXC operations.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

The responsive documents are confidential and will be provided when a non-disclosure agreement or protective order is entered.

TWTC Request for Production No. 4

For the period of time for which Qwest seeks "reparations with applicable interest," provide all competition report responses submitted by Qwest in Florida.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

The responsive documents are confidential and will be provided when a non-disclosure agreement or protective order is entered.

TWTC Request for Production No. 5

Provide all documents related to Qwest's decision to enter Florida as a CLEC.

QCC objects on the basis that this Request is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this proceeding is to examine whether TWT abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. Why QCC entered Florida as a CLEC in 1999 bears no reasonable connection to the determining whether TWT acted unlawfully.

Without waiver of its objections, QCC responds as follows.

Despite its reasonable search, QCC could not locate any responsive documents.

REQUESTS FOR ADMISSIONS

TWTC Request for Admission No. 1

Florida law does not require CLECs in Florida to file agreements for intrastate switched access service with the Commission.

QCC objects to this Request on the basis that it calls for a legal conclusion, and is therefore improper pursuant to Rule 1.370, Rules of Civil Procedure ("A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.").

TWTC Request for Admission No. 2

Florida law does not require CLECs in Florida to file price lists for intrastate switched access service with the Commission.

QCC objects to this Request on the basis that it calls for a legal conclusion, and is therefore improper pursuant to Rule 1.370, Rules of Civil Procedure ("A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.").

TWTC Request for Admission No. 3

The Commission has no authority under Florida law to establish rates, terms or conditions for CLEC-provided switched access services.

QCC objects to this Request on the basis that it calls for a legal conclusion, and is therefore improper pursuant to Rule 1.370, Rules of Civil Procedure ("A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.").

TWTC Request for Admission No. 4

CLEC schedules of rates, terms and conditions filed with the Commission are reviewed by and stamped approved by the Commission staff in accordance with the Commission's Administrative Procedures Manual, wherein the Commission has delegated review and approval responsibilities to the staff for CLEC filed schedules to the staff.

QCC objects to this Request on the basis that it is overly broad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows. QCC lacks knowledge as to how the Commission staff has handled each CLEC schedule of rates, terms and conditions ever filed, and therefore responds, "Deny."

TWTC Request for Admission No. 5

Qwest suffers none of the harm it has alleged in its complaint in this proceeding if the Commission orders that the difference between respondent CLECs' price list rates and contract rates should be paid by the IXCs with whom respondent CLECs contracted.

QCC objects to this Request on the basis that it is vague, ambiguous and calls for speculation. QCC further objects to the Request on the basis that it is unduly burdensome. QCC intends to present expert testimony in its pre-filed direct testimony regarding the potential economic impacts of unreasonable rate discrimination in the context of bottleneck input services such as switched access. That testimony is not yet complete, however, and it would be unreasonable to require QCC to present its complete analysis at this. QCC further objects on the basis that the Request is not reasonably calculated to lead to the discovery of admissible evidence. The relief QCC seeks in this proceeding is not premised on economic harm or damage (including lost revenue or market share), but instead measures the amount which QCC was overcharged (for the switched access services it was provided by the Respondents) relative to the IXCs preferred by the secret discount agreements at issue in this case.

Without waiver of its objections, QCC responds as follows.

Deny. The potential economic impacts of unreasonable rate discrimination in the context of bottleneck input services such as switched access cannot be undone, years later, by merely requiring the recipient of a discount to disgorge the discounted amount. In a competitive market, such as the market for long distance telecommunications, it is not possible to confer an artificial advantage on one firm without simultaneously harming other firms. (See QCC's response to TWT Interrogatory Nos. 2 and 3). In other words, what matters is relative positioning. Because the named CLECs conferred an artificial competitive advantage on QCC's rivals, they in all likelihood distorted the marketplace for switched long-distance services in a manner that is not remedied, in full, by simply requiring that the preferred IXCs return their discounts years later. This is because consumer perceptions of a retail provider are influenced, in part, by the price that provider levies in the marketplace and that price in turn reflects the costs incurred by that provider. The competitive advantage enjoyed by the preferred IXCs for many years (and the relative disadvantage suffered by QCC during those years) would not now be fully remedied should the Commission order disgorgement.

TWTC Request for Admission No. 6

Qwest does not contend that the rates in the price list of TWTC for intrastate switched access service violate Florida law.

QCC objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. QCC's allegations in this complaint concern TWT's failure to abide by its statutory obligations, and stem from TWT's failure to extend to QCC the beneficial rate treatment provided to AT&T via one or more secret agreements. QCC's complaint offers no opinion as to the lawfulness of TWT's price list rates. Without waiver of its objections, QCC responds as follows.

QCC has neither formulated nor asserted any contentions regarding the lawfulness of TWT's intrastate switched access price list rates, and therefore responds, "Deny."

TWTC Request for Admission No. 7

At all times within the period covered by Qwest's complaint in this proceeding, Qwest had notice of the rates, terms and conditions of the TWTC price lists on file with the Commission.

QCC objects to this Request to the extent that the phrase "Qwest had notice" calls for a legal conclusion. QCC further objects on the basis that the Request is not reasonably calculated to lead to the discovery of admissible evidence. QCC's complaint is not premised upon QCC having (or not having) reasonable access to TWT's price list. Without waiver of its objections, QCC responds as follows. After reasonable investigation, QCC cannot verify whether it has had reasonable access to TWT's published price list at all times between 2001 and 2008, and therefore responds, "Deny."

TWTC Request for Admission No. 8

Qwest does not contend that it is unlawful in Florida for a CLEC to enter into an agreement with an IXC for intrastate switched access rates different from the rates in the CLEC's price list.

Admit, although QCC does contend that, consistent with Florida statute, CLECs are nevertheless required to avoid unreasonable rate discrimination in the context of intrastate switched access services.

TWTC Request for Admission No. 9

Qwest contends that the Respondent CLECs' alleged failure to disclose to Qwest any agreements between Respondent CLECs and IXCs for intrastate switched access rates different from the rates in the CLECs' price list violates Florida law.

As stated, denied. See QCC's amended complaint, which articulates QCC's causes of action. QCC's complaint alleges that the respondent CLECs, including TWT, violated Florida law by engaging in unreasonable rate discrimination. Once the respondents made the decision to enter into the subject switched access ICBs, they could have still met their statutory obligations by affirmatively providing QCC the identical rate treatment and/or by modifying their price lists to align with the ICB rates, even possibly without advising QCC that they had entered into ICBs.

RESPECTFULLY SUBMITTED on this 30th day of January, 2012.

//s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS
COMPANY, LLC D/B/A CENTURYLINK QCC

Qwest Supplemental Response to TW Telecom of Florida, L.P.'s Document Request Nos. 3 & 4

(Confidential)

24

Qwest Communications Company, LLC's Objections & Responses To TW Telecom Of Florida, L.P.'s Third Set Of Interrogatories (No. 14), and Fourth Set Of Document Requests (No. 13)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 24
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #24) CONFIDENTIAL

25

Qwest Communications Company, LLC Supplemental Objections and Responses to TW Telecom Of Florida, L.P.'s Third Set Of Interrogatories (No. 14)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 25
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #25) CONFIDENTIAL

26

Qwest Communications Company, LLC's Response TW Telecom Of Florida, L.P.'s Third Set Of Document Requests (Nos. 10-12)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 26
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #26) CONFIDENTIAL

27

Qwest Communications Company, LLC's Objections & Response MCIMetro Access Transmission Services d/b/a Verizon Access Transmission Services' First Set Of Interrogatories (No. 22 – subparts a & b)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 27
PARTY Florida Public Service Commission Staff
DESCRIPTION QCC (Staff's Exhibit #27)

MCI Interrogatory No. 22:

In paragraphs 8, 9 and 10 of its Complaint, QCC refers to a series of investigations conducted by the Minnesota Public Utilities Commission ("Minnesota PUC") that focused on off-tariff agreements relating to the provision of intrastate switched access services to selected IXCs.

a. Please identify each of the investigations included in the "series of investigations" conducted by the Minnesota PUC that QCC refers to in paragraph 8 of its Complaint.

QCC objects to this Request on the basis that it seeks information in the public domain and information that is already in MCI's possession or control. Without waiver of its objections, QCC responds as follows.

QCC is referring to Minnesota PUC Docket Nos. 04-235, 05-1282 and 06-498.

Respondent: Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

b. For each investigation identified in your response to subpart a, please specify the date on which QCC or its affiliates became aware of the investigation. If the precise date is unknown following a reasonably diligent investigation, please provide QCC's best estimate and the basis for QCC's estimate.

See QCC's objections to MCI Interrogatory No. 22(a). Without waiver of its objections, QCC responds as follows.

While the Minnesota Department of Commerce filed the complaint initiating Docket No. 04-235 in June 2004, QCC and its ILEC affiliate, Qwest Corporation, did not become aware of the nature and scope of the proceeding until April 2005, when the Minnesota Public Utility Commission issued its Notice of Settlement and Request for Comment ("Notice") (issued April 15, 2005). However, the Notice did not identify all carriers involved in the investigation and did not provide significant detail regarding the CLEC practices at issue. This is the first notice in the Docket that the MPUC issued to all Telecommunications Carriers in Minnesota, including Qwest. Qwest asked to be added to the service list on April 29, 2005.

Respondent:
Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

28

Qwest Supplemental Discovery Responses to Birch Communications First Set Of Interrogatories (Nos. 1-4) and Document Requests (Nos. 1-3)

(Confidential)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 28
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #28) CONFIDENTIAL

QWEST COMMUNICATIONS COMPANY, LLC'S SUPPLEMENTAL RESPONSES TO BIRCH COMMUNICATIONS, INC.'S FIRST SET OF INTERROGATORIES (NOS. 1, 4) AND DOCUMENT REQUESTS (NOS. 1, 3)
DOCKET NO. 090538-TP
PAGE 3

INTERROGATORIES

Birch Interrogatory No. 1

Describe each and every instance since 2001 where QCC offered to, or discussed with, a CLEC operating in Florida an agreement of any kind, including but not limited to a wholesale service agreement, in which the CLEC would waive or reduce any of its intrastate switched access rates as part of the agreement.

INITIAL RESPONSE

QCC objects to this Request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. QCC's provision of wholesale long distance services has little (if any) relevance to this proceeding. The purpose of this proceeding is to examine whether Birch abided by its statutory obligations in connection with its provision of intrastate switched access services to QCC. The manner in which QCC has provided wholesale long distance services is not relevant to determining the lawfulness of Birch's conduct.

Furthermore, whether or not QCC, as a *customer* of switched access, has discussed or entered into any ICBs with the CLEC providers of switched access is not relevant to this case. As the customer, QCC does not have an obligation to police the CLEC's adherence to its price list or to its obligation to avoid rate discrimination. At issue in this case is whether each individual CLEC respondent, as to *its* provision of intrastate switched access, abided by its statutory and price list obligations.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE

Without waiver of its objections, QCC supplements its response as follows. The response is confidential and is provided subject to the parties' non-disclosure arrangements.

[redacted]

REDACTED

QWEST COMMUNICATIONS COMPANY, LLC'S SUPPLEMENTAL RESPONSES TO BIRCH COMMUNICATIONS, INC.'S FIRST SET OF INTERROGATORIES (NOS. 1, 4) AND DOCUMENT REQUESTS (NOS. 1, 3)
DOCKET NO. 090538-TP
PAGE 4

[redacted]

REDACTED

[redacted]

Aside from the referenced subsets of traffic, QCC is unaware of having ever requested negotiation of an agreement similar to those entered into between Birch/Access Integrated and AT&T. However, as the provider subject to a statutory non-discrimination obligation, Birch had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to commence negotiations in order to obtain non-discriminatory treatment.

Respondents: QCC Legal

William Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1505
Seattle, WA 98191

REDACTED

Broadwing Interrogatory No. 42

Refer to Qwest's confidential supplemental response to Birch Communications, Inc.'s Interrogatory No. 1.

[BEGIN CONFIDENTIAL INFORMATION] As to the second category of agreements to which you refer in that supplemental response, for each CLEC wholesale long distance customer Qwest serves or had served with operations in Florida from "the early 2000s" to now, identify:

[redacted]

[END CONFIDENTIAL INFORMATION]

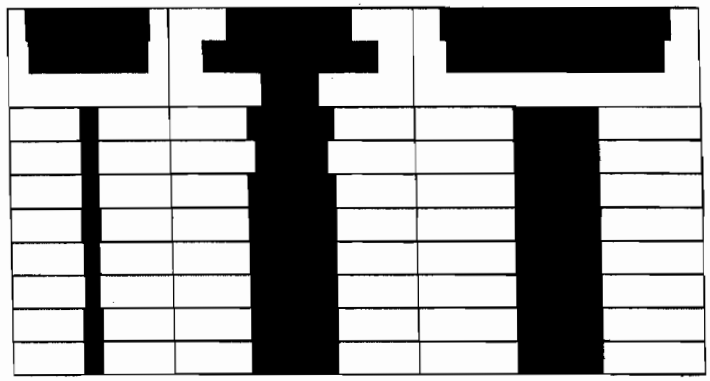
RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Broadwing/Focal is asking about a wholesale long distance product of which it was not even a customer. Facts and circumstances related to QCC's provision of an unrelated, unregulated service to other parties is wholly irrelevant to whether Broadwing/Focal violated Florida law in connection with its provision of intrastate switched access to QCC. Further, the request seeks information beyond Florida. Without waiver of its objections, QCC responds as follows.

[BEGIN CONFIDENTIAL]

[redacted]

REDACTED

[redacted]



[redacted]

[END CONFIDENTIAL]

Respondents: QCC Legal

William R. Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

Candace Mowers, Manager Public Policy

REDACTED

Broadwing Document Request No. 50

Refer to Qwest's confidential supplemental response to Birch Communications, Inc.'s Interrogatory No. 1.

[BEGIN CONFIDENTIAL INFORMATION]

[redacted]

[END CONFIDENTIAL INFORMATION]

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects to the extent the request seeks documents protected by attorney-client privilege and/or the work product doctrine. QCC further objects on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Broadwing/Focal is asking about a wholesale long distance product of which it was not even a customer. Facts and circumstances related to QCC's provision of an unrelated, unregulated service to other parties is wholly irrelevant to whether Broadwing/Focal violated Florida law in connection with its provision of intrastate switched access to QCC. Further, the request seeks information beyond Florida. Without waiver of its objections, QCC responds as follows.

The materials Broadwing is seeking date back many years and were held or generated by employees who no longer work for the company. QCC has performed a reasonable search for responsive documents, and has located a handful of non-privileged documents. Included among those are several internal emails and other documents. At the time QCC terminated the wholesale product offering in 2007-2008, it sent (in some cases) demand letters to certain customers whom QCC believed had breached the relevant contract terms. Those demand letters described the program and its purpose and operation. An example demand letter is provided. QCC could not locate any documents "showing or relating to requests' by customers for the wholesale product. In terms of "iterations of the" terms and conditions, QCC attaches a summary of sample variations of language it is aware of related to the wholesale product. QCC does not know whether all the attached variations were found in the wholesale service agreements of wholesale customers providing service in Florida. All the materials produced in response to this request are designated as Lawyers Only Confidential, and are produced pursuant to the parties' non-disclosure agreement.

REDACTED

Docket No. 090538-TP
Qwest Discovery Responses
Exhibit MDG-2

Pages 7 – 30
are confidential

29

FCC Declaratory Ruling in CCB/CPD NO. 01-02

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 29
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #29)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
AT&T and Sprint Petitions for Declaratory	)	
Ruling on CLEC Access Charge Issues	)	CCB/CPD No.01-02
	)	
	)	
	)	
	)	
	)	

Declaratory Ruling

Adopted: October 19, 2001 **Released: October 22, 2001**

By the Commission: Commissioner Martin concurring and issuing a statement at a later date.

1. In this declaratory ruling, we respond to a primary jurisdiction referral from the U.S. District Court for the Eastern District of Virginia in an action styled *Advamtel LLC v. AT&T Corp.*[1] In its January 5, 2001 referral orders, the district court asked the Commission to determine (1) whether any statutory or regulatory constraints prevent an IXC from refusing access service, and (2) if not, what steps an IXC must take to effectuate such a refusal. The generally applicable rules that we promulgated in our recent *CLEC Access Reform Order*[2] provide the answers to these issues as they may arise in the future. However, because the same questions exist in connection with the parties' past dealings, we discuss below the requirements of the Communications Act as it applied in the past to the carriers currently before the district court. We stress, however, that the principles set forth in this declaratory ruling are exclusively retrospective in application: the parties' future dealings are subject to the recent rulemaking order.

I. BACKGROUND

2. According to the district court's findings, AT&T began receiving originating and terminating access service from the plaintiff CLECs in April 1997.[3] AT&T initially paid for

---

[1] *Advamtel, LLC v. AT&T Corp.*, Civil Action No. 00-643 (E.D. Va. complaint filed Jan. 5, 2000). This action was initially moving in tandem with one styled *Advamtel, LLC v. Sprint Communications Co., L.P.*, Civil Action No. 00-1074-A (E.D. Va. complaint filed Jan. 5, 2000). However, all of the parties to the Sprint action have settled.

[2] *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC No. 01-146, 2001 WL 431685 (rel. Apr. 27, 2001). *See infra* paragraphs 7 - 10.

[3] *Advamtel LLC v. AT&T Corp.*, 105 F. Supp. 2d 507, 510 (E.D. Va. 2000).

these services at the full tariffed rates. In November 1998, however, AT&T stopped payment, asserting that the tariffed rates were unreasonable and that AT&T had never ordered, or otherwise agreed to purchase, the services.[4] Since that time, it appears that AT&T has refused to pay for some of the access services that the plaintiff CLECs have continued to provide to it.[5] In April, 2000, the plaintiffs brought suit in the district court, seeking to enforce their tariffs, and requested as damages the difference between their tariffed charges and the amounts they had received from AT&T.[6]

3. This declaratory ruling responds to the second of two primary jurisdiction referrals from the district court. In the first, the court referred to the Commission, *inter alia*, the question, raised by the IXCs' counterclaim, of whether the plaintiffs' tariffed access rates violated section 201(b)'s prohibition against unjust and unreasonable rates. Sprint and AT&T brought this question before the Commission by section 208 complaints filed on January 16, 2001 against Business Telecom, Inc. (BTI).[7] We adjudicated these claims on May 30, 2001, ruling that BTI's access rates were unjust and unreasonable under section 201(b) of the Act.[8] In that decision, we examined the reasonableness of BTI's access rates by reviewing several different market factors, including: the access rates of incumbent local exchange carriers (ILECs) operating both within and outside of BTI's service areas; access rates charged by other CLECs; BTI's rates to its end-user customers for competitive services such as local exchange and long distance and how those rates compared with those of the competing ILEC; and the disparity between BTI's access and reciprocal compensation rates and how it compared with the disparity between those rates of the competing ILEC.[9] In order to determine a reasonable access rate for the period in question, we looked to the rate that we had recently found to be reasonable on a prospective basis, the downward trend of access rates during the relevant period, and the contemporaneous rates of low-band NECA carriers over the time relevant to the litigation. In deciding *BTI*, we explained that both the factors we examined to determine the reasonableness of the CLEC's rates and the analysis that led us to establish the level of a reasonable rate were based on the facts and record of the case.[10]

4. Our order today responds to a second primary jurisdiction referral. As noted above, AT&T has asserted that it did not order access service from most of the plaintiffs and thus could not be required to pay for such service. It has also argued that it attempted to cancel its order to the one plaintiff CLEC from which it had ordered service.[11] The plaintiff CLECs disputed these assertions, disagreeing over whether the IXC could refuse the plaintiffs' access services, and, if so, what actions would be necessary to effectuate such a refusal. Noting that this

---

4 *Id.*

5 *Id.*

6 *Id.*

7 AT&T also filed numerous informal complaints against the remaining *Advamtel* plaintiffs.

8 *AT&T Corp. v. Business Telecom, Inc*; *Sprint Communications Company, L.P., v. Business Telecom, Inc.*, EB-01-MD-001, EB-01-MD-002, Memorandum Opinion and Order, FCC 01-185 (May 30, 2001) (*BTI Order*).

9 *BTI Order*, ¶¶ 23-44.

10 *BTI Order*, ¶ 59.

11 *Advamtel*, 105 F. Supp.2d at 510.

portion of the suit raised serious questions of communication policy and construction of the Act, the court referred two specific issues to the Commission:

> (1) whether any statutory or regulatory constraints prevent an IXC from declining access services, or from terminating access services previously ordered or constructively ordered; and, if not,
>
> (2) what steps must IXCs take either to avoid ordering access service or to cancel service after it has been ordered or constructively ordered?

On January 19, 2001, AT&T filed a petition for declaratory ruling presenting to the Commission the issues referred from the district court. On February 5, 2001, the Common Carrier Bureau issued a public notice seeking comment on the petition and the referred issues.[12]

5. During a hearing on September 7, 2001, the court indicated its intention to answer the first of these questions in the negative, concluding that no portion of the Act or the FCC's rules prohibited an IXC from declining a CLEC's tariffed access service.[13] The court set for trial the issues surrounding its second referred question. Although we regret not acting before the court took further action in the cases by denying motions for summary judgment, we believe that, even at this late juncture, the court and other parties will benefit from the Commission's declaratory ruling on this complicated issue.

II. RECENT DECISIONS

6. In responding to the court's referral, we are guided by several recent Commission orders addressing CLEC access charges.

7. *CLEC Access Reform Order*: In the *CLEC Access Reform Order*, the Commission comprehensively addressed, on a prospective basis, the problem of allegedly unreasonable CLEC access charges. Before the release of that order, the Commission had declined prospectively to regulate CLEC access rates, believing instead that competition and the possibility of a 201(b) challenge to the rates' reasonableness would prevent CLECs from imposing unreasonable rates in their access tariffs.[14] In the *CLEC Access Reform Order*, however, we concluded that the market for exchange access is not structured so that competition can discipline rates. Consequently, we found that some CLECs were able to tariff their access rates at unreasonable levels.[15]

---

[12] AT&T and Sprint File Petitions for Declaratory Ruling on CLEC Access Charge Issues, CCB/CPD No. 01-02, Public Notice, DA 01-301, 2001 WL 92220 (rel. Feb. 5, 2001).

[13] *See* Transcript of September 7, 2001 Hearing at 19, *Advamtel v. AT&T.*

[14] *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 (1997). Such rate-reasonableness complaints would be filed pursuant to sections 206-209 of the Act.

[15] The Commission found two flaws in the market structure that prevented competition from ensuring the reasonableness of CLEC access rates. First, although the end user chooses its access provider, it is the IXC that actually pays the access provider's rates. The IXC has little practical means of affecting the caller's choice of access provider (and even less opportunity to affect the called party's choice of provider) and thus cannot easily avoid the expensive ones. Second, the requirement that IXCs geographically average their rates spreads the cost of originating

(continued....)

8. To address this problem, we adopted a safe-harbor approach, establishing a benchmark level at which CLEC access rates are conclusively presumed to be just and reasonable and at (or below) which they may therefore be tariffed. CLECs that seek to charge to IXCs rates in excess of this benchmark may do so, but only outside of the regulated tariff process with agreement from the relevant IXC. Additionally, during the pendency of any such negotiations, or if the parties cannot agree, the CLEC must continue to provide access to the IXC at the applicable benchmark rate in order to maintain connectivity within the network.[16]

9. In the *CLEC Access Reform Order*, the Commission also concluded that section 201(a) prohibits an IXC from refusing to serve the end user of a CLEC charging safe-harbor rates, while serving the customers of other LECs within the same geographic area. We reasoned that, when an IXC's end-user customer attempts to place a long-distance call, that customer makes a request for communication service – from the originating LEC, the IXC and the terminating LEC. When that customer attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a).

10. In adopting this approach, the Commission sought to avoid disruptions within the nation's telecommunications network. We recognized that, previously, some IXCs had blocked or threatened to block access traffic to and from CLECs charging rates that the IXCs considered too high. As the Commission stated, "These practices threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network and could result in consumer confusion."[17] The Commission was "particularly concerned with preventing such a degradation of the country's telecommunications network."[18]

11. Complaint Proceedings: The Commission has addressed issues related to competitive carriers' access services in several complaint proceedings in addition to the *BTI* case discussed above.[19] In July 1999, in *MGC v. AT&T*, the Common Carrier Bureau ruled that AT&T was liable to MGC for originating access charges at MGC's tariffed rate because AT&T had failed to take the necessary steps to terminate its access service arrangement with MGC.[20] The Bureau and the Commission, which later affirmed the order, assumed, without deciding, that an IXC may refuse to accept originating access traffic from a CLEC because MGC's tariff

---

(...continued from previous page)
and terminating access across all of the IXCs end users. This prevents IXCs from creating incentives for their customers to choose CLECs with low access charges. Since the IXCs are effectively unable either to pass through access charges to their end users or to create other incentives for end users to choose LECs with low access rates, the party causing the access costs – the end user that chooses the high-priced LEC – has no incentive to minimize costs. Accordingly, CLECs can impose high access rates without creating the incentive for the end user to shop for a lower-priced access provider. *See CLEC Access Reform Order*, 2001 WL 431685 at ¶ 31.

16 *CLEC Access Reform Order*, 2001 WL 431685, at ¶¶ 3, 97.

17 *Id.* at ¶ 24.

18 *Id.*

19 *AT&T Corp. v. Business Telecom, Inc*; *Sprint Communications Company, L.P., v. Business Telecom, Inc.*, Memorandum Opinion and Order, FCC 01-185 (May 30, 2001).

20 *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999), *recon. denied*, 15 FCC Rcd 308 (2000).

permitted such a refusal, and because MGC identified no provision of the Act that prevented such a refusal.[21] The Bureau made clear, however, that its analysis was restricted to the issues that MGC had presented and that other portions of the Act, including sections 201, 202, and 214, might operate to prohibit such refusal of service by AT&T.[22]

12. In March 2001, the Commission ruled, in *Total Tel. v. AT&T*,[23] that a competitive access provider's rates for terminating access were the product of a sham arrangement between an ILEC and the access provider to inflate the access charges incurred by AT&T and to pass on a portion of the revenues generated by those inflated charges to the carrier's single end-user customer. We concluded that AT&T did not violate sections 201(a), 202(a), 214(a) or 251(a) of the Act when it declined the access provider's terminating access service and blocked traffic bound for the access provider's single end-user customer. However, the Commission made clear that its holding was limited to "the unique circumstances of this case" involving a sham competitive access provider that an incumbent LEC appeared to have created for the sole purpose of imposing higher access charges than are permitted to incumbent LECs.[24] The Commission further stressed that its "ruling should not be construed to address the broader question of what other circumstances might permit an IXC to refuse to purchase, or discontinue purchasing, access service from a competitive LEC."[25]

III. DISCUSSION

A. IXC Obligations to Accept Access Service

13. After reviewing the language of section 201(a), the district court ruled at least tentatively that there are no regulatory or statutory constraints to prevent an IXC from declining access services ordered or constructively ordered. As a threshold matter, we agree with the court that section 201(a) does not expressly require an IXC to accept traffic from, and terminate traffic to, all CLECs, regardless of their access rates.[26] Section 201(a) does, however, impose a duty on common carriers to accept a "reasonable request" for service. Because the statute does not provide any guidance on what constitutes a "reasonable request," we interpret the phrase in light of the overall context of our access charge regime and the policy goals we have set forth.

14. We conclude that a "reasonable request" means a request to carry traffic that is tariffed at a presumptively reasonable rate. As we stated in paragraph 94 of the *CLEC Access*

---

21 *Id.* ¶¶ 8, 12.

22 *Id.* In June 2000, in *Sprint v. MGC*, the Commission also addressed the argument that a CLEC's access rates are *per se* unjust and unreasonable – and therefore violative of section 201(b) – solely because they exceed the rates charged by incumbent LECs in the CLEC's region. *Sprint Communications Company, L.P. v. MGC Communications, Inc.*, 15 FCC Rcd 14027 (2000). The Commission denied Sprint's complaint, holding that Sprint had failed to meet its burden of showing that the challenged rates were unreasonable.

23 *Total Telecommunications, Services, Inc. and Atlas Telephone Company, Inc. v. AT&T*, 16 FCC Rcd 5726 (2001).

24 *See id.* ¶ 35.

25 *Id.* ¶ 21 & n 50.

26 *See also, CLEC Access Reform Order*, 2001 WL 431685, at ¶ 24 As we have held in the past, certain circumstances may warrant termination and blocking of access service. *See Total Tel.*, 16 FCC Rcd 5726.

Reform Order, when a customer "attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for a communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a)." This interpretation of the language in 201(a) is consistent with other sections of the Act and our past orders, and it also achieves an important policy goal of ensuring that all end users, regardless of the LEC that they have chosen, have available to them rapid, efficient and nationwide communications services.

15. In light of this interpretation, and in order to resolve the questions raised by the court, we must address whether the tariffed CLEC access rates that AT&T now contests were "presumptively reasonable." We answer that question in the affirmative. We emphasize that this does not mean that an IXC is unable to challenge those rates by appropriate mechanisms and to be awarded damages if we should later determine that those "presumptively reasonable" rates were, in fact, excessive. But, where rates charged for an access service are presumptively reasonable at the time the service is offered, an IXC cannot refuse to exchange originating or terminating traffic with the CLEC, because such a practice would "threaten to compromise the ubiquity and seamlessness of the nation's telecommunications network" with serious adverse consequences for consumers.[27]

16. During the period at issue in the pending litigation, which preceded our decision in the *CLEC Access Charge Order*, CLECs were subject to the regulations and rules applicable to tariff filing requirements for non-dominant carriers.[28] Under established law during that time period, tariffs filed by non-dominant carriers were considered "presumptively lawful."[29] Thus, where CLECs sought to originate or terminate traffic with an IXC at access rates that were presumptively lawful *at that time*, we find that the IXCs were required to exchange traffic with the CLEC. In sum, the request to carry traffic tariffed at a presumptively lawful rate was a "reasonable request" within the meaning of section 201(a). Accordingly, until there has been an affirmative finding that a particular tariffed rate was unreasonable, the presumption of lawfulness accorded to non-dominant carrier tariffs applied.

17. The statutory interpretation and conclusions we reach here are also consistent with our *CLEC Access Reform Order*. As we said in that order, and as the district court correctly acknowledged, section 201(a) does not expressly require an IXC to accept traffic from and terminate traffic to, all CLECs without regard to their access rates. But our application of this principle to the facts differs from the ruling, at least as tentatively articulated by the court, at the conclusion of its hearing. Section 201(a) does impose a duty on common carriers to accept "reasonable requests" for service, and under our interpretation and precedent, the request to

---

[27] *See CLEC Access Reform Order*, 2001 WL 431685, at ¶ 24.

[28] Under Commission precedent, competitive LECs "are nondominant carriers." *See Tariff Filing Requirements Order*, 8 FCC Rcd at 6752, 6754, ¶ 13 (1993).

[29] In the case of nondominant carriers, "the Commission considers their tariff filings to be presumptively lawful." *Tariff Filing Requirements for Nondominant Common Carriers*, 10 FCC Rcd 13653, 13654, ¶ 3 n. 13 (1995). Thus, for example, the Commission has expressly stated that tariffs filed on one day's notice pursuant to the non-dominant carrier tariff filing procedures "shall be presumed lawful." *Tariff Filing Requirements Order*, 8 FCC Rcd at ¶ 23; *see also*, section 1.773(a)(ii) of the Commission's Rules stating that "tariff filings by non-dominant carriers will be considered prima facie lawful."

complete a call using CLEC access service that is tariffed at presumptively reasonable rates satisfies that requirement.

18. By requiring carriers to bring to the Commission (under section 208) any challenges to the reasonableness of rates already presumed reasonable, rather than attempting to unilaterally interrupt the flow of communications traffic, we seek to facilitate to the maximum extent the goal of network ubiquity that is a prominent and clearly articulated goal of the Communications Act. We note that Section 1 of the Communications Act sets out the goal of making available "to all the people of the United States . . . a rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges."[30] We view section 1 as guidance for the construction of section 201 that we adopted in the *CLEC Access Reform Order* and again today. Under that construction, an IXC may not decline to complete a call that entails the use of access service from a CLEC with rates that are presumptively reasonable. Furthermore, such IXCs remain under a continuing obligation to accept that service at the tariffed rates until another rate has been established through negotiation or litigation. In short, traffic continues to move while the involved carriers seek a determination of the reasonableness of the CLEC's rates. This interpretation of the Act gives meaning to the language of section 201(a) that "reasonable requests" be honored, while ensuring, through the operation of section 201(b), that the CLEC may not retain, at the end of the day, an unreasonable rate for the access service involved.

19. We recognize that the lack of explicit guidance in section 201(a) as to what constitutes a "reasonable request" renders that provision ambiguous. The interpretation we adopt today, however, is one that is informed by our prior orders and the goals articulated in the Communications Act itself.[31] This interpretation does mean that during the period in question, when the CLEC could determine for itself the level of its presumptively lawful rates, an IXC had a duty to accept the service at that rate and could not decline service based upon its perception of reasonableness. The IXCs have suggested that this results in excessive unilateral rate control by CLECs, at least during the limited period before our safe harbor rates took effect. But alternative interpretations of section 201(a) as suggested by the IXCs would also trigger a unilateral determination of reasonableness - - except that these determinations would be made by the IXCs. In other words, the IXCs would reserve to themselves the right to decline service upon unilaterally finding a request unreasonable. Given these conflicting perspectives, we have adopted a statutory interpretation that we believe furthers best the goals of the Act while minimizing service cut-offs. At the same time, we emphasize that IXCs are not without adequate remedies; those IXCs that contest the CLEC tariffed rates during this period may continue to avail themselves of their legal remedies under the Act.

20. AT&T suggests that our interpretation of section 201(a) is unreasonable because, it argues, we must read the second clause of section 201(a) as an express limitation on the obligations imposed on carriers by the first clause.[32] AT&T argues that it could satisfy its

---

30 47 U.S.C. § 151.

31 The Commission has sought to fashion a reasonable and permissible interpretation of this ambiguous provision, guided by the text of the statute, the structure and history of relevant portions of the Act, and policy considerations, particularly those elucidated in section 1 of the Communications Act.

32 *See* October 15, 2001 *ex parte* submission of AT&T.

obligations to comply with a customer's "reasonable request" for service under section 201(a) by an agreement to provide long distance service using access of *some carrier*, though not necessarily the local exchange carrier that the customer has requested. Under its textual reading, a carrier is obligated to provide service using a *specific* access carrier only after the opportunity to contest a customer's request under the second clause of section 201(a). Such an interpretation, which is not compelled by the plain text of this provision, would essentially permit "reasonable requests" under the first clause of section 201(a) to be dishonored pending an opportunity for hearing under the second clause. We decline to adopt such a statutory interpretation.

21. On the facts presented here, we have found reasonable the *entirety* of the request made to AT&T by the end-user and held that a reasonable request is made when the end-user is asking AT&T to provide its long distance service through an interstate access provider (a CLEC) with presumptively lawful rates. We have determined that such a reasonable request should be honored promptly and in its entirety. In contrast, AT&T's interpretation would permit IXCs to decline such requests in the first instance, and force potential customers to find a different local exchange carrier *before* IXCs provide the requested service. Thus, AT&T's statutory interpretation would undermine a customer's right to have reasonable requests honored under the first clause of section 201(a). A customer who has made a "reasonable request" for service should not be forced to choose between its preferred local exchange carrier and its preferred interexchange carrier where, as here, the preferred local exchange carrier is charging rates that are presumptively lawful. Accordingly, we find AT&T's interpretation unreasonable.

22. Our conclusion that requests for service using an access carrier with "presumptively reasonable" rates constitute "reasonable requests" under section 201(a) is not absolute. In *Total Tel v. AT&T* we held that where rates were the product of a "sham arrangement" by a CLEC, the customer's request for service was not a "reasonable request" within the meaning of section 201(a).[33] We reaffirm that holding today. Further, we disavow any construction of that order that would read that case too broadly, i.e., as holding that a customer's request for access service using a CLEC with presumptively reasonable rates may be refused *whenever* such rates are later found unreasonable, without regard to whether or not the CLEC's rates were the result of a "sham arrangement." That case has precedential effect only to the extent that a customer's request for service would involve access lines for which rates are the product of a "sham arrangement." Simply put, we concluded in *Total Tel* that a patently unlawful arrangement did not produce a rate entitled to a "presumption of reasonableness."

[33] *Total Tel.*, 16 FCC Rcd 5726, ¶ 35. *Total Tel* involved a company that purported to be a *bona fide* carrier but which instead was simply a sham creation, designed to facilitate an arrangement among several entities to capture access revenues that could not otherwise be obtained by lawful tariffs. Total provided no local exchange service, and it paid its so-called "customer" Audiobridge commissions of up to 50 or 60 percent of Total's terminating access revenues. Audiobridge, a chat line service, obtained no revenues other than these commissions, and it was Total's sole "customer." Total's operations were also closely intertwined with that of another entity, Atlas, with which it had a commonality of management and office space, and from which it leased all its transmission. Atlas was the local exchange carrier for Audiobridge. The Commission concluded in paragraph 18 of the Order that "the arrangement between Total and Atlas serve[d] only to create a superficial distinction intended to enable Atlas to increase its fees for interexchange access for calls to Audiobridge ... through a sham arrangement."

B. Factors Affecting CLEC Rate Reasonableness

23. Given our discussion above of section 201(b)'s continuing viability as a limitation of CLEC access rates, we discuss briefly some of the factors that the Commission likely would examine in future cases challenging the reasonableness of a CLEC's access rates. First, our *BTI* decision would serve as precedent in future complaint cases. We thus would look to the factors we examined there, including the rates of arguably similar NECA carriers, possibly determining the similarity of the NECA carrier, and consequently the applicable NECA band, by examining the number and type of the CLEC's subscribers and the density and geographic characteristics of the markets in which the CLEC operates. However, we must decide each complaint on the record before us. We might well examine additional factors beyond those enumerated in *BTI* in determining the reasonableness of a CLEC's rates.

IV. CONCLUSION

24. For the reasons discussed above, we conclude that, when a customer attempts to call from and/or to an access line served by a CLEC with presumptively reasonable rates, that request for a communications service is a reasonable one that the IXC may not refuse without running afoul of section 201(a). An IXC's protection against unreasonable rates arises from section 201(b) of the Act, which prevents a CLEC from charging an unjust or unreasonable rate for its services. Accordingly, the proper course for an IXC faced with what it views as excessive access rates is to challenge the rate as violative of section 201(b). In light of our ruling on the first question referred by the district court, we need not reach its second question.

V. ORDERING CLAUSE

25. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, this Declaratory Ruling IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

30

Minnesota DOC Complaint in Docket No. P-442 et.al./C04-235

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 30
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #30)

FILED
10-09-09
04:59 PM

MINNESOTA
DEPARTMENT OF
COMMERCE

RECEIVED
JUN 1 6 2004
MN PUBLIC UTILITIES COMMISSION

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
651.296.4026 FAX 651.297.1959 TTY 651.297.3067

June 16, 2004

PUBLIC DOCUMENT

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Complaint and Request for Commission Action**
Docket No. P442,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235

Dear Dr. Haar:

Enclosed is a complaint and request for Commission action in the matter of switched access services provided by competitive local exchange carriers to interexchange carriers at rates and terms different than the tariffs. Please feel free to contact me if you have any questions relating to the Department's recommendations in this case.

Respectfully submitted,

GREGORY J. DOYLE
Manager, Telecommunications

GJD/DD/jl
Attachment

PUBLIC DOCUMENT

MINNESOTA DEPARTMENT OF COMMERCE
COMPLAINT AND REQUEST FOR COMMISSION ACTION

IN THE MATTER OF NEGOTIATED CONTRACTS FOR THE PROVISION OF SWITCHED ACCESS SERVICES

DOCKET NO. P442,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235

I. BACKGROUND

For the calendar year ending December 31, 2002, the annual reports filed with the Minnesota Department of Commerce (Department) by telecommunications carriers and telephone companies included a question on whether the company has an agreement with any other carrier in Minnesota either to pay or to receive payments for long distance access services at rates different than the tariffed rates.

AT&T Communications of the Midwest, Inc. reported that it had agreements with the following local exchange carriers in Minnesota to pay long distance access rates other than tariffed rates: Allegiance, Arizona Dialtone, Brooks Fiber, Eschelon Telecom, Focal Communications, Global Crossing, Intermedia, Integra, KMC, MCIMetro, McLeod, Northstar Access, Winstar, Worldcom/MFS, and Z-Tel. The Department requested and received copies of the agreements from AT&T. The remaining interexchange carriers and competitive local exchange carriers (CLECs), identified in this complaint and request for Commission action, indicated in their annual reports for the calendar year ending December 31, 2002 that they [TRADE SECRET DATA HAS BEEN EXCISED] agreements for switched access services at untariffed rates. Each of the agreements contain a confidentiality clause which served to hinder regulators from discovering the existence and learning the specific terms of the agreements.

Several of the agreements (i.e., the agreements with KMC Telecom and MFS Telecom) covered the provision of dedicated services, generally priced on an individual case basis. Another agreement (i.e., the agreement with MCImetro Access Transmission Services and Brooks Fiber Properties) covered the provision of both dedicated and intrastate switched access services, but the contract appears to no longer be in effect. The agreement with Intermedia, a Company named

PUBLIC DOCUMENT

by AT&T in Section B of its annual report, has been acquired by MCIWorldcom and it is the Department's understanding that this agreement was not in effect after the acquisition. The remaining contracts (i.e., Allegiance Telecom of Minnesota, Inc., Arizona Dialtone, Inc., Eschelon Telecom, of Minnesota, Inc., Focal Communications Corporation of Minnesota, Integra Telecom of Minnesota, Inc., McLeodUSA Telecommunications Services, Inc., and Northstar Access, LLC) covered the provision of switched access services and appear still to be in effect.

On December 31, 2003 and January 8, 2004, the Department sent follow-up correspondence to the CLECs inquiring about the existence of special agreements for the provision of access service at untariffed rates. In response, four companies, Arizona Dialtone, Eschelon, Integra Telecom, and Focal admitted to the existence of the switched access agreements. Five companies, KMC, Winstar, MCImetro Access Transmission Services, LLC, Metro Fiber Systems, and Brooks Fiber Communications failed to respond to the Department. Allegiance sent letters to the Department, but did not specifically respond to the questions raised by the Department in its letters of inquiry. McLeod sent a letter to the Department that failed to admit to the existence of special access agreements. The other companies (i.e., Z-Tel, NorthStar Access, and Global Crossing) responded to the Department's letters of inquiry by denying the existence of agreements for the provision of switched access service at untariffed rates.

After reviewing the contracts, the Department held meetings with representatives of the companies to discuss the contracts for switched access services. During the meetings with the CLECs, the companies revealed that the contracts were negotiated with AT&T to avoid litigation or potential litigation. The CLECs indicated that AT&T had refused to pay outstanding bills for switched access services. The dispute between AT&T and the CLECs was in large part attributable to the magnitude of the switched access rates. Since interexchange carriers are captive customers of the local service providers for switched access services, and the rate levels of CLECs receive little regulatory oversight, the switched access rates of CLECs are often higher than the switched access rates of the incumbent local exchange carrier. After the agreements were formed between AT&T and the CLECs, some of the CLECs also entered agreements for the provision of switched access services with Sprint Communications Company, Global Crossing and MCI Worldcom.

The meetings between the Department and the companies also revealed that some of the contracts did not result in discriminatory rates for switched access services:

- Global Crossing Local Services and Z-Tel have been billing all interexchange carriers the same switched access rates. In the case of Global Crossing Local Services, the tariff needs to be corrected as it does not reflect the correct switched access rates.

PUBLIC DOCUMENT

- Winstar, in its contract with AT&T, included rates different than the tariffed rates, but because the Winstar billing system wasn't functioning properly, no interexchange carrier in Minnesota except for AT&T was billed for access service until April 2004. The amount of intrastate switched access charges paid by AT&T was less than $25 over a one year period. The contract between AT&T and Winstar expires on June 20, 2004.

- The Department found that another company, Allegiance, is in bankruptcy and its assets are being sold to XO Communications. The Department asked whether the contract between Allegiance and AT&T will be terminated upon the sale, but has not yet received an answer.

- North Star, in its agreement with AT&T, is charging tariffed access rates, but has set AT&T's PIU (percent of interstate usage) factor at 100 percent to, so that the tariffed intrastate access rates are not billed to AT&T.

With respect to the remaining agreements of the affected CLECs (i.e., Arizona Dialtone, Eschelon[1], Focal, Integra, and McLeodUSA,), the contracts provided for a different effective rate for switched access service than the tariff rate of each company. In most cases the intrastate access rate in the contracts was less than the tariff rate. In the AT&T contract with NorthStar Access, AT&T was permitted to declare all interexchange calling to or from the company as interstate, thus applying the interstate rate to 100% of all originating and terminating traffic.

The contract with Arizona Dialtone is unique, to the Department's knowledge, in that it provides for a discount of 2.5 percent if AT&T pays its bill within 30 days. The amount of discount AT&T received was minimal, but it is a term currently benefiting only AT&T. The Discount changes the effective rate paid by AT&T for switched access service and is not available to interexchange carriers under the Arizona Dialtone tariff.

Trade Secret Exhibit DOC-1 shows the rate impact resulting from the agreements between the CLECs (i.e., Arizona Dialtone, Eschelon, Focal, Integra, McLeodUSA and Northstar) and certain interexchange carriers (i.e., AT&T, Sprint, MCI and Global Crossing).

[1] The Department found that Eschelon has agreements with four separate interexchange carriers (AT&T, Transtel Communications, Sprint Communications and Global Crossing). Eschelon informed the Department that, while it has an access agreement with Transtel Communications, Transtel has no customers in Minnesota. Based on this information, the Department is not recommending that any action be taken with respect to the Eschelon/Transtel agreement.

PUBLIC DOCUMENT

II. STATEMENT OF ISSUES

How should the Commission ensure that the rates charged by CLECs for switched access services comply with Minnesota law?

Whether the Commission should take enforcement action against Arizona Dialtone, Eschelon, Focal, Integra, McLeodUSA, Northstar, AT&T, Sprint, MCI Worldcom and Global Crossing for engaging in the sale and/or purchase of switched access service via non-disclosed contracts?

III. DISCUSSION OF LAW

Under Minn. Stat. §216A.07, the Department is charged with investigating and enforcing Chapter 237 and Commission orders made pursuant to that chapter. The Commission has jurisdiction over complaints filed pursuant to Minn. Stat. §237.081 (Commission investigations) and §237.462 (competitive enforcement).

As competitive local exchange carriers, the CLECs have a number of legal duties set forth in Minn. Stat. §§237.07 and 237.071 and Minn. Rules pt. 7812.2210. Among those duties are:

a. The duty to keep on file with the department a specific rate, toll, charge or price for every telephone service used by it in the conduct of the telephone business. Minn. Stat. 237.07, subd. 1. Prices unique to a particular customer or group of customers may be allowed for noncompetitive services and for services subject to emerging competition when differences in the cost of providing a service or a service element justifies a different price for a particular customer or group of customers. Minn. Stat. 237.071. Pursuant to Minn. Stat. 237.57 a service is noncompetitive if it has not been classified by the Commission as competitive. Access services have not been classified by the Commission as competitive services.

b. The duty to maintain a comprehensive tariff of regulated local services: "For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority." Minn. Rules pt. 7812.2210, subd. 2.

No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. Minn. Rules pt. 7812.2210, subd. 5 and Minn. Stat. § 237.09. At a minimum, CLECs must offer telecommunications services in accordance with Minn. Rules pt. 7812.2210, subd. 5 A – D.

PUBLIC DOCUMENT

Minn. Stat. §237.121 (a)(3) states that telephone and telecommunications carriers may not "fail to provide service . . . to a consumer other than a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the Commission's rules and orders."

Violations of Minn. Stat. §§ 237.09, 237.121, and 237.16 and any rules adopted under those sections can be enforced by the Commission under Minn. Stat. §237.462. Section 462 subd 1(1)."

IV. ADDITIONAL SPECIFIC FACTUAL ALLEGATIONS

A. THE ARIZONA DIALTONE, INC. AGREEMENT WITH AT&T COMMUNICATIONS OF THE MIDWEST, INC. (ARIZONA DIALTONE AGREEMENT I)

Arizona Dialtone, Inc. is and was, at all times during the term of the agreement, licensed and certificated to operate as a CLEC in Minnesota. On January 21, 2003, Arizona Dialtone, Inc. ("Arizona Dialtone") entered into an agreement with AT&T Communications of the Midwest, Inc. for the provision of access service ("the Arizona Dialtone Agreement"). A copy of the Arizona Dialtone Agreement provided to the Department by AT&T Communications of the Midwest, Inc. is attached as Trade Secret Exhibit AD-1.

In its annual report for the year ending on December 31, 2002, at page 2, Arizona Dialtone [TRADE SECRET DATA HAS BEEN EXCISED] having any agreements for the provision of access service at rates other than the tariffed rates. A copy of the annual report of Arizona Dialtone for the year ending December 31, 2002 is attached to this Complaint as Trade Secret Exhibit AD-2.

On January 22, 2004, Arizona Dialtone submitted a copy of the January 21, 2003 Agreement to the Department. The January 22, 2004 filing was submitted in response to a direct request made by the Department to Arizona Dialtone for agreements covering the provision of access service. In its January 22, 2004 cover letter, Arizona Dialtone asserts that it bills all customers for access in Minnesota at its tariffed rates. A copy of the cover letter for Arizona Dialtone's January 22, 2004 filing is attached as Exhibit AD-3. The Arizona Dialtone Agreement I provides for a discount of 2.5 percent if AT&T pays its bill within 30 days.

PUBLIC DOCUMENT

B. THE ESCHELON TELECOM, INC. AGREEMENT WITH AT&T COMMUNICATIONS OF THE MIDWEST, INC. (ESCHELON AGREEMENT I)

Eschelon Telecom, Inc. is and was, at all times during the term of the agreement, licensed and certificated to operate as a CLEC in Minnesota. On May 1, 2000, Eschelon Telecom, Inc. ("Eschelon") entered into an agreement with AT&T Communications of the Midwest, Inc. for the provision of access service ("the Eschelon Agreement I"). A copy of the Eschelon Agreement I provided to the Department by AT&T Communications of the Midwest, Inc. is attached as Trade Secret Exhibit ES-1.

In its annual report for the year ending on December 31, 2002, at page 2, Eschelon denied having any agreements for the provision of access service at rates other than the tariffed rates. A copy of the annual report of Eschelon for the year ending December 31, 2002 is attached to this Complaint as Exhibit ES-2.

On January 16, 2004, Eschelon submitted a cover letter [TRADE SECRET DATA HAS BEEN EXCISED] enclosing a copy of the May 1, 2000 Eschelon Agreement I. The January 16, 2004 filing was submitted in response to a request made by the Department to Eschelon for agreements covering the provision of access service. A copy of the cover letter for Eschelon's January 16, 2004 filing is attached as Trade Secret Exhibit ES-3.

The Eschelon Agreement I provides in Paragraph II.A of Exhibit A as follows:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 24, 2004 letter to the Department Eschelon delineated the impact on intrastate revenue as a result of the use of untariffed switched access rates. [TRADE SECRET DATA HAS BEEN EXCISED]. The May 24, 2004 letter is attached as Trade Secret Exhibit ES-4.

C. THE ESCHELON TELECOM, INC. AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY (THE ESCHELON AGREEMENT II)

On December 29, 2000, Eschelon entered into an agreement for the provision of access service to Sprint Communications Company L.P. ("Eschelon Agreement II"). A copy of the Eschelon Agreement II provided to the Department by Eschelon is attached as Trade Secret Exhibit ES-5 to this Complaint.

On January 16, 2004, Eschelon submitted a copy of the December 29, 2000 Agreement to the Department. The January 16, 2004 filing was submitted in response to a direct request made by the Department to Eschelon for agreements relating to the provision of access service.

PUBLIC DOCUMENT

The Eschelon Agreement provides in Section 1.B of the Agreement that the following access rates will apply:

[TRADE SECRET DATA HAS BEEN EXCISED]

Appendix A of the contract shows the originating intrastate access rate for Minnesota to be **[TRADE SECRET DATA HAS BEEN EXCISED]** and the terminating intrastate access rate for Minnesota to be **[TRADE SECRET DATA HAS BEEN EXCISED]** effective 12/31/00. The following intrastate access rates apply to the Minnesota jurisdiction after 1/1/01:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 24, 2004 letter, Eschelon included revenue impact information relating to its contract with Sprint. **[TRADE SECRET DATA HAS BEEN EXCISED]**.

D. THE ESCHELON AGREEMENT WITH GLOBAL CROSSING (THE ESCHELON AGREEMENT III)

On October 19, 1999, Eschelon entered into an agreement for the provision of access service to Global Crossing Bandwidth, Inc. and its affiliates ("Global Crossing Bandwidth"). A copy of the agreement ("the Eschelon Agreement III") provided to the Department by Eschelon is attached as *Trade Secret Exhibit ES-6 to this Complaint.*

On January 16, 2004, Eschelon submitted a copy of the Eschelon Agreement III to the Department. The January 16, 2004 filing was submitted in response to a direct request made by the Department to Eschelon for agreements relating to the provision of access service.

The Eschelon Agreement III provides at Section 4.13 that the following access rates will apply:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 24, 2004 letter, Eschelon included revenue impact information relating to its contract with Global Crossing. **[TRADE SECRET DATA HAS BEEN EXCISED]**.

Global Crossing serves as the underlying carrier for Eschelon's retail long distance service offerings. The agreement between the companies requires Global Crossing to be responsible for the switched access charges. Thus, while Eschelon is the retail service provider, Global Crossing has paid access charges to Eschelon. The meeting with Global Crossing revealed that if Global Crossing would be required to pay the tariffed access rates, the fees charged by Global Crossing as the underlying service provider would be increased to Eschelon. Global Crossing indicated

PUBLIC DOCUMENT

that they would be financially indifferent if both the switched access rates and the fees charged to Eschelon as the underlying service provider were to be increased.

E. THE FOCAL COMMUNICATIONS AGREEMENT WITH AT&T COMMUNICATIONS OF THE MIDWEST (THE FOCAL AGREEMENT I)

Focal Communications Corporation of Minnesota is and was, at all times during the term of the agreement, licensed and certificated to operate as a CLEC in Minnesota. On December 25, 2001, Focal Communications Corporation entered into an agreement with AT&T Communications of the Midwest, Inc. and its subsidiaries for the provision of access service ("the Focal Agreement I"). A copy of the Focal Agreement provided to the Department by AT&T Communications of the Midwest, Inc. is attached as Trade Secret Exhibit FC-1 to this Complaint.

In its annual report for the year ending on December 31, 2002, at page 2, Focal **[TRADE SECRET DATA HAS BEEN EXCISED]** having any agreements for the provision of access service at rates other than the tariffed rates. A copy of the annual report of Focal for the year ending December 31, 2002 is attached to these comments as Trade Secret Exhibit FC-2.

On January 15 and 20, 2004, Focal submitted cover letters acknowledging the existence of the December 25, 2001 Focal Agreement. In its January 20, 2004 cover letter, Focal also acknowledged that it had charged untariffed rates for access services. Copies of the cover letters for Focal's January 15 and 20, 2004 filings are attached as Exhibit FC-3.

The Focal Agreement I provides in Paragraph 2 of Schedule A (Switched Access Rates and Charges) as follows:

[TRADE SECRET DATA HAS BEEN EXCISED]

F. THE FOCAL COMMUNICATIONS AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY (THE FOCAL AGREEMENT II)

On December 21, 2000, Focal Communications Corporation and its affiliates ("Focal") entered into an agreement ("the Focal Agreement II") for the provision of access service to Sprint Communications Company L.P. and its affiliates. A copy of the Focal Agreement II provided to the Department by Focal is attached as Trade Secret Exhibit FC-4 to this Complaint.

On January 15, 2004, Focal submitted a copy of the Focal Agreement II to the Department. The January 15, 2004 filing was submitted in response to a direct request made by the Department to Focal for agreements relating to the provision of access service.

PUBLIC DOCUMENT

The Focal Agreement II provides in Section 1.b that the following access rates will apply:

[TRADE SECRET DATA HAS BEEN EXCISED]

G. THE INTEGRA TELECOM AGREEMENT WITH AT&T COMMUNICATIONS OF THE MIDWEST (THE INTEGRA AGREEMENT I)

Integra Telecom of Minnesota, Inc. is and was, at all times during the term of the agreement, licensed and certificated to operate as a CLEC in Minnesota. On July 1, 2001, Integra Telecom of Minnesota, Inc. (Integra) entered into an agreement with AT&T Communications of the Midwest, Inc. for the provision of access service (the "Integra Agreement I"). A copy of the Integra Agreement I provided to the Department by AT&T Communications of the Midwest, Inc. is attached as Trade Secret Exhibit IT-1 to this Complaint.

In its annual report for the year ending on December 31, 2002, at page 2, Integra **[TRADE SECRET DATA HAS BEEN EXCISED]** having any agreements for the provision of access service at rates other than the tariffed rates. A copy of the Integra annual report for the year ending December 31, 2002 is attached as Trade Secret Exhibit IT-2 to this Complaint.

On March 15, 2004, Integra submitted a letter to the Department, stating that **[TRADE SECRET DATA HAS BEEN EXCISED]**. See Trade Secret Exhibit IT-3.

The Integra Agreement I provides in Schedule A, page 6(2), the following relating to switched access rates and charges:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 28, 2004 letter, Integra included revenue impact information relating to its contract with AT&T. **[TRADE SECRET DATA HAS BEEN EXCISED]**. See Trade Secret Exhibit IT-5.

H. THE INTEGRA AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY (THE INTEGRA AGREEMENT II)

On October 4, 2001, Integra Telecom of Minnesota, Inc. (Integra) entered into an agreement with Sprint Communications Company L.P. for the provision of access service (the "Integra Agreement II.") A copy of the Integra Agreement II provided to the Department is attached as Trade Secret Exhibit IT-4 to these comments.

PUBLIC DOCUMENT

The Integra Agreement II provides in paragraph 1.b., the following terms relating to switched access rates and charges:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 28, 2004 letter, Integra included revenue impact information relating to its contract with Sprint. **[TRADE SECRET DATA HAS BEEN EXCISED].**

I. THE MCLEODUSA AGREEMENT WITH AT&T COMMUNICATIONS COMPANY OF THE MIDWEST (THE MCLEOD AGREEMENT I)

McLeodUSA Telecommunications Services, Inc. is and was, at all times during the term of this agreement, licensed and certificated to operate as a CLEC in Minnesota. On July 1, 2001, McLeodUSA Telecommunications Services, Inc. ("McLeod") entered into an agreement with AT&T Communications of the Midwest, Inc. for the provision of access service (the "McLeod Agreement"). A copy of the McLeod Agreement, provided to the Department by AT&T Communications of the Midwest, Inc., is attached as Trade Secret ML-1 to this Complaint. To date, McLeod has not submitted the McLeod Agreement to the Department and the Commission.

In its annual report for the year ending on December 31, 2002, at page 2 McLeod denied having any agreements for the provision of access service at rates other than the tariffed rates. A copy of McLeod's annual report for the year ending December 31, 2002 is attached as Exhibit ML-2 to this Complaint.

On February 26, 2004, McLeod submitted a letter to the Department wherein the Company did not acknowledge the existence of any specific agreements, but nonetheless asserted that it had a right to form agreements for the provision of switched access services using individual case based pricing. A copy of McLeod's February 27, 2004 letter is attached as Exhibit ML-3.

The McLeod Agreement provides in Schedule A, page 7(2), the following relating to switched access rates and charges:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 26, 2004 letter, McLeod included revenue impact information relating to its contract with AT&T. **[TRADE SECRET DATA HAS BEEN EXCISED]** See Trade Secret Exhibit ML-5.

PUBLIC DOCUMENT

J. THE MCLEODUSA AGREEMENT WITH MCI WORLDCOM NETWORK SERVICES, INC. (THE MCLEOD AGREEMENT II)

During a May 12, 2004 meeting between the Department and McLeod, McLeod stated that it currently has an agreement with MCI WorldCom Network Services, Inc. for the provision of switched access service at untariffed rates. A copy of this agreement was provided to the Department by McLeod on June 4, 2004. A copy of the McLeod Agreement II provided to the Department by McLeod is attached as Trade Secret ML-4 to this Complaint.

The McLeod Agreement provides, in paragraph 5.C, the following relating to switched access rates and charges:

[TRADE SECRET DATA HAS BEEN EXCISED]

In its May 26, 2004 letter, McLeod included revenue impact information relating to its contract with MCI. **[TRADE SECRET DATA HAS BEEN EXCISED]**

The circumstances of contracts and special pricing provisions for access services are unique in the case of McLeod. In the Commission's June 25, 1996 Order in Docket No. P5323/NA-96-193, the Commission directed McLeod to file copies of contracts, including cost and rate information, for all services where individual case based pricing is used.

The terms of the contract between McLeod and MCI WorldCom reflect that it was MCI WorldCom that was due a settlement payment at the time the agreement was negotiated. Thus, the lower access rates were not the result of MCI WorldCom withholding payment of tariffed rates.

K. THE NORTHSTAR ACCESS AGREEMENT WITH AT&T COMMUNICATIONS OF THE MIDWEST (THE NORTHSTAR AGREEMENT I)

NorthStar Access, LLC is and was, at all times during the term of the agreement, licensed and certificated to operate as a CLEC in Minnesota. On September 11, 2002, NorthStar Access, LLC ("NorthStar") entered into an agreement with AT&T Communications of the Midwest, Inc. for the provision of access service. (the "NorthStar Agreement"). A copy of the NorthStar Agreement provided to the Department by AT&T Communications of the Midwest, Inc. is attached as Trade Secret Exhibit NS-1 to this Complaint.

In its annual report for the year ending on December 31, 2002, at page 2, NorthStar **[TRADE SECRET DATA HAS BEEN EXCISED]** having any agreements for the provision of access

PUBLIC DOCUMENT

service at rates other than the tariffed rates. A copy of the annual report for the year ending December 31, 2002 is attached as Trade Secret Exhibit NS-2 to this Complaint.

On January 12, 2004, NorthStar submitted a letter to the Department wherein it denied having any agreements with any interexchange carriers to charge untariffed rates for the provision of Access Services. A copy of the letter from NorthStar to the Department is attached as Exhibit NS-3 to this Complaint.

The NorthStar Agreement provides in Schedule A, page 6(2), the following relating to switched access rates and charges:

[TRADE SECRET DATA HAS BEEN EXCISED]

[TRADE SECRET DATA HAS BEEN EXCISED]

V. DEPARTMENT ANALYSIS

The Department has found substantial evidence, as described above, that four interexchange carriers (AT&T, Sprint, MCI WorldCom, and Global Crossing) and six CLECs (Arizona Dialtone, Eschelon, Focal, Integra, McLeod, and NorthStar) formed agreements for the provision of intrastate switched access service to change the effective rate in the CLECs' intrastate tariffs. These changes took the form of lower rates, discounts for paying on time, or changing the percent interstate usage. The confidentiality clauses in these agreements prevented regulatory agencies such as the Department and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and Orders, and foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T, MCI WorldCom, Sprint, and Global Crossing.

By changing the effective intrastate switched access rates, interexchange carriers that were not parties to the agreements have not been offered the same rates and terms of service as were some other interexchange carriers. The impact in the marketplace is that the interexchange carrier with an agreement has an unfair competitive advantage over other interexchange carriers. The ramifications are significant given that switched access costs constitute one of the primary cost components of the long distance services offered by interexchange carriers.

The CLECs who are offering lower switched access rates under the agreements have not provided the Department with documentation showing that the lower switched access rates are appropriate in light of cost or market conditions. The switched access agreements appear to have been formed as a means for the CLECs to obtain some payment from the interexchange carriers, which, in some cases, refused to pay the tariffed rates of the CLECs. To the CLECs, reduced

access charges to certain interexchange carriers was preferable to litigation, since the costs of litigation and the delay in receiving payment may have threatened their continued operations.

Minnesota law requires all regulated telephone and telecommunications carriers, including CLECs and interexchange carriers, to operate in accordance with their tariffs and in accordance to Commission rules and orders. Minn. Stat. §237.121 (a)(3) states that telephone and telecommunications carriers may not "fail to provide service ... to a consumer other than a telephone company or telecommunications carrier in accordance with ...the Commission's rules and orders." Among the orders that establish guidelines for the provision of interexchange service and the use of contracts for pricing access service are two orders issued in Docket No. P442, 443, 444, 421, 433/NA-84-212 (the 212 case) and Docket No. P999/CI-85-582 (the 582 case).

In its October 15, 1985 Order in the 212 case, the Commission granted Sprint a certificate of authority to provide intraLATA and interLATA telecommmunications services and extended AT&T's authority to intraLATA services. These authorizations are subject to the requirements of the October 15, 1985 Order (Ordering para. 3) including the condition that the system for toll access compensation would be established in a separate proceeding, initiated in the October 15, 1985 Order (on page 26). That new proceeding, the 582 case, was a generic case regarding toll access compensation applicable to all local and interexchange carriers.

In its November 2, 1987 Order in the 582 case, the Commission established guidelines for the provision of intrastate access compensation. One issue resolved by the Commission in the November 2, 1987 Order, concerned the use of contracts for pricing access services. In that Order (on page 16), the Commission rejected a proposal that access rates be established based on individual contracts. The Commission instead required local carriers to establish their access rates in intrastate access tariffs. The Commission permitted the use of contract pricing only for those few features, which are specific to a given interexchange carrier and where unique circumstances lend themselves to the use of a contract.

For the interexchange carriers, the requirements of the October 15, 1985 Order (and the orders from the 582 case, which was initiated in the October 15, 1985 Order) established conditions associated with their certificates of authority, including the payment of switched access services at tariffed rates.

The charging of untariffed rates for intrastate access services has significant implications in the marketplace for telecommunications services. If large interexchange carriers are able to exert market power to receive lower switched access rates, without a demonstration that there are cost differences, small interexchange carriers will have more difficulty competing. Also, the access rates of CLECs need to be fair since CLECs often provide both local and long distance services and high access rates harm competition. Since long distance carriers are captive customers for

access services of a local service provider, particularly for the termination of traffic, there are both legal and policy reasons for access rates to be fair to all interexchange carriers.

The circumstances that led to the creation of contracts, which were confidential and were protected from regulators, are unfortunate. Interexchange carriers believed the CLECs were taking advantage of their captive status with high access rates. CLECs felt that resolving their billing dispute by engaging in contracts to charge lower rates was the best way to avoid litigation and to resume some cash flow. In Iowa, the matter was brought before the Commission as a complaint.[2] The complaint process was/is the appropriate vehicle to use in Minnesota as well. While an imperfect process, the complaint process would have avoided violations of Minnesota Statutes and Rules.

The Commission needs to address the violations of Minnesota Statutes and Rules for the future application of access charges, and for the past violations. Compliance with tariffing requirements is the appropriate solution for the future to ensure fairness to all interexchange carriers. With respect to the past violations, the Department has not reached a determination of the appropriate resolution, given the circumstances that led to the contracts.

VI. DEPARTMENT RECOMMENDATION

The Department Recommends that the Commission:

A. Pursuant to Minn. Stat. §237.07 and §237.09 and Minn. Rules pts. 7812.2210, subd. 5, find that Arizona Dialtone, Inc., Eschelon Telecom of Minnesota, Inc., Focal Communications Corporation of Minnesota, Integra Telecom of Minnesota, Inc., McLeodUSA Telecommunications Services, Inc., and Northstar Access, LLC violated state law by not charging tariffed rates for switched access services.

B. Find that AT&T Communications of the Midwest, Inc., Sprint Communications Corporation, LP, MCI Worldcom Network Services, Inc., and Global Crossing Telecommunications violated conditions associated with their certificates of authority, including the payment of switched access services at tariffed rates as set forth in the Commission's October 15, 1985 Order in Docket No. P442, 443, 444, 421, 433/NA-84-212 which established these conditions.

---

[2] FiberComm, L.C., et al. v. AT&T Communications of the Midwest, Inc.
Additional complainants: Forest City Telecom, Inc.; Heart of Iowa Communications, Inc.; Independent Networks, L.C.; and Lost Nation-Elwood Telephone Company. Docket No. FCU-00-3. 213 PUR4th 265
Iowa Utilities Board. October 25, 2001

PUBLIC DOCUMENT

C. Find that McLeod violated the Commission's June 25, 1996 Order in Docket No. *P5323/NA-96-193*, directing McLeod to file copies of contracts, including cost and rate information, for all services where individual case based pricing is used.

D. Pursuant to Minn. Stats.§§237.07 and 237.071, and Minn. Rule 7812.2210 subp. 17 (E) order that all rates, terms and conditions for the provision of switched access service are to be on file in the applicable access tariffs of each company within 30 days unless the company demonstrates that it properly may charge non-uniform rates, and may offer some interexchange carriers discounts or other special terms not available under tariff.

E. Find that the percentage interstate usage in the agreement between Northstar Access and AT&T should be the percentage used prior to entry into the contract, since the intent of the change was to evade intrastate access charges.

F. Reaffirm that any charges for intrastate switched access services, that are not in the company's tariff or have not been approved by the Commission, should not be charged and that any contract provision dealing with such services cannot become effective until such charges are properly tariffed or otherwise approved by the Commission.

G. Grant such other and further relief, as the Commission may deem just and reasonable.

/jl

PUBLIC COPY OF EXHIBIT NO. DOC-1

Comparison of the Tariffed Switched Access Rates with Access Rates offered under the Agreements

		CLEC's Tariffed Switched Access Rates					Qwest Interstate Switched Access Rates			
		CCLC		local switching			CCLC			
CLEC	IXC	originating	terminating	originating	terminating	tandem term	originating	terminating	local switch	tandem term
Arizona Dialtone	AT&T									
Eschelon	AT&T									
Eschelon	Sprint Comm.									
Eschelon	Global Crossing									
Focal	AT&T									
Focal	Sprint Comm.									
Integra	AT&T									
Integra	Sprint Comm.									
McLeodUSA	AT&T									
McLeodUSA	MCI									
Northstar	AT&T									

Exhibit FC-1

Public Document

Trade Secret Information has been Excised

Agreement between AT&T Corporation and Focal Communications Corporation

Docket No. P442 et al/DI-04-235
Trade Secret Ex. FC-2, Public Copy

Telecommunication Carrier Annual Report 2002

Name	Focal Communications Corp. of MN
Address	200 N. LaSalle St., Suite 1100
City State ZIP	Chicago, IL 60601

Company Identification Number U-

Place an "X" in the box to indicate the type of report. If no selection is made, the report will be considered PUBLIC

PUBLIC COPY [X] TRADE SECRET COPY [ ]

Note: The light yellow areas are for the responding company to input data. The rose areas contain equations.

All Telecommunication Carriers authorized to provide service at any time during 2002 are required to complete this report. E-mail the completed report to UtilityReporting.commerce@state.mn.us and mail a completed report with the appropriate signatures for Section A and Section D (if D.1 is selected) to the Minnesota Department of Commerce, 85 7th Place East, Regulatory Information Suite 500, St. Paul, MN 55101-2198 on or before May 1, 2003.

Please place an "X" in the following box if you made any corrections to the mailing label above. [ ]

Any Form not filled out completely will be returned to the company.

Section A: Company Information. Responses in this section are consider PUBLIC information.

1. Federal Employer Identification Number 36-4287773
2. Toll-free phone number for customers 1 888-362-2522
3. Web site address for company www.focal.com

4. Type of authority granted by the Minnesota Public Utilities Commission
Authority for local facility-based service (class a) includes authority for classifications b-d. Local niche authority is usually for dedicated private line and special access services. If you place an "X" in the box for a,b, or c, you need to answer all Sections of this report. If you only place an "X" in the box for class d, you only need to answer Sections A and B.

[X] a. Local facility-based (includes b-d)
[ ] b. Local resale only
[ ] c. Local niche only
[ ] d. Long distance only

5. List all affiliated companies offering in Minnesota at least one service that is regulated by the Minnesota Public Utilities Commission.

Affiliate name	Parent	Subsidiary	Other Affiliate
a.			
b.			
c.			

6. Regulatory contact:
Contact Daniel Moldaxis, Sr. Manager Regulatory Affairs
Company name Focal Communications Corporation
Address 200 N. LaSalle St., Suite 1100
Phone No. 312-895-8272
E-mail address dmoldaxis@focal.com

7. Attestation:
Angel Reinhart, Sr. Regulatory Analyst — 312-895-8315
Print Name — *Phone Number*

I certify that the information contained in this report is accurate and a complete and accurate statement of our business.

Public Copy

Section B: Annual Revenue for 2002. Responses in this section are considered public information unless declared TRADE SECRET by the responder. Responder MUST file a complete TRADE SECRET Annual Report and a Complete PUBLIC Annual Report or the information will be considered PUBLIC information.

Include all revenue in Minnesota, both retail and wholesale. This is the revenue upon which the Department of Commerce will calculate assessments in accordance with Minnesota Statute 237.295.

1. Minnesota intrastate interexchange services $ XXXXXX
   - (Include all toll and interexchange private line services)

2. Minnesota local services:
   a. Local switched service revenue $ XXXXXX
      (Include local services to end users, features, local call termination, etc.)

   b. Local dedicated service revenue $
      (Include local private line and special access)

   c. Carrier common line access charge revenue $
      (Intrastate CCLC revenue only)

   d. Local switching access service revenue $
      (Local switching service provided to toll carriers)

   e. Other switched access service revenue $
      (Revenue from all access services provided to toll carriers other the CCLC and local switching revenue)

3. Other Minnesota jurisdictional services: $
   (If other is over 10% of total, explain which services are included)

Total Minnesota intrastate revenue for ALL telecommunications services (total of 1+2+3) $ #VALUE!

Minnesota intrastate local switching access minutes of use for the year 2002: XXXXXX MOU

If you provide interexchange service, do you have an agreement with any local exchange carrier in Minnesota to pay long distance access rates other than the tariffed rates? Yes [ ] No [X]

If yes, identify which local exchange carriers.

Telecommunications Carriers with authority for long distance services only need not complete Sections C through F.

Section C: Provision of Certain Local Services in Minnesota. Responses in this section are considered public information unless declared TRADE SECRET by the responder. Responder MUST file a complete Trade Secret Annual Report and a Complete Public Annual Report or the information will be considered PUBLIC information.

Please indicate whether you provided, as of 12-31-2002, or plan to provide sometime in 2003, the following services:

	Provided as of 12-31-2002?		If not in 2002, do you plan to provide sometime in 2003?	
Local service to businesses	Yes [X]	No [ ]	Yes [ ]	No [ ]
Local service to residences	Yes [ ]	No [X]	Yes [ ]	No [X]
Caller ID-name and number	Yes [X]	No [ ]	Yes [ ]	No [ ]
ISDN service	Yes [X]	No [ ]	Yes [ ]	No [ ]
DSL service	Yes [ ]	No [X]	Yes [ ]	No [X]
Other broadband services	Yes [ ]	No [X]	Yes [ ]	No [X]

Identify the other broadband services

Docket No. P442 et al/DI-04-235
Exhibit FC-3

Focal Communications Corporation
200 North LaSalle Street
Chicago, Illinois 60601

312-895-8400
312-895-9403 fax

FOCAL

January 13, 2004



BY OVERNIGHT COURIER

Diane Dietz
Rate Analyst
Telecommunications
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198

Dear Ms. Dietz,

Focal Communications Corporation has agreements with AT&T Corp. and Sprint Communications Company L.P. to pay access rates other than the rates listed in Focal's tariff. As your December 31, 2003 letter to me requests, I am enclosing a copy of the Sprint agreement, which is trade secret information and has been marked CONFIDENTIAL AND PROPRIETARY. It should not be made publicly available. Focal's agreement with AT&T, which is also confidential, already was provided to the Department of Commerce in October 2003 in response to a previous request. If you require an additional copy of the AT&T agreement, please contact me.

Sincerely,

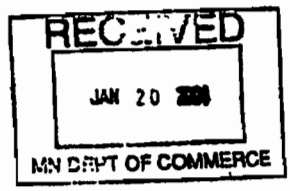
Daniel Meldazis
Senior Manager - Regulatory Affairs

Focal Communications Corporation
200 North LaSalle Street
Chicago, Illinois 60601

312-895-8400
312-895-8403 fax

FOCAL

January 16, 2004



BY OVERNIGHT COURIER

Diane Dietz
Rate Analyst
Telecommunications
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198

Dear Ms. Dietz,

This letter responds to the questions set forth in your letter to me dated January 8, 2004. Focal has identified for the Department two contracts (with AT&T and Sprint) with interexchange carriers that provide for access rates other than those listed in Focal's tariff.

1. It is not unreasonably discriminatory to charge carriers such as AT&T and Sprint a lower access rate than other IXCs because those carriers send Focal higher volumes of traffic than other carriers. Essentially, the carriers are receiving a volume discount to reflect the lower costs that Focal incurs to serve them.

2. While Focal's rates are always designed to recover the incremental costs of providing a service, Focal does not have the resources to conduct state-specific or customer-specific cost studies. Therefore, Focal cannot identify with particularity the cost differences relating to the provision of switched access service to Sprint and AT&T in Minnesota. Nevertheless, it is Focal's experience that when it receives higher volumes of traffic from a customer, the overall costs to serve that customer are lower than the costs to serve other customers. For example, the cost per minute of use of higher capacity circuits, such as a DS3, is significantly lower that the cost per minute of smaller capacity circuits, such as a DS1.

3. Both the AT&T and Sprint contracts were entered into as confidential settlements of federal litigation between Focal and the two carriers.

4) The rates contained in the confidential settlements discussed above are authorized under Minnesota Statutes Section 237.071 (Special pricing) and are not prohibited

under Minnesota Statutes Section 237.60 (Discriminatory practices; service costs).

Sincerely,

Daniel Meldazis
Senior Manager - Regulatory Affairs

Exhibit FC-4

Public Document

Trade Secret Information has been Excised

Agreement between Sprint Communications Company, LP and Focal Communications Corporatioin

31

QCC Responses to MCI Interrogatories Nos. 5 & 7

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 31
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #31)

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23) AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 10

MCI Interrogatory No. 5:

Please state whether QCC or any of its affiliates provided switched access service in Florida at any time between November 2002 and February 2007.

QCC objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. When, in and what manner, QCC received and utilized service authority to provide regulated service in Florida bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC. QCC further objects to this Request to the extent it seeks information regarding any affiliate of QCC. Without waiver of its objections, QCC responds as follows.

No.

Respondent: William R. Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND SUPPLEMENTAL RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 7, 11)
DOCKET NO. 090538-TP
PAGE 3

INTERROGATORIES

MCI Interrogatory No. 7:

Identify each state in which QCC or any of its CLEC affiliates provided switched access service between January 2004 and January 2007.

INITIAL RESPONSE: QCC objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. QCC's provision of service in other states bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC in Florida. QCC further objects to this Request to the extent it seeks information regarding any affiliate of QCC. Without waiver of its objections, QCC responds as follows.

See QCC's response to MCI Interrogatory No. 5.

Respondents: QCC Legal;

William R. Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows.

QCC did not provide switched access between the years 2004 and 2007. However, QCC was certificated to provide local exchange service in nearly every state (including Florida) during that period. Had it been presented with the same "bilateral" discount arrangement as MCI provided to AT&T, QCC could have easily rolled out switched access tariffs and price lists in Florida and other states. QCC was deprived of that opportunity, and was deprived of even the opportunity to consider whether to offer switched access (assuming that was even a legitimate prerequisite for the discount afforded by MCI to AT&T), by MCI's intentionally secretive conduct.

Respondents: QCC Legal;

William R. Easton, QCC Wholesale Advocacy
1600 7th Avenue, Room 1506
Seattle, WA 98191

32

QCC Responses to MCI Interrogatories Nos. 4 & 24

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 32
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #32)

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23) AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 7

MCI Interrogatory No. 4:

If the answer to MCImetro Interrogatory 3 above is in the affirmative,

a. Please state the date on which QCC obtained a certificate of authority to provide service as a CLEC in Florida.

QCC objects to this Request on the basis that it seeks information in the public domain and on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. When, in and what manner, QCC received and utilized service authority to provide regulated service in Florida bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC. Without waiver of its objections, QCC responds as follows.

QCC's certificate of authority to provide service as a CLEC in Florida was issued on March 3, 1999.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

b. Please state the date on which QCC began providing service as a CLEC in Florida.

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Based on its reasonable investigation, QCC believes that it first began providing CLEC service in Florida in 1999, although a precise date (month and day) could not be ascertained.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

c. Does QCC have a tariff or price list to provide competitive local exchange services in Florida?

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

As of December 14, 2009, Qwest no longer files tariffs with the Florida Public Service Commission for its detariffed local services. Qwest's Local Exchange services can be found in its Local Exchange Services Catalog No. 1 at http://tariffs.qwest.com:8000/Q_Tariffs/FL/index.htm

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

d. If the answer to subpart c is in the affirmative, please state the date on which QCC first filed a tariff or price list to provide competitive local exchange services in Florida.

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

QCC FPSC Price List No. 1, as of June 17, 2002, which replaced and canceled LCI International Telecom Corp.'s (LCI) Local Exchange Service Florida Price List No. 1. LCI's local exchange price list was issued in 1999.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

e. During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service to residential customers in Florida?

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

No.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

f. During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service using its own facilities, including its own end-office switch or switches, in Florida?

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

No.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

g. During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service in Florida by reselling the service of one or more local exchange carriers or by using unbundled network elements that it obtained from one or more local exchange carriers, either pursuant to agreement or tariff?

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Yes.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

h. If the answer to subpart g above is in the affirmative, please identify each local exchange carrier whose services QCC resold or from which QCC obtained unbundled network elements in Florida.

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Bell South.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION SERVICES'SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 3

INTERROGATORIES

MCImetro Interrogatory No. 24

During the period between January 2004 and February 1, 2007, did QCC provide competitive local exchange service in Florida by using unbundled network elements that it obtained from one or more local exchange carriers, either pursuant to agreement or tariff?

RESPONSE: QCC objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. As an IXC, similarly situated to AT&T with regard to MCI's provision of intrastate switched access in Florida, QCC was entitled to non-discriminatory rate treatment for that service. The provision of UNE-based local services is not an explicit or implicit prerequisite for obtaining non-discriminatory rate treatment. Without waiver of its objections, QCC responds as follows.

No. While QCC (as a certificated CLEC) had the authority to provide competitive local exchange service in Florida between January 2004 and February 1, 2007 by using unbundled network elements, it did not so. Had MCI made QCC aware of the availability of the discount arrangement provided to AT&T, QCC could have made different business decisions regarding the type of services it chose to offer in Florida. In any event, it is not clear that the provision of UNE-based local exchange services would have been required.

Respondents: QCC Legal;

Marsha Dodd, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

33

Qwest added to service list dated 4-29-2005

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 33
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #33)

200 S. 5th Street, Room 2200
Minneapolis, Minnesota 55402

Qwest Corporation
Law Department
(612) 672-8927-Phone
(612) 672-5911-Fax

Joan C. Peterson
Attorney

RECEIVED
MAY - 2 2005
MN PUBLIC UTILITIES COMMISSION

Qwest
Spirit of Service™

April 29, 2005

Dr. Burl W. Haar
Minnesota Public Utilities Commission
121 Seventh Place East
Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of the DOC Investigation in Many Companies Negotiated Contracts for Switched Access Services
Docket No. P, et al./C-04-235

Dear Dr. Haar:

This letter is to request that you add me to the official service list in the above-referenced matter. If you should have any questions, please feel free to contact me.

Very truly yours,

Joan C. Peterson

JCP/bardm

Enclosures

cc: Service List

5

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Phyllis Reha	Commissioner
Kenneth A. Nickolai	Commissioner
Thomas W. Pugh	Commissioner

In the Matter of the DOC Investigation in Many Companies Negotiated Contracts for Switched Access Services

Docket No. P, et al./C-04-235

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Dianne Barthel. being first duly sworn, deposes and says:

That on the 29th day of April, 2005, in the City of Minneapolis, State of Minnesota, she served the annexed filing of Qwest Corporation identified on the filing letter, by either delivery in person, or facsimile or electronic mail followed by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office in Minneapolis, Minnesota, directed to said addressees at their last known addresses.

Dianne Barthel

Subscribed and sworn to before me
this 29th day of April, 2005.

Notary Public

LEANN M. CAMMARATA
Notary Public-Minnesota
My Commission Expires Jan 31, 2010

34

Minnesota PUC Order Dismissing Complaint in Docket No. P-442 et.al./C04-235

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 34
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #34)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Negotiated Contracts for Switched Access Services

ISSUE DATE: July 7, 2005

DOCKET NO. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235

ORDER APPROVING STIPULATIONS, DISMISSING VARIOUS COMPLAINTS, AND PROVIDING FOR RESPONSE TO ADDITIONAL COMPLAINT

PROCEDURAL HISTORY

On June 6, 2004, the Minnesota Department of Commerce (the Department) filed its complaint in the current case, alleging that various competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) had negotiated agreements that contained untariffed rates.

On August 19, 2004, Sprint Communications Company, LP (Sprint), AT&T Communications of the Midwest, Inc. (AT&T), Eschelon Telecom of Minnesota, Inc. (Eschelon), NorthStar Access (NorthStar), MCI Worldcom Network Services (MCI) and McLeodUSA Telecommunications Services, Inc. (McLeod) filed comments arguing that the companies did not violate any laws or Orders by entering into their respective agreements.

On September 9 and 10, 2004, AT&T, the Department, Eschelon, McLeod, Focal Communications Corporation of Minnesota, Inc. (Focal), MCI and Jaguar Communications (Jaguar)[1] filed reply comments.

On November 24, 2004, the Department filed additional comments indicating that further investigation has revealed the existence of numerous additional agreements between CLECs and IXCs providing for the payment of untariffed access rates.

[1] While Jaguar Communications is not a party in this proceeding, Jaguar filed comments indicating that AT&T and Sprint have refused to pay Jaguar's tariffed access rates and instead have requested Jaguar to sign a pre-negotiated contract with non-disclosure provisions. Jaguar urged the Commission to void the negotiated agreements between the CLECs and IXCs and order the IXCs to pay the corresponding tariffed rates.

On March 30, 2005, the Department filed a Stipulation and Agreement (Stipulation) that was signed by seven [Arizona Dialtone, Inc. (Arizona Dialtone), Eschelon, Focal, Global Crossing Telecommunications (Global Crossing), Integra Telecom of Minnesota (Integra), McLeod and Sprint] of the ten parties named in the Complaint. AT&T, MCI and NorthStar did not sign the Stipulation and Agreement.

On April 4, 2005, the Department filed additional comments indicating that it has been investigating a second group of agreements involving untariffed access rates. Among agreements being investigated are agreements between AT&T as the IXC and NOS Communications, Inc. (NOS Communications) and XO Communications, Inc. (XO Communications) as CLECs. The Department stated that while NOS and XO Communications were not part of the initial complaint, they have signed the Stipulation. The Department indicated that if the Stipulation is approved, the Department will consider the investigation of NOS and XO Communications complete.

On April 4, 2005, MCI, Inc., signed the Stipulation on behalf of itself and its subsidiaries.

On April 15, 2005, the Commission sent a notice soliciting comments regarding issues raised by the March 30, 2005 Stipulation and the Department's April 4, 2005 Additional Comments.

On April 19, 2005, KMC, Telecom, Inc. signed the Stipulation.[2]

On April 20, 2005, NorthStar Access signed a separate Stipulation with the Department (NorthStar Stipulation), explaining that a separate stipulation was appropriate for it since the March 30, 2005 Stipulation did not fit the circumstances associated with the contract between NorthStar Access and AT&T.

On April 25, 2005, Eschelon, MCI, Focal, Integra, KMC, McLeodUSA, XO Communications and the Department filed comments recommending Commission approval of the Stipulation and dismissing the signatories to the Stipulation from the Complaint.

On April 25, 2005, AT&T filed comments opposing the approval of the Stipulation.

On April 25, 2005, the Department also filed additional comments reporting three additional agreements with untariffed access rates: 1) KMC Telecom, LLC (CLEC) and Sprint (IXC); 2) MCImetro Access Transmission Services, LLC (CLEC) and Sprint; and 3) AT&T (CLEC) and MCI's various IXC subsidiaries operating in Minnesota, including: Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.

On May 11, 2005, the Commission met to hear oral argument regarding this matter. In the course of the proceeding the Department proposed to introduce an exhibit comparing tariffed and contract rates for CLECs. The Commission agreed to accept the late-filed exhibit on the condition that AT&T be allowed an opportunity to review the exhibit and file comments before the Commission would proceed to deliberate this matter.

---

[2] KMC was not part of the initial Complaint but does have an agreement involving untariffed access rates with Sprint.

On May 20, 2005, AT&T filed comments, including a revised Confidential Exhibit A, and on May 23, 2005, replies were filed on behalf of Eschelon, Focal Communications, Inc., Integra Telecom of Minnesota, KMC Telcom, Inc., McLeod USA Telecommunications Services, Inc., and XO Communications, Inc.

The Commission met on May 24, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Proposed Stipulation and Agreement

The Stipulation and Agreement was presented as resolving all issues arising from this proceeding against any signatory with respect to switched access charges in any written agreement that has been provided to the Department. A copy of the Stipulation and Agreement is attached.[3] Principal provisions of the Stipulation and Agreement may be fairly summarized as follows:[4]

1. The untariffed/unapproved access rates will be superseded by new tariffed access rates to be filed by the CLECs as described in Paragraph 1 of the Stipulation. The CLECs agreed to file new tariffed rates for intrastate switched access services pursuant to a revenue neutral formula within 20 days of the Commission's Order approving the settlement and that any discount would also be tariffed and available to all IXCs. Paragraph 1.

2. CLECs also agreed that in accordance with Minn. Rules, Part 7812.2210, subp. 5 (but only to the extent CLEC switched access rates remain regulated by the Commission and subject to a statutory tariffing requirement) that they would not offer switched access service within Minnesota on terms that are unreasonably discriminatory or contrary to their filed Minnesota tariffs and 2) that any individual case-based (ICB) pricing for switched access services would have an approved tariff pursuant to Minn. Rules, Part 7812.2210, subp. 5B. Paragraph 2.

3. The IXCs agreed to pay the tariffed rates calculated per the settlement formula and not to challenge any such rate prior to March 1, 2006. Paragraph 3.

4. IXCs further agreed not to dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under the tariff or contract. Paragraph 5.

---

[3] Attachment A.

[4] The approved Stipulation and Agreement has, by its approved terms, the effect of a Commission Order. Section 13. In the event of any dispute regarding the meaning and scope of any provision of the Stipulation and Agreement, the language of the Stipulation and Agreement itself shall control.

5. The Stipulation did not address the status of the untariffed/unapproved access charges and the agreement on a retroactive basis, and the parties agreed that the settlement did not invalidate or declare unreasonable any multi-state contract or tariffed rate applicable in other jurisdictions or any CLEC's tariffed intrastate switched access rates in Minnesota in effect prior to the date the Commission approves the settlement. Paragraph 4.

6. The CLECs and IXCs agreed not to initiate any further legal or regulatory action to enforce the rates set forth in the agreements at issue in the proceeding with respect to the Minnesota intrastate jurisdiction. Paragraph 6.

7. While the parties do not admit to any violation of law, the Stipulation does provide for CLECs to make payments to the State Treasury in Paragraphs 7 and 14.

8. The signatory CLECs and IXCs do not admit to any violation of state law in the Stipulation. Rather, Paragraph 13 states: "This Settlement does not imply, nor does any Party to this Settlement Agreement admit, any violation of law, rule or Commission Order. Upon its approval by the Commission, this Settlement Agreement will have the force and effect of a Commission Order."

9. Parties to the Stipulation agreed to jointly request that the Commission enter an Order approving the Settlement Agreement and dismissing with prejudice the Complaint against any party to the Agreement with respect to switched access charges in any written agreement that has been provided to the Department. Paragraph 8.

10. The Parties agreed that the settlement does not provide any third party with any remedy, right or privilege. Paragraph 11.

II. Signatories to the Stipulation

As of the date the Commission deliberated this matter, five of the six CLECs named in the Department's complaint (Arizona Dialtone, Eschelon, Focal, Integra, McLeod) and three of the four IXCs named in the complaint (Sprint, Global Crossing, and MCI, Inc. on behalf of itself and its IXC subsidiaries in Minnesota[5]) had signed the Stipulation.

The CLEC that did not sign the Stipulation (NorthStar Access) has signed a separate Stipulation with the Department, which is addressed in Section VII of this Order.

The IXC that did not sign the Stipulation is AT&T. Its objections to the Stipulation are addressed below in Section V.

In addition to the parties and agreements identified in the Department's original complaint, NOS and XO Communications (CLECs) signed the Stipulation regarding a subsequently identified untariffed rates agreements with AT&T (the IXC); KMC Telecom, LLC (a CLEC) signed the

[5] MCI, Inc.'s IXC subsidiaries in Minnesota include Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.)

Stipulation regarding another such agreement with Sprint (the IXC); and MCImetro Access Transmission Services, LLC (a CLEC) signed the Stipulation regarding such an agreement with Sprint (the IXC).

III. Party Positions Regarding the Stipulation

On April 25, 2005, Eschelon, MCI, Focal, Integra, KMC, McLeodUSA, XO Communications and the Department filed comments recommending Commission approval of the Stipulation and dismissing the signatories to the Stipulation from the Complaint.

On the same day, AT&T filed comments opposing the approval of the Stipulation.

As of the hearing date on this matter, then, all of the companies, except AT&T, had signed the Stipulation and the Department had indicated that it would consider its investigation of the signatories to the Stipulation complete if the Stipulation was approved.

IV. Commission Analysis and Action Regarding the Stipulation

A. Summary

The Stipulation and Agreement is in the nature of a settlement. Minn. Stat. § 237.076 authorizes the Commission to accept a settlement upon a finding that it is in the public interest and is supported by substantial evidence.

Having reviewed the record and heard the parties' oral arguments on this matter, the Commission finds that the proposed Settlement is in the public interest and supported by substantial evidence. Accordingly, the Commission will approve the Settlement and require its implementation.

B. Public Interest Analysis

A significant achievement of the Settlement is that the CLECs' new tariffed rates for switched access service will be lower than the currently tariffed rates. While reducing the rates for switched access service is not the primary objective of this docket, the CLECs' new tariffed rates are for the most part significantly lower than their currently tariffed rates. As a consequence, all the IXCs operating in Minnesota except for the IXCs who have been enjoying even lower access rates due to the confidential, off-tariff agreements identified in this docket will receive the benefit of the new, lower tariffed rates achieved by this Settlement.

More importantly, the Settlement ends a period of unproductive contention between IXCs and CLECs regarding the payment of tariffed switched access rates, a period marked by the creation of untariffed switched access rate agreements identified in this docket. The Settlement creates stability regarding payment of tariffed or Commission-approved ICB rates. Highlights of that period of stability include:

- The signatory IXCs agreed to pay the tariffed rates calculated as described in the Agreement prospectively from the date the Commission approves the Settlement Agreement unless a different rate is negotiated and approved by the Commission as an ICB rate.

- The signatory IXCs agreed that, unless provided for in a carrier's tariff or contract, they would not dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under tariff or contract.

- CLECs and IXCs further agreed not to initiate any further legal or regulatory action to enforce rates set forth in the agreements at issue in this proceeding with respect to the Minnesota jurisdiction.

The settlement also promotes fair and open competition by assuring that all IXCs will have access to the same tariffed rates or, if the CLEC proposes to offer ICB rates, that those rates will be pursuant to a Commission-approved tariff that states the conditions under which the unique price is available. Such an arrangement assures that ICB rates will be fairly available to all who meet the conditions that justify the ICB rate. This promotes fair and open competition by limiting the power of the largest IXCs to disadvantage smaller IXCs by securing rates that reflect their negotiating power rather than characteristics that truly justify lower rates.

C. AT&T's Objections to the Settlement

The only IXC objecting to the Settlement is AT&T. AT&T's objections to the Commission's acceptance of the Settlement Agreement are not persuasive.

First, AT&T asserted that the rates proposed in the Settlement were not just and reasonable but provided no evidence of that except that the proposed rates would be higher than the rates AT&T and certain other IXCs had been paying pursuant to their negotiated agreements. The Commission finds, however, that the formula and the resulting revenue neutral rates achieved by the settlement are fair and reasonable. For many IXCs, the new tariffed rates will be lower than the tariffed rates they are currently paying and, moreover, they come with the pro-competition assurance that no IXC is getting a lower rate unless warranted pursuant to ICB pricing.

Second, AT&T asserted that the Settlement's proposed rates are anti-competitive and unreasonably discriminatory because the proposed access rate for terminating calls is higher than the access rate for originating calls.

The relevance of AT&T's claim is unclear. Moreover, it is factually inaccurate. For seven of the eight CLECs whose proposed rates are shown on Attachment A of the Settlement, the proposed originating and terminating rates are the same. In one instance, the proposed access rate for terminating calls is negligibly higher ($0.00000010 higher) than the access rate for originating calls.

Third, AT&T argued that the Settlement Agreement was not in the public interest because, it asserted, the proposed tariffed access rates would result in increased long distance rates for numerous Minnesota customers.

It is not clear that there is an automatic pro-rata cause-effect relationship between switched access rates and the long distance rates AT&T charges. However, assuming that changed access rates result in some change in long distance rates, AT&T's argument ignores the fact that numerous Minnesota long distance customers may experience lower long distance rates due to the Settlement because they are customers of IXCs who have not been party to a negotiated agreement involving untariffed rates and will now be paying reduced tariff rates for switched access service.

Fourth, AT&T argued that the parties' settlement (Stipulation and Agreement) would improperly interfere with settlement agreements voluntarily entered into at arms' length by two businesses, settlements that are encouraged under Minnesota law and Commission policy. The settlement of issues achieved in the Stipulation and Agreement, however, is entitled to equal or greater deference than the settlements that AT&T refers to (between AT&T and several CLECs) since it has been submitted to the Commission, commented upon by the parties, and reviewed by the Commission.

Fifth, AT&T objected that the Settlement encourages CLECs to breach lawful and enforceable contracts.

AT&T's argument, however, is not against the Stipulation and Agreement but with the CLECs that have signed the Stipulation and Agreement. AT&T's position appears to be that the CLECs signing the Stipulation and Agreement are committed to a course of action that will breach valid and lawful contracts with IXCs and AT&T as an IXC in particular. AT&T, of course, is in no position to raise the rights that signatory IXCs may have under contracts since the signatory IXCs have agreed they will not seek to have those contracts performed. As to its own six contracts with CLECs for the provision of switched access service at untariffed rates, AT&T essentially is asking the Commission to examine and act on contract law claims that are not fully developed and for which this Commission may not be the appropriate forum.

Sixth, AT&T asserted that the Settlement violated Minnesota law by requiring CLECs and IXCs to obtain prior approval of CLEC tariffs and contracts. AT&T was apparently referring to the settlement's provisions regarding ICB pricing.[6] In that regard, Section 2(b) of the Settlement states:

> . . . if used for switched access services, [ICB pricing] will have an **approved** tariff on file . . . . [Bracketed material and emphasis added.]

Without needing to determine in this Order whether Minnesota law requires CLECs and IXCs to obtain prior approval of CLEC tariffs and contracts for ICB pricing, the Commission notes that the signatories' voluntary agreement to be bound by the provisions of Section 2(b) does not violate Minnesota law. AT&T cites no law prohibiting the parties from agreeing to obtain prior Commission approval of ICB tariffs and contracts. Agreement to seek prior approval of such rates does not offend the meaning or purposes of the ICB rate.

V. Department Complaint Against AT&T as an IXC

A. The Department's Complaint

In its initial complaint filed June 6, 2004, the Department asserted that four large IXCs, including AT&T, violated conditions associated with their certificates of authority by contracting with certain CLECs to pay lower, untariffed rates for switched access service. The Department stated that the Commission's October 15, 1985 Order in the 212 Docket[7] and its November 2, 1987 Order

---

[6] Settlement Paragraphs 2 (b) and 3.

[7] See *In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate InterCity Telecommunications Services Within the State of Minnesota*, P-442, P-442, P-443, P-444, P-421, P-433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985).

in the 582 Docket[8] established conditions associated with their certificates, including payment of switched access services at tariffed rates. The Department stated that if large IXCs are able to exert market power to receive lower switched access rates without demonstrating that there are cost differences justifying the lower rates, smaller IXCs will have more difficulty competing.

All the IXCs identified by the Department in its complaint except AT&T signed the Stipulation Agreement reviewed and approved in Section IV of this Order. As to the IXCs that signed the Stipulation, therefore, the Department's complaint will be dismissed, as provided in the Stipulation Agreement.

B. AT&T's Position

With respect to its negotiated contracts with six CLECs involving untariffed rates, AT&T objected that the Department failed to establish the existence of any legal obligation or duty requiring AT&T to purchase access services exclusively from tariffs. AT&T stated that the Department cited no requirements in AT&T's certificates or the two Orders cited (see Footnotes 6 and 7) imposing such an obligation on AT&T.

Additionally, with respect to its contract with Northstar, AT&T noted that this contract was not an agreement that established access rates varying from Northstar's tariffed Minnesota intrastate access rates. AT&T argued the Northstar contract is therefore materially different from the other contracts addressed in the complaint and should be dismissed.

AT&T asserted that none of the Department's other allegations applied to AT&T since as a customer of the CLECs' access services it had no obligation to assure that the contract rates were not unreasonably discriminatory or that the rates were offered to other similarly situated IXCs. Likewise, AT&T contended, it has no filing obligations under Minn. Rules, Part 7812.2210.

C. The Commission's Analysis and Action

Without addressing the merits of the Department's and AT&T's competing claims regarding the Department's complaint against AT&T as an IXC, the Commission finds that the principal concern inspiring the Department's complaint is addressed adequately by the Stipulation and Agreement approved in Section IV. In the Stipulation, the CLECs who have contracted with AT&T to provide switched access service at untariffed rates have agreed to discontinue that practice and to henceforward provide switched access service exclusively at tariffed rates. As a result, the Department's complaint against AT&T as an IXC is, in effect, moot. Accordingly, the Commission will not pursue this complaint further and will dismiss it.

---

[8] See *In the Matter of a Summary Investigation into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota*, Docket No. P-999/CI-85-582, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND ORDER INITIATING SUMMARY INVESTIGATIONS (November 2, 1987).

VI. Department Allegations/Complaint Regarding AT&T as a CLEC

A. The Department's Allegations

In its April 25, 2005 comments, the Department charged AT&T with violating Minn. Stat. § 237.07, Minn. Stat. § 237.09, and Minn. Rules, Part 7812.2210, subd. 5. The Department cited an agreement between AT&T acting as a CLEC and MCI's subsidiaries acting as IXCs.[9] The Department alleged that AT&T as a CLEC charged MCI subsidiaries (IXCs) untariffed switched access rates.

B. The Parties' Response

Subsequently, on March 30, 2005, the MCI subsidiaries signed the Stipulation Agreement that has been approved in this Order. AT&T, by contrast, objected that it did not have a chance to file comments objecting to the Department's allegations.

C. The Commission's Analysis and Action

Pursuant to the approved Stipulation Agreement, the Department's allegations against MCI will not proceed, but will be dismissed.

As to AT&T, the Commission finds that the Department's April 25, 2005 allegations against AT&T as a CLEC are within the Commission's jurisdiction and warrant investigation. Furthermore the Department's comments are in sufficient detail to inform AT&T regarding what is being alleged and to give it fair notice of what is to be responded to. Accordingly, the Commission will treat the Department's allegations as a complaint pursuant to Minn. Rules, Part 7812.2210, subp. 17 and allow AT&T to file an answer to that complaint within 20 days of this Order.

VII. NorthStar Stipulation

A. Background

Unlike the other contracts complained of by the Department in this matter, the contract between NorthStar (the CLEC) and AT&T (the IXC) results in lower access rates for AT&T by adjusting AT&T's Percent Interstate Usage (PIU). The PIU is a process developed to provide a surrogate means for determining the jurisdictional nature of long distance traffic where call detail is unavailable. Parties have disputes routinely regarding PIU factors and many federal access services tariffs provide a process to audit and/or resolve such disputes. The contract between NorthStar and AT&T resolved just such a dispute regarding the appropriate PIU to be applied to AT&T's long distance traffic with NorthStar in Minnesota.

[9] The MCI subsidiaries in question are: Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.

B. Parties' Positions

After initially asserting that AT&T and NorthStar violated Minnesota law by agreeing to a specific PIU, the Department modified its recommendation by recommending that the Commission simply require NorthStar to submit a compliance filing estimating when it will be able to measure AT&T's actual PIU rather than using a negotiated PIU.

On April 20, 2005, NorthStar Access signed a separate Stipulation with the Department, explaining that a separate Stipulation was appropriate since the March 30, 2005 Stipulation did not fit the circumstances associated with the contract between NorthStar Access and AT&T. The Stipulation stated in relevant part:

> **Further Filings Required**: NorthStar Access is to provide an estimated time frame stating when it will be able to recognize the jurisdiction of AT&T's interexchange traffic. Within 30 days of when the jurisdiction of traffic is known, NorthStar Access agrees to file a report with the Commission and Department on the actual jurisdiction of AT&T's traffic. NorthStar agrees, in lieu of using AT&T's declared PIU, to bill AT&T based on the actual recorded usage that identifies the jurisdiction of AT&T's traffic.

The stipulation also required NorthStar to charge only tariffed or Commission approved rates and dismissed NorthStar from the Complaint.

The Department filed comments stating that the Stipulation addressed its concerns.

C. Commission Analysis and Action

The Commission finds that the Stipulation between NorthStar and the Department is reasonable, in the public interest, and supported by substantial evidence. The Commission will, therefore, approve it and require its implementation.

ORDER

1. The Stipulation and Agreement filed March 30, 2005 in this matter is approved. Copy attached. Accordingly, the Department's complaint is dismissed as to all signatories. Parties to this document shall implement it according to its terms.

2. The Department's complaint against AT&T as an Interexchange Carrier (IXC) is dismissed.

3. Allegations by the Department against AT&T as a competitive local exchange carrier (CLEC) in comments filed April 25, 2005 are deemed to be a complaint pursuant to Minn. Rules, Part 7812.2210, subp. 17. AT&T will have 20 days from the date of this Order to file a response or answer.

4. The Stipulation between NorthStar and the Department dated April 20, 2005 is approved. Copy attached. Parties to this document shall implement it according to its terms.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651-201-2202 (voice) or 1-800-627-3529 (TTY relay service)

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a DOC Complaint and Request For Commission Action in Regard to Negotiated Contracts for Switched Access Services	MPUC Docket No.: P442, 5798, 5340, 5826, 437, 5643, 443, 5323, 5668, 466/C-04-235

STIPULATION AND AGREEMENT

This is a Stipulation and Agreement between the Minnesota Department of Commerce and the parties who are signatories to this agreement (The Parties). The Parties have entered into this Settlement Agreement with the express intent and purpose of settling and resolving certain issues raised in this proceeding in a manner that is consistent with the public interest. By executing this Stipulation and agreement, the Parties agree to recommend acceptance of this Stipulation and Agreement without reservation, except where the Parties have agreed to reserve those rights and privileges set forth below.

This Stipulation and Agreement resolves all issues arising from this proceeding against any party to this Stipulation and Agreement with respect to switched access charges in any written agreement that has been provided to the Department of Commerce

1. **Calculation of Switched Access Rates.** Each Competitive Local Exchange Carrier (CLEC) that is a Party to this Agreement with one or more contracts containing rates for Minnesota intrastate switched access services that are different from the rates in the CLEC's intrastate access tariffs agrees to file new tariffed rates for intrastate switched access services. The new tariffed rates must be no greater than the weighted average of the current contract rates and the currently tariffed rates in effect as of January 1, 2005, using 2003 or 2004 switched access minutes. The current and proposed tariffed rates for each Party CLEC are provided in Attachment A. Each CLEC will file revised access tariffs within 20 days of the Commission's Order approving settlement. Any rate increases above the weighted averages calculated under this paragraph will require prior Commission approval if filed prior to March 1, 2006.

Each CLEC further agrees that the ratio between its originating and terminating rates in its new tariff filed under this paragraph will not exceed the ratio between Qwest's

originating and terminating intrastate blended switched access rates in Minnesota in effect as of January 1, 2005.[1]

CLECs may offer a discount on switched access services for on time payment. The discount will be tariffed and available to all Interexchange Carriers (IXCs) on the same terms and conditions.

2. **Tariffing of switched access rates.** In accordance with MR 7812.2210, Subp. 5. but only to the extent CLEC switched access rates remain regulated by the Commission and subject to a statutory tariffing requirement, CLECs agree (a) that they will not offer switched access service within Minnesota on terms that are unreasonably discriminatory or contrary to their filed Minnesota tariffs; and (b) that ICB pricing, if used for switched access services, will have an approved tariff on file that clearly states the switched access component that is subject to ICB pricing and the conditions under which the ICB pricing is available pursuant to MR 7812.2210, subp. 5B.

3. **Payment of switched access charges.** IXCs that are Parties to this Settlement Agreement agree to pay the tariffed rates calculated as described in paragraph 1 above prospectively from the date the Commission approves the Settlement Agreement unless a different rate is negotiated and approved by the Commission as an ICB rate. The IXCs agree further not to challenge a CLEC's tariffed rate calculated under paragraph 1 prior to March 1, 2006, but reserve their right to challenge any rate filed or charged by a CLEC that is higher than the CLEC's tariffed rate filed under paragraph 1. This Settlement Agreement does not preclude an IXC from challenging after March 1, 2006, the weighted average rates calculated under paragraph 1 or any other tariffed rate.

4. **Impact on multi-state contracts and existing tariffs.** This settlement is based solely on issues raised in the Complaint that are relevant to Minnesota and does not purport to invalidate or declare unreasonable (a) any multi-state contract or tariffed rate applicable in other jurisdictions; or (b) any CLEC's tariffed intrastate switched access rates in Minnesota in effect prior to the date the Commission approves this settlement.

5. **Further disputes relating to switched access rates.** As of the effective date of Commission approval of this Settlement Agreement, unless provided for in a carrier's tariff or contract, IXCs agree that they will not dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under tariff or contract. This agreement does not, however, preclude IXCs from withholding payment during the pendency of a billing dispute for a reason other than disagreement with the applicable filed tariff rate or ICB rate.

6. **Further legal or regulatory action by CLECs and IXCs.** CLECs and IXCs agree not to initiate any further legal or regulatory action to enforce the rates set forth in

[1] Qwest's current blended Minnesota blended switched access rates are $0.0124390 for originating and $0.0229040 for terminating.

the agreements at issue in the proceeding with respect to the Minnesota intrastate jurisdiction.

7. **Payments.** In settlement of this dispute, each CLEC with over $500,000 in total 2003 Minnesota intrastate jurisdictional revenues agrees to pay into the State Treasury a total of $5,000 for each contract pursuant to which the CLEC billed a Minnesota intrastate switched access rate that has not been approved by the Commission and that is different from the corresponding rate in the CLEC's Minnesota intrastate switched access tariff. Each CLEC with under $500,000 in total 2003 Minnesota intrastate jurisdictional revenues agrees to pay into the State Treasury a total of $400 for each contract pursuant to which the CLEC billed a Minnesota intrastate switched access rate that has not been approved by the Commission and that is different from the corresponding rate in the CLEC's Minnesota intrastate switched access tariff.

8. **Dismissal of Complaint.** The Department of Commerce and other Parties to this Settlement Agreement will jointly request that the Commission enter an order approving the Settlement Agreement, and dismissing with prejudice the Complaint against any party to this Settlement Agreement with respect to switched access charges in any written agreement that has been provided to the Department of Commerce. The Parties will be bound by the terms of the Settlement Agreement, which shall be subject to the Commission's and Department's regulatory authority as defined by law. This Settlement Agreement does not preclude the Commission or the Department from undertaking investigations related to compliance with the Settlement Agreement or with applicable statutes, rules, or Commission Orders.

9. **Scope of Agreement.** The Settlement Agreement constitutes the entire agreement pertaining to the subject matter of the agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, concerning the subject matter hereof, except as explicitly stated in the Settlement Agreement. This Settlement Agreement is subject to approval by the Commission, and shall be of no effect unless the material terms of this Settlement Agreement are approved by the Commission.

10. **Amendments.** The Settlement Agreement may be amended only by a written instrument signed by all Parties to the agreement and approved by the Commission.

11. **Third Party Rights.** Except as may be specifically set forth in this Settlement Agreement, the Agreement does not provide and shall not be construed to provide any third party with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

12. **Counterparts to Agreement.** The Settlement Agreement may be executed in two or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effective, subject to Commission approval, on the latest date signed.

13. **Reservations.** This Settlement does not imply, nor does any Party to this Settlement Agreement admit, any violation of law, rule or Commission Order. Upon its approval by the Commission, this Settlement Agreement will have the force and effect of a Commission Order.

14. **Penalty relating to Docket No. P5323/NA-96-193.** In settlement of the Department's allegation concerning the Commission's June 25, 1996 Order in Docket No. P5323/NA-96-193 directing McLeod to file copies of contracts, including cost and rate information, for all services where individual case based pricing is used, McLeod agrees to pay into the State Treasury $500 in addition to the other remedies stated in this Settlement Agreement.

15. **Public Document.** This Stipulation and Agreement is a public document.

Dated: 3/30, 2005

MINNESOTA DEPARTMENT OF COMMERCE

By: Gregory J. Doyle

Gregory J. Doyle
Manager, Telecommunications Division

MAR 25 2005

Dated: 3/22, 2005

ARIZONA DIAL TONE, INC.

By: _____
Tom Bade, President

Dated: 3/24, 2005

ESCHELON TELECOM OF MINNESOTA, INC.

By: William D. Able

Its: Senior Attorney/Director

Dated: March 29, 2005

FOCAL COMMUNICATIONS CORPORATION OF MINNESOTA, INC.

By: Ellen Leuschultz

Its: Legal Counsel

Dated: 29 March, 2005

GLOBAL CROSSING
TELECOMMUNICATIONS

By: _____

Its: _____

Dated: March 29, 2005

INTEGRA TELECOM OF MINNESOTA, INC.

By: _____
James B. Huesgen

Its: President and Chief Financial Officer

Dated: March 29, 2005

MCLEODUSA TELECOMMUNICATIONS, INC.

By: [signature]

Its: Legal Counsel

Dated: March 29, 2005

NOS COMMUNICATIONS, INC

By: _____
Joseph Koppy, President

Dated: March 30, 2005

SPRINT COMMUNICATIONS COMPANY, LP

By: Victor E Dobras
Victor Dobras, Director – Regulatory/External Affair

Dated: March 29, 2005

XO COMMUNICATIONS, INC.

By: Dan Lipschultz

Its: Legal Counsel

ATTACHMENT A

Comparison of the Tariffed Switched Access Rates with Proposed Switched Access Rates

	CLEC's Tariffed Switched Access Rates					Proposed Intrastate Switched Access Rates				
	CCLC		local switching			CCLC		local switching		
CLEC	originating	terminating	originating	terminating	tandem switch	originating	terminating	originating	terminating	tandem switch
Arizona Dialtone			$ 0.019051	$ 0.025352				0.0190180	0.0252190	
Eschelon			$0.029567	$0.052413				0.0219570	0.0219570	
Focal			$0.045439	$0.050377				0.0369960	0.0369960	
Integra			$0.03600	$0.03500				0.0244950	0.0244950	
McLeodUSA			$0.025906	$0.053322				0.0272165	0.0272165	
KMC Telecom II			$0.025000	$0.025000				0.0213170	0.0213170	
XO Minnesota			$0.020424	$0.020424	$0.00073			0.0183370	0.0183370	
NOS Comm.			$0.0345319	$0.0345319				$0.0186585	$0.0186585	
MCImetro Access	$0.010000	$0.010000	$0.007550	$0.007550	$0.000676					
AT&T Comm.			$0.011396	$0.032462	$0.00048					

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 7th day of July, 2005 she served the attached

ORDER APPROVING STIPULATIONS, DISMISSING VARIOUS COMPLAINTS, AND PROVIDING FOR RESPONSE TO ADDITIONAL COMPLAINT.

MNPUC Docket Number: P-442,5798,5340,5826,5025,5643,443,5323,5668,4661/ C-04-235

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Mark Oberlander
AG
Roger Moy
Mary Swoboda
Jessie Schmoker
Linda Chavez - DOC
Julia Anderson - OAG
Curt Nelson - OAG

Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 8 day of

July, 2005

Robin Benson
Notary Public

ROBIN J. BENSON
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2010

P-04-235 1 Service List

P,etal/C-04-235

BURL W. HAAR (0+15)
EXECUTIVE SECRETARY
MN PUBLIC UTILITIES COMMISSION
SUITE 350
121 EAST SEVENTH PLACE
ST. PAUL MN 55101-2147

LINDA CHAVEZ (4)
DOCKET COORDINATOR
MN DEPARTMENT OF COMMERCE
SUITE 500
85 7TH PLACE EAST
ST. PAUL MN 55101-2198

JULIA ANDERSON
MN OFFICE OF THE ATTORNEY GENERAL
1400 BRM TOWER
445 MINNESOTA STREET
ST. PAUL MN 55101-2131

LINDA S. JENSEN
OFFICE OF THE ATTORNEY GENERAL
1400 BRM TOWER
445 MINNESOTA STREET
ST. PAUL MN 55101-2131

CURT NELSON
OAG-RUD
900 BRM TOWER
445 MINNESOTA STREET
ST. PAUL MN 55101-2130

DENNIS AHLERS
ESCHELON TELECOM, INC.
SUITE 900
730 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402

MONICA M. BARONE
SR. ATTORNEY
SPRINT MINNESOTA, INC.
6450 SPRINT PARKWAY
DISNEY A
OVERLAND PARK KS 66251-6105

WAUNETA BROWNE
AT&T
15711 WEST 145TH STREET
OLATHE KS 66062

PATRICK CHOW
MANAGER-RATES AND TARIFFS
MCIMETRO ACCESS TRANSMISSION SERVICES
9TH FLOOR
201 SPEAR STREET
SAN FRANCISCO CA 94105

REBECCA DECOOK
HOLLAND & HART
SUITE 400
8390 E. CRESCENT PARKWAY
GREENWOOD VILLAGE CO 80111

VICTOR E DOBRAS
STATE EXECUTIVE
SPRINT MINNESOTA, INC.
SUITE 1630
30 EAST 7TH STREET
ST. PAUL MN 55101-4901

MIKE DUKE
KMC TELECOM INC.
3RD FLOOR
1755 NORTH BORWN ROAD
LAWRENCEVILLE GA 30043

LETTY S.D. FRIESEN
AT&T
SUITE 900
919 CONGRESS AVENUE
AUSTIN TX 78701-2444

MELISSA K. GERAGHTY
DAVIS WRIGHT TREMAINE LLP
2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE WA 98101

PAT GIDEON
INTERMEDIA COMMUNICATIONS, INC.
FLOOR 5-10
201 SPEAR STREET
SAN FRANCISCO CA 94105

ROWENA HARDIN
NOS COMMUNICATIONS
4380 BOULDER HIGHWAY
LAS VEGAS NV 89121-3002

SANDRA HOFSTETTER
10157 IVYWOOD COURT
EDEN PRAIRIE MN 55347

KAREN J. JOHNSON
INTEGRA TELECOM OF MN, INC.
1200 MINNESOTA CENTER
7760 FRANCE AVENUE
BLOOMINGTON MN 55435

RANDEE KLINDWORTH
MCIMETRO ACCESS TRANSMISSION SERVICES
9TH FLOOR
201 SPEAR STREET
SAN FRANCISCO CA 94105-1634

GREGORY J. KOPTA
DAVIS WRIGHT TREMAINE LLP
2600 CENTURY SQUARE, 25TH FLOOR
1501 FOURTH AVENUE
SEATTLE WA 98101-3150

LESLEY LEHR
MCI
67 OTIS AVENUE
ST. PAUL MN 55104

DAN LIPSCHULTZ
MOSS & BARNETT
4800 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS MN 55402

MAC MCINTYRE
WINSTAR COMMUNICATIONS, LLC
SUITE 300
1850 M STREET
WASHINGTON DC 20036

ROBIN R. MCVEIGH
OVATION COMMUNICATIONS OF MINNESOTA
MCLEODUSA TELECOMMUNICATIONS SERVICES
P.O. BOX 3177
6400 C ST. SW
CEDAR RAPIDS IA 52406-3177

GREGORY MERZ
ATTORNEY
GRAY, PLANT, MOOTY, MOOTY & BENNETT
500 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS MN 55402

CATHY MURRAY
MANAGER, REGULATORY AFFAIRS
ESCHELON TELECOM, INC.
SUITE 900
730 SECOND AVE. S.
MINNEAPOLIS MN 55402

DIANE PETERS
GLOBAL CROSSING LOCAL SERVICES, INC.
1080 PETTSFORD VICTOR ROAD
PITTSFORD NY 14534

JOAN C. PETERSON
QWEST CORPORATION
200 SOUTH FIFTH STREET, ROOM 2200
MINNEAPOLIS MN 55402

PAAVO PYYKKONEN
NORTHSTAR ACCESS, LLC
P.O. BOX 207
BIG LAKE MN 55309

CARRIE RANGES
ARIZONA DIALTONE, INC.
7170 W. OAKLAND STREET
CHANDLER AZ 85226

PAUL REBEY
FOCAL COMMUNICATIONS CORP.
SUITE 1100
200 N. LASALLE
CHICAGO IL 60601

MICHAEL J. SHORTLY, III
GLOBAL CROSSING NORTH AMERICA
1080 PITTSFORD VICTOR ROAD
PITTSFORD NY 14534

DAVID STARR
ALLEGIANCE TELECOM OF MINNESOTA, INC.
9201 N. CENTRAL EXPRESSWAY
DALLAS TX 75231

SANDRA L. TALLEY
FOCAL COMMUNICATIONS
SUITE 1100
200 N. LASALLE STREET
CHICAGO IL 60601

SUSAN TRAVIS
METRO FIBER SYSTEMS OF MPLS/ST. PAUL
707 17TH ST
STE 3600
DENVER CO 80202

KIM K. WAGNER
ESCHELON TELECOM, INC.
SUITE 900
730 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402

TIMOTHY ZEAT
Z-TEL COMMUNICATIONS, INC.,
STUITE 220
601 SOUTH HARBOUR ISLAND BLVD.
TAMPA FL 33602

35

Qwest August 24, 2005 Comments to Minnesota PUC in Docket No. P-442 et.al./C04-235

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 35
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #35)

RECEIVED
AUG 2 4 2005
MN PUBLIC UTILITIES COMMISSION

WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

August 24, 2005

Eric F. Swanson
Direct Dial: (612) 604-6511
Direct Fax: (612) 604-6811
eswanson@winthrop.com

VIA MESSENGER

Dr. Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101-2147

RE: *In the Matter of Negotiated Contracts for Switched Access Services*
MPUC Docket No. P422, et al./C-04-235

Dear Dr. Haar:

Enclosed for filing are an original and 15 copies of Qwest's Comments in the above-referenced matter. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Eric F. Swanson

Eric F. Swanson

Enclosures

cc: Attached Service List

2448726v1

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner

MPUC Docket No.: P442, et al./C-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

QWEST'S COMMENTS

On April 25, 2005, the Department of Commerce ("DOC") submitted comments indicating that it had identified an agreement between AT&T as a CLEC and MCI as an IXC whereby the two companies entered into an illegal agreement related to intrastate switched access rates. The DOC alleged that this secret deal violated Minnesota law because AT&T charged untariffed access rates. On July 7, 2005, the Minnesota Public Utilities Commission ("Commission") issued its Order Approving Stipulations, Dismissing Various Complaints, And Providing For Response To Additional Complaint ("July 7 Order") that, among other things, certified the DOC's comments as an official complaint and ordered AT&T to respond. On July 27, 2005, AT&T filed a Motion to Dismiss or, in the alternative, a Motion for Definite Statement. On August 3, 2005, the Commission issued an order seeking comments on AT&T's Motion. Qwest submits these comments pursuant to that Commission Order.

Qwest opposes AT&T's Motion to Dismiss. AT&T alleges that it cannot properly defend itself without a more definite statement by the DOC as to what statutes and rules it violated. However, the issue here is clear. The DOC has "alleged that AT&T as a CLEC charged MCI

subsidiaries (IXCs) untariffed switched access rates." *July 7 Order, p. 9.* While the Department did not file a formal complaint in this matter, the Commission already properly determined that "the Department's comments are in sufficient detail to inform AT&T regarding what is being alleged and to give it fair notice of what is to be responded to." *Id.* Indeed, the DOC's comments clearly allege that AT&T entered into a secret agreement that provided one carrier with a rate for intrastate switched access that was lower than the rate in AT&T's tariff. If true, this fact would constitute a violation of Minnesota law.

Minnesota Statute section 237.035 governs telecommunications carriers such as AT&T and provides that telecommunications carriers shall comply with Minnesota Statute section 237.74. *Minn. Stat. §237.035, subd. 1(b)(2004).* Minnesota Statute section 237.74 contains an affirmative requirement that telecommunications carriers make public their rates:

> Every telecommunications carrier shall elect and *keep on file with the department* either a tariff or a price list for each service *on or before* the effective date of the tariff or price, containing the rules, rates, and classifications used by it in the conduct of the telephone business, including limitations on liability. The filings are governed by chapter 13. The department shall require each telecommunications carrier to keep *open for public inspection* at designated offices so much of these rates, tariffs or price lists, and rules as the department considers necessary for public information.
>
> *Minn. Stat. §237.74, subd. 1 (2004) (emphasis supplied).*

It is also clear that telecommunications carriers cannot discriminate in their pricing. Minnesota Statute section 237.74 states that "[n]o telecommunications carrier shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory." *Minn. Stat. §237.74, subd. 2 (2004).* Minnesota Statute section 237.74 further provides: "prices unique to a particular customer or group of customers may be allowed for services when differences in the cost of providing a service or a service element justify a

different price for a particular customer or group of customers. *Minn. Stat. §237.74, subd. 3 (2004).*

Minnesota Rule Part 7812.2210 also makes clear that it is impermissible for a CLEC to discriminate:

> **Discrimination.** No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:
>
> A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:
>
> (1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;
>
> (2) provide volume or term discounts;
>
> (3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices justify a different price;
>
> (4) offer different prices in different geographic areas when: (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC.
>
> B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.
>
> C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.
>
> *Minnesota Rule Part 7812.2210, Subp. 5 (2005).*

AT&T complains that it does not have sufficient notice of the matter against it without a formal complaint. However, Minnesota Statute section 237.74 allows a Commission investigation of violations of its provisions upon notice to the carrier:

> "When the commission or the department believes that an investigation of any matter relating to any telephone service should for any reason be made, it may on its own motion investigate the service or matter upon notice to the carrier."
>
> *Minn. Stat. §237.74, subd. 4(a) (2004).*

The Commission has ruled that the DOC's prior comments constitute such notice. This paragraph is distinct from the statutory requirements where a formal complaint is required where an entity other than the Department or Commission initiates an investigation:

> Upon a complaint made against a telecommunications carrier *by a telephone company, by another telecommunications carrier, by the governing body of a political subdivision, or by no fewer than five percent or 100*, whichever is the lesser number, of the subscribers or spouses of subscribers of the particular telecommunications carrier, that any of the rates, tolls, tariffs or price lists, charges, or schedules is in any respect unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission, after notice to the telecommunications carrier, shall investigate the matters raised by the complaint.
>
> *Minn. Stat. §237.74, subd. 4(b) (2004).*

The DOC's comments allege that AT&T entered into a secret agreement that provided certain competitors with a better price than that available in AT&T's publicly-filed rate and that AT&T has not provided sufficient justification for that discrimination. Presumably, if AT&T has information that its discrimination was "reasonable" and justified under Minnesota law, it can present that information. Fully investigating the DOC's allegation will allow AT&T the opportunity to make any such showing. Moreover, fully investigating this allegation is not just an interesting academic exercise. Charging untariffed and unapproved rates to only select market participants can materially distort the marketplace and harm competitors such as Qwest. Competition for long distance contracts is intense. If certain CLECs make available lower

access rates to some but not all competitors, competitors such as QCC can be put at a severe competitive disadvantage.[1]

Even though it is not required to file a formal complaint, the DOC will produce evidence at a hearing of specific violations of law. It appears that little, if any, formal discovery has yet been conducted by the DOC. The formal discovery process may lead the DOC or others to assert allegations of violations of the above-referenced provisions or of other state laws. Nonetheless, AT&T has specific notice that the DOC believes it failed to make public its rates for switched access services. That notice is sufficient for this matter to continue.

Minnesota Rules also provide for a remedy:

> If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:
>
> (1) change the rate, tariff, charge, schedule, or practice;
>
> (2) make the service reasonable, adequate, or obtainable; or
>
> (3) take other appropriate action.

Minnesota Rule Part 7812.2210, Subp. 17 (2005).

In addition, of course, should the Commission find that AT&T has violated the provisions of Chapter 237 or the Commission's rules, penalties against AT&T may also be appropriate.

[1] Here, as AT&T acknowledges in its Motion, AT&T and MCI had "reciprocal agreements" whereby each company's CLEC operations provided the other company's IXC operations with lower than tariffed intrastate switched access rates, *AT&T Motion, p. 2.* providing both MCI and AT&T's IXCs with a competitive advantage over companies not party to such unfiled agreements.

For the foregoing reasons, the Commission should deny AT&T's Motion to Dismiss and allow this matter to proceed. However, should the Commission believe a more definite statement of charges is appropriate, Qwest would not oppose that action.

Dated: 8-24-05

By: Eric F. Swanson
Eric F. Swanson, #188128

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 225
Minneapolis, Minnesota 55402
(612) 604-6400

Attorneys for Qwest

2446559v1

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner

MPUC Docket No.: P442, et al./C-04-235

In the Matter of Negotiated Contracts for Switched Access Services

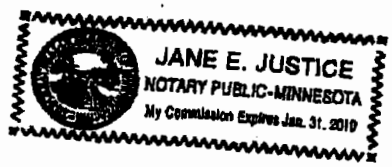
AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary G. Holly, of the City of Lake Elmo, County of Washington, the State of Minnesota, being first duly sworn, deposes and says that on the 24th day of August, 2005, she served the attached **Qwest's Comments** to all said persons on the attached Service List, true and correct copies thereof, by electronic delivery, hand-delivery and/or by depositing the same enclosed in an envelope, postage prepaid in the United States Mail in the post office at Minneapolis, Minnesota.

Mary G. Holly
MARY G. HOLLY

Subscribed and sworn to before me this
24th day of August, 2005.



Jane E. Justice
Notary Public

2447513v1

MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

(05/09/05)

Burl W. Haar (original + 15 copies)
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101-2147

Linda Chavez (4 copies)
Docket Coordinator
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101

Julia Anderson
Assistant Attorney General
Minnesota Office of the Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Curt Nelson
Minnesota Office of the Attorney General
900 BRM Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Linda S. Jensen
Assistant Attorney General
Minnesota Office of the Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Dennis Ahlers
Eschelon Telecom, Inc.
Suite 900
730 Second Avenue South
Minneapolis, MN 55402

Monica M. Barone
Sprint Minnesota, Inc.
6450 Sprint Parkway
Disney A
Overland Park, KS 66251-6105

Wauneta Browne
AT & T
15711 West 145th Street
Olathe, KS 66062

Patrick Chow
MCImetro Access Transmission Services
9th Floor
201 Spear Street
San Francisco, CA 94105

MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

Rebecca DeCook Holland & Hart Suite 400 8390 E. Crescent Parkway Greenwood Village, CO 80111	Victor E. Dobras Sprint Minnesota, Inc. Suite 1630 30 East Seventh Street St. Paul, MN 55101-4901
Mike Duke KMC Telecom Inc. 3rd Floor 1755 North Brown Road Lawrenceville, GA 30043	Letty S.D. Friesen AT & T Suite 900 919 Congress Avenue Austin, TX 78701-2444
Melissa K. Geraghty David Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101	Pat Gideon Intermedia Communications, Inc. Floor 5-10 201 Spear Street San Francisco, CA 94105
Rowena Hardin NOS Communications 4380 Boulder Highway Las Vegas, NV 89121-3002	Sandra Hofstetter 10157 Ivywood Court Eden Prairie, MN 55347
Karen J. Johnson Integra Telecom of MN, Inc. 1200 Minnesota Center 7760 France Avenue Bloomington, MN 55435	Douglas W. Kinkoph LCI International Inc. 8180 Greensboro Drive Suite 800 McLean, VA 22102
Randee Klindworth MCImetro Access Transmission Services 9th Floor 201 Spear Street San Francisco, CA 94105-1634	Gregory J. Kopta David Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101
Lesley Lehr MCI 67 Otis Avenue St. Paul, MN 55104	Dan Lipschultz Moss & Barnett 4800 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402

MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

Mac McIntyre Winstar Communications, LLC Suite 300 1850 M Street Washington, DC 20036	Robin R. McVeigh Ovation Communications of Minnesota McLeodUSA Telecommunications Services P.O. Box 3177 6400 C Street S.W. Cedar Rapids, IA 52406-3177
Gregory Merz Gray Plant Mooty, Mooty & Bennett 500 IDS Center 80 South Eighth Street Minneapolis, MN 55402	Cathy Murray Eschelon Telecom, Inc. Suite 900 730 Second Avenue South Minneapolis, MN 55402
Diane Peters Global Crossing Local Services, Inc. 1080 Pittsford Victor Road Pittsford, NY 14534	Joan C. Peterson Qwest Corporation 200 South Fifth Street, Room 2200 Minneapolis, MN 55402
Paavo Pyykkonen NorthStar Access LLC P.O. Box 207 Big Lake, MN 55309	Carrie Ranges Arizona Dialtone, Inc. 7170 W. Oakland Street Chandler, AZ 85226
Paul Rebey Focal Communications Corp. Suite 1100 200 N. LaSalle Chicago, IL 60601	Michael J. Shortly, III Global Crossing North America 1080 Pittsford Victor Road Pittsford, NY 14534
David Starr Allegiance Telecom of Minnesota, Inc. 9201 N. Central Expressway Dallas, TX 75231	Sandra L. Talley Focal Communications Suite 1100 200 N. LaSalle Chicago, IL 60601
Susan Travis Metro Fiber Systems of Mpls/St. Paul 707 17th Street Suite 3600 Denver, CO 80202	Kim K. Wagner Eschelon Telecom, Inc. Suite 900 730 Second Avenue South Minneapolis, MN 55402

MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

Timothy Zeat Z-Tel Communications, Inc. Suite 220 601 South Harbour Island Boulevard Tampa, FL 33602	

2447534v1

36

QCC & AT&T dated January 29, 2007 (Minnesota State Court Complaint)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 36
PARTY Florida Public Service Commission Staff
DESCRIPTION (Staff's Exhibit #36)

FILED PSL
07 JAN 29 PM 3:13
HENNEPIN COUNTY DISTRICT COURT ADMINISTRATOR

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY — Case Type: Other Civil

Qwest Communications Corporation, a Delaware corporation,

Plaintiff,

v.

AT&T Inc., a Delaware corporation; AT&T Communications of the Midwest, Inc., an Iowa corporation; and TCG Minnesota, Inc., a Delaware corporation,

Defendants.

Case No.

COMPLAINT

For its complaint against Defendants, Plaintiff Qwest Communications Corporation ("Qwest") states the following:

Introduction and Overview

1. AT&T is a telecommunications carrier that has, since at least 1998, engaged in a broad-scale national effort to evade the legally-mandated intrastate switched-access tariffs filed in numerous states and thereby gain a significant illegal and unfair competitive advantage at the expense of Qwest, one of AT&T's competitors, among others.

2. Many states, including Minnesota, require telephone companies and telecommunications carriers to file and honor tariffs for intrastate access charges. A purpose of such legal requirements is to protect against price discrimination and unfair competition.

3. AT&T flouted state tariff requirements and coerced nascent competitive local exchange telephone companies ("CLECs") to provide off-tariff rates with various threats and

incentives, including withholding compensation from the CLECS for services provided to AT&T until the CLECs agreed to accept contracts for illegal and discriminatory intrastate switched-access rates and charges. AT&T used a non-negotiable form for these contracts that required the CLECs to keep the agreements confidential. With the exception of a small subset in Minnesota for which disclosure was forced by agency action, none of these agreements have been filed. Nor has the discrimination in favor of AT&T been justified.

4. The Minnesota Department of Commerce uncovered AT&T's conduct and initiated administrative proceedings against AT&T. The Minnesota Public Utilities Commission determined that AT&T had a duty as a long-distance telephone company (also known as an inter-exchange carrier or "IXC") to pay tariffed amounts for intrastate switched access. Those proceedings have caused AT&T to enter into a "Minnesota exception," under which AT&T has begun to pay tariff rates in Minnesota. However, AT&T's actions have not been fully remedied in Minnesota and its conduct continues unabated in other states. AT&T's scheme involves hundreds of agreements, many of which have multi-state applications and effects.

5. AT&T has violated state requirements directly; it has committed and participated in frauds and misrepresentations; it has conspired with other companies to procure and exploit violations; and it has aided and abetted the violations of other companies. AT&T continues to enforce and exploit these agreements in a large number of states in which they were and are unlawful.

6. AT&T's actions have caused and are causing harm to Qwest, one of AT&T's competitors, in the form of lost market share, lost profits and other consequential harm.

7. Qwest brings this action to seek declaratory relief, injunctive relief, damages, and other relief warranted by AT&T's illegal actions.

Parties

8. Qwest is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest has participated and currently participates in the long distance market or markets at issue in this case and owns the claims at issue, either by virtue of its own dealings or as a result of mergers, assignments and other consolidations from predecessor or affiliate organizations. Qwest is authorized to do business in the State of Minnesota.

9. Defendant AT&T Inc. is a Delaware corporation with its headquarters in San Antonio, Texas. At the time that most of the contracts described herein were formed, AT&T Corp. was a New York corporation with headquarters in New Jersey, but on November 18, 2005, SBC Communications, Inc. merged with AT&T Corp. and changed its name to AT&T Inc. AT&T Inc. is the successor in interest, parent, or affiliate of all AT&T entities described herein. (The term "AT&T" in this Complaint will be used to refer to AT&T Inc. and its predecessors and affiliates and will be used to refer to AT&T's predecessors and affiliates, including the co-defendants, in their roles as CLECs or IXCs, as applicable.)

10. Defendant AT&T Communications of the Midwest, Inc. ("AT&T Midwest") is an Iowa corporation headquartered at One AT&T Way, Bedminster, NJ 07921. It is a wholly-owned subsidiary of AT&T.

11. Defendant TCG Minnesota, Inc. is a Delaware corporation with its principal place of business in New Jersey. It too is a wholly-owned subsidiary of AT&T.

Jurisdiction and Venue

12. Jurisdiction in this Court is proper pursuant to Minn. Stat. § 484.01.

13. Venue in this District is proper pursuant to Minn. Stat. § 542.09.

Factual Background

Role of Regulation and Competition in the Relevant Markets in the Telecommunications Industry

14. This lawsuit pertains to an important aspect of the telecommunications industry that may be virtually unnoticed by most consumers of long-distance phone calls but that has enormous economic implications for the CLECs and IXCs that connect and transport those calls.

15. "Local exchange carriers" ("LECs") provide local telephone service to customers ("subscribers"). LECs own and control most of the plant and facilities used to provide local telephone service in their geographic areas. By way of general illustration, in local telephone networks, the subscribers' wired telephones are connected to the network in the subscribers' local service areas by cable strung on telephone poles or buried underground. The cable connects each telephone subscriber to a local "central office" switch in the LEC's service area. A switch is a machine that receives telephone calls and "switches" (that is, connects) the calls to the next step along the path to the destination that the subscriber dialed. If the call is for a subscriber on another switch, the central office sends the call to another switch that routes the call on its way. Thus, the telephone network is in essence a series of switches connected to one another. (While technologies such as internet protocol networks are beginning to change the structure of local telephone systems, this description remains a generally accurate explanation of the network structure involved in this case.)

16. Local telephone networks: (1) complete local calls; and (2) originate and terminate long-distance calls. When a subscriber places a call to someone whom the subscriber's LEC also services, then that LEC originates and terminates the call. In some cases involving "local toll" traffic, if the call is outside the free local service area but not necessarily outside the territory of the LEC that originates the call (known as "local toll service"), the subscriber dials

"1" plus the phone number and the call goes to the subscriber's preselected IXC to carry the call from the originating LEC exchange to the terminating LEC exchange. When a subscriber dials a number outside the LEC's service area with "1+" dialing, the caller's LEC originates the call, but then routes it outside the local service area. If the call is long-distance, the LEC sends the call to the subscriber's preselected IXC.

17. Generally, IXCs may not maintain their own networks to the end user's location and in many cases it is economical for IXCs to rely, therefore, on access to the networks maintained by LECs when bringing long distance calls from the calling party (originating) or to the receiving party (terminating). When a subscriber places a long-distance call (or when the subscriber has chosen a company other than its LEC to provide its local toll service), the customer's IXC generally must access both the calling party's local network and the receiving party's local network to complete the call. LECs charge IXCs a fee for using their local networks to complete customers' long-distance or local toll calls. In other words, IXCs must pay the LECs' "access charges" to use the local networks on each end of the call. Local access on the calling party's end of the call is called "originating access," while access on the receiving party's end is "terminating access."

18. This lawsuit pertains specifically to the subset of long-distance phone calls that are handled on an intrastate basis—that is, phone calls that originate in one local telephone exchange, are carried by one or more IXCs, and are terminated in another local telephone exchange within the same state.

19. LECs may be incumbent local exchange carriers ("ILECs"), including the successors to the Bell Telephone Company, or they may be CLECs, which are companies that have come into existence after the enactment of the Telecommunications Act of 1996. This

lawsuit pertains to the intrastate switched-access charges for origination or termination with CLECs.

20. The larger IXCs during the period from approximately 1998 through the present have included AT&T, MCI, Sprint, and Qwest. Some IXCs, such as AT&T, have also acted as CLECs in some states or nationally.

21. Since a merger in 2000, Qwest has been affiliated with an ILEC known as Qwest Corporation ("QC"), that has provided local exchange services in 14 states, including Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. These 14 states are referred to herein as Qwest's "In-Region States." Qwest has provided retail and wholesale long-distance inter-exchange telephone service in states other than its In-Region States at all pertinent times since 1998. Qwest has provided retail long-distance inter-exchange service in its In-Region States prior to the merger in 2000, and, thereafter, only after receiving certain approvals from various state and federal agencies, the dates of which range from about December 2002 through December 2003.

22. The switched-access charges for calls made within the same state are intrastate switched-access charges and are subject to regulation, to the extent exercised, by the given state and its administrative agencies charged with regulation of intrastate telephone service. The switched-access charges for calls that cross state lines are interstate switched-access charges and are subject to regulation by the Federal Government and, specifically, by the Federal Communications Commission ("FCC"). This lawsuit pertains to intrastate calls and not to interstate calls.

23. Nearly all states, including Minnesota, subscribe to the filed rate doctrine as reflected in statutes, regulations, and case law. The filed rate doctrine, sometimes referred to as the filed tariff doctrine, generally requires that the specific filed rate, toll, charge or price for a service be published in a tariff and charged to customers until the rate, toll, charge, or price for the service is changed through a new tariff filing or through an order of the appropriate regulatory agency requiring a going-forward change to the tariff. Under the filed rate doctrine, parties providing or receiving a tariffed service, including many telephone or telecommunications services, are governed by the tariffed rate or price, and are not free to negotiate an off-tariff rate. Many states, including Minnesota, also have had or have policies requiring CLECs and other telephone companies or telecommunications carriers to provide services and prices without discrimination between or among customers.

24. Many states have required or currently require CLECs to keep on file with the appropriate public agency the specific rate, toll, charge, or price for intrastate switched-access services provided by CLECs and or mandate non-discrimination with respect to such charges. This lawsuit pertains to states that have required or require such filings for intrastate switched-access services provided by CLECs or that mandate non-discrimination with respect to such matters. For purposes of this Complaint, the states at issue, referred to herein as "Filed-Rate States," include the following:

- Alabama;
- Arizona;
- Arkansas;
- California;
- Colorado;

- Connecticut;
- Delaware;
- Florida;
- Georgia;
- Iowa;
- Kansas;
- Kentucky;
- Louisiana;
- Maryland;
- Massachusetts;
- Mississippi;
- Missouri;
- Minnesota;
- Nebraska;
- Nevada;
- New Jersey;
- New Mexico;
- New York;
- North Carolina;
- North Dakota;
- Oklahoma;
- Pennsylvania;
- Rhode Island;
- South Dakota;

- Tennessee;
- Texas;
- Vermont;
- Virginia;
- West Virginia; and
- Wyoming.

Qwest reserves the right to amend and supplement this listing of Filed-Rate States to bring into play other states that currently have similar requirements or that have had similar requirements at material times.

25. In Filed-Rate States, LECs charge tariff rates to the IXCs for use of their networks for the origination and termination of long-distance calls. Minutes of Use (MOU) provide a common measurement for the traffic that is routed through the LEC switches and a basis for common intrastate switched-access charges.

26. Since interstate switched-access charges are regulated by the FCC and intrastate switched-access charges are regulated, if at all, by the many Filed-Rate States, intrastate switched-access charges for CLECs can vary from state to state and can (and generally do) vary from the interstate rates. Moreover, intrastate switched-access charges for CLECs can (and generally do) vary from those charged by ILECs. Intrastate switched-access charges are often higher than interstate switched-access charges.

27. There has been and remains fierce competition among IXCs for inter-exchange telephone traffic both for intrastate and interstate calls at both retail and wholesale levels. IXCs want to control and minimize variable costs, and switched-access charges represent a large share of those costs. In Filed-Rate States, however, intrastate switched-access charges are governed by

tariffed prices. Accordingly, fair competition as between and among IXCs for intrastate long-distance telephone calls is to be pursued in relation to prices of other service inputs, quality of service, and other factors besides the intrastate switched-access charges.

28. The long distance market includes the retail market, in which services are sold directly to end-user customers, and the wholesale market, which involves resale or transport and termination services for another IXC's traffic. Both the retail long distance market and the wholesale long distance market are and have been competitive markets during the times relevant to this lawsuit. At the same time, IXCs have also routinely entered into transactions with other IXCs in the wholesale market for resale and transport and termination services. The expectation and express or implied representation and obligation for such wholesale services is that the terminating IXC will terminate the call lawfully and will assume and satisfy all associated obligations to pay the tariffed charges in Filed-Rate States for intrastate switched-access.

29. Access charges are one of the largest costs of doing business for Qwest, AT&T, MCI, and Sprint, as well as other long-distance companies.

30. Revenues from IXCs for intrastate switched-access charges and interstate switched-access charges represent a large share of the income expected by CLECs for their local exchange services.

AT&T's Self-Help and Off-Tariff Deals

31. AT&T decided in 1998 to adopt a national policy under which it would refuse to pay for CLEC access services in exchanges where the ILEC access charges were lower than those of the CLEC. AT&T pursued its national policy without regard to the unlawful results of its policy in Filed-Rate States.

32. AT&T obtained enormous financial leverage over the CLECs through its unilateral decision to withhold payment of the tariffed access charges. This created a financial squeeze on CLECs that effectively eliminated meaningful opportunities for negotiation, and put the CLECs at the mercy of AT&T's demands.

33. AT&T has publicly admitted its self-help measures and has attempted to justify those measures by complaining that the public policy-makers have failed to mandate reforms, failed to do so with sufficient speed, or failed to mandate adequate reforms. Rather than abide by decisions of the regulators of Filed-Rate States, AT&T instead elected to engage in self-help to pay less than state law required it to pay, and carried out its wishes in a deceptive, intentional and knowing manner.

34. AT&T conceived, undertook, and implemented its self-help measures without regard for the law as it existed and currently exists. As set forth below, AT&T reached a bilateral deal with MCI for untariffed prices between their respective IXC and CLEC operations as early as 1998, imposed its self-help deals on other CLECs as early as 2000, and the deals have continued apace since then.

35. Over the years, AT&T used the financial leverage gained through its size, and the volume of its intrastate calls originated or terminated with CLECs, to refuse to pay CLECs for access services at lawful tariffed rates and to induce, coerce, or persuade the CLECs to enter into agreements for the purpose of avoiding lawful tariffed access charges. In the words of one of the CLECs pressured by AT&T's self-help measures:

> AT&T asserts that CLECs "voluntarily" agreed to these contracts. This is the equivalent of Stalin saying that Poland voluntarily agreed to occupation by the Soviet Union. The fact is that AT&T refused to pay <u>any</u> access charges unless and until an agreement was signed. AT&T not only refused to pay the tariffed rate, it refused to pay anything, even the rate that it claimed was reasonable, until the CLEC signed the agreement. This denied the CLECs millions of dollars at a

> time that they were struggling to merely survive. Thus the agreements were hardly "voluntary" on the part of the CLECs.

Eschelon's Reply to AT&T's Response to Department Exhibit, p. 3, *In the Matter of Negotiated Contracts for the Provision of Switched-access Services*, Minnesota Public Utilities Commission ("PUC"), Docket No. P442, etc./C-04-235, May 23, 2005. In the words of another group of CLECs:

> AT&T misleadingly suggests that the CLECs "voluntarily" agreed to these contracts in exchange for not having to defend their excessive tariff rates in complaint proceedings. More accurately, the CLECs entered into these contracts because AT&T was refusing to pay any of the multiple millions of dollars in access charges that the CLECs had properly billed at tariffed rates for services already received. The CLECs had to enter into these contracts to receive even a portion of these very large past due payments.

Reply of Focal Communications, Inc., Integra Telecom of Minnesota, Inc., KMC Telecom, Inc. McLeodUSA, Inc., and XO Communications, Inc. to AT&T's Comments on Department's Exhibit, PUC Docket No. P442, etc./C-04-235, May 23, 2005. In the same vein, the CLEC McLeodUSA provided the proper characterization of the conduct of AT&T and MCI in *Reply Comments of McLeodUSA, Inc.*, PUC Docket No. P442, etc./C-04-235, September 9, 2004:

> AT&T was usurping the Minnesota Public Utilities Commission's authority to determine the reasonableness of switched-access rates. Rather than address the reasonableness of CLEC access rates in proper proceedings, AT&T flexed its considerable market power in a policy of "self help" and extracted from CLECs the access rates it wanted. . . . MCI did the same. . . . The market power disparity between the IXCs and CLECs is apparent in the striking similarity between all of the agreements in which all the key terms were dictated by the IXCs.

36. For the Filed-Rate States, AT&T unilaterally decided to engage in self-help through confidential, coerced deals that afforded discriminatory pricing in its favor rather than to obtain lawful revisions to tariffs in compliance with applicable law.

37. AT&T's conduct caused disadvantage and harm not only to the CLECs, but also to AT&T's competitors and to the public. One of the affected CLECs explained the public harm:

> IXCs had already billed their customers for the long distance services that the IXCs were able to provide by virtue of the access services provided by McLeodUSA and other CLECs. Yet, when an IXC used its market power (in the form of withholding very large sums of money that CLECs desperately needed to fund their day-to-day operations) to extract reduced access rates, IXCs did not pass the benefits they reaped to their customers in the form of refunds. Instead, this money simply went to improve the bottom line profits of the IXCs [who had thereby avoided the tariffed access rates].

Reply Comments of McLeodUSA, September 9, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services,* C-04-235.

38. In a document dated August 18, 2004, AT&T admitted to the PUC that its agreements all follow the same basic form, stating:

> In the past four years or so, AT&T has entered into hundreds of agreements based on the same form with CLEC providers of switched-access services throughout the United States.

AT&T Comments, Motion to Dismiss and Motion for Summary Judgment, August 18, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services,* C-04-235. On information and belief, AT&T has continued to enter into additional and similar agreements since August 2004, continues to rely upon those agreements at the present time, and plans to continue to do so for the foreseeable future, barring specific rulings to the contrary.

39. Illustrative Settlement and Switched-Access Service Agreements, which have become known to Qwest by virtue of disclosures obtained by the Minnesota Department of Commerce ("DOC"), include:

a. Agreement with MCI on July 23, 1998;

b. Agreement with Eschelon Telecom, Inc. on May 1, 2000;

c. Agreement with Time Warner on January 1, 2001;

d. Agreement with Integra on July 1, 2001;

e. Agreement with McLeod on July 1, 2001;

f. Agreement with XO Communications on July 1, 2001;

g. Agreement with Focal Communications Corporation of Minnesota on December 25, 2001;

h. Agreement with NorthStar on September 11, 2002;

i. Agreement with Granite on April 1, 2003;

j. Agreement with New Access, Stonebridge, Choicetel, Emergent on May 1, 2003;

k. Agreement with Digital on July 31, 2003;

l. Agreement with Desktop Media on August 15, 2003;

m. Agreement with Mainstreet on September 4, 2003;

n. Agreement with OrbitCom, Inc. on January 1, 2004;

o. Agreement with VAL-ED on February 16, 2004;

p. Agreement with Time Warner on February 20, 2004, superseding prior Agreement; and

q. Agreement with Tekstar on April 5, 2004.

40. The following provisions are generally found in all or the vast majority of these "Settlement and Switched-Access Service Agreements":

a. The agreements were entered into by and between AT&T Corp. on behalf of itself and each of its subsidiaries, all collectively referred to as "AT&T," and any given CLEC.

b. Part A of the agreements documented a payment by AT&T of a "Settlement Amount," representing, on information and belief, a substantially discounted payment for switched-access services provided to AT&T by the CLEC prior to the date of the agreement.

c. The agreements provided for a resolution of the so-called "Dispute," which AT&T had created by withholding the payments unlawfully withheld from CLECs in need of cash, providing a release in favor of AT&T (to protect the discount it had extracted) as of the "Effective Date," for all claims in any court or agency.

d. The agreements provided for a contract period in Part B.1 governing prices relating to "Switched-access Services," although the contract periods varied from CLEC to CLEC.

e. The agreements pertained to Switched-access Services throughout the nation or at least the entire area served by any particular CLEC.

f. The agreements provided for "Pricing Principles" in Part B.6, which usually referred to a Schedule A, to govern the charges for intrastate switched-access service as between AT&T and the given CLEC. The agreements did not provide for or authorize the CLEC to make filings of the agreements or otherwise comply with filing requirements for the Filed-Rate States.

g. Schedule A provided for the same charges to be used in all states served by the CLEC, and only in a few instances did Schedule A include exceptions for particular states.

h. The agreements contained provisions that made the agreements and the terms of the agreements, both in their literal wording and their practical effect, confidential.

i. The agreements used by AT&T have remained essentially the same over the several years that AT&T has been employing self-help measures, without changes

prompted by various decisions that were adverse to AT&T's practices and that put AT&T on notice of its violations of the laws in the Filed-Rate States.

41. The settlement amounts AT&T paid to any particular CLEC for intrastate switched-access charges constituted only partial payments for the tariffed rates for those services that had been used for long-distance calls prior to the dates of the settlements.

42. Not only did AT&T achieve significant savings through its off-tariff prices for services predating the agreements, AT&T also achieved significant savings with the prospective, unique, off-tariff rates it achieved through each deal.

43. Since off-tariff savings were and are not lawful in the Filed-Rate States, AT&T's gains are unlawful. The specific amounts of these unlawful gains are not yet known to Qwest.

44. As explained below, AT&T eventually agreed to abide by tariffed rates for intrastate switched access in Minnesota. However, AT&T continues to enjoy the benefits of its untariffed rate agreements for Filed-Rate States other than Minnesota, and continues to threaten CLECs with economic hardship, sanctions, claims for breach of contract, and other disincentives against complying with their tariffed rates for AT&T's use of their intrastate switched-access services in any state other than Minnesota.

45. Even in Minnesota, and except for a repayment to MCI, AT&T has not repaid to CLECs the amount of illegal rate relief it achieved through its deals with any CLEC for any services received prior to the date on which the DOC filed a complaint against AT&T and various CLECs. Rather, AT&T has agreed merely to honor specific tariffs in Minnesota on a going-forward basis.

Bi-Lateral Off-Tariff Deals Between AT&T and MCI

46. AT&T and MCI entered into a National Services Agreement (as amended) between Metro Access Transmission Services, Inc. and AT&T Communications, Inc., dated November 1, 1996, and a Switched-Access Services Agreement (as amended) between AT&T Corp. and MCI WorldCom Network Services, Inc., dated July 23, 1998. One or both of these agreements served as private contractual arrangements between these two competitors governing the respective amounts which AT&T's CLEC charged to MCI's IXC and which MCI's CLEC charged to AT&T's IXC.

47. On or about February 25, 2004, AT&T and MCI entered into a settlement to resolve, among other things, a complaint that AT&T had filed against MCI in the United States District Court, Eastern District of Virginia, in September, 2003. In addition to the settlement of the lawsuit, the parties also resolved a dispute about access charges, confirming that the access charges would be paid at contract rates, rather than tariff rates, for the period in question prior to the settlement. In addition, AT&T and MCI entered into reciprocal switched-access service agreements with two-year terms in a format consistent with the same format AT&T used with other CLEC deals. Under these reciprocal agreements, AT&T's CLEC agreed to charge MCI's IXC an off-tariff rate for all calls, including intrastate switched-access calls. And, MCI's CLEC agreed to charge AT&T's IXC the same off-tariff rate for the same classes of calls. During this time, AT&T maintained a filed tariff for its own switched-access for services for terminating calls at a rate that is higher than the rate it granted solely to MCI in the reciprocal deal.

48. The rates charged by AT&T's CLEC and MCI's CLEC deviated below their tariffed rates for intrastate switched-access service in Filed-Rate States.

49. Neither AT&T nor MCI complied with applicable filing and non-discrimination requirements for tariffed rates with respect to any of their reciprocal agreements as required under laws and regulations in the Filed-Rate States.

50. In reference to the reciprocal agreements between AT&T and MCI, Gregory J. Doyle, a Manager for the DOC, stated: "AT&T . . . engaged in self-help which resulted in discrimination and a thumbing of its nose at legal requirements." Doyle Rebuttal Testimony filed in *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-access Contracts,* October 6, 2006 ("Doyle Rebuttal"), p. 18.

AT&T's Deceptions Concerning Tariffed Rates

51. Beginning in about 2001 and from time to time thereafter, AT&T filed its own tariffs in various states, including, without limitation, Arkansas, Colorado, Florida, Massachusetts, Minnesota, Missouri, New Jersey and New York, for the purpose of collecting a monthly "In-State Connection Fee" ("ISCF") from residential customers of approximately $1.95.

52. AT&T specifically or implicitly represented to regulators, the public and other parties in each of these states that it needed the ISCF in order to cover the difference between the rates for tariffed access charges for intrastate long-distance calls as compared with the rates for tariffed access charges for interstate long-distance calls.

53. AT&T concealed or failed to reveal to regulators, the public and other parties that AT&T was at that same time refusing to pay the tariffed intrastate switched-access rates to CLECs and demanding and obtaining off-tariff intrastate switched-access rates from CLECs far lower than the tariffed intrastate switched-access charges.

54. AT&T profited by collecting the ISCF from its residential customers at the same time as it was refusing to pay and avoiding payment of the tariffed intrastate switched-access charges upon which the ISCF was ostensibly predicated.

Tolling of Claims

55. The existence, terms, and conditions of the off-tariff agreements were not known to Qwest until recently and even now Qwest has only limited information about these off-tariff agreements.

56. AT&T required pre-negotiation confidentiality agreements as a condition of negotiations with a large number of CLECs.

57. Nearly all of the agreements AT&T imposed upon CLECs contained provisions that made the agreements confidential.

58. The DOC obtained information about a small number of off-tariff agreements, which led the DOC to file an administrative complaint with the PUC on June 15, 2004, against AT&T, MCI, and a number of other CLECs and IXCs. However, at that time, while the DOC's complaint described some information about the unfiled, off-tariff agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public. As explained by Mr. Doyle: "[T]his case was initiated in early 2004, and for two years, AT&T and the other parties to the agreements continued to abide by the veil of secrecy. Doyle Rebuttal, p. 3. Eventually, all of the CLECs and IXCs agreed to abide by tariffed rates in Minnesota going forward, and the DOC's complaint was dismissed against all parties, except against AT&T for its conduct as a CLEC with respect to the bi-lateral deal with MCI. The majority of AT&T's off-tariff intrastate switched-access pricing agreements, except for a small subset of those

agreements that formed the basis of certain administrative proceedings in Minnesota, have not yet been made public.

59. On December 30, 2005, the DOC filed an additional complaint with the PUC against AT&T and a number of other CLECs. The DOC had only recently become aware of those additional agreements between AT&T and those CLECs. Again, while the DOC's complaint described some information about the unfiled agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public.

60. As a result of AT&T's representation to the PUC in April 2006, Qwest has finally been permitted to receive and review a handful of AT&T's secret agreements with CLECs, including the discriminatory pricing rates that AT&T was able to extract from CLECs through its predatory practices. Qwest had no access to these agreements until after April 2006.

61. Even now, the only subset of agreements that has been made available to Qwest is the handful of agreements that have been revealed in Minnesota. The other similar agreements and pricing arrangements AT&T extracted from other CLECs, including a large number of those entered into applicable to Minnesota and including all of those affecting only other states, still have not been filed or made available to Qwest. Accordingly, while the veil of secrecy has been lifted enough to glimpse a small fraction of AT&T's conduct, AT&T continues to profit by its illegal actions in Filed-Rate States across the nation.

Regulators Reject AT&T's Assertions of Right to Evade Tariffed Rates

62. The Iowa Supreme Court confirmed that AT&T was obligated to comply with tariffed switched-access rates in *AT&T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd.*, 687 N.W.2d 554 (Iowa 2004). The court affirmed an Iowa Utilities Board ruling that AT&T was

obligated to pay the tariffed rates for past intrastate switched-access services. The court relied upon the filed-rate doctrine, observing that this doctrine "provides that the legal rights of the utility in the customer are measured exclusively by the published tariff." *Id.* at 562. The court concluded that the tariff rate on file was applicable and enforceable until it was found to be unlawful. (The Iowa case commenced when five CLECs filed an administrative complaint filed against AT&T Midwest with the Utilities Board for the State of Iowa Department of Commerce on August 16, 2000, objecting that AT&T had refused to provide payment for billed originating and terminating access services. Other CLECs intervened. Each of the CLECs had adopted and filed an intrastate switched-access tariff. AT&T argued that it should not be required to purchase and pay for access services from the CLECs at rates AT&T deemed to be non-competitive.) The Iowa Utilities Board ruling against AT&T, affirmed by the Iowa Supreme Court, had been reflected in a Decision and Order issued October 25, 2001. The Board ruled that:

> Any interexchange calls originating outside the called user's exchange using AT&T's services must be completed to the called user's telephone number and AT&T must pay the tariffed terminating access charges, even if the user's chosen LEC has terminating access charges that are higher than AT&T might like. Similarly, calls originating from customers of the complainant CLECs must be carried by AT&T, so long as AT&T serves any LEC in the exchange, and AT&T must pay the tariffed originating access charges.
>
> This does not put AT&T at the mercy of an "unconstrained monopoly," as AT&T argues. If AT&T (or any other interexchange carrier) believes at any time that a particular CLEC's access charges are unreasonable, the interexchange carrier may file a written complaint with the Board ..., asking the Board to determine the just and reasonable terms and procedures for exchange of toll traffic with the CLEC ....

The Board ordered that AT&T was obligated to pay for the access services at the CLEC's tariffed rates in effect at the time the services were used.

63. The Minnesota PUC has also ruled against AT&T on the off-tariff conduct. For example, the PUC issued its Order Finding Failure to Pay Tariffed Rate, Requiring Filing, and

Notice and Order for Hearing on February 8, 2006, in *In the Matter of the Complaint of PrairieWave Telecommunications, Inc. Against AT&T Communications of the Midwest*, PUC Docket No. P-442/C-05-1842. In that Order, the PUC explicitly ruled:

> The Commission finds that AT&T is obligated to pay PrairieWave's tariffed access rates and that it has failed to do so. The Commission rejects AT&T's contention that it was authorized to withhold payment on the basis of its belief that the tariffed rates were excessive, unjust, unreasonable, and therefore illegal.

Order, at p. 2. The matter had come before the PUC on the complaint of PrairieWave that AT&T Midwest was refusing to pay PrairieWave's tariffed rates for intrastate switched-access services. AT&T Midwest admitted that it had not paid monthly invoices submitted by PrairieWave, but asserted in a counterclaim that the tariffed rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal. The DOC urged the PUC to resolve PrairieWave's complaint on legal and policy issues and to refer the counterclaim for an evidentiary hearing. At a hearing before the PUC on January 12, 2006, the PUC rejected AT&T's contention that it was allowed to withhold payment on the grounds that AT&T deemed the rates excessive. The PUC provided a detailed explanation in support of its decision that "AT&T was and is obligated to pay tariffed access rates," Order, at p. 2, starting with the invocation of the filed rate doctrine, embracing the following definition:

> **Filed rate doctrine.** Doctrine which forbids a regulated entity from charging for its services other than those properly filed with the appropriate federal regulatory authority.

Order, at p. 2. The PUC went on to explain:

> Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service areas, including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics.

> PrairieWave therefore lacked the right to accede to AT&T's request to retroactively adjust its access rates, and AT&T lacked the right to pay any rate other than the tariffed rate.
>
> Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications network on which the public depends and the competitive telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations.

Order, at p. 3 (citations omitted).

64. As noted above, in another proceeding, the Minnesota DOC initiated a complaint against AT&T and others in June 2004. That administrative proceeding was given the Docket Number P-442 et seq./C-04-235. Eventually, the parties to that proceeding agreed to abide by filed tariffs on a prospective basis, except that AT&T did not reach an agreement with the DOC concerning its conduct as a CLEC with respect to the bi-lateral deals with MCI. The Minnesota PUC referred that complaint to the Office of Administrative Hearings ("OAH") for an evidentiary proceeding.

65. In the ensuing contested case proceeding concerning AT&T's conduct as a CLEC, on June 26, 2006, in a Recommendation on Motion for Summary Disposition, Administrative Law Judge Steve M. Mihalchick recommended that the Commission should find, among other violations, that "AT&T knowingly and intentionally violated applicable provisions of Minn. Stat. Ch. 237, Commission orders, and rules of the Commission adopted under Minn. Stat. Ch. 237," and

> That AT&T engaged in discrimination by knowingly or willfully charging, demanding, collecting, and receiving the untariffed rates for intrastate-switched-access service under the terms of its unfiled Agreement with MCI, while offering, charging, demanding, collecting, or receiving tariffed rates for intrastate-switched-access service with regard to other IXCs under similar circumstances, in violation of Minn. Stat. § 237.09, subd. 1.

Recommendation, pp. 1-2. In explaining these recommendations, Judge Mihalchick explained that AT&T is required to file its tariff or price list for each service and noted that AT&T entered into two unfiled Agreements with MCI but did not file the terms as a unique price list or tariff term. "Instead, AT&T filed and maintained a separate tariff under which AT&T provided less favorable terms to other carriers that did not reach a unique agreement with AT&T." Recommendation, p. 9. The Administrative Law Judge continued:

> [B]y offering unique pricing to MCI that it did not file as a tariff, AT&T engaged in unreasonable discrimination .... CLECs, like AT&T [are permitted] to offer telecommunications service within the State only if the rates are uniform and the terms and rates are not "unreasonably discriminatory." . . . [A] CLEC's abililty to reasonably discriminate with respect to its rates and terms is limited to ... specific exceptions; anything else, is unreasonable discrimination. Moreover, ... a CLEC may only qualify for one of these exceptions if it first files its unique price offering with the Commission ....

Recommendation, pp. 12-13. The Administrative Law Judge concluded that AT&T's purposeful election to enter into an agreement with MCI—in which AT&T charged MCI less for intrastate switched-access than it charged other carriers and provided intrastate switched-access service to MCI on a unique separate basis, not pursuant to tariff under which the service was offered to all similarly situated carriers—was "illegal conduct" in which "AT&T purposefully engaged . . . [and] its actions were knowing and intentional." Recommendation, p. 14.

66. As noted earlier, the DOC initiated another complaint against AT&T and other parties in Docket No. P442/C-05-1282, filed December 30, 2005. This matter was resolved by stipulations confirming that the parties would honor filed tariffs on a prospective basis in April 2006.

67. Also, the DOC initiated another complaint against AT&T's subsidiary TCG in Docket No. P442/C-05-1282, filed June 7, 2006. On October 12, 2006, the PUC referred this complaint to the OAH for contested case proceedings.

Defendants' Ongoing Off-Tariff Deals in Filed-Rate States outside Minnesota

68. Although AT&T has agreed to abide by tariffed rates for intrastate switched-access service in Minnesota for agreements discovered and specifically challenged by the DOC, AT&T has not agreed to abide by tariffed rates for intrastate switched-access service for any other Filed-Rate States, and AT&T continues to enjoy the illegal fruits of off-tariff intrastate switched-access pricing agreements in all or at least most other Filed-Rate States.

69. AT&T continues to pursue tactics based upon the leverage afforded by the volume of its interexchange traffic rather than lawful compliance with filed tariffs. For example, on information and belief, while AT&T has begun to pay PrairieWave for its intrastate switched-access services at tariffed rates, AT&T has simultaneously determined to withhold other payments for which it is legally obligated. Thus, AT&T is honoring only the form of compliance with the PUC order while effectively flaunting requirements by transferring its withholding to other categories so that PrairieWave is given no net benefit by AT&T's ostensible compliance.

70. On information and belief, Defendants continue to pursue and enforce even the agreements with specific CLECs that operate in Minnesota, after those agreements have plainly been exposed as illegal contracts in Minnesota, so that even though it may be paying tariffed rates in Minnesota, it continues to pay the agreement rates for those same CLECs in all other jurisdictions, including other Filed-Rate States.

71. Defendants have no legitimate justification to use, enforce, or threaten to enforce their illegal off-tariff intrastate switched-access pricing contracts in Filed-Rate States.

72. Defendants' activities, and the activities of those with whom Defendants are in privity, violate statutes or cause violations of statutes in the Filed-Rate States, including but not limited to the following:

a. Alabama: The laws that those activities violated include Ala. Code § 37-2-10.

b. Arizona: The laws that those activities violated include Ariz. Rev. Stat. Ann. § 40-365, Ariz. Admin. Code §§ R14-2-1115 and R14-2-510, and Ariz. Rev. Stat. Ann. § 40-334.

c. Arkansas: The laws that those activities violated include Ark. Code Ann. §§ 23-4-88-107, 23-4-105, 23-4-106, and 23-3-114(a).

d. California: The laws that those activities violated include Cal. Pub. Util. Code §§ 489 (and General Order 96A adopted pursuant thereto), 556, and 558.

e. Colorado: The laws that those activities violated include Colo. Rev. Stat. §§ 40-15-105 and 40-3-101.

f. Connecticut: The laws that those activities violated include Conn. Stat. Ann §§ 42-110b, 16-247f, and16-247b.

g. Delaware: The laws that those activities violated include Del. Code Ann. tit. 26, § 304, Del. Code Regs §§ 10-800-020-3.5, 10-800-050-48.1, 10-800-050-5.2.1, and Del. Code Regs § 10-800-050-6 and Del. Code Ann. tit. 26, § 303.

h. Florida: The laws that those activities violated include, but are not limited to, Fla. Stat. §§ 501.204, 364.04, 364.08, and 364.09.

i. Georgia: The laws that those activities violated include Ga. Code Ann. §§ 46-2-25, 46-5-164, and 46-5-166.

j. Iowa: The laws that those activities violated include Iowa Code §§ 476.4 and 476.101.

k. Kansas: The laws that those activities violated include Kan. Stat. Ann. §§ 66-109, 66-1,190, 66-1,189, and 66-154a.

l. Kentucky: The laws that those activities violated include Ky. Rev. Stat. Ann. § 278.160.

m. Louisiana: The laws that those activities violated include La. Competition Reg. § 401(A).

n. Maryland: The laws that those activities violated include Md. Code Ann., Pub. Util. Cos. § 4-202.

o. Massachusetts: The laws that those activities violated include Mass. Gen. Laws 93A § 2, 159 § 19 and 116 § 14, and orders entered pursuant thereto.

p. Minnesota: The laws that those activities violated include Minn. Stat. §§ 325F.67, 325F.69, 237.07, 237.035, 237.74, 237.09, 237.60, and Minn. R. 7811.2210.

q. Mississippi: The laws that those activities violated include Miss. Code Ann. § 77-3-35.

r. Missouri: The laws that those activities violated include Mo. Stat. §§ 392.220, Mo. Code Regs tit. 4 § 240- 3.545, and Mo. Stat. § 392.200.

s. Nebraska: The laws that those activities violated include Neb. Rev. Stat. Ann. § 86-143.

t. Nevada: The laws that those activities violated include Nev. Rev. Stat. Ann. §§ 598.969, 598.0923, and 704.061 through 704.0130.

090538 Hearing Exhibits 00646

u. New Jersey: The laws that those activities violated include N.J. Stat. Ann. § 56:8-2, N.J. Admin. Code §§ 14:1-4, 14:10-5.3 through 14:10 10-5.11, and 48:3-1.

v. New Mexico: The laws that those activities violated include N.M. Stat. §§ 57-12-2, 57-12-3, and 63-9A-8.1.

w. New York: The laws that those activities violated include N.Y. Pub. Serv. L. §§ 92, N.Y. Comp. Codes R & Regs tit. 16 § 720-1.3, and N.Y. Pub. Serv. Law § 91.

x. North Carolina: The laws that those activities violated include N.C. Gen. Stat. §§ 62-133.5 and 62-134.

y. North Dakota: The laws that those activities violated include N.D. Cent. Code §§ 51.15-02, 49-05-05, 49-21-04, 49-04-07, 49-21-07, and 49-21-10.

z. Oklahoma: The laws that those activities violated include Okla. Stat. §§ 165:55-5-1 and 165:55-5-2.

aa. Pennsylvania: The laws that those activities violated include 66 Pa. Cons. Stat. Ann. §§ 1302, 1303 and 1304.

bb. Rhode Island: The laws that those activities violated include R.I. Gen. Laws §§ 39-3-10, 39-3-11, 39-2-2, 39-2-3, and 39-2-4.

cc. South Dakota: The laws that those activities violated include S.D. Stat. §§ 37-24-6, 49-31-12.2 49-31-19, 49-31-4, 49-31-4.2, and 49-31-11, and S.D. Admin. R. 20:10:27:06 and 20:10:27:17.

dd. Tennessee: The laws that those activities violated include Tenn. Code Ann. § 65-5-102 and Tenn. Comp. R. & Regs. 1220-4-1-.03 to .04.

ee. Texas: The laws that those activities violated include Tex. Util. Code § 52.251 and Tex. PUC Subst. R. 26.89(a)(3).

ff. Vermont: The laws that those activities violated include Vt. Stat. Ann. § 225.

gg. Virginia: The laws that those activities violated include Va. Code Ann. §§ 56-479.2(b), 56-236, 56-237, and 56-234.

hh. West Virginia: The laws that those activities violated include W. Va. Code §§ 24-3-1, 24-3-2, and 24-3-5, W. Va. Code R. §§ 150-2-2, 150-2-7, 150-2-16, 150-2-28, 150-6-9, and 150-6-15.

ii. Wyoming: The laws that those activities violated include Wyo. Stat. Ann. §§ 37-15-204, 37-15-404, and 37-15-404.

Effects of Defendants' Off-Tariff Deals

73. Qwest brings this action to obtain relief for harm that cannot be remedied in any other forum. Qwest has incurred loss of market share in the wholesale market for intrastate inter-exchange telephone service as a direct result of AT&T's practices since 1998. There is no adequate remedy for such damages to be had in the administrative agencies in the Filed-Rate States.

74. AT&T gained competitive advantages by exploiting evasion and secrecy in states that depended upon the filed rates for uniformity and even-handed, non-discriminatory treatment of competitors. In other words, IXCs like Qwest, which complied with the lawful requirements to pay the tariffed rates for intrastate switched access, were put at a disadvantage in the face of AT&T's conspiracy to deceive regulators, CLECs, the public, and competitors.

75. Defendants have no right to create wealth for themselves by exploiting a regulatory regime with illegal practices inuring to the exclusive benefit of Defendants. In the words of Mr. Doyle:

> AT&T, like other businesses, has an incentive to maximize shareholder wealth. This is generally healthy for the marketplace. However, that does not mean that a company can choose to create wealth by violating the law if it is unlikely that it will be caught, and even if caught, any penalty is unlikely to be as great as the benefit received.

Doyle Rebuttal, p. 4.

76. Defendants have no right to profit by their illegal conduct in Minnesota or in any other state that employs a comparable tariff filing requirement for switched-access services offered by CLECs. In the words of Mr. Doyle:

> There is value to regulatory certainty in the marketplace and regulatory certainty is created when all competitors are confident that, if they operate in compliance with the law, they will be operating on a level playing field and will not be disadvantaged by their honesty. AT&T's discriminatory tactics, if anything, created financial hardship on those companies that did not have the economic advantage of an illegal contract, and would create a disincentive for such companies to invest.

Doyle Rebuttal, p. 19.

77. Defendants' conduct has enabled them to gain unfair and illegal advantage at the expense of their competitors. In the words of Mr. Doyle:

> [N]ot all IXCs engaged in such contracts. Thus, only the very few IXCs that also obtained contracts with the same beneficial terms could compete effectively with each other. IXCs without contracts are clearly harmed. IXCs with fewer contracts are also harmed. If competition suffers, consumer benefits achieved through competition will also suffer. Only through non-discrimination by application of the tariffed rates for access services are IXCs effectively competing with one another.

Doyle Rebuttal, p. 20.

78. Defendants have harmed consumers by achieving their desired rate reductions through their illegal self-help measures rather than through appropriate regulatory channels. The IXC market is highly competitive and, as costs decline, prices for consumers tend to decline as well. However, because the Defendants secured secret cost reductions, market forces operated differently for those IXCs like Qwest whose costs were kept higher as they complied with filed rates. Mr. Doyle provided an additional perspective:

> In the P421/C-90-1184 and P999/C-93-90 dockets, AT&T was required to pass through the access charge savings to consumers through lower toll rates. Interexchange carriers would prefer that there be no regulatory requirement to reduce their toll rates if access rates are reduced. However, a pass-through was agreed to in the course of negotiations to reach a settlement in these previous cases. Thus, access charge reductions reached through the regulatory process, if a pass through of cost savings is required, does not have the same financial benefit to AT&T as access charge reductions achieved, as AT&T has done, through the unfiled agreements.

Doyle Testimony, *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-Access Services*, July 28, 2006. In fact, AT&T's actions actually compounded the illegal consequences insofar as AT&T obtained authority to impose the ISCF upon its customers by representing that it was paying tariffed rates that it was in fact not paying.

79. AT&T was able to exploit the benefits of their bilateral off-tariff agreements. They were in a position to hoard the gains made possible by their mutual deception, because competitors in the marketplace, including Qwest, were driven to higher prices by incurring the full costs required by following the filed tariffs. Thus, since AT&T engaged in a conspiracy of self-help, it deprived the public consumers of the true benefit of open and fair competition.

80. Not only was the public harmed by the bilateral off-tariff agreements of AT&T, but so also were competitors such as Qwest that paid tariffed rates to AT&T and to other CLECs with whom AT&T had secret deals. In the words of Mr. Doyle:

> [T]here are a significant number of competitors in the interexchange market. In a competitive market, price moves toward cost and no individual company has the ability to establish the market price. . . . If a competitor is able to achieve a cost advantage that is not achievable by others, profit margins (if any) will be squeezed .... Obtaining a cost advantage from a self-help scheme can significantly harm competitors and reduce the benefits that legitimate competition brings to consumers.

Doyle Testimony, p. 21. Mr. Doyle also explained:

> [C]ompanies can compete on non-price factors, such as quality of service. The issue of discrimination resulting from the contract should legitimately consider cost and non-cost factors. Even though AT&T and MCI may not have changed prices during the term of the contract[s], to the extent the margin between price and cost increased, the contract created a competitive advantage. To the extent the company [such as AT&T and MCI] could afford to improve service quality since access costs were reduced, the contract created a competitive advantage.

Doyle Rebuttal, p. 21. Further,

> If one company has a sweetheart deal that no other company has, that company may use that cost advantage to directly improve the company's net income. The prices charged by competitors cannot squeeze out excessive profits if the underlying costs, over which a carrier has no control, are not the same. Over the long term, companies must keep their service prices above costs to stay in business. If a company is able to obtain a cost advantage, that company may simply flow that advantage to its bottom line.

Doyle Rebuttal, pp. 23-24. Defendants have exploited their series of sweetheart off-tariff deals in Filed-Rate States to impose illegal harm upon Qwest.

81. There is no legitimate competitive benefit in Defendants' practices of breaking the law to secure gains, nor is there any competitive benefit in Defendants' practices to discriminate against other IXCs (apart from the co-conspiring IXC with which they conspired).

82. Defendants' practices have caused direct and indirect harm to Qwest through an unfair competitive advantage, price manipulations, exploiting unlawful and hidden cost savings, causing a loss of market share, and other direct and consequential harm.

Claims

Count One
Statutory Claims for Violation of Tariffing and Related State Law Requirements

83. The allegations of paragraphs 1 through 82 are incorporated herein as if fully restated.

84. Defendants have engaged in violations of law in Filed-Rate States with respect to their off-tariff intrastate switched-access pricing agreements.

85. Defendants have engaged in, procured, assisted, aided, abetted, encouraged or conspired in the violations of law knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

86. Defendants' conduct constitutes anti-competitive acts or practices in connection with Defendants' provision of telecommunications services.

87. Qwest has suffered substantial harm as a result of Defendants' violations of law in Filed-Rate States in an amount yet to be determined.

88. Qwest is entitled to recover damages and other relief, including attorneys' fees, for the violations of law of the Filed-Rate States with respect to Defendants' unfiled, off-tariff agreements for special pricing for intrastate switched-access service pursuant to applicable statutes, including but not limited to the following:

a. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arizona pursuant to the law of Arizona, including without limitation, Ariz. Rev. Stat. Ann. § 40-423, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

b. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arkansas pursuant to the law of Arkansas, including without limitation, Ark. Code Ann. § 4-88-113, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

c. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of California pursuant to the law of California, including without limitation, Cal. Pub. Util. Code § 2106 and California Public Utilities Commission Decision No. 77406, 71 Cal. P.U.C. 229, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

d. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Colorado pursuant to the law of Colorado, including without limitation, Colo. Rev. Stat § 40-7-102, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

e. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Connecticut pursuant to the law of Connecticut, including without limitation, Conn. Stat. Ann § 42-110g, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

f. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Delaware pursuant to the law of Delaware, including without limitation, Del. Code Ann. tit. 6, §§ 2513, 2525 and 2533, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

g. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Florida pursuant to the law of Florida, including without limitation, Fla. Stat. §§ 501.204 and 501.211, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

h. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Georgia pursuant to the law of Georgia, including without limitation, Ga. Code Ann. § 46-2-90, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

i. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Kansas pursuant to the law of Kansas, including without limitation, Kan. Stat. Ann. §§ 66-176 and 66-178, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

j. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Massachusetts pursuant to the law of Massachusetts, including without limitation, Mass. Gen. Laws ch. 93A, §§ 2 and 11, and,

by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

k. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Minnesota pursuant to the law of Minnesota, including without limitation, Minn. Stat. §§ 325F.67, 325F.69, 325D.13, and 8.31, subd. 3a.

l. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Missouri pursuant to the law of Missouri, including without limitation, Mo. Stat. § 392.350, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

m. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Nevada pursuant to the law of Nevada, including without limitation, Nev. Rev. Stat. Ann. §§ 41.600(e), 598.0923, 598.9694, and 598.969, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

n. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Jersey pursuant to the law of New Jersey, including without limitation, N.J. Stat. Ann. § 56:8-2.12 and 56.8-19, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

o. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Mexico pursuant to the law of New Mexico, including without limitation, N.M. Stat. § 57-12-10, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

p. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New York pursuant to the law of New York, including without limitation, N.Y. Pub. Serv. Law § 93 and 349, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

q. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of North Dakota pursuant to the law of North Dakota, including without limitation, N.D. Cent Code § 49-05-10, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

r. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Pennsylvania pursuant to the law of Pennsylvania, including without limitation, 66 Pa. Cons. Stat. Ann. § 3309, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

s. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Rhode Island pursuant to the law of Rhode Island, including without limitation, R.I. Gen. Laws §§ 39-2-7, 39-2-8, and 39-1-22, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

090538 Hearing Exhibits 00656

t. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of South Dakota pursuant to the law of South Dakota, including without limitation, S.D. Stat. § 37-24-31, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

u. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Virginia pursuant to the law of Virginia, including without limitation, Va. Code Ann. § 56-479.2(b), and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

v. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of West Virginia pursuant to the law of West Virginia, including without limitation, W. Va. Code §§ 24-4-7 and 24-4-3, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

w. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Wyoming pursuant to the law of Wyoming, including without limitation, Wyo. Stat. Ann. § 37-12-208, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

89. Qwest is entitled to judgment for damages caused by Defendants' violations in an amount to be determined by the trier of fact.

Count Two
Misrepresentation, Omission or Fraud

90. The allegations of paragraphs 1 through 89 are incorporated herein as if fully restated.

91. AT&T has made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

92. AT&T has made indirect representations of material fact to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made indirect representations of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

93. AT&T has endorsed or confirmed representations of material fact made by others to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States.

94. The statements made directly or indirectly, implied, endorsed or confirmed, to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading. And, the statements to

the effect that CLECs were charging tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading.

95. AT&T knew or should have known that its statements of material fact and those procured, assisted, encouraged and in common with CLECs were false or misleading.

96. AT&T made misstatements of material fact, and procured, assisted, encouraged, and acted in common with CLECs and others with whom it was in privity in misstatements of material fact, in order to induce reliance upon those misstatements by others including, but not limited to, Qwest.

97. Qwest actually and justifiably relied upon the misstatements of fact by AT&T and those with whom AT&T was in privity.

98. Qwest has suffered damages in an amount yet to be determined through its reliance upon the direct and indirect misstatements of fact by AT&T and those with whom AT&T was in privity.

99. Qwest is entitled to judgment for damages caused by the violations of law frauds and misrepresentations engaged in, procured by, assisted, encouraged, and made in concert with, for, and by AT&T in an amount to be determined by the trier of fact.

Count Three
Conspiracy to Violate Tariffing Requirements

100. The allegations of paragraphs 1 through 99 are incorporated herein as if fully restated.

101. CLECs, including AT&T and MCI, which have entered into off-tariff agreements with Defendants for special pricing for intrastate switched-access service, have violated applicable statutes, regulations, orders and other laws in the Filed-Rate States.

102. Defendants have combined, conspired and agreed with MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

103. The conspiracy or conspiracies have involved unlawful purposes or lawful purposes to be achieved by unlawful means.

104. Defendants have engaged in overt acts in furtherance of the conspiracy or conspiracies.

105. Defendants have engaged in the violations of law and the conspiracy or conspiracies for such violations, knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

106. Qwest suffered substantial harm as a result of Defendants' conspiracy or conspiracies with CLECs in an amount yet to be determined.

107. Qwest is entitled to judgment for damages caused by the violations of law Defendants' conspiracy or conspiracies with MCI and CLECs and other parties in an amount to be determined by the trier of fact.

Count Four
Aiding and Abetting the Violations of Tariffing Requirements

108. The allegations of paragraphs 1 through 107 are incorporated herein as if fully restated.

109. Defendants have aided and abetted MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

110. Defendants acted under a common design to violate the law or to encourage and assist violations of law by the CLECs.

111. Defendants have purposefully engaged in the violations of law and the aiding and abetting of such violations knowing that their unlawful conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

112. Qwest suffered substantial harm as a result of MCI's, CLECs' and other parties' violations of law and the Defendants' aiding and abetting of such violations in an amount yet to be determined.

113. Qwest is entitled to judgment for damages caused by the violations of law by MCI, CLECs and other parties and the aiding and abetting of such violations.

114. Qwest is entitled to judgment for damages caused by the violations of law by Defendants with MCI, CLECs and other parties in an amount to be determined by the trier of fact.

Count Five
Declaratory Judgment and Injunctive Relief

115. The allegations of paragraphs 1 through 114 are incorporated herein as if fully restated.

116. Defendants have violated applicable statutes, regulations, orders, and other laws in the Filed-Rate States directly or indirectly with respect to their agreements for off-tariff special pricing for intrastate switched-access service.

117. Qwest is entitled to a declaration that Defendants have violated applicable law in the Filed-Rate States with respect to off-tariff intrastate switched-access charges and rates.

118. Qwest is entitled to a declaration that Defendants are obligated to comply with filed tariffs for intrastate switched-access service.

119. Qwest is entitled to a declaration that Defendants' off-tariff agreements for special pricing for intrastate switched-access service have been and are void, illegal and unenforceable in the Filed-Rate States.

120. Qwest is entitled to an injunction requiring Defendants to abide by filed tariffs with respect to intrastate switched-access service in the Filed-Rate States without evasion or offset.

WHEREFORE, Qwest demands judgment against Defendants:

1. For declaratory and injunctive relief against Defendants;
2. For damages in an amount yet to be determined greater than $50,000;
3. For attorneys' fees, costs and other relief as is allowed by applicable laws; and
4. For such other and further relief as the Court may deem just and proper.

Dated: January 29, 2007

GREENE ESPEL, P.L.L.P.

By _____
Larry D. Espel, Reg. No. 27595
John M. Baker, Reg. No. 174403
William J. Otteson, Reg. No. 290440
200 S. Sixth Street, Suite 1200
Minneapolis, MN 55402
(612) 373-0830

Attorneys for Plaintiff Qwest Communications Corporation

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subdivision 2, to the party against whom the allegations in this pleading are asserted.

Larry D. Espel

#290772v12

CONFIDENTIAL

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 37
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-1A (Direct)
CONFIDENTIAL

INDEX TO EXHIBITS

DESCRIPTION	Exhibit
CLEC Agreement Rates (confidential)	Confidential WRE 1C
Saturn Telecommunications Services and [redacted]	Confidential WRE 45
Saturn Telecommunications Services Price List No. 2 effective October 5, 2011	WRE 46

REDACTED

INDEX TO EXHIBITS

DESCRIPTION	Exhibit
CLEC Agreement Rates (confidential)	Confidential WRE 1A
CLEC Agreement Rates (lawyers only confidential)	Confidential WRE 1B
Bell South Telecommunications Inc. of Florida Section E6.8, effective September 4, 2005	WRE 2
Verizon Florida Switched Access Tariff Section 6.6	WRE 3
Embarq Florida Access Service Tariff Section 6.8	WRE 4
Focal Communications Corporation and [redacted]	Confidential WRE 5A
Focal Communications and [redacted]	Confidential WRE 5B
Broadwing Communications, LLC Responses to Data Requests	WRE 6A, 6B
Focal Communications Corporation of Florida Price List No. 2 effective July 16, 2003	WRE 7
Budget Phone, Inc. and [redacted]	Confidential WRE 8
Budget Prepay, Inc. Responses to Data Requests	WRE 9
Budget Prepay, Inc. Florida Price List No. 3, effective January 17, 2004	WRE 10
BullsEye Telecom, Inc. and AT&T Settlement Agreement [redacted]	Confidential WRE 11
BullsEye Telecom, Inc. Responses to Data Requests	WRE 12
BullsEye Telecom Inc. Florida Price List No. 2, Section 3.9, effective November 7, 2003	WRE 13

REDACTED

~~ITC^Deltacom Communications, Inc. and AT&T Corp. Settlement and Switched Access Agreement, effective September1, 2002~~	Confidential WRE 14A
~~DeltaCom, Inc. and AT&T Corp. Switched Access Service Agreement, effective January 1, 2011~~	Confidential WRE 14B
~~ITC^Deltacom Communications, Inc. and Sprint Settlement Agreement, effective March 28, 2002~~	Confidential WRE 14C
~~DeltaCom, Inc. Responses to Data Requests~~	WRE 15
~~ITC DeltaCom Communications Inc. Switched Access Tariff, Section 3, effective August 26, 1998~~	WRE 16
Ernest Communications and [redacted]	Confidential WRE 17A
[redacted]	Confidential WRE 17B
Ernest Communications, Inc. Responses to Data Requests	WRE 18
Ernest Communications Inc. Access Services Tariff, Section 3, Effective February 4, 2003	WRE 19
Flatel, Inc. and [redacted]	Confidential WRE 20
Flatel, Inc. Data Requests	WRE 21
Flatel, Inc. Florida Pr[redacted]	WRE 22
~~Granite Telecommunications, LLC, and AT&T Agreement effective~~ [redacted]	Confidential WRE 23A
~~Granite Telecommunications, LLC and Sprint Agreement Effective~~ [redacted] ~~. (Lawyers Only)~~	Confidential WRE 23B
~~Granite Telecommunications, LLC Responses to Data Requests~~	WRE 24A
~~Granite Telecommunications, LLC Supplemental Responses to Data Requests~~	WRE 24B

REDACTED

Granite Telecommunications, LLC Florida Price List No. 2, Section 5.1, effective June 18, 2003	WRE 25
MCImetro Access Transmission Services and AT&T Agreement effective 1-27-2004	Confidential WRE 26
Verizon Access Transmission Services Responses to Data Requests	WRE 27
MCImetro Access Transmission Services, LLC, Florida Price List No. 1, effective January 15, 1998	WRE 28
MCI Response to Colorado Data Request	WRE 29A
MCI Internal Correspondence (Lawyers Only)	Confidential WRE 29B
Navigator Telecommunications, LLC and AT&T Agreement effective July 1, 2001	Confidential WRE 30
Navigator Telecommunications, LLC Responses to Data Requests	WRE 31
Navigator Telecommunications, LLC Florida Price List No. 2, Section 7, effective May 7, 2002 Section 7, effective December 2, 2005	WRE 32
PaeTec Communications Inc. and AT&T: Agreement effective April 1, 2000	WRE 33A
Agreement effective April 30, 2008	WRE 33B
PaeTec Communications Inc. and Sprint: Agreement effective September 5, 2000	Confidential WRE 33C
Agreement effective November 1, 2004	Confidential WRE 33D
PAETEC Communications Inc. Responses to Data Requests	WRE 34A
Additional Data Request Response	WRE 34B
PAETEC Communications, Inc. Florida Price List No. 3, effective November 1, 2005	WRE 35
Time Warner Telecom and AT&T Agreement effective July 1, 2001	Confidential WRE 36

TW TELECOM of Florida Responses to Data Requests	WRE 37
Time Warner Telecom of Florida, Florida Access Tariff PCS No. 2, effective October 29, 2004	WRE 38
~~US LEC Corp. and AT&T~~	Confidential WRE 39A
~~Agreement effective March 14, 2002~~	
~~Agreement effective April 30, 2008~~	
~~US LEC Corp. and Sprint~~	
~~Agreement effective October 5, 2001~~	Confidential WRE 39B
~~Agreement effective February 16, 2006~~	Confidential WRE 39C
~~US LEC and MCI~~	Confidential WRE 39D
~~Agreement effective February 7, 2006~~	
~~US LEC Responses to Data Requests~~	WRE 40A
~~Additional Data Request Response~~	WRE 40B
~~US LEC of Florida, Inc. Florida Price List No. 2, Section 3~~	WRE 41
~~NuVox, Inc. and AT&T~~	Confidential WRE 42A
~~Agreement effective November 1, 2001~~	
New South Communications and AT&T	Confidential WRE 42B
Agreement effective January 1, 2001	
~~NuVox, Inc. and AT&T~~	Confidential WRE 42C
~~Agreement effective June 8, 2010~~	
~~NuVox, Inc. and MCI~~	Confidential WRE 42D
~~Agreement effective January 1, 2006~~	
~~NuVox, Inc. and Sprint~~	Confidential WRE 42E
~~Agreement effective August 26, 2002~~	
~~Windstream NuVox Inc. Responses to Data Requests~~	WRE 43A
~~Windstream NuVox Inc. Supplemental Responses to Data Requests~~	WRE 43B
~~NuVox Communications Inc. Florida Tariff No. 3,~~	WRE 44
~~effective January 21, 2005~~	
~~effective April 2, 2008~~	

REDACTED

CLEC AGREEMENT RATES
(CONFIDENTIAL)

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
1	Broadwing (Focal) [1]	[redacted]	[redacted]	[redacted]	[redacted]
2	Budget[2]	[redacted]	[redacted]	[redacted]	[redacted]
3	BullsEye[3]	AT&T	[redacted]	[redacted]	[redacted]

[1] Exhibit WRE 5A, pp. 3, 7.

[2] Exhibit WRE 8, pp. 2, 5.

[3] Exhibit WRE 11, pp. 5-6.

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
4	DeltaCom[4]	AT&T	9/1/02-12/31/10	[redacted]	[redacted]
5	DeltaCom[5]	AT&T	1/1/11 through present	[redacted]	[redacted]
6	DeltaCom[6]	Sprint	3/28/02 through 4/15/10	[redacted]	[redacted]

[4] See Confidential Exhibit WRE 14A, pp. 4-5.

[5] See Confidential Exhibit WRE 14B, p.7.

[6] See Confidential Exhibit WRE 14C, p. 2.

REDACTED

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
7	Ernest[7]	[redacted]	[redacted]	[redacted]	[redacted]
8	Ernest[8]	[redacted]	[redacted]	[redacted]	[redacted]
9	Flatel[9]	[redacted]	[redacted]	[redacted]	[redacted]
10	Granite[10]	AT&T	[redacted]	[redacted]	[redacted]
11	MCI[11]	AT&T	1/27/04 -- 1/27/07	[redacted]	[redacted]

[7] See Confidential Exhibit WRE 17A pp. 2, 6.

[8] See Confidential Exhibit WRE 17B p. 1.

[9] See Confidential Exhibit WRE 20, p. 1.

[10] See Confidential Exhibit WRE 23 pp. 2, 6.

[11] See Confidential Exhibit WRE 26, pp. 2, 6.

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
				[redacted]	[redacted]
12	Navigator[12]	AT&T	7/1/01 through present	[redacted]	[redacted]
13	PAETEC[13]	AT&T	4/1/00 through 3/31/07	RBOC Rate	RBOC Rate
14	PAETEC-US LEC[14]	AT&T	4/30/08 through 10/6/11	AT&T to receive a fixed dollar credit which could vary by year and by level of monthly purchases of other services. The credits increase or decrease if AT&T's purchase of switched access increases/decreases by more than 10%.	
15	TW Telecom[15]	AT&T	1/1/01 through 10/1/08	[redacted]	[redacted]
16	US LEC[16]	AT&T	3/14/02 through 6/30/07	[redacted]	[redacted]

[12] See Confidential Exhibit WRE 30, pp. 2, 6.

[13] Exhibit WRE 33A, pp. 3, 6.

[14] Exhibit WRE 33B, pp. 5-6 (Credit Schedule A).

[15] Confidential Exhibit WRE 36, pp. 57-71.

[16] Confidential Exhibit WRE 39, p. 2.

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
17	Windstream (NuVox) [17]	AT&T	11/1/01 through 1/31/05		
18	Windstream (NewSouth) [18]	AT&T	2/1/05 through 6/7/10		
19	Windstream (NuVox) [19]	AT&T	6/8/10 through present		

[17] Confidential Exhibit WRE 42A, pp. 2, 6.

[18] Confidential Exhibit WRE 42B, pp. 2, 5, 10. In 2005, NuVox informed AT&T that NewSouth had merged into NuVox and that, effective February 1, 2005, the NewSouth-AT&T agreement (as amended) would govern the terms of NuVox's provision of intrastate switched access to AT&T. Confidential Exhibit WRE 42A, p. 7.

[19] Confidential Exhibit WRE 42C, pp. 3, 8.

	CLEC	IXC	EFFECTIVE DATES	PER MOU OF RATE	8XX DATABASE RATE
					[redacted]

[20] Confidential Exhibit WRE 45, p. 1.

[21] Exhibit WRE 47, pp. 2, 6.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090538-TP EXHIBIT 38

PARTY Qwest Communications Co., LLC (QCC) - Direct

DESCRIPTION William R. Easton WRE-1B (Direct)

Withdrawn at hearing

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: November 30, 2006
BY: Marshall M. Criser III, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Sixth Revised Page 117
Cancels Fifth Revised Page 117

EFFECTIVE: February 1, 2007

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching

A. Local Switching Rates and Optional Features

1. Usage Sensitive Rates

		Rate Per Access Minute	USOC	
(a)	LS1 - BellSouth Telecommunications, Inc. BellSouth SWA FGA and BellSouth SWA FGB	*$.008131*	NA	(R)
(b)	LS2 - BellSouth Telecommunications, Inc. BellSouth SWA FGC and BellSouth SWA FGD	*. 008131*	NA	(R)
(c)	LS3 - BellSouth Telecommunications, Inc. BellSouth SWA LSBSA and BellSouth SWA TSBSA 1	*. 008131*	NA	(R)
(d)	LS4 - BellSouth Telecommunications, Inc. BellSouth SWA TSBSA 2 and TSBSA 3	*. 008131*	NA	(R)
(e)	LS1 – ITS Telecommunications Systems, Inc. - Feature Groups A and B	.01150	NA	
(f)	LS2 – ITS Telecommunications Systems, Inc. - Feature Groups C and D	.01150	NA	
(g)	LS3 - ITS Telecommunications Systems, Inc. - LSBSA and TSBSA Technical Option 1	.01147	NA	
(h)	LS4 - ITS Telecommunications Systems, Inc. - TSBSA Technical Options 2 and 3	.01147	NA	
(i)	For all other Independent Companies concurring in this Tariff	.01770	NA	
(j)	Common Trunk Port Service per Each Common Transport Trunk Termination	.000800	NA	

2. Dedicated End Office Trunk Port Service

		Monthly Rate	USOC
(a)	Per dedicated DS0/VG trunk port required	$9.47	TDE0P
(b)	Per dedicated DS1 trunk port required	139.98	TDE1P

3. Common Switching Optional Features (BellSouth SWA FG Customers Only) [1]

a. Hunt Group Arrangement, available with BellSouth SWA FGA
Per Transmission Path Group

b. Uniform Call Distribution Arrangement, available with BellSouth SWA FGA
Per Transmission Path Group

c. Nonhunting Numbers for use with Hunt Group Arrangements or Uniform Call Distribution Arrangement available with BellSouth SWA FGA
Per Transmission Path

d. Automatic Number Identification /Charge Number,[2] available with BellSouth SWA FGB, BellSouth SWA FGC and BellSouth SWA FGD
Per Transmission Path Group

Note 1: These Common Switching Optional Features are not available for BellSouth SWA Basic Serving Arrangement. See E6.8.2 for the appropriate BSE.

Note 2: Charge number is applicable only to BellSouth SWA FGD.

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

Second Revised Page 118
Cancels First Revised Page 118

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

4. Common Switching (Feature Group and BellSouth SWA Basic Serving Arrangement Customers Only[1] (M)(T)

a. Call Denial on line or hunt group, available with BellSouth SWA FGA
Per Transmission Path or Transmission Group

b. Service Code Denial on line or hunt group available, with BellSouth SWA FGA
Per Transmission Path or Transmission Path Group

c. Enhanced Call Denial, available with BellSouth SWA FGA only
Per Transmission Path Equipped

d. Up to 7 Digit Outpulsing of Access Digits to IC, available with BellSouth SWA FGB
Per Transmission Path Group

e. Alternate Traffic Routing
- Multiple IC Premises Alternate Routing, avialable with BellSouth SWA FGB, BellSouth SWA FGC, and BellSouth SWA FGD
Per End Office and Access Tandem
- End Office Alternate Routing when ordered in Trunks, available with BellSouth SWA FGB and BellSouth SWA FGD
Per End Office and Access Tandem

f. Service Class Routing, available with BellSouth SWA FGC and BellSouth SWA FGD
Per End Office and Access Tandem

g. Dial Pulse Address Signaling, available with BellSouth SWA FGC
Per Transmission Path Group

h. Revertive Pulse Address Signaling, available with BellSouth SWA FGC
Per Transmission Path Group

i. Delay Dial Start-Pulsing Signaling, available with BellSouth SWA FGC
Per Transmission Path Group

j. Immediate Dial Pulse Address Signaling, available with BellSouth SWA FGC
Per Transmission Path Group

k. Trunk Access Limitation Arrangement, available with BellSouth SWA FGC and BellSouth SWA FGD
Per End Office

l. Call Gapping Arrangement, available with BellSouth SWA FGD
Per End Office

m. Cut-Through, available with BellSouth SWA FGD
Per End Office and Access Tandem

Note 1: References to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A.

Material appearing on this page previously appeared on page(s) 117 of this section.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Second Revised Page 119
Cancels First Revised Page 119

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

4. Common Switching (BellSouth SWA FG and BellSouth SWA Basic Serving Arrangement Customers Only)[1] (Cont'd) (T)

n. Switched digital 56 kbps (e.g., AccuPulse® service) services switching capability, available with BellSouth SWA FGD only

o. Calling Party Number

Per end office, per Transmission Path group

p. Carrier Selection Parameter

Per end office, per Transmission Path group

q. Access Transport Parameter, available with BellSouth SWA FGD 64CCC only

Per end office per Di-Group

r. Call Screening

Per Transmission Path or Transmission Path Group

s. 950-XXXX Dialing Over BellSouth SWA FGD and BellSouth SWA TSBSA 3

Per 950-XXXX number per end office and access tandem trunk group equipped

5. Basic Service Elements (BellSouth SWA Basic Serving Arrangement Customers Only)[2] (T)

a. Chargeable

(1) Hunt Group Arrangement

	Monthly Rate	Nonrecurring Charge Initial	Nonrecurring Charge Subsequent	USOC
(a) Per Transmission Path[3]	$.48	$-	$-	HTGPP
(2) Uniform Call Distribution Arrangement				
(a) Per Transmission Path[3]	1.56	-	-	A6TPP

(M)

Note 1: References to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A.

Note 2: Basic Service Element rates are in addition to basic Local Switching rates. Rates applicable to BellSouth SWA LSBSA only, except where noted.

Note 3: Appropriate rearrangement charges to be applied in lieu of subsequent nonrecurring charges.

Material previously appearing on this page now appears on page(s) 120 of this section.

®Registered Service Mark of BellSouth Corporation

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Second Revised Page 120
Cancels First Revised Page 120

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

5. Basic Service Elements (BellSouth SWA Basic Serving Arrangement Customers Only)[1] (Cont'd) (T)

a. Chargeable (Cont'd)

(3) Nonhunting Number for Use with Hunt Group Arrangement or Uniform Call Distribution Arrangement (M)

	Monthly Rate	Nonrecurring Charge Initial	Nonrecurring Charge Subsequent	USOC
(a) Per Transmission Path[2]	$-	$-	$-	NHLPP
(4) Simplified Message Desk Interface - SMDI				
(a) Per hunt group arrangement[3]	518.38	320.00	320.00	AVA
(5) Surrogate Client Number				
(a) Per Number	6.41	3.00	3.00	SMV
(6) Bulk Calling/Line Information Delivery - BCLID[3]				
(a) Per Arrangement	-	59.00	59.00	NXK
			Rate	USOC
(b) Per Message			$.03493	NA

(7) Queuing

	Monthly Rate	Nonrecurring Charge Initial	Nonrecurring Charge Subsequent	USOC
(a) Per Multiline Hunt Group	$21.72	$66.00	$66.00	QLMHG
(b) Per Multiline Hunt Group with Delay Announcement	77.36	66.00	66.00	QLHDA
(c) Per Multiline Hunt Group with Call Waiting Lamps[3]	40.51	66.00	66.00	QLHCW
(d) Per Multiline Hunt Group with Delay Announcement and Call Waiting Lamps[3]	96.15	66.00	66.00	QLHGD
(e) Per Line Arranged for Queuing	-	2.00	2.00	QSC
(f) Per Queue Slot	-	-	-	QSCPQ
(g) Delay Announcement, per channel	45.52	-	-	BEXPC

Note 1: Basic Service Element rates are in addition to basic Local Switching rates. Rates applicable to BellSouth SWA LSBSA only, except where noted.

Note 2: Appropriate rearrangement charges to be applied in lieu of subsequent nonrecurring charges.

Note 3: Rates and charges as specified in ***E6.8.1*** also apply for this service. (T)

Material appearing on this page previously appeared on page(s) 119 of this section.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Second Revised Page 121
Cancels First Revised Page 121

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

5. Basic Service Elements (BellSouth SWA Basic Serving Arrangement Customers Only)[1] (Cont'd) (T)

a. Chargeable (Cont'd)

(7) Queuing (Cont'd)

		Monthly Rate	Nonrecurring Charge Initial	Nonrecurring Charge Subsequent	USOC
(h)	Delay Announcement, per trunk	$10.14	$-	$-	BEXPT
(i)	Music After Delay Announcement, per channel[2]	49.29	-	-	BE2PC
(j)	Music After Delay Announcement, per trunk[2]	26.16	-	-	BE2PT
(k)	Call Waiting Indication, per unique timing state[2]	18.79	-	-	A7G
(8)	User Transfer				
(a)	Per Transmission Path	2.62	3.00	3.00	E13
(b)	Per Transmission Path with SMDI	2.62	3.00	3.00	E13UT
(9)	Make Busy/Night Transfer[2]				
(a)	Per Arrangement	8.33	31.00	31.00	A9ANT
(b)	Per Customized Central Office Announcement	67.95	22.00	22.00	A9ACC
(10)	Direct Inward Dialing (DID) or DID/DOD Access Service with BellSouth SWA LSBSA				
(a)	Establishment of DID with BellSouth SWA LSBSA, including the First Group of 20 DID Numbers	.01	53.00	-	NDZ
(b)	Each Additional Group of 20 DID Numbers	.01	2.00	2.00	ND4
(c)	Establishment of two-way Line-Side service, each	-	20.00	-	NEF
(d)	DID or DID/DOD Trunk Termination, including Dial Pulse Signaling, each	33.50	36.00	-	NDT
(e)	DTMF Signaling, per trunk termination	26.54	-	-	S5DBD
(f)	MF Signaling, per trunk termination	.35	-	-	S5MBD

Note 1: Basic Service Element rates are in addition to basic Local Switching rates. Rates applicable to LSBSA only, except where noted.

Note 2: Rates and charges as specified in *E6.8.1* also apply for this service. (T)

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

5. Basic Service Elements (BellSouth SWA Basic Serving Arrangement Customers Only)[1] (Cont'd) (T)

a. Chargeable (Cont'd)

(11) Automatic Number Identification/Charge Number (BellSouth SWA TSBSA only)[2] (T)

		Monthly Rate	Nonrecurring Charge Initial	Subsequent	USOC
(a)	Per Trunk Group[3]	$-	$-	$-	NR4CN
				Rate	USOC
(b)	Per ANI/CN Delivered			$.00019	NA

(12) Answer ***Supervision*** (T)

		Monthly Rate	Nonrecurring Charge Initial	Subsequent	USOC
(a)	Per Transmission Path	$2.33	$2.00	$2.00	USW1X

(13) BellSouth® Remote Access Service, One Way, Dial Tone Office[4] (T)

		Monthly Rate	Nonrecurring Charge Initial	Subsequent	USOC
(a)	Initial Request	$23,460.00	$13,800.00	$-	RAQ11
(b)	Subsequent Request	1,955.00	-	1,150.00	RAQ1S

6. Common Switching Optional Features for Use with Dedicated Access Lines (BellSouth SWA FG and BellSouth SWA Basic Serving Arrangement Customers)[5] (T)

a. Band Advance Arrangement for use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line), available with BellSouth SWA FGC and BellSouth SWA FGD
Per Transmission Path Group

b. End Office End User Line Service Screening for use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line), available with BellSouth SWA FGC and BellSouth SWA FGD[6]
Per Transmission Path

c. Hunt Group Arrangement for use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line), available with BellSouth SWA FGC and BellSouth SWA FGD
Per Transmission Path Group

d. Uniform Call Distribution Arrangement use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line), available with BellSouth SWA FGC and BellSouth SWA FGD
Per Transmission Path Group

e. Nonhunting Number for use with Hunt Group Arrangement or Uniform Call Distribution Arrangement for use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line), available with BellSouth SWA FGC and BellSouth SWA FGD (M)
Per Transmission Path (M)

Note 1: Basic Service Element rates are in addition to basic Local Switching rates. Rates applicable to BellSouth SWA LSBSA only, except where noted.

Note 2: Charge Number is applicable only to BellSouth SWA TSBSA 3.

Note 3: Appropriate rearrangement charges to be applied in lieu of subsequent nonrecurring charges.

Note 4: One BellSouth® Remote Access Service port per BellSouth SWA LSBSA.

Note 5: References to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.13.A.

Note 6: This feature is required for originating only WATS Access Lines (a.k.a. BellSouth SPA WATS Line).

Material appearing on this page previously appeared on page(s) 123 of this section.

® BellSouth is a registered trademark of BellSouth Intellectual Property Corporation

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Second Revised Page 123
Cancels First Revised Page 123

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

7. Basic Service Element for Use with WATS Access Lines (a.k.a. BellSouth SPA WATS Line) (BellSouth SWA Basic Serving Arrangement Customers Only)[1] (T)

a. Chargeable

(1) Direct Inward Dialing (DID) or DID/DOD Access Service with BellSouth SWA Basic Serving Arrangement for Use with Dedicated Access Lines[2] (T)

		Monthly Rate	Nonrecurring Charge Initial	Nonrecurring Charge Subsequent	USOC
(a)	Establishment of DID with Dedicated Access Line Service, including the First Group of 20 DID Numbers	$.01	$62.00	$-	NDZ
(b)	Each Additional Group of 20 DID Numbers	.01	3.00	3.00	ND4
(c)	Establishment of two-way Line-Side service, each	-	20.00	-	NEF
(d)	DID or DID/DOD Trunk Termination, including Dial Pulse Signaling, each	33.50	36.00	-	NDT
(e)	DTMF Signaling, per trunk termination	26.54	-	-	S5D8D
(f)	MF Signaling, per trunk termination	.35	-	-	S5MBD

(M)

Note 1: Basic Service Element rates are in addition to basic Local Switching rates. Rates applicable to BellSouth SWA LSBSA only, except where noted. (T)

Note 2: Basic Service Element Rates are in addition to Section E6.8.3 WATS Access Line (a.k.a. BellSouth SPA WATS Line) Rates. (T)

Material previously appearing on this page now appears on page(s) 122 and 124 of this section.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 25, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Second Revised Page 124
Cancels First Revised Page 124

EFFECTIVE: October 25, 2000

E6. BELLSOUTH SWA SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

A. Local Switching Rates and Optional Features (Cont'd)

8. BellSouth SWA Transport Termination Options (M)(T)

a. Line Side Terminations for BellSouth SWA FGA and BellSouth SWA LSBSA (M)(T)

(1) Two Way Operation (M)(T)

- Dial Pulse with Loop Start (M)
- Dial Pulse with Ground Start
- DTMF with Loop Start
- DTMF with Ground Start

(2) Terminating Operation

- Dial Pulse with Loop Start
- Dial Pulse with Ground Start
- DTMF with Loop Start
- DTMF with Ground Start

(3) Originating Operation

- Loop Start
- Ground Start

b. Trunk Side Terminations for BellSouth SWA FGB, BellSouth SWA FGC, BellSouth SWA FGD and BellSouth SWA TSBSA

(1) Standard Trunk for Originating, Terminating or Two-Way operation, available with BellSouth SWA FGB, BellSouth SWA FGC, BellSouth SWA FGD and BellSouth SWA TSBSA

(2) Rotary Dial Station Signaling Trunk, available with BellSouth SWA FGB and BellSouth SWA TSBSA 1

(3) Operator Trunk, Coin, Non-Coin or Combined Coin and Non-Coin, available with BellSouth SWA FGC and TSBSA 2; also available with BellSouth SWA FGC, BellSouth SWA FGD, BellSouth SWA TSBSA 2 or TSBSA 3 when used in conjunction with BellSouth Operator Transfer Service

(4) Operator Trunk, Full Feature Arrangement, available with BellSouth SWA FGD and BellSouth SWA TSBSA 1

B. Line Terminations

1. WATS Access Line (a.k.a. BellSouth SPA WATS Line) Termination Optional Features

a. Line Side Terminations:

(1) Originating Only Loop Start, Line Side Connection, with DTMF Address Signaling Per WATS Access Line (a.k.a. BellSouth SPA WATS Line)

(2) Originating Only Loop Start, Line Side Connection, with Dial Pulse Address Signaling Per WATS Access Line (a.k.a. BellSouth SPA WATS Line)

(3) Originating Only Ground Start, Line Side Connection, with DTMF Address Signaling Per WATS Access Line (a.k.a. BellSouth SPA WATS Line)

Material appearing on this page previously appeared on page(s) 123 of this section.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

E6. BELLSOUTH SWA SERVICE (T)

E6.8 Rates and Charges (Cont'd)

E6.8.2 Local Switching (Cont'd)

B. Line Terminations (Cont'd)

1. WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** Termination Optional Features (Cont'd) (T)

   a. Line Side Terminations: (Cont'd)

      (4) Originating Only Ground Start, Line Side Connection, with Dial Pulse Address Signaling Per WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** (T)

      (5) Terminating Only Loop Start, Line Side Connection Per WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** (T)

      (6) Terminating Only Ground Start, Line Side Connection Per WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** (T)

   b. Trunk Side Terminations:

      (1) Terminating Only Trunk Side Connection for forwarding of Dialed Number Identification to End User Per Transmission Path

C. ***BellSouth SWA*** 900 Service NXX Activation Charge (T)

1. Per Company End Office Switch or Access Tandem in which translations are required

		Nonrecurring Charge	USOC
(a)	First NXX Code submitted on ASR	543.61	NA
(b)	Additional NXX Codes submitted on same ASR	21.51	NA

E6.8.3 WATS Access Line (a.k.a. BellSouth SPA WATS Line) Service (T)

A. Monthly Rate

1. Access Lines

		Monthly Rate	USOC	
(a)	2-wire Out WATS ***(a.k.a. BellSouth SPA WATS Line)*** and ***BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening*** Service[1,2]	538.00	X2W	(T)
(b)	2-wire DID or DID/DOD Access Service with ***BellSouth SWA Basic Serving Arrangement*** for use with WATS Access Lines ***(a.k.a. BellSouth SPA WATS Line)***.[3]	38.00	X2L	(T)

Note 1: The WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** Monthly Rates will be reduced by the amount of the gross receipts tax for certified vendors of telecommunications services. (T)

Note 2: This service will be available 60 days from receipt of the first request for service.

Note 3: For use with Direct Inward Dial (DID) or DID/DOD Access Service with ***BellSouth SWA Basic Serving Arrangement*** for use with WATS Access Lines ***(a.k.a. BellSouth SPA WATS Line)*** described in E6.3.5.A. and provided in E6.8.2.A.6. of this Tariff. (T)

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

First Revised Page 126
Cancels Original Page 126

EFFECTIVE: March 1, 1997

E6. BELLSOUTH SWA SERVICE (T)

E6.8 Rates and Charges (Cont'd)

E6.8.3 WATS Access Line (a.k.a BellSouth SPA WATS Line) Service (Cont'd) (T)

A. Monthly Rate (Cont'd)

1. Access Lines (Cont'd)

		Monthly Rate	USOC	
(c)	4-wire OutWATS and ***BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening*** service[1,2]	$38.00	X4W	(T)
(d)	4-wire DID or DID/DOD Access Service with ***BellSouth SWA Basic Serving Arrangement*** for use with WATS Access Lines ***(a.k.a. BellSouth SPA WATS Line)***.[3]	38.00	X4L	(T)

2. Access Line Extensions

a. Located in the Same Exchange as Main Termination

(1) First extension termination on different premises from main termination

(a)	Each	25.00	WSP++

(2) Additional termination in same building as main or other extension termination

(a)	Each[4]	-	WSS++

(3) First extension termination in different building, same premises as main or other extension termination

(a)	Each	9.25	WSD++

b. Located in Different Exchange from Main Termination within same LATA

(1) Interexchange channel mileage charges and channel terminal charges apply as specified for series 2000 channels in this Company's Private Line Service Tariff plus:

(a)	First termination	25.00	EWW++
(b)	Additional termination in same building with first or other extension termination, each[5]	-	WSS++
(c)	Additional termination in different building, same premises as first or other extension termination, each	9.25	WSD++
(d)	Additional termination on different premises, same exchange as first termination, each	25.00	WSP++

Note 1: The WATS Access Line ***(a.k.a. BellSouth SPA WATS Line)*** Monthly Rates will be reduced by the amount of the gross receipts tax for certified vendors of telecommunications services. (T)

Note 2: This service will be available 60 days from receipt of the first request for service.

Note 3: For use with Direct Inward Dial (DID) or DID/DOD Access Service with ***BellSouth SWA Basic Serving Arrangement*** for use with WATS Access Lines ***(a.k.a. BellSouth SPA WATS Line)*** described in E6.3.5.A. and provided in E6.8.2.A.6. of this Tariff. (T)

Note 4: Nonrecurring charge applies.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

E6. BELLSOUTH SWA SERVICE (T)

E6.8 Rates and Charges (Cont'd)

E6.8.3 WATS Access Line (a.k.a. BellSouth SPA WATS Line) Service (Cont'd) (T)

A. Monthly Rate (Cont'd)

3. Four-Wire Terminating Arrangement

	Monthly Rate	USOC
(a) Each arrangement[1]	$10.00	4WA

B. Installation Charges

Service Ordering Charge - The term Service Ordering Charge means the charge that applies for work performed by the Company in connection with the receiving, recording and processing of customer requests for service.

Central Office Work Charge and New Line Connection Charge - Covers work associated with establishing or changing each WATS access line ***(a.k.a. BellSouth SPA WATS Line)*** or access line extension connection. (T)

Premises Visit Charge - The term Premises Visit Charge means the charge that applies for a visit to the customer's premises to perform work, other than disconnect work, requested by the customer.

1. For installation of WATS access lines ***(a.k.a. BellSouth SPA WATS Line)***, extensions or four-wire terminating arrangements (T)

a. Access Lines and Extension Lines

(1) Service Ordering - Primary

	Nonrecurring Charge	USOC
(a) Each order	$35.00	NA
(2) Service Ordering - Secondary		
(a) Each order	12.50	NA
(3) Central Office Work Charge[2]		
(a) Each	19.50	NA
(4) New Line Connection Charge[3]		
(a) Each	31.50	NA
(5) Premises Visit		
(a) Each visit	19.00	NA

b. Four-Wire Terminating Arrangements

(1) This charge is in addition to the access line nonrecurring charges.

(a) Each arrangement	17.00	NA

Note 1: This charge is in addition to the access line monthly recurring charges.

Note 2: Central Office Work Charge is applicable for all access lines connected.

Note 3: New Line Connection Charge is applicable for all new access lines or additional access lines over and above the number previously installed at a premises.

6. SWITCHED ACCESS

6.6 Rates and Charges (M) T

6.6.1 Nonrecurring Charges *

(A) (Reserved for Future Use) *

(B) Switched Access Ordering Charge *
per ASR *
USOC: (SESCL) *
$138.12 *

(C) Design Change Charge *
USOC: (H28) *

Per ASR/Per Occurrence *

$ 34.14 *

(D) Network Blocking Charge *

Applies to FGB, FGC, FGD, BSA-B, BSA-C, BSA-D and SAC Access Service (C) *
Per Call *

$ .014 *

(E) FGA and BSA-A Optional Toll Blocking (C) *

Per FGA or BSA-A Line (C) *
Nonrecurring Charge *
USOC: (CAH) *

$ 5.11 *

(F) 500 NXX Translation Charge *

First NXX, per ASR per End Office (NW51X)	Each Additional NXX per ASR, per End Office (NW5AX)
$19.00	$10.00

R (M)

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 40
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-3 (Direct)

(M) Material transferred from Page 34.2. (N)

6. SWITCHED ACCESS

6.6 Rates and Charges (Continued)

6.6.2 Switched Transport

(A) Tandem-Switched Transport-Facility

	Per Access Minutes of Use
Per Access Minute/Mile	
Zone 1	.0000135
Zone 2	.0000141
Zone 3	.0000149

(B) Tandem Switched Transport - Termination

Per Access Minute Per Termination	
Zone 1	.0001344
Zone 2	.0001344
Zone 3	.0001344

(C) Tandem Switching

Per Access Minute	
Zone 1	.0007500
Zone 2	.0007500
Zone 3	.0007500

(D) Interconnection

Per Access Minute	.0011421	(R)

(E) Direct-Trunked Transport Facility-Voiceband

	Monthly Rate
Per Airline Mile	
Zone 1	$ 5.08
Zone 2	5.08
Zone 3	5.08

(F) Direct-Trunked Transport Facility-DS1

Per Airline Mile	
Zone 1	5.00
Zone 2	5.63
Zone 3	6.25
Termination, per month	
Zone 1	30.00
Zone 2	30.00
Zone 3	30.00

(G) Direct-Trunked Transport Facility-DS3

Per Airline Mile	
Zone 1	70.00
Zone 2	89.81
Zone 3	109.63
Termination, per month	
Zone 1	500.00
Zone 2	500.00
Zone 3	500.00

6. SWITCHED ACCESS

6.6 Rates and Charges (Continued)

6.6.2 Switched Transport (Continued)

	Installation Charge	USOC	Monthly Rate	USOC	
(H) Entrance Facility-Voiceband					
Per Entrance Facility					
2-Wire Voiceband					
Zone 1	$104.91	EFG2X	$33.08	EFG2X	(C)
Zone 2	104.91	EFG2X	33.08	EFG2X	|
Zone 3	104.91	EFG2X	33.08	EFG2X	(C)
4-Wire Voiceband					
Zone 1	104.91	EFG4X	52.93	EFG4X	(C)
Zone 2	104.91	EFG4X	52.93	EFG4X	|
Zone 3	104.91	EFG4X	52.93	EFG4X	(C)
(I) Entrance Facility - DS1					
First System					
Zone 1	788.08	EFGDX	260.00	EFGDX	(C)
Zone 2	788.08	EFGDX	300.00	EFGDX	|
Zone 3	788.08	EFGDX	331.72	EFGDX	(C)
Each Additional System					
Zone 1	788.08	EFGLX	130.00	EFGLX	(C)
Zone 2	788.08	EFGLX	130.00	EFGLX	|
Zone 3	788.08	EFGLX	130.00	EFGLX	(C)
(J) Entrance Facility - DS3 - Protected Electrical					
Per DS3					
Zone 1	788.08	EFGPF	1,400.00	EFGPF	(C)
Zone 2	788.08	EFGPF	1,450.00	EFGPF	|
Zone 3	788.08	EFGPF	1,500.00	EFGPF	(C)
(K) Multiplexing					
DS1 to Voice					
Zone 1	672.54	M6W1X	250.00	M6W1X	(C)
Zone 2	672.54	M6W1X	250.00	M6W1X	|
Zone 3	672.54	M6W1X	250.00	M6W1X	(C)
DS3 to DS1					
Zone 1	394.04	M6W3X	581.63	M6W3X	(C)
Zone 2	394.04	M6W3X	581.63	M6W3X	|
Zone 3	394.04	M6W3X	581.63	M6W3X	(C)

6.6.3 End Office Services

(A) Basic and Premium Data Base Query Charge

The rate for Data Base Query Service is per query.

Rate Per Query
$ 0.01

(B) End Office Switching - Bundled (EOSB)

The bundled rates for End Office Switching are based on originating and terminating Access Minutes.

Bundled Rates (EOSB) Per Access Minute
$.0089000

6. SWITCHED ACCESS

6.6 Rates and Charges (Continued)

6.6.3 End Office Services (Continued)

(C) End Office Switching - Unbundled (EOSU) - Circuit Switched Line (N) T

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Unbundled Rates-Circuit Switched Line (EOSU) Per Access Minute
$.0088785

(D) End Office Switching - Unbundled (EOSU) - Circuit Switched Trunk

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Unbundled Rates-Circuit Switched Trunk (EOSU) Per Access Minute
$.0088785

		USOC
(E) Alternate Traffic Routing - BSE		
Nonrecurring Charge Per Trunk Group Equipped	$ 70.92	CF3AR
(F) Automatic Number Identification (ANI) - BSE		
Rate Per ANI Attempt	.00015	
(G) User Transfer - BSE		
Monthly Rate Per Line Arranged	1.50	EO3
(H) Hunt Group Arrangement - BSE		
Monthly Rate Per Line Equipped	11.02	CF3HG
(I) Queuing - BSE		
Monthly Rate Per Group Equipped	15.00	CF3QU
(J) Uniform Call Distribution - BSE		
Monthly Rate Per Line Equipped	5.28	CF3UD
(K) Simplified Message Desk Interface (SMDI) - BSE		
Monthly Recurring Rate Per DNAL	229.71	SMQPX
(L) Remote Call Forwarding - BSE		
Monthly Recurring Rate Per Line	16.00	FOMPX
(M) Direct Inward Dialing (DID) - BSE		
Monthly Recurring Rate Per DID Term Per Block of 20 Numbers	71.00 29.00	NDT ND4
(N) Billed Number Screening (BNS) - BSE		
Monthly Recurring Rate Per Line Screened	1.00	RTVXQ

R (N)

6. SWITCHED ACCESS

6.6 Rates and Charges (Continued)

6.6.3 End Office Services (Continued)

(O) Carrier Identification Parameter (CIP)

Nonrecurring Charge, per CIC		(C)
Per Trunk Group to an Access Tandem	$1,120.00	(C)
Per Trunk Group to an End Office	80.00	(N)
Monthly Rate, Per Trunk	.46	

6. SWITCHED ACCESS

6.6 Rates and Charges (Continued)

6.6.4 Information Surcharge

	Per Access Minute	
The rates for Information Surcharge are based on an originating and terminating Access Minutes.	$.0	(R)

6.6.5 FGA or BSA-A Usage Sensitive Credit Allowance

Credit Per Originating FGA or BSA-A	$ .0014

6.6.6 (Reserved for Future Use)

6.6.7 Switched Access Cross Connect

(A) Rates and Charges

	Monthly Rate
Per DS0 Connection	$ 1.60
Per DS1 Connection	4.00
Per DS3 Connection	31.00

GTE FLORIDA
INCORPORATED

FACILITIES FOR INTRASTATE ACCESS

First Revised Page 36
Cancelling Original Page 36
First Revised Page 37
Original Pages 38 through 40
First Revised Page 41
Original Pages 42 through 44
First Revised Page 45
Original Pages 45.1 and 46
First Revised Page 47
Original Pages 48 through 63
First Revised Page 64
Original Pages 65 through 71
First Revised Page 72
Original Pages 73 through 75
First Revised Page 76
Original Pages 77 through 80
First Revised Page 81
and Original Pages 82 through 87

6. SWITCHED ACCESS

(Deleted) (D)

T
*
*
*

ACCESS SERVICE TARIFF

Embarq Florida, Inc.
By: F. B. Poag, Director

First Revised Page 136.2
Cancels Original Page 136.2

Effective: January 19, 2001

E6. SWITCHED ACCESS SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.2 Switched Transport (Cont'd)

C. Tandem-Switched Transport

	Rate
1. Tandem-Switched Transmission Termination, per Access Minute	
Zone 1	$.000180
Zone 2	$.000200
Zone 3	$.000210
Facility, per Access Minute per mile	
Zone 1	$.000036
Zone 2	$.000040
Zone 3	$.000042
2. Tandem Switching, per Access Minute	
Zone 1	$.000792
Zone 2	$.000880
Zone 3	$.000924

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 41
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-4 (Direct)

Tariff Page revised 6/5/2006 to reflect company name change from Sprint to Embarq.

ACCESS SERVICE TARIFF

Embarq Florida, Inc.
By: F. B. Poag, Director

Second Revised Page 141
Cancels First Revised Page 141

Effective: October 26, 2001

E6. SWITCHED ACCESS SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.3 End Office

A. Local Switching	Rate
1. Per Access Minute	$.0177

2. Local Switching Nonchargeable Optional Features

a. Call denial on line or hunt group, available with FGA, Per Transmission Path or Transmission Path Group

b. Service Code Denial on line or hunt group, available with FGA, Per Transmission Path or Transmission Path Group

c. Hunt Group Arrangement, available with FGA, Per Transmission Path Group

d. Uniform Call Distribution Arrangement, available with FGA, Per Transmission Path Group

e. Nonhunting Numbers for use with Hunt Group Arrangements or U.C.D. Arrangement available with FGA, Per Transmission Path

f. Automatic Number Identification, available with FGB, FGC and FGD, Per End Office By Type of Capacity

g. Up to 7 Digit Outpulsing of Access Digits to IC, available with FGB, Per Entry Switch

h. Cut-Through, available with FGD, Per End Office or Access Tandem

i Revertive Pulse Address Signaling, available with FGC, Per Transmission Path Group

j. Delay Dial Start-Pulsing Signaling, available with FGC, Per Transmission Path Group

k. Immediate Dial Pulse Address Signaling, available with FGC, Per Transmission Path Group

Tariff Page revised 6/5/2006 to reflect company name change from Sprint to Embarq.

ACCESS SERVICE TARIFF

Embarq Florida, Inc.
By: F. B. Poag, Director

Second Revised Page 154
Cancels First Revised Page 154

Effective: July 16, 1997

E6. SWITCHED ACCESS SERVICE

E6.8 Rates and Charges (Cont'd)

E6.8.5 Toll Free Code (TFC) Access Service

		Nonrecurring Charge	
		United Telephone	Central Telephone
A.	TFC Access Service Data Base Query - per query	$0.008037	$.01623
B.	TFC Data Base Optional Features* - per query	$0.001344	$.00137

* When a combination of one or more TFC Data Base Optional Service Features is used, only

Tariff Page revised 6/5/2006 to reflect company name change from Sprint to Embarq.

REDACTED

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 42
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-11 (Direct)
CONFIDENTIAL

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of

QWEST COMMUNICATIONS COMPANY, LLC,

Docket No. 090538-TP

Against

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50.

RESPONSE OF BULLSEYE TELECOM, INC. TO FIRST SET OF INTERROGATORIES (1-8) AND DOCUMENT REQUESTS (1-5) FROM QWEST COMMUNICATIONS COMPANY, LLC

BullsEye Telecom, Inc. ("BullsEye"), by and through its undersigned counsel, hereby responds to the *First Set of Interrogatories (1-8) and Document Requests (1-5) from Qwest Communications Company, LLC* ("QCC").

Information in these responses was supplied by Peter LaRose, BullsEye Telecom, Inc., and counsel.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 43
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-12 (Direct)

BULLSEYE RESPONSES TO INTERROGATORIES

Interrogatory No. 1. *Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."*

BULLSEYE RESPONSE:

BullsEye objects to this interrogatory since it is not likely to produce relevant or admissible evidence, given that, *inter alia*, the Florida Public Service Commission does not have subject matter jurisdiction over QCC's claims in this proceeding and does not have authority to award the relief sought by QCC.

BullsEye also objects to this request given that it seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Moreover, BullsEye objects to the request as Overly Broad, Unduly Burdensome, and Not Relevant, since the request seeks, *inter alia*, information relating to time periods beyond the statute of limitations period applicable to QCC's claims.

Without waiving, and subject to all stated objections, BullsEye identifies the following agreement: a nationwide settlement agreement between BullsEye and AT&T Corp. ("AT&T Agreement").

Interrogatory No. 2. *For each agreement identified in response to No. 1:*

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that it seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

BullsEye further objects to this request as Unduly Burdensome given that QCC can identify the information requested through review of BullsEye's agreement made available to QCC and the BullsEye filed price list, which is a publicly available document.

Without waiving and subject to the objections stated herein, please refer to the AT&T Agreement and BullsEye's price list on file with the Commission for their rates, terms and conditions.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving and subject to all stated objections, BullsEye responds that it was coerced by AT&T to enter the settlement agreement. Prior to entering the agreement, AT&T unlawfully withheld all access charge payments under BullsEye's filed tariffs and price lists on a nationwide basis. AT&T refused to make any payments to BullsEye, unless BullsEye agreed to enter a settlement agreement under rates, terms and conditions demanded by AT&T.

c. Identify the precise date on which the agreement became effective.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections, please refer to the AT&T Agreement for its effective date.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye also objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections: Not Relevant.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye also objects to this request given that it seeks confidential and proprietary information. All of the information requested under this interrogatory is confidential and proprietary information.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye further objects to this request on the grounds that any appendices or summaries are readily available to QCC.

Without waiving, and subject to all stated objections, BullsEye refers QCC to BullsEye's price list on file with the Florida Public Service Commission.

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

BullsEye further objects to this request given that this request seeks confidential and proprietary information. Confidential and proprietary information shall be provided in a supplemental response once a protective order and/or non-disclosure agreement has been entered by the parties.

Without waiving, and subject to all stated objections, BullsEye states that the existence of AT&T's off-tariff agreements for switched access was made publicly known in a 2004 proceeding before the Minnesota Public Utilities Commission. The existence of the agreement has also been made publicly known in proceedings before the Colorado Public Utilities Commission, California Public Utilities Commission and Florida Public Service Commission, to which QCC is a party

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as being Vague and Ambiguous, and specifically objects to QCC's offensive use of the term "similarly situated." BullsEye further objects to this request as calling for a Legal Conclusion.

This request is likewise improper to the extent it seeks to shift QCC's burden of proof to demonstrate that QCC is similarly situated to AT&T.

Without waiving, and subject to all stated objections, BullsEye responds that it is unable to respond to this request since QCC, as Complainant, has not met its burden of proof, has not yet responded to any discovery on this question, and has failed even to assert the existence of facts that may support any valid claim.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart i., above.

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

BullsEye further objects to this request as Overly Broad, Unduly Burdensome and Not Relevant.

Without waiving and subject to the objections stated herein, BullsEye refers QCC to the AT&T Agreement for its terms.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

BULLSEYE RESPONSE:

BullsEye objects to this request pursuant to the same specific objections provided in response to Interrogatory No. 1 above, and further objects to this request as Not Relevant.

Without waiving and subject to all stated objections, BullsEye refers QCC to the response to Interrogatory No. 2(b) above.

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart l., above.

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above.

Without waiving and subject to all stated objections, BullsEye identifies the following employees:

Peter LaRose, Vice President, Finance
BullsEye Telecom, Inc.
25900 Greenfield Road, Suite 330
Oak Park, MI 48237

William H. Oberlin, CEO
BullsEye Telecom, Inc.
25900 Greenfield Road, Suite 330
Oak Park, MI 48237

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same specific objections provided in response to Interrogatory No. 1 above. BullsEye further objects to this request as Overly Broad, Unduly Burdensome and Not Relevant.

Without waiving and subject to all stated objections, BullsEye states that the existence of AT&T's agreements was made publicly known in a 2004 proceeding before the Minnesota Public Utilities Commission.

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

BULLSEYE RESPONSE:

Please see the response to subpart q., above.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

BULLSEYE RESPONSE:

BullsEye responds to this request pursuant to the same objections and in the same manner as stated in response to subpart o., above.

BullsEye further objects to this request as being improper to the extent it seeks to shift QCC's burden of proof.

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

BULLSEYE RESPONSE:

Please see the response to subpart s., above.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

BULLSEYE RESPONSE:

BullsEye objects to this request under the same objections provided in response to Interrogatory No. 1 above.

BullsEye further objects to this request on the grounds that it Calls for a Legal Conclusion. This request is likewise improper to the extent it seeks to shift QCC's burden of proof.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges

3.9.1 Common Line Access Service

A. Carrier Common Line

Per Originating Minute:	Note 1
Per Terminating Minute:	Note 1

3.9.2 Switched Transport Service

A. Nonrecurring Charges

1. Trunk Charges

Per Trunk:	ICB

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching. This composite rate includes the elements traditionally billed as Carrier Common Line.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 44
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-13 (Direct)

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.2 Switched Transport Service (Continued)

B. Monthly Recurring Charges

1. Direct-Trunked Transport

All elements of Direct-Trunked Transport are priced on an Individual Case Basis (ICB).

C. Usage Charges

1. Tandem Switched Transport

A.	Tandem Switched Transport, per Minute:	Note 1
B.	Tandem Switched Transport, per Minute, per Mile:	Note 1
C.	Tandem Switching, per Minute:	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching. This composite rate includes the elements traditionally billed as Tandem Switched Transport.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.3 End Office Switching

A. Local Switching

Per Minute:	$0.04100

B. Transport Interconnection Charge

Per Minute:	Note 1

C. Information Surcharge

Per Minute:	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching. This composite rate includes the elements traditionally billed as Transport Interconnection Charge and Information Surcharge.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.4 Toll-Free 8XX Data Base Access Service

Per Query:	$0.0055

3.9.5 Switched Access Optional Features

Optional Features are provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 5 of this price list.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.6 Service Order Charges

Service Order Charges are non-recurring charges to recover the administrative costs associated with initiating Access Service.

A. Service Implementation

.1	Access Order Charge, per Access Request:	$60.001
.2	Installation Charge, per Trunk:	$115.00

B. Service Date Change, per Access Order $25.00

C. Design Change/Partial Cancellation Charge
Per Access Order: $50.00

SECTION 5 - SPECIAL CONTRACTS, ARRANGEMENTS, AND CONSTRUCTION

5.1 Special Contract Arrangements

At the option of the Company, services may be offered on a contract basis to meet specialized pricing requirements of the Customer not contemplated by this price list. The terms of each contract shall be mutually agreed upon between the Customer and Company and may include discounts off of rates contained herein and waiver of recurring, nonrecurring, or usage charges. The terms of the contract may be based partially or completely on the term and volume commitment, type of access arrangement, mixture of services, or other distinguishing features. Service shall be available to all similarly situated Customers for a fixed period of time following the initial offering to the first contract Customer as specified in each individual contract.

5.2 Special Service Arrangements

5.2.1 If a Customer's requirements cannot be met by services included in this price list, or pricing for a service is shown in this price list as "ICB", the Company will provide, where practical, special service arrangements at charges to be determined on an Individual Case Basis. These special service arrangements will be provided if the provision of such arrangements are not detrimental to any other services furnished under the Company's price lists or tariffs.

5.2.2 Special service arrangement rates are subject to revision depending on changing costs or operating conditions.

5.2.3 If and when a special service arrangement becomes a regular Company offering, the price list rate or rates will apply from the date of price list approval.

5.3 Non-Routine Installation Charges

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays or night hours, additional charges may apply.

SECTION 5 - SPECIAL CONTRACTS, ARRANGEMENTS, AND CONSTRUCTION, (CONT'D)

5.4 Special Construction Charges

5.4.1 General

A. Special construction charges may apply for services provided to the Customer by the Company. Special construction includes but is not limited to that construction undertaken:

.1 where facilities are not presently available, and there is no other requirement for the facilities so constructed;

.2 of a type other than that which the Company would normally utilize in the furnishing of its services;

.3 over a route other than that which the Company would normally utilize in the furnishing of its services;

.4 in a quantity greater than that which the Company would normally construct;

.5 on an expedited basis;

.6 on a temporary basis until permanent facilities are available;

.7 involving abnormal costs;

.8 in advance of its normal construction; or

.9 when the Company furnishes a facility or service for which a rate or charge is not specified in the Company's price list.

B. Where the Company furnishes a facility or service requiring special construction, charges will be determined by the Company and may include: (1) non-recurring charges; (2) recurring charges; (3) usage charges; (4) termination liabilities; or (5) a combinations thereof.

C. Rates and charges for special construction shall be determined and presented to the Customer for its approval prior to the start of construction. No construction will commence until and unless the Customer accepts in writing the rates and charges as presented by the Company.

REDACTED

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 45
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-17ADirect)
CONFIDENTIAL

REDACTED

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 46
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-17BDirect)
CONFIDENTIAL

CenturyLink™

Adam L. Sherr
Associate General Counsel
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507

December 15, 2011

General Counsel
Ernest Communications, Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092

Paul Masters
President
Ernest Communications, Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092

Re: Florida PSC Case No. 090538-TP
Failure to Respond to Discovery

Dear Mr. Masters and General Counsel:

On October 21, 2011, QCC served by mail its first interrogatories and first set of document requests to Ernest. An additional copy is enclosed. Pursuant to Rules 1.340 and 1.350 of the Florida Rules of Civil Procedure and Rule 28-106.206, F.A.C, Ernest had thirty (30) days to respond. QCC received no response, and no request for an extension of time to respond.

Please immediately advise as to when QCC should expect to receive your response.

Thank you.

Adam L. Sherr
ALS/ldj
Enclosures

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 47
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-18 (Direct)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.	Docket No. 090538-TP Filed: August 1, 2011

QWEST COMMUNICATIONS COMPANY, LLC's FIRST SET OF INTERROGATORIES (1-7) AND DOCUMENT REQUESTS (1-4) TO ERNEST

In accordance with Rules 1.280, 1.340 and 1.350, Florida Rules of Civil Procedure, Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") hereby serves this First Set of Interrogatories and Document Requests on Ernest Communications, Inc. ("Ernest"). Responses should be served within 30 calendar days, and should be served electronically to the undersigned counsel of record, or in such other manner and at such other place as counsel may agree.

INTERROGATORIES

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

Interrogatory No. 2. For each agreement identified in response to No. 1:

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

c. Identify the precise date on which the agreement became effective.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

Interrogatory No. 4. If your response to Interrogatory No. 3 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it originating intrastate switched access.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges

3.9.1 Common Line Access Service

A. Carrier Common Line

- Per Originating Minute	Note 1
- Per Terminating Minute	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching.

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 48
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-19 (Direct)

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.2 Switched Transport Service

A. Nonrecurring Charges

1. Trunk Charges

Per Trunk	ICB

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.2 Switched Transport Service (Continued)

B. Monthly Recurring Charges

1. Direct-Trunked Transport

All elements of Direct-Trunked Transport are priced on an Individual Case Basis (ICB).

C. Usage Charges

1. Tandem Switched Transport

A.	Tandem Switched Transport, per Minute	Note 1
B.	Tandem Switched Transport, per Minute, per Mile	Note 1
C.	Tandem Switching, per Minute	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.3 End Office Switching

A. Local Switching

- Per Minute	
Originating	$0.0200
Terminating	$0.0280

B. Transport Interconnection Charge

- Per Minute	Note 1

C. Information Surcharge

- Per Minute	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3A, Local Switching.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.4 Toll-Free 8XX Data Base Access Service

Per Query	$0.0055

3.9.5 Switched Access Optional Features

Optional Features are provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 6 of this tariff.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.9 Rates and Charges (Continued)

3.9.6 Service Order Charges

Service Order Charges recover the administrative costs associated with initiating Access Service.

Per Service Order	ICB

REDACTED

REDACTED

REDACTED

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 49
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-20 (Direct)
CONFIDENTIAL

CenturyLink™

Adam L. Sherr
Associate General Counsel
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507

December 15, 2011

Flatel, Inc.
c/o Adrian Solar
2300 Palm Beach Lakes Blvd
Executive Center, Suite 100
West Palm Beach, FL 33409

Re: Florida PSC Case No. 090538-TP
Failure to Respond to Discovery

Dear Mr. Solar:

On October 21, 2011, QCC served by mail its first interrogatories and first set of document requests to Flatel. An additional copy is enclosed. Pursuant to Rules 1.340 and 1.350 of the Florida Rules of Civil Procedure and Rule 28-106.206, F.A.C, Flatel had thirty (30) days to respond. QCC received no response, and no request for an extension of time to respond.

Please immediately advise as to when QCC should expect to receive your response.

Thank you.

Adam L. Sherr
ALS/ldj
Enclosures

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 50
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-21 (Direct)

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.	Docket No. 090538-TP Filed: August 1, 2011

QWEST COMMUNICATIONS COMPANY, LLC's FIRST SET OF INTERROGATORIES (1-7) AND DOCUMENT REQUESTS (1-4) TO FLATEL

In accordance with Rules 1.280, 1.340 and 1.350, Florida Rules of Civil Procedure, Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") hereby serves this First Set of Interrogatories and Document Requests on Flatel, Inc. ("Flatel"). Responses should be served within 30 calendar days, and should be served electronically to the undersigned counsel of record, or in such other manner and at such other place as counsel may agree.

INTERROGATORIES

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

Interrogatory No. 2. For each agreement identified in response to No. 1:

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

c. Identify the precise date on which the agreement became effective.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

Interrogatory No. 4. If your response to Interrogatory No. 3 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it originating intrastate switched access.

RESERVED FOR FLATEL TARIFF

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 51
PARTY Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-22 (Direct)
CONFIDENTIAL

****REDACTED****

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 52
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-30 (Direct)
CONFIDENTIAL

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.	Docket No. 090538-TP Filed: December 2, 2011

NAVIGATOR TELECOMMUNICATIONS, LLC.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC'S FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS

Navigator Telecommunications, LLC. ("Navigator") hereby submits its objections and responses to Qwest Communications Corporation's ("Qwest") First Set of Interrogatories and Document Requests (collectively "Data Requests" and individually "Data Request") dated October 21, 2011 that are associated with the above-captioned proceeding.

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 53
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-31 (Direct)

providing the data is outweighed by the burden of production or (b) Qwest can obtain the data through publicly available information.

3. *Overly Broad*: The Data Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. *Vague and Ambiguous*: The Data Request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the Navigator cannot reasonably determine the intended meaning, scope or limits of Qwest's Data Request.

5. *Calls for a Legal Conclusion*: The Data Request calls for a conclusion of law.

SPECIFIC RESPONSES TO DATA REQUESTS

Navigator's specific responses to Qwest's Data Requests, which includes general and specific objections, are provided below.

INTERROGATORIES

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, Navigator's response is limited to relevant information reasonably related to the subject matter of this proceeding.

Navigator signed a proprietary and confidential document styled as a "Settlement and Switched Access Service Agreement" with AT&T, dated July 1, 2001, that was national in scope and included terms related to interstate and intrastate switched access charges in various states. By its terms, both the existence of that agreement and the terms of that agreement were deemed proprietary and confidential and were not subject to disclosure. In the course of Qwest's pending proceeding before the California Public Utilities Commission (CPUC Case No. 08-08-006), Navigator sought permission from AT&T to acknowledge the existence of the agreement and to provide an unredacted copy of the agreement to Qwest. AT&T refused to permit the disclosure of an unredacted copy of the agreement, but supplied Navigator with a redacted copy of the agreement that AT&T had itself provided to Qwest.

Interrogatory No. 2. For each agreement identified in response to No. 1:

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

RESPONSE: No terms or conditions set by Navigator's agreement with AT&T currently differ from the terms or conditions stated in Navigator's Florida switched access price list, except for the obligation, stated in Navigator's agreement with AT&T, for Navigator to maintain the confidentiality of both the existence and terms of the agreement with AT&T. Only the rates in the agreement differ from the rates Navigator ultimately filed with the Florida PSC.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, Navigator's response is that it did not

have a "then-effective price list" in Florida at the time it signed the AT&T agreement. Neither did Navigator make a "decision to offer" AT&T rates that were different from those in Navigator's price list(s) as subsequently filed. Rather, under economic duress caused by AT&T's refusal to pay validly tariffed access charges in multiple states, Navigator had no practically viable business option but to accede to AT&T's demand that Navigator execute the proffered agreement. Navigator did not wish to accept lesser access charges than those filed in its various state access tariffs and price lists, but faced with AT&T's withholding of payments in multiple states, felt it had no alternative.

c. Identify the precise date on which the agreement became effective.

RESPONSE: The AT&T agreement became effective on July 26, 2001.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

RESPONSE: Navigator has not stopped providing AT&T the rates, terms and conditions under the agreement.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Navigator further objects to the interrogatory to the extent that it requires or purports to require the disclosure of information that is confidential and proprietary to Navigator, especially since no protective order has been established in this case. Such material shall not be produced until an appropriate non-disclosure agreement or protective order has been entered.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

RESPONSE: No.

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

RESPONSE: No. The agreement required Navigator to maintain the confidentiality of both the existence and terms of the agreement.

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

RESPONSE: Navigator never voluntarily offered to provide switched access services to any IXC under any rates, terms or conditions that varied from its valid and applicable price lists.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

RESPONSE: Navigator objects that the interrogatory is Not Relevant, Unduly Burdensome, Overly Broad, and Vague and Ambiguous. Without waiving its objections, Navigator responds that at the time the agreement became effective, Navigator had not yet begun providing access services in Florida. Navigator further responds that it experienced no other like circumstances where charges billed per filed tariffs were being withheld by a single IXC in multiple states throughout Navigator's service territory creating a level of economic duress that challenged the ongoing viability of its business.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

RESPONSE: Without waiving the previous stated objections, no.

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

RESPONSE: See response to Interrogatory No. 1, supra. Navigator objects to the interrogatory to the extent that it requires or purports to require the disclosure of information that is confidential and proprietary to Navigator, especially since no protective order has been established in this case. Such material shall not be produced until an appropriate non-disclosure agreement or protective order has been entered. Without the express acquiescence of AT&T, Navigator objects to providing an unredacted copy of the agreement in lieu of an order to do so which releases Navigator from any potential liability to AT&T for violating the confidentiality provisions of that agreement.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, see response to Interrogatory No. 1, supra. Navigator did not perform a cost study and did not establish the rates in the agreement.

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, see response to Interrogatory No. 1,

supra. Navigator did not rely on a demand study or an elasticity study and did not establish the rates in the agreement.

n. **Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.**

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Navigator also objects to the implication that there was any meaningful "negotiating" regarding the substance of the agreement. Without waiving its objections, Navigator identifies David Stotelmyer, CFO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113, and Kenrick LeDoux, CTO, Navigator Telecommunications, LLC., 8525 Riverwood Park Drive, P.O. Box 13860, North Little Rock, AR 72113.

o. **During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?**

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, Navigator's response is no.

p. **If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.**

RESPONSE: See response to Interrogatory 2.o., supra.

q. **During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?**

RESPONSE: Navigator objects that the interrogatory is Overly Broad and seeks information which is Not Relevant. Without waiving its objections, Navigator's response is no.

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

RESPONSE: See response to Interrogatory 2.q., supra.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

RESPONSE: With respect to the first part of the question, (a), Navigator objects that the interrogatory is Overly Broad. Without waiving its objections, Navigator's response is no. With respect to the second part of the question, (b), Navigator objects that the interrogatory is Overly Broad. Without waiving its objections, Navigator's response is no.

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

RESPONSE: See response to Interrogatory 2.s., supra.

Interrogatory No. 3. Do you contend that an IXC has the ability to choose which local exchange carrier will provide it originating switched access in connection with an intrastate, long distance call?

RESPONSE: Navigator objects that the interrogatory is Not Relevant. Without waiving its objection, Navigator's response is that an IXC can choose whether or not to provide service in a particular market, but that it is an end user that determines which LEC originates that end user's call.

Interrogatory No. 4. If your response to Interrogatory No. 3 above is other than an unqualified no, fully explain all ways in which an IXC can choose which local exchange carrier will provide it originating intrastate switched access.

RESPONSE: See response to Interrogatory No. 3, supra.

ACCESS SERVICE

4. **SWITCHED ACCESS** (Cont'd)

4.7 Rate Regulations (Cont'd)

4.7.2 Individual Case Basis Rates

Subject to Florida Public Service Commission regulations and approval, the Company may, where certain Access Services or arrangements are required to meet customer requirements, utilize rates based on an Individual Case Basis.

Louis F. McAlister, President
Navigator Telecommunications, LLC.
8525 Riverwood Park Dr.
North Little Rock, AR 72113-0860

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 54
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-32 (Direct)

ACCESS SERVICE

CONTENTS

5. Miscellaneous Access Service

5.1 General.....57

5.2 Services Offered.....57

ACCESS SERVICE

CONTENTS

7. Rates and Charges

7.1 General.....66

7.2 Carrier Common Line.....66

7.3 Switched Access Service.....66

7.4 Access Order Charges.....66

7.5 Miscellaneous Services.....67

7.6 Individual Case Basis (ICB).....67

Louis F. McAlister, President
Navigator Telecommunications, LLC.
8525 Riverwood Park Dr.
North Little Rock, AR 72113-0860

ACCESS SERVICE

7. RATES AND CHARGES

7.1 General

Rates for service will include nonrecurring charges, recurring charges for the rate elements or items specified in previous sections of this tariff, miscellaneous charges, or ICB charges or combinations of same and are identified herein.

		Per/Minute
7.2	Carrier Common Line	
	A. InterLATA Access	
	Access Minute, each terminating	$0.033600
	Access Minute, each originating	$0.025800
	IntraLATA Access	
	Access Minute, each terminating	$0.033600
	Access Minute, each originating	$0.025800
7.3	Switched Access Service	
7.3.1	Local Switching	$0.017700
7.3.2	Tandem Switching Facility	$0.000039
	Tandem Switching Termination	$0.000197
	Tandem Switching	$0.000865
7.3.3	Network Blocking Charge	
	Per Call	$0.008000
7.3.4	800 Data Base Access Service Queries	
	Per Query	
	800 NPAS Query	$0.008037
	Call Handling & Destination	$0.001344
7.3.5	Information Surcharge	$0.000000

		Per Order/Per Occurrence
7.4	Access Order Charges	
	Access Order Charge	-
	Design Change Charge	$32.96
	Service Date Change Charge	$14.77
	Miscellaneous Service Order Charge	$32.96

Issued: May 3, 2002

Effective: May 7, 2002

Louis F. McAlister, President
Navigator Telecommunications, LLC.
8525 Riverwood Park Dr.
North Little Rock, AR 72113-0860

ACCESS SERVICE

7. **RATES AND CHARGES (Cont'd)**

7.5 Miscellaneous Services

		Nonrecurring Charge
A.	Pre-subscription	
	Per Telephone Exchange Service Line or Trunk	$ 4.50
B.	Unauthorized PIC Change	
	Residence/Business Per Telephone Exchange Service Line or Trunk	$32.09
	Per Pay Telephone Exchange Service Line or Trunk	$51.81
C.	Billing Name and Address Service	
	Service Establishment Charge, for the initial establishment of BNA service on a mechanized or paper basis:	$250.00
	Per Request:	$50.94
	Per Account Within an Individual Request (Subscriber Line):	$0.33
D.	Originating Line Screening (OLS) Service	
	Per Exchange Service Line	$7.16

7.6 Individual Case Basis (ICB)

Subject to Florida Public Service Commission regulations and approval, the Company may, where certain Access Services or arrangements are required to meet customer requirements (such as Frame Relay, DSL, Special Access Services etc.) utilize rates based on an Individual Case Basis.

Louis F. McAlister, President
Navigator Telecommunications, LLC.
8525 Riverwood Park Dr.
North Little Rock, AR 72113-0860

SECTION 5 - RATES AND CHARGES

5.1 General

Rates for service will include nonrecurring charges, recurring charges for the rate elements or items specified in previous sections of this tariff, miscellaneous charges, or ICB charges or combinations of same and are identified herein.

5.2 Blended Carrier Switched Access	Per Minute
Sprint and Verizon service areas	$0.06152
BellSouth service areas	$0.03410

5.3. Network Blocking Charge	
Per Call	$0.008000

5.4 800 Data Base Access Service Queries	
Per Query	
800 NPAS Query	$0.01

5.5 Access Order Charges	Per Order or Occurrence
Access Order Charge	-
Design Change Charge	$32.96
Service Date Change Charge	$14.77
Miscellaneous Service Order Charge	$32.96

5. RATES AND CHARGES (Cont'd)

5.5 Miscellaneous Services

		Nonrecurring Charge
A.	Pre-subscription	
	Per Telephone Exchange Service Line or Trunk	$ 4.50
B.	Unauthorized PIC Change	
	Residence/Business Per Telephone Exchange Service Line or Trunk	$32.09
	Per Pay Telephone Exchange Service Line or Trunk	$51.81
C.	Billing Name and Address Service	
	Service Establishment Charge, for the initial establishment of BNA service on a mechanized or paper basis:	$250.00
	Per Request:	$50.94
	Per Account within an Individual Request (Subscriber Line):	$0.33
D.	Originating Line Screening (OLS) Service	
	Per Exchange Service Line	$7.16

40304

SETTLEMENT AND SWITCHED ACCESS SERVICE AGREEMENT

between

AT&T Corp.
900 Route 202/206N
Bedminster, NJ 07921-0752

AT&T Contact: William J. Taggart III
Telephone No.: 908-234-5896
Facsimile No.: 908-234-8835

and

Supplier: PaeTec Communications, Inc.	**Supplier Contact:** J.T. Ambrosi
Address: 290 Woodcliff Drive	**Telephone No.:** (716) 340-2528
Fairport, NY 14450	**Facsimile No.:** (716) 340-2563
Effective Date: As of April 1, 2000	

This Settlement and Switched Access Agreement is entered into by and between AT&T Corp. ("AT&T"), on behalf of itself and each of its subsidiaries, and PaeTec Communications, Inc. ("PaeTec").

WHEREAS prior to the effective date PaeTec issued invoices to AT&T for switched access services to AT&T at the rates set forth in PaeTec's interstate switched access services tariff; and

WHEREAS AT&T objected to and disputed its obligation to pay said invoices; and

WHEREAS the parties have agreed to resolve their dispute (the "Dispute") and to enter into an agreement for PaeTec's provision of Switched Access Services (as defined herein) to AT&T from and after the Effective Date on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, AT&T and PaeTec agree as follows:

A. Settlement.

1. Within ten (10) days after the execution of this Agreement, AT&T shall pay PaeTec, by wire transfer, the sum of six hundred thousand dollars ($600,000.00) (the "Initial Payment"). Within thirty (30) days after the Initial Payment, AT&T shall pay PaeTec the remaining amount (net of the Initial Payment) that would have been owed to PaeTec for Switched Access Service provided prior to the Effective Date, had the rates set forth in Schedule A (effective for the period before October 1, 2000) been applicable to such traffic at the time the service was rendered (the "Remaining Payment"). In the event the parties are unable to resolve any dispute regarding the amount of the Remaining Payment, AT&T shall pay the undisputed amount and the parties shall submit their dispute to arbitration pursuant to the rules of the CPR Institute for Dispute Resolution. AT&T's payment, and PaeTec's acceptance, of the Initial Payment and the Remaining Payment (collectively, the "Payment") shall constitute full and final satisfaction of the Dispute prior to the Effective Date of this Agreement.

2. The parties acknowledge and agree that this Agreement and the Payment are the result of a compromise and shall not be, nor shall they ever be deemed or construed to be, an admission by any party of any liability, wrongdoing, or responsibility on its part or on the part of its predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders. The parties expressly deny any such liability, wrongdoing or responsibility.

3. In consideration hereof, the parties and their respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders hereby mutually release each other and each other's respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders from any and all claims, debts, demands, actions, causes of action, liabilities or controversies whatsoever, whether at law or in equity, whether in contract, in tort or under statute, arising out of or related to, in whole or in part, the Dispute and any and all claims or lawsuits arising out of or related to the Dispute that could have been brought before any state, local or federal court, or state or federal agency, or in any arbitration proceeding, whether now known or unknown, liquidated or unliquidated, as of the Effective Date of this Agreement.

B. Switched Access Services

AT&T and PaeTec hereby agree that the following terms and conditions will apply to the Switched Access Service furnished by PaeTec to AT&T. Words and phrases spelled with initial capital letters refer to information specified at the top of this Agreement or terms defined within the relevant Section of the Agreement.

1. Contract Period

This Agreement will go into effect on the Effective Date and will continue in effect until terminated in accordance with this Agreement. Either party may terminate this Agreement: (a) at any time after the date that is five (5) years following the Effective Date upon sixty (60) days' written notice to the other party; or (b) if the other party fails to cure a material breach within sixty (60) days after written notice thereof.

2. Areas Served

2.A PaeTec will offer, and AT&T will accept, Switched Access Service provided to AT&T under the terms, conditions and pricing principles of this Agreement within the Serving Areas listed on Schedule B hereto, which are referred to in this Agreement as the "Serving Areas."

2.B PaeTec shall notify AT&T at or before the time that PaeTec begins offering local exchange service in an area not listed on Schedule B ("New Serving Area"). The parties shall then negotiate in good faith the rates, terms and conditions pursuant to which PaeTec will provide Switched Access Service to AT&T in such New Serving Area.

2.C. The entry into this Agreement covering the Serving Areas does not constitute any admission or concession on the part of either party regarding the rates, terms and conditions that should apply in any New Serving Area, and each party reserves all rights it might otherwise have regarding the provision of, ordering of or obligation to pay for Switched Access Service in any New Serving Area.

3. Service

3.A "Switched Access Service" means a service which provides a circuit-switched connection between (1) the point of call origination or termination and (2) a third-party tandem switch or a direct trunk installed between PaeTec's and AT&T's switching centers (regardless of the party providing the trunk). Switched Access Service will connect all types of calls, including but not limited to, interLATA and international calls, excluding intraLATA traffic to the extent described in Section 4. AT&T will designate whether Switched Access Service will be delivered via tandem transport facilities or direct trunks. AT&T agrees to use commercially reasonable efforts to establish, at its expense, direct trunks to PaeTec's switches for purposes of originating and terminating switched access traffic wherever AT&T's traffic volume, economic, technical and other requirements for direct trunks are met.

3.B Upon execution of this Agreement and during the term of this Agreement, and provided that PaeTec is not in breach of this Agreement, AT&T shall issue Access Service Requests ("ASRs") pursuant to industry standards for each Serving Area in which PaeTec provides Switched Access Service, accept PaeTec local customer PICs to AT&T's interexchange services in each Serving Area, and facilitate the origination and termination of PaeTec customer calls originating from or terminating to each Serving Area, consistent with the terms of this Agreement. Provided that PaeTec is not in breach of this Agreement, AT&T shall not block, threaten to block, instruct PaeTec to block, or otherwise refuse to accept any type of Switched Access Service provided by PaeTec to AT&T in a Serving Area, and shall pay for such service in accordance with this Agreement, regardless of whether PaeTec provides all or only some of the types of Switched Access Service required to originate calls from or terminate calls to a given end user in a Serving Area, and regardless of whether PaeTec provides such Switched Access Service entirely by itself or jointly with the incumbent or other local exchange carrier on a meet-point or similar basis.

3.C PaeTec will provide customer account information necessary for AT&T to bill its customers. Such information will be provided by PaeTec to AT&T at a charge to be agreed upon by the parties, which in no event shall exceed the then-current charge for such information charged by the Regional Bell Operating Company ("RBOC") in each Serving Area, and pursuant to the most current AT&T Requirements for Customer Account Record Exchange (CARE) document, a copy of which will be provided to PaeTec.

3.D PaeTec will measure the duration of each call in tenth (10th) of a second increments. All Switched Access Service minutes of use ("MOU"), or fractions thereof, will be accumulated over the billing period among all Serving Areas and will then be rounded to the nearest whole minute.

3.E AT&T agrees to purchase from PaeTec an average of at least 10,000,000 minutes of use per month of Switched Access Service in all of the Serving Areas combined during each year of this Agreement. In the event AT&T is unable to meet the foregoing commitment as a result of a decline in the total volume of end users and/or access traffic on PaeTec's network, AT&T's volume commitment will be reduced accordingly. Furthermore, the failure to meet the volume commitment shall not constitute a material breach of the Agreement.

4. Exclusion of Certain IntraLATA Traffic and PIU Factor

4.A Switched Access Service under this Agreement shall not include the origination and termination of local traffic, or the origination and termination of other intraLATA traffic ("Certain IntraLATA Traffic") in any State in which such traffic is not generally subject to Switched Access charges. Local traffic and Certain IntraLATA Traffic may be sent over the same trunks used for Switched Access traffic. PaeTec will attempt to jurisdictionalize traffic sent by AT&T, and issue a bill to AT&T only for Switched Access Service (*i.e.*, excluding local and, where applicable, Certain IntraLATA Traffic). In the event that PaeTec is unable to jurisdictionalize the traffic, PaeTec will reduce the access minutes of use charged to AT&T by a Percent Local Usage factor ("PLU") provided by AT&T. The PLU will be based on a sampling of actual calling data from the previous quarter. No true-up will occur following the revision of the PLU. The revised PLU will become the basis for billing until revised during the next quarter. The PLU factor may be audited by PaeTec once in any twelve-month period upon receipt of sixty (60) days' prior written notice. Each Party will pay its own costs for the audit.

4.B PaeTec will also attempt to jurisdictionalize the traffic that is subject to Switched Access Service charges pursuant to this Agreement between interstate and intrastate jurisdictions. To the extent that PaeTec is unable to jurisdictionalize traffic between interstate and intrastate jurisdictions, PaeTec shall apply a Percent of Interstate Usage Factor ("PIU Factor") provided by AT&T to such traffic for the purposes of charging for Switched Access Service. Notwithstanding the foregoing, it is hereby agreed that, prior to September 30, 2000, the PIU Factor to be applied to all traffic originated from PaeTec's network to an 800/8YY number for which AT&T is the service provider that PaeTec cannot jurisdictionalize shall be eighty percent (80%), and the PIU Factor to be applied to all other traffic that PaeTec cannot jurisdictionalize shall be seventy-five percent (75%). Commencing on October 1, 2000, AT&T will

supply the PIU Factors where PaeTec cannot jurisdictionalize the traffic; the AT&T-provided PIU Factors may be audited by PaeTec once in any twelve-month period upon sixty (60) days' prior written notice.

5. Right to Resell

AT&T will have the right to resell or repackage under an AT&T brand name, or under such other name or mark as AT&T may elect, Switched Access Service provided to AT&T by PaeTec under this Agreement.

6. Pricing Principles

6.A Unless otherwise agreed to in writing by PaeTec and AT&T, the rates and charges listed on Schedule A are the sole charges that apply to Switched Access Service provided under this Agreement.

6.B An 800/8YY Charge is applicable in the event that PaeTec performs an 800/8YY database query and the 800/8YY number is a number for which AT&T is the service provider. The amount of the 800/8YY Charge will be no greater than the then current price charged by the RBOC for the same functionality within the relevant Serving Area.

6.C Notwithstanding anything to the contrary in this Agreement, if during the term of this Agreement PaeTec offers a service that is similar to the Switched Access Service offered under this Agreement to any customer other than AT&T in a Serving Area at a price (taking into account any discounts, credits, or other reduction in compensation) that is less than the applicable price for the Switched Access Services offered by the terms of this Agreement, then PaeTec will offer such services to AT&T at terms, conditions and prices no less favorable than those offered to such other customer.

6.D In the event a regulatory ruling or order requires CLECs generally to charge lower rates for Switched Access Services than those set forth in Schedule A to this Agreement, then PaeTec shall comply with such ruling or order prospectively (i.e., from and after the date such ruling or order becomes effective) for service provided to AT&T under this Agreement. In the event a regulatory ruling or order (1) permits CLECs generally to charge higher rates for Switched Access Services than those set forth in Schedule A to this Agreement and (2) requires IXCs to accept those services and to pay those rates regardless of whether or not the services were affirmatively ordered, then PaeTec shall be permitted to charge AT&T the approved rates prospectively for the remainder of this Agreement (i.e., from and after the date such ruling or order becomes effective). Notwithstanding the foregoing, the parties agree that any such order or ruling shall not affect any charges or payments for Switched Access Services rendered and made prior to the date such order or ruling becomes effective. Furthermore, should any ruling or order that may have an effect on the rates for Switched Access Services be reversed on appeal, the parties shall perform an appropriate true-up of rates and payments made during the period while the order or ruling was in effect.

6.E PaeTec will charge AT&T, as separately identified items on PaeTec's bills, for any state and local sales and use taxes and federal excise taxes which are required by law to apply to AT&T's purchase of Switched Access Service from PaeTec under this Agreement unless AT&T has provided PaeTec a tax exemption certificate or a letter of indemnification reasonably acceptable to PaeTec. PaeTec will not charge AT&T for any other taxes, fees, or surcharges, however designated, including, but not limited to, real or personal property taxes, income taxes, gross receipts taxes, franchise fees, license fees, permit fees, and occupational fees, unless (1) AT&T agrees in writing that such other charges are properly applied against AT&T, or (2) an appropriate judicial or administrative body issues a final, effective ruling or order that such other charges are properly charged against AT&T or another similarly situated party; provided, however, that if as the result of an order or ruling in an appeal from such a final, effective order it is determined that AT&T was not required to pay any such tax, charge or fee, PaeTec shall refund the amount of such tax, charge or fee to AT&T within fifteen (15) days of the entry of such an order or ruling on appeal.

7. Billing and Payment

7.A Unless otherwise mutually agreed to by the parties, PaeTec will use the then current Small Exchange Carrier Access Billing ("SECAB") guidelines, or other system that emulates the output of SECAB, for billing all charges under the Agreement. PaeTec will obtain and implement in a timely manner all updates to the SECAB industry standard guidelines. AT&T and PaeTec, by mutual agreement, will (1) establish the day of the month on which the billing period will end, and (2) determine the bill medium (*i.e.*, magnetic tape, paper or data transmission network based on CONNECT:Direct® technology). Bills will contain sufficient supporting details to allow AT&T to account for the charges and to verify their accuracy in a reasonable and timely fashion.

7.B AT&T will make payment to PaeTec by check or, at AT&T's option, by electronic funds transfer to an account reasonably designated by PaeTec within thirty (30) days after receipt of a reasonably acceptable bill. Notwithstanding the foregoing, AT&T retains the right to withhold all, or a portion, of the payment because of disputes over all, or a portion, of the bill, respectively. AT&T may only withhold that portion of the bill that is being disputed.

8. PaeTec Regulatory Approvals and Tariffs

PaeTec warrants that it has and will maintain, at its own expense, all regulatory certifications, authorizations, and permits needed to offer the Switched Access Service described in this Agreement. PaeTec will not file any tariff or tariff revisions that alter the terms and conditions, or pricing, of this Agreement.

9. Delegation or Assignment

Neither party may assign this Agreement without the prior written approval of the other party, except that AT&T may assign all or any part of this Agreement to any Affiliate without obtaining PaeTec's consent. "Affiliate" means an entity which (directly or indirectly) controls, is controlled by, or is under common control with either AT&T, where "control" means the direct or indirect ownership of more than fifty percent (50%) of the voting equity.

® CONNECT:Direct is a registered trademark of Sterling Software, Inc.

10. No Consequential Damages
EXCEPT FOR DAMAGES RESULTING FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESSNESS OR PERSONAL INJURY OR DEATH OR DAMAGE TO PROPERTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTY KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS) FROM ANY SUCH CLAIM.

11. Confidentiality and Proprietary Information
11.A For purposes of this Agreement, "Proprietary Information" means information that is marked or otherwise specifically identified in writing as proprietary, confidential or trade secret. Proprietary Information includes, but is not limited to, the contents of this Agreement, the negotiation of the terms of this Agreement, any matters related to this Agreement, the payments to PaeTec by AT&T and the volume of traffic between the parties.
11.B Except as otherwise expressly provided herein, neither party shall disclose Proprietary Information disclosed by the other party without the other party's consent, unless such disclosure is (1) lawfully required, (2) otherwise required to be disclosed by law, or (3) necessary in any legal proceeding to enforce the terms of this Agreement. If any party is legally required to disclose Proprietary Information, the parties shall agree in advance on the precise wording of such disclosure.
11.C If either party is compelled to disclose Proprietary Information in judicial or administrative proceedings, such party will give the other party the opportunity, in advance of such disclosure, to seek protective arrangements and will cooperate with the other party in that regard.
11.D Where so requested by a switched access tandem provider in a Serving Area, AT&T will provide the tandem provider with a zero-quantity ASR, in standard industry form for services purchased under this Agreement, and/or such notification concerning the services as the tandem provider may reasonably require.
11.E Notwithstanding any other term of this Agreement, PaeTec may disclose, without AT&T's prior consent, to current or potential customers or investors only, that PaeTec and AT&T have entered into an agreement under which PaeTec will provide, and AT&T will pay for, Switched Access Service; provided, however, that PaeTec may not disclose any other terms or conditions of this Agreement.

12. Publicity and Advertising
Neither party will publish or use any advertising, promotional efforts, press releases or other publicity of any kind which use the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

13. Additional Terms and Conditions
13.A Failure of either party to enforce any right or remedy available to it under this Agreement will not be construed as a waiver of the right or remedy with respect to any other breach or failure by the other party.
13.B This Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.
13.C New York law governs all substantive matters pertaining to the interpretation and enforcement of the terms of this Agreement.
13.D Titles to sections, appendixes, and the like are used merely for convenience and will not be taken as an interpretation of the contents of those provisions or as an attempt to enlarge, limit, or define terms covered by this Agreement.
13.E This Agreement may be modified or amended only by written agreement executed by authorized representatives of both PaeTec and AT&T.
13.F This Agreement is intended to establish a relationship of supplier and customer between PaeTec and AT&T. The undertakings described in this Agreement will not be deemed to constitute a joint venture or partnership between PaeTec and AT&T.

14. Notices
All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers must be in writing and must be delivered by a method providing for proof of delivery (including express courier and facsimile or email if receipt is acknowledged by the recipient) and will be deemed delivered when actually received. Any notice or request will be delivered to the addresses specified on page 1 of this Agreement until a different address has been designated by notice to the other.

15. Entire Agreement
This Agreement constitutes the entire agreement between PaeTec and AT&T with respect to the subject matter hereof. This Agreement supersedes all other memoranda, proposals, representations, statements, agreements, or understandings, whether written or oral, made concerning such subject matter prior to mutual execution hereof.

In witness whereof, the parties have executed this Agreement through their authorized representatives.

PAETEC COMMUNICATIONS, INC.	AT&T CORP.
By: _____	By: _____
Richard E. Ottalagana	Richard A. Williams
Executive Vice President and Treasurer	Access Management VP - Network
4/10/00	4/12/00
Date	Date

Schedule A

Switched Access Rates and Charges

INFORMATION
REDACTED

Intrastate Switched Access:	RBOC*
800/8YY Database Queries:	RBOC*

* "RBOC" for the purposes of this Schedule A shall mean the then-prevailing rates for Switched Access Services charged by the RBOC in each Serving Area, based on the rates that would have been charged by the RBOC to AT&T for providing comparable services and functionality.

Schedule B

Serving Areas

The following are the Serving Areas that are subject to this Agreement:

INFORMATION REDACTED

Florida

INFORMATION REDACTED

60489

Robert P. Handal, Jr.
Division Manager
CLEC Business Development and Management

One AT&T Way
Room 2A109
Bedminster, NJ 07921-0752
Voice: 908.234.4138
Fax: 908.234.8835
Email:

June 19, 2003

PaeTec Communications
J.T. Ambrosi
1 PaeTec Plaza
600 Willowbrook Office Park
Fairpoint, NY 14450

Dear J.T.:

This will confirm that AT&T Corp. ("AT&T") and PaeTec Communications, Inc. ("PaeTec"), have agreed to amend Section B.3.A of the Switched Access Service Agreement between AT&T and PaeTec effective April 1, 2000 (the "Agreement") as follows:

The last sentence of Section B.3.A is deleted in its entirety and replaced with the following two sentences (in italics):

> *AT&T agrees to use commercially reasonable efforts to establish direct trunks to PaeTec's switches for purposes of originating and terminating switched access traffic wherever AT&T's traffic volume, economic, technical and other requirements for direct trunks are met. For those direct trunks established for the delivery of switched access traffic to which PaeTEC agrees, PaeTec will pay the non-recurring charges and monthly recurring charges for any such direct trunks..*

Please confirm PaeTec's agreement with this letter by signing one of the originals of this letter below and returning it to me. Thank you.

AT&T CORP.

By: _____
Name: Robert P. Handal, Jr.
Title: Division Manager, Local Services and Access Management

Agreed to and accepted this 25th day of June, 2003.

PAETEC COMMUNICATIONS, INC.

By: _____
Name: J.T. Ambrosi
Title: VP, CARRIER / GOVT RELATIONS

Recycled Paper

60488

LETTER OF UNDERSTANDING

This letter confirms the agreement between AT&T Corp. ("AT&T") and PAETEC Communications, Inc. ("PAETEC"), together the Parties ("Parties"), to renew the Settlement And Switched Access Service Agreement dated April 1, 2000 between AT&T and PAETEC (the "Agreement") for an additional two (2) years in accordance with Section B.1 of the Agreement ("Contract Period"). In consideration for this Letter of Understanding, AT&T and PAETEC hereby each agree to waive its respective right under the Agreement to elect to not renew the Agreement.

Further, the Parties agree to amend Schedule A of the Agreement as follows. The term "RBOC" in the rate table, and in the associated footnote, is deleted and replaced with the term "ILEC."

All other terms of the Agreement remain in full force and effect.

Signatures of authorized individuals of each of the below constitute the "Parties" acceptance of this Letter of Understanding. Once this Letter of Understanding is executed, the Agreement's Contract Period will be extended through at least April 1, 2007.

PAETEC Communications, Inc.	**AT&T Corp.**
By:	By:
JT Ambrosi Vice President, Carrier and Government Relations	Cynthia M. Batchelder Local Services & Access Management - Vice President
Name & Title	Name & Title
Signature	Robert P. Hamblen Jr As Cynthia Batchelder Signature
3/24/05 Date	4/1/05 Date

60343

PAETEC COMMUNICATIONS | *passionate about quality*™

January 5, 2007

VIA ELECTRONIC AND OVERNIGHT MAIL

Ms. Geri Sadowski
Business Development Manager
AT&T
One AT&T Way
Room 2A133B
Bedminster, New Jersey 07921-0752

Re: Notice of Termination of Switched Access Agreement

Dear Ms. Sadowski:

PAETEC Communications, Inc. ("PAETEC") entered into a Settlement and Switched Access Agreement ("Agreement") with ATT Corp. ("ATT") on April 1, 2000. The Agreement's initial term was five years from that effective date. On April 1, 2005, the parties amended the Agreement to include a revised contract period. That revised contract period extended the term of the Agreement through April 1, 2007.

In accordance with Section B.1 of the Agreement, this letter is formal notice that PAETEC intends to terminate the Agreement in its entirety, including all subsequent and related letters of understanding or agreement, effective March 31, 2007. The rates, terms and conditions of PAETEC's interstate and intrastate exchange access tariffs will apply to services provided to ATT thereafter.

Should you have any questions, please feel free to give me a call at 585-340-2528.

Sincerely,

JT Ambrosi
Vice President, Carrier and Government Relations

Copy to:

William J. Taggart III
ATT Corp.
900 Route 202/206N
Bedminster, NJ 07921-0752

2008 SERVICES AND SETTLEMENT AGREEMENT

This 2008 Services and Settlement Agreement (the "2008 Agreement") entered into as of this 30th day of April, 2008 by and between AT&T Corp., on behalf of itself and each of its subsidiaries, (collectively "AT&T") as each such entity existed on November 17, 2005 before AT&T's merger with SBC, and PAETEC Communications, Inc. ("PAETEC Communications"), US LEC Corp. ("US LEC") and McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), and each of their telephone operating subsidiaries and affiliates (PAETEC Communications, US LEC and McLeodUSA will be referred to collectively as"PAETEC"). AT&T and PAETEC are sometimes referred to herein individually as a "Party," or collectively as "the Parties."

WHEREAS, AT&T and PAETEC Communications entered into a Settlement and Switched Access Services Agreement on April 1, 2000 ("PAETEC Agreement");

WHEREAS, AT&T and US LEC, now a wholly owned a subsidiary of PAETEC, entered into a Switched Access Services Agreement on March 14, 2002 ("US LEC Agreement");

WHEREAS, PAETEC Communications elected to terminate the PAETEC Agreement effective as of March 31, 2007;

WHEREAS, US LEC elected to terminate the US LEC Agreement effective as of June 30, 2007;

WHEREAS, since the PAETEC and US LEC Agreements were terminated AT&T has disputed the rates to be paid for the switched access services that had been governed by the PAETEC and US LEC Agreements, and the Parties wish to settle those disputes (including all claims and counterclaims raised by PAETEC Communications and US LEC and AT&T, respectively, in that matter captioned *PAETEC Communications v. AT&T Corp.*, United States District Court, District of Columbia, Civil Action No. 1:08-CV-00076 EGS (the "Lawsuit")), as well as certain other disputes between the Parties specifically described elsewhere in this 2008 Agreement;

WHEREAS, PAETEC and AT&T wish to agree on the terms and conditions for AT&T to purchase certain services from PAETEC and its affiliates and subsidiaries, including but not limited to, PAETEC Communications, US LEC and McLeodUSA on a going forward basis;

WHEREAS, McLeodUSA, now a wholly owned subsidiary of PAETEC, and AT&T entered into a Services and Settlement Agreement effective August 28, 2006, (hereinafter referred to as the "2006 Agreement") resolving disputes concerning amounts invoiced and to be invoiced to AT&T for intrastate switched access services provided by McLeodUSA;

WHEREAS, although the term of the 2006 Agreement has not expired, as further consideration for this 2008 Agreement, AT&T and PAETEC agree that the 2006 Agreement shall be superseded by this 2008 Agreement and therefore terminated as of the Effective Date (as described in Section 2) of the 2008 Agreement; and

WHEREAS, AT&T and PAETEC agree that AT&T shall retain the benefit of certain discounts earned in the performance of the 2006 Agreement;

NOW THEREFORE, in consideration of the above recitals and mutual promises and agreements set forth below, the sufficiency of which is expressly acknowledged, AT&T and PAETEC agree as follows:

1. The Parties affirm and acknowledge that the recitals set forth above are true and correct and are incorporated into this 2008 Agreement by reference.

2. The Effective Date of this 2008 Agreement is April 30, 2008 and expires April 30, 2011.

3. Services Agreement.

   a. AT&T may purchase Dedicated Services from PAETEC as specified under the terms of the Agreement between McLeodUSA Network Services, Inc., a subsidiary of McLeodUSA, and AT&T Corp. effective November 1, 1997, as the same has been amended or may hereafter be amended (the "Dedicated Services Agreement"). AT&T's Monthly Purchase Amount ("MPA") of "Other Services" (i.e., services excluding direct end office trunks ("DEOTs") and interstate and intrastate Switched Access Services) from PAETEC, for each month of the three year term shall earn AT&T a corresponding monthly credit on intrastate switched access services purchased from PAETEC according to the Monthly Purchase Level ("MPL") set forth in Section 3d, Credit Schedule A. For purposes of this Agreement, MPA is defined as the monthly average of the total billed amount for the Billing Account Numbers (BANs) outlined in the list below for Other Services provided by PAETEC to AT&T over the three prior billed months, inclusive of the then current month's billing. The listed BANs will be the only BANs utilized for existing and new Dedicated Services provided under the Dedicated Services Agreement with McLeodUSA. Should PAETEC have a need to change an existing BAN or develop a new BAN, then the Parties agree that PAETEC or AT&T may unilaterally amend the BAN list accordingly to accommodate the use of new or amended BANs provided the amending Party promptly notifies the other of the changed BAN. In the event that PAETEC divests or otherwise transfers ownership of any MSA, portion of an MSA or individual dedicated circuit, from or in which PAETEC provides AT&T Dedicated Services under the Dedicated Services Agreement, then the MPL at all levels will be reduced by an amount equal to the amount of charges for the Dedicated Services that were transferred or divested so that AT&T will receive credit at the levels AT&T would have had if the transfer of ownership or divesture had not taken place. In the event that PAETEC's performance does not meet the required standards per the 1997 Dedicated Services Agreement and AT&T exercises its right to disconnect Dedicated Services in accordance with the terms of the 1997 Dedicated Services Agreement, the MPL at all levels will be reduced by an amount equivalent to the amount of the charges for the Dedicated Services disconnected so that AT&T will receive Credit at the levels AT&T would have

had if AT&T had not disconnected Dedicated Services based on PAETEC's performance under the Dedicated Services Agreement. Any discounts earned pursuant to the 2006 Agreement shall be retained by AT&T.

List of BANs

6514987

6511952

6510142

6514829

8612091

6514889

6509726

6467580

6466947

6509256

3144226

3266333

3144223

0407754

b. AT&T shall purchase interstate switched access services from PAETEC in accordance with PAETEC's lawfully filed tariff provided that at all times throughout the term of this 2008 Agreement, PAETEC's rates for interstate switched access services in each Serving Area in which it operates shall comply with all applicable federal law, including decisions and regulations of the Federal Communications Commission ("FCC"), as modified from time to time. Any change in such law will have no effect on any amounts paid under this 2008 Agreement prior to the change in law. Such change in law will take effect upon the effective date of the change in law established by any applicable FCC order or judicial decision. If the Parties believe that there are any issues that need to be resolved regarding PAETEC's interstate switched access service rates from the Effective Date or thereafter the Parties will confer in good faith in an effort to resolve such issues. Further, AT&T agrees that if it has a dispute regarding PAETEC's interstate switched access service rates after the Effective Date of this 2008 Agreement, it will follow a 'pay and dispute' approach,

i.e., AT&T will pay billed charges without prejudice to its rights to seek recovery of the disputed charges. Notwithstanding the settlement and withdrawal of the Lawsuit (including AT&T's counterclaims) effected by this 2008 Agreement, PAETEC agrees that nothing herein shall preclude AT&T from claiming in the future that PAETEC's interstate access rates exceed FCC benchmark levels, subject to the 'pay and dispute' approach described above and also to the following limitations: (1) AT&T shall not raise or maintain any such claim in any complaint or other filing made prior to January 1, 2009; and (2) in no event shall AT&T be entitled to any relief on any such claim for any period prior to January 1, 2009.

c. AT&T shall purchase intrastate switched access service from PAETEC in accordance with PAETEC's lawfully filed tariffs or price lists. At all times throughout the term of this 2008 Agreement, PAETEC's lawfully filed tariff rates for intrastate switched access services in each Serving Area in which it operates shall comply with the applicable state regulatory commission rules and/or applicable state law, as they may be modified from time to time. Any such change in law will have no effect on any amounts paid under this 2008 Agreement prior to the change in law. Such change in law will take effect upon the effective date of the change in law established by any applicable state order or judicial decision. If the Parties believe that there are any issues that need to be resolved regarding PAETEC's intrastate switched access service rates from the Effective Date or thereafter the Parties will confer in good faith in an effort to resolve such issues. Further, AT&T agrees that if it has a dispute regarding PAETEC's intrastate switched access service rates after the Effective Date of this 2008 Agreement, it will follow a 'pay and dispute' approach, *i.e.*, AT&T will pay billed charges without prejudice to its rights to seek recovery of the disputed charges. Consistent with the way in which McLeodUSA files intrastate switched access service tariffs, the Parties agree that McLeodUSA may invoice AT&T for only the following rate elements for intrastate switched access services:

i. Applicable elements for originating & terminating calls for including but not limited to: "1+", 8XX, and 10XXX.

a. Interconnection Charge (if tariffed)

b. Carrier Common Line (if tariffed)

c. Local Switching

d. Tandem Transport Termination – For tandem routed traffic and/or access as a result of McLeodUSA UNE-P customers. (For purposes of this Agreement, "UNE-P" includes both the unbundled network element platform, Section 271 UNE-P, or a commercial substitute service for UNE-P.)

e. Tandem Transport Facility (per MOU, per mile) – For tandem routed traffic and/or access as a result of McLeodUSA UNE-P customers.

f. 800 database query for originating toll free calls

ii. Applicable elements for calls where McLeodUSA is the intermediate carrier.

a. Tandem Switching is billed instead of the Local Switching,

b. Carrier Common Line and Interconnection Charge would not be applied for these calls.

c. Tandem Transport Termination – For tandem routed traffic and/or access as a result of McLeodUSA UNE-P customers.

d. Tandem Transport Facility (per MOU, per mile) – For tandem routed traffic and/or access as a result of McLeodUSA UNE-P customers.

e. 800 database query for originating toll free calls.

To the extent the McLeodUSA tariffs use different names for any of the elements listed above, McLeodUSA shall bill its tariffed elements that provide comparable functionality as those elements listed above.

d. In recognition of AT&T's MPA of Other Services, PAETEC shall apply a credit ("Credit"), as outlined in the Credit Schedule A below, to AT&T's intrastate switched access service invoice each month AT&T has satisfied or exceeded the identified MPL level. Credit Schedule A (below) lists the MPL levels and corresponding Credit that would apply during the term of this 2008 Agreement. The Credit specified herein shall apply to the current tariffed intrastate PAETEC rates per applicable jurisdiction and operating company and the current combined total intrastate switched access usage invoiced to AT&T across the PAETEC operating companies. Should PAETEC's intrastate switched access service billing across the combined PAETEC's operating companies drop greater than ten percent (10%) from PAETEC's intrastate switched access billing across the combined PAETEC's operating companies for the previous 12 month rolling period, the Credit as specified herein shall be reduced by the same percentage. Should PAETEC's intrastate switched access service billing across the combined PAETEC's operating companies increase greater than ten percent (10%) from PAETEC's intrastate switched access billing across the combined PAETEC's operating companies for the pervious 12 month rolling period, the Credit as specified herein shall be increased by the same percentage. The credits shall be applied to the intrastate usage billed to AT&T in the month following AT&T's attainment of the MPA. The final earned credit under this 2008 Agreement shall be applied in the month following the expiration of the term of this 2008 Agreement. Upon mutual agreement by the Parties in regard to form, content and frequency, PAETEC shall provide AT&T on a monthly basis, documentation containing the calculation details of such final earned credit. The calculation detail shall provide the

MPA and, by state, the original billed amount, the earned credit amount and final effective billed amount.

Credit Schedule A

Monthly Purchase Level	2008	2009 - 2011
$475K	$220K	$277K
$450K	$210K	$267K
$425K	$200K	$257K
$400K	$191K	$229K
$375K	$181K	$209.5K
$350K	$172K	$191K
$325K	$162K	$181K

4. AT&T and PAETEC are resolving the following disputes (collectively referenced as "the Disputes" in this 2008 Agreement): (a) AT&T's dispute concerning the rates and charges for access services formerly subject to the PAETEC Agreement and US LEC Agreement subsequent to the respective terminations of the PAETEC Agreement and the US LEC Agreement, through and including April 30, 2008; (b) AT&T's counterclaims in the Lawsuit (subject, however, to the last sentence of paragraph 3(b)); (c) AT&T's dispute concerning charges applied for the Direct Connect Monthly DS1 Port Charges billed by PAETEC to AT&T through and including April 30, 2008; (d) AT&T's dispute concerning residual interconnection charges "RIC" charges billed by McLeodUSA to AT&T through and including April 30, 2008; (e) any dispute that PAETEC Communications and/or US LEC may have with respect to switched access charges and other intercarrier compensation associated with AT&T's prepaid card programs through and including October 31, 2006; (f) any dispute that PAETEC Communications and/or US LEC may have with respect to switched access charges and other intercarrier compensation associated with AT&T's phone to phone IP program through and including June 30, 2004; and (g) any dispute that AT&T may have with respect to claims that PAETEC Communications, US LEC or McLeodUSA damaged AT&T by incorrectly jurisdictionalizing and billing AT&T terminating switched access charges in connection with wireless calls by wireless callers roaming out of their home state and delivered to PAETEC Communications, US LEC or McLeodUSA customers through and including April 30, 2008 (collectively the "Dispute"). AT&T and PAETEC agree to settle the Disputes by the following payments by AT&T: (i) to PAETEC Communications of $3.1 million through the April 30, 2008 invoices; (ii) to US LEC Corp. of $800 thousand through the April 30, 2008 invoices, (collectively the *"Settlement Amount"*). AT&T will pay the Settlement Amount within fifteen (15) business days of the date this Agreement is signed by both Parties. In addition, within

three (3) days of AT&T's payment of the Settlement Amount, AT&T and PAETEC will execute and file a Stipulation of Dismissal With Prejudice (and without costs to either Party) in the Lawsuit.

5. The execution of this Agreement, together with AT&T's payment, and PAETEC's acceptance, of the Settlement Amount shall constitute full and final satisfaction of the Dispute as described in the preceding paragraph and payment for any of the services covered by the Settlement Amount through the specific dates set forth above with respect to each individually identified dispute.

6. The Parties acknowledge and agree that this Agreement and the payment of the Settlement Amount are the result of a mutually agreed to compromise emanating from a legitimate dispute and shall not be, nor shall they ever be deemed or construed to be, an admission by any party of any liability, wrongdoing, or responsibility on its part or on the part of its predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders. The Parties expressly deny any such liability, wrongdoing or responsibility.

7. Neither party shall not alter call detail information or re-route the other party's traffic to make it appear that such traffic is anything other than the type of traffic originated by the originating party's end users. AT&T will designate whether Switched Access Service will be delivered via tandem transport or direct trunks to AT&T. AT&T will in its sole and reasonable discretion, establish direct trunking to PAETEC's switches for the purposes of originating and terminating switched access traffic where the characteristics of such traffic meet AT&T's traffic volume, economic and other requirements for establishing direct trunks. Expenses associated with any such direct connect implementations shall be borne as specified in PAETEC's lawfully filed tariffs.

8. Neither Party will charge the other Party for originating or terminating any local or ISP bound traffic between local service customers of the Parties (that is, local to local traffic terminations paid for by the calling party customer of the sending Party to a called number served by the other Party). Local traffic may be sent over the same trunks used for switched access traffic. PAETEC will attempt to jurisdictionalize traffic sent by AT&T, and issue a bill to AT&T only for Switched Access Service (*i.e.*, excluding local traffic and ISP bound traffic).

9. In the event of a dispute arising under this 2008 Agreement, then the Parties agree to the following dispute process ("Dispute Resolution Process"), notwithstanding any provision to the contrary in any tariff or other agreement under which services that are the subject of the dispute is provided. Either Party shall initiate the Dispute Resolution Process by giving written notice to the other Party as provided in Section 16. If AT&T is the Party initiating the dispute, and the dispute involves billing matters, PAETEC must respond to a written notice of dispute and provide requested billing resolution within thirty (30) days after receipt of the notice of dispute. If the dispute does not involve billing matters, then the Party against whom the dispute is asserted will never-the-less provide a written response within thirty (30) days. If the dispute is not mutually resolved within forty-five 45 days after written notice of the dispute is sent,

then either Party may escalate the dispute to at least a Vice-President level representative from each Party by sending the other Party a written request for escalation. If the dispute is not mutually resolved at the Vice President level within thirty (30) days after sending written notice of escalation, or within such additional time as the Parties may mutually agree in writing ("Escalation Period"), then the dispute shall be escalated to a Group Vice President or equivalent executive officer for resolution. If the dispute is not mutually resolved at the Group Vice President level within thirty (30) days, then the Parties may mutually agree to settle the dispute by binding arbitration in accordance with CPR Institute for Dispute Resolution's ("CPR's") then-current "Non-Administered Arbitration Rules." The arbitration shall be held in a location mutually agreeable to the parties and shall be conducted by a single neutral arbitrator who shall be familiar with the business of telecommunications service providers. The arbitrator shall be bound by and shall strictly enforce the terms of the Agreement and may not limit, expand, or otherwise modify the terms of this Agreement. The arbitrator shall not have the power to award punitive damages or any damages that are excluded under this Agreement and each party irrevocably waives any claim thereto. The arbitrator shall not have the power to order pre-hearing discovery of documents or the taking of depositions. The arbitrator shall render a written decision within six months after being selected, which decision shall be final and binding upon the parties and may be enforced by either party in any court of competent jurisdiction. Each party will bear its own expenses in connection with the arbitration, and will share equally the fees and expenses of the CPR and the arbitrator, unless the award otherwise provides. This Section shall not be construed to prohibit either party from seeking preliminary or permanent injunctive relief in any court or agency of competent jurisdiction; however, the arbitrator hearing the dispute to which the injunction pertains will have the power to modify or dissolve any such injunction, or to order additional injunctive relief, in connection with the final arbitration award. If court proceedings to stay litigation or compel arbitration under this Section are necessary, the party who unsuccessfully opposes such proceedings shall pay all associated costs, expenses, and attorneys' fees that the other party reasonably incurs in connection with such court proceedings. The United States Arbitration Act, 9 U.S.C. Sections 1-14, governs the interpretation and enforcement of this Section. If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this 2008 Agreement or to any PAETEC tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding, then (1) to the extent required by law, the agency ruling shall be binding upon the parties for the limited purposes of regulation within the jurisdiction and authority of such agency and (2) for all other purposes not expressly precluded by such agency ruling, the arbitration ruling shall be binding upon the parties..

10. For and in consideration of the performance by the Parties of their obligations under this 2008 Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, AT&T as defined in this 2008 Agreement, on the one hand, and PAETEC on the other hand, for themselves and their officers, directors, attorneys, agents and representatives do hereby absolutely, unconditionally, completely, and without reservation, release each other and their

parent companies' subsidiaries, owners, affiliates, predecessors, successors, shareholders, partners, principals, insurers and assigns and their past, present and future employees, officers, directors, attorneys, agents and representatives from and against each and every past, present and future action, complaint, petition, right, action, claim, demand, charge, invoice, liability, damage, loss, expense, obligation, potential action, cause of action, suit, judgment, offset, or decree in controversy of any kind and nature whatsoever, at law, in equity or otherwise, whether known or unknown, foreseen or unforeseeable, discoverable or undiscoverable, or certain or contingent, arising from the beginning of time in connection with or relating solely to the Disputes as defined in this 2008 Agreement, *provided, however,* notwithstanding anything to the contrary contained herein, nothing in this 2008 Agreement shall release, remise or discharge any claim arising under this 2008 Agreement, including any claim for failing to perform any obligation provided in or by this 2008 Agreement, provided, further, however, that once the Parties complete the settlement of the Disputes by the payment of the Settlement Amount, neither Party may seek to void or negate the settlement based on a breach of any other provision of this 2008 Agreement.

11. No Consequential Damages. EXCEPT FOR DAMAGES RESULTING FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR PERSONAL INJURY OR DEATH OR DAMAGE TO PROPERTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OF ANY INDIRECT, INCIDENTIAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUE, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLES OF WHETHER THE PARTY KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT FROM THE USE OF SWITCHED OR DEDICATED ACCESS SERVICES.

12. Confidentiality. PAETEC and AT&T shall treat this 2008 Agreement as confidential and shall not disclose its terms to third parties in the absence of the written consent of all parties hereto. Neither Party shall issue a press release regarding the terms of this 2008 Agreement. In addition, any and all public statements by either Party regarding this 2008 Agreement shall be limited to specific statements approved in writing by the other Party, nor shall either Party characterize the practices, conduct, behavior or position of the other Party with respect to the subject matter of this 2008 Agreement in any public forum. Notwithstanding the foregoing, nothing herein shall preclude either AT&T or PAETEC from submitting copies of this 2008 Agreement or disclosing its terms or making other oral or written statements, (i) as required by law, (ii) to accountants or lawyers for AT&T or PAETEC as may be required that are bound by this confidentiality agreement, (iii) as may be directed by such accountants or lawyers for AT&T or PAETEC in order to comply with law, regulations or other requests of or proceedings before governmental law enforcement or regulatory agencies, or (iv) in any action or proceeding to enforce the terms of this 2008 Agreement. In the event that

AT&T or PAETEC provides a copy of the 2008 Agreement in connection with the exceptions to confidentiality enumerated herein, the Parties agree to ensure that any third party that receives a copy of the 2008 Agreement will be bound by this confidentiality provision or a separate confidentiality agreement on substantially similar terms. The Parties further agree that if they receive a subpoena, summons or request to reveal this confidential information, then the Party shall promptly notify the other Party of the subpoena, summons, or request. These Confidentiality Provisions are contractual consideration and not mere recitals. The Parties acknowledge that any breach or threatened breach of this paragraph will constitute irreparable harm and shall entitle the non-breaching Party to seek injunctive relief. Nothing in this Agreement shall be interpreted as preventing PAETEC from meeting all of its regulatory requirements. Notwithstanding anything to the contrary in this Agreement, PAETEC shall comply with any and all mandated filing and/or notice requirements set forth by the relevant regulatory authority in each state in which PAETEC does business.

13. Each Party represents that it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this 2008 Agreement and to fully perform its duties and obligations under this 2008 Agreement, and that neither this 2008 Agreement nor the performance by such party of any duty or obligation under this 2008 Agreement will violate any other contract, agreement, covenant or restriction by which such party is bound. To the extent that this 2008 Agreement is in conflict with any other contract, agreement, covenant or restriction by which such Party is bound, the parties hereby agree that such conflict is not material.

14. Each Party represents that it has executed and entered into this 2008 Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties, or promises other than those set forth in this 2008 Agreement were made by any Party or any employee, agent or legal counsel of any Party to induce said party to execute this 2008 Agreement.

15. The execution of this 2008 Agreement by any Party does not constitute, imply or evidence the truth of any claim, the admission of any liability, the validity of any defense or the existence of any circumstances or facts, which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this 2008 Agreement.

16. No waiver, amendment or modification of any provision of this 2008 Agreement shall be effective without the written agreement of the Parties. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. No prior drafts of this 2008 Agreement, or any negotiations regarding the terms contained in these drafts, or any related agreements shall be admissible in any court to vary or interpret the terms of this 2008 Agreement, the Parties hereto agreeing that this 2008 Agreement constitutes the final expression of the Parties' agreement and supersedes all prior written and oral understandings regarding the terms of this 2008 Agreement.

17. This 2008 Agreement is for the benefit of and shall be binding upon the Parties, their successors and assigns (and, with respect to the releases, is for the benefit of the AT&T and PAETEC). Nothing in this 2008 Agreement shall be construed to create any rights in, or grant any cause of action to, any other person not a Party to this 2008 Agreement.

18. Except as expressly provided herein, this 2008 Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of New York.

19. This 2008 Agreement may be executed simultaneously in any number of counterparts, each of which when so executed and delivered shall be taken to be an original, but such counterparts shall together constitute but one and the same document.

20. All notices under this 2008 Agreement should be delivered by certified or registered US mail, return receipt requested or by other recognized competent overnight carrier, and shall be required to be given to:

If to AT&T:	AT&T One AT&T Way Attn: Legal Department CLEC Access Attorney Room 3A-159 P.O. Box 752 Bedminster, NJ 07921-0752
with copy to:	Kimberly A. Meola AT&T 1 AT&T Way Room 2A126 Bedminster, NJ 07921
If to PAETEC:	General Counsel PAETEC One PAETEC Plaza 600 Willowbrook Office Park Fairport, NY 14450
with copy to:	William A. Haas Vice President - Regulatory & Public Policy PAETEC One Martha's Way Hiawatha, Iowa 52233
And	Al Finnell Carrier Relations Manager PAETEC 6801 Morrison Blvd. Charlotte, NC 28211

21. No modification of this 2008 Agreement shall be effective unless in writing and signed by both Parties.

22. The Parties agree that faxed signatures and counterpart signatures are acceptable.

AT&T

AT&T Corp. on behalf of itself and each of its subsidiaries as each such entity existed on November 17, 2005

By: Kim Meola

Name: Kim Meola

Title: Executive Director

Date: 9/4/08

PAETEC

PAETEC Communications, Inc., US LEC Corp. and McLeodUSA Telecommunications Services, Inc. and each of their telephone operating subsidiaries and affiliates

By:

Name: Sean Pflaging

Title: Senior Vice President – Network Services

Date: 9/3/08

REDACTED

****REDACTED****

REDACTED

****REDACTED****

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.	Docket No. 090538-TP Dated: December 9, 2011

PAETEC COMMUNICATIONS, INC.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC's FIRST SET OF INTERROGATORIES (NOS. 1-10) AND DOCUMENT REQUESTS (NOS. 1-10)

PAETEC Communications, Inc. ("PAETEC") hereby submits its objections and responses to Qwest Communications Company, LLC d/b/a Century Link QCC's ("Qwest" or "QCC") First Set of Interrogatories (Nos. 1-10) and Document Requests (Nos. 1-10) (collectively "Data Requests" and individually "Data Request") dated October 21, 2011 that are associated with the above-captioned proceeding.

PAETEC Communications, Inc.

Before the Public Service Commission of the
State of Florida

Docket No. 090538-TP

Respondent: Al Finnell, Senior Manager - Carrier Relations, PAETEC Communications, Inc.
Objections Prepared By PAETEC's Undersigned Outside Counsel

REQUEST: **Qwest Set No.1, Interrogatory No. 1**

DATED: October 21, 2011

ITEM: Qwest FL - PAETEC Int. 1- 1

Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

PAETEC RESPONSE:

In addition to the General Objections, PAETEC objects to this Data Request on the grounds that it is *Overly Broad* and *Unduly Burdensome.*

Subject to, and without waiving the foregoing objections, PAETEC responds as follows: Based on PAETEC's understanding, AT&T has already identified and provided to Qwest, in response to the subpoena issued in this docket, such agreements. Those agreements included a: (1) Settlement and Switched Access Service Agreement (effective April 1, 2000) as revised by June 19, 2003 Amendment and April 1, 2005 Letter of Understanding ("AT&T 2000 Settlement Agreement"); and (2) Services and Settlement Agreement (effective April 30, 2008) ("AT&T 2008 Settlement Agreement").

In addition, based on PAETEC's understanding, Sprint has already identified and provided to Qwest, in response to the subpoena issued in this docket, such agreements. Those agreements included a: (1) Settlement Agreement and General Release (dated September 5, 2000) ("Sprint 2000 Settlement Agreement"); and (2) Settlement Agreement

(dated November 17, 2004) ("Sprint 2004 Settlement Agreement").

Moreover, PAETEC had such agreements with Global Crossing. Those agreements included a: (1) Telecommunications Agreement (effective February 25, 2004) ("Global Crossing 2004 Settlement Agreement"); and (2) Settlement Agreement and Release (effective January 5, 2006) ("Global Crossing 2006 Settlement Agreement").

In addition, PAETEC had a Switched Access Agreement and First Amendment to Telecommunications Services Agreement with MCI (dated December 14, 2000) ("MCI 2000 Agreement").

PAETEC Communications, Inc.

Before the Public Service Commission of the
State of Florida

Docket No. 090538-TP

Respondent: Al Finnell, Senior Manager - Carrier Relations, PAETEC Communications, Inc.
Objections Prepared By PAETEC's Undersigned Outside Counsel

REQUEST: **Qwest Set No.1, Interrogatory No. 2**

DATED: October 21, 2011

ITEM: Qwest FL - PAETEC Int. 1-2

For each agreement identified in response to No. 1:

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

c. Identify the precise date on which the agreement became effective.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the

agreement to QCC or another IXC?

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

PAETEC
RESPONSE:

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
1-2(a) . Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the settlement agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This settlement agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the	In addition to the General Objections, PAETEC objects to this Data Request because it improperly requests PAETEC to create data by undertaking an analysis of the agreement and PAETEC's switched access price list in Florida, rather than seeking any existing data. This agreement and PAETEC's price list speak for themselves. Additionally, Qwest is capable of reviewing and comparing these documents itself. Subject to, and without waiving the

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 7 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.	foregoing objections, PAETEC responds as follows: To the best of PAETEC's knowledge, none.
1-2(b) Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above.	Not applicable. See Objections and response to Qwest FL-PAETEC Int. 1-2(a), above..
1-2(c) Identify the precise date on which the agreement became effective.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date identified as the effective date in the	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date identified as the effective date in the	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date upon which the parties entered	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date upon which the parties entered	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date identified as the effective date in the	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date identified as the effective date in the	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The effective date is the date upon which the parties entered

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 8 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	settlement agreement, i.e., April 1, 2000.	settlement agreement, i.e., April 30, 2008.	into the settlement agreement, *i.e.*, , September 5, 2000.	into the settlement agreement, *i.e.*, November 17, 2004	settlement agreement, i.e. February 25, 2004.	settlement agreement, i.e. January 5, 2006.	into the agreement, *i.e., December 14,* 2000..
1-2(d) Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: PAETEC sent AT&T a termination letter on January 5, 2007 and the effective date of the termination was March 31, 2007.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: After two extensions through June 20, 2011, PAETEC terminated the settlement agreement as of that date by letter dated October 6, 2011.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The settlement agreement was terminated by Sprint effective February 2, 2004 per letter dated November 15, 2003.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, this settlement agreement has not been terminated.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On November 4, 2005, PAETEC sent Global Crossing ("GC") a termination letter and the effective date of the termination was February 25, 2006.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The rate provisions of this agreement were expressly limited to the term of the previous 2004 agreement, and therefore terminated as of the same date, *i.e.*, February 25, 2006.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: The agreement was terminated when it was rejected in the MCI bankruptcy on October 31, 2003.
1-2(e) Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad, Unduly Burdensome, Ambiguous* and the information requested is carrier proprietary

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 9 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.	information that is shielded by law from disclosure.
1-2(f) Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.
1-2(g) Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On August 14, 2009, PAETEC publicly filed a version of this agreement with its Motion for	Subject to, and without waiver of the General Objections, PAETEC responds as follows: On August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 10 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	Summary Judgment that was filed with the California Public Utilities Commission in Case No. C.08-080-006.	Summary Judgment that was filed with the California Public Utilities Commission in Case No. C.08-080-006. In addition, on August 17, 2009, PAETEC publicly filed with the California Public Utilities Commission its Advice Letter #118 and attachments that included a redacted version of this settlement agreement. In addition, on August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for Summary Judgment that was filed with the California			Summary Judgment that was filed with the California Public Utilities Commission in Case No. C.08-080-006.	Summary Judgment that was filed with the California Public Utilities Commission in Case No. C.08-08-006.	Summary Judgment that was filed with the California Public Utilities Commission in Case No. C.08-080-006.

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 11 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		Public Utilities Commission in Case No. C.08-08-006.					
1-2(h) Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price lists on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.	In addition to the General Objections, PAETEC objects to this Data Request because the agreement submitted in response to Qwest FL-PAETEC DR 1-2(a) speaks for itself and Qwest is equally capable of comparing the agreement with PAETEC's price list on file with the Commission. Furthermore, Qwest is equally capable of comparing the agreements submitted in response to Qwest FL-PAETEC DR 1-2(a) to one another.

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 12 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with Sprint, Global Crossing, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with Sprint, Global Crossing, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with AT&T, Global Crossing, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with AT&T, Global Crossing, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with AT&T, Sprint, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	. PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with AT&T, Global Crossing, and MCI, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.	PAETEC further objects to this Data Request because the term equivalent is *Ambiguous.* Subject to and, without waiver of the foregoing objections, PAETEC responds as follows: On information and belief, while PAETEC also had off-price list agreements with AT&T, Sprint and Global Crossing, PAETEC provided intrastate switched access to Qwest and other IXCs in Florida under its price list at the same rates, terms and conditions it provided to this IXC.
1-2(i)	In addition to the	In addition to the	In addition to the	In addition to the	In addition to the	In addition to the	In addition to the

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 13 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.	General Objections, PAETEC objects to this data request on the grounds that it is *Overly Broad, Calls for a Legal Conclusion*, and seeks the creation, rather than production of data.
1-2(j) With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,	In addition to the General Objections, PAETEC objects to the Data Request because it is *Ambiguous*. Subject to, and without waiver of the General Objections, PAETEC responds as follows: It is PAETEC's understanding that on a tacit basis,

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 14 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	PAETEC' did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.	PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not.
1-2(k) Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the settlement agreement, not data. The settlement agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.	In addition to the General Objections, PAETEC objects to this Data Request because it seeks an interpretation of the agreement, not data. The agreement speaks for itself. Moreover, PAETEC objects to this Data Request because it is *Unduly Burdensome*, and *Overly Broad*.
1-2(l) Did you produce or	Subject to, and without waiver of	Subject to, and without waiver of	Subject to, and without waiver of	Subject to, and without waiver of	Subject to, and without waiver of	Subject to, and without waiver of	Subject to, and without waiver of

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 15 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
rely on a cost study to establish the intrastate switched access rate set forth in the agreement?	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.
1-2(m) Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.
1-2(n) Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are	In addition to the General Objections, PAETEC objects to this Data Request because it is *Overly Broad* and *Unduly Burdensome*. The settlement agreement speaks for itself and identity of the persons who negotiated the agreement, including individuals no longer with PAETEC, are

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 16 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2003 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.	not reasonably related to any legitimate issue in this proceeding.
1-2(o) During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: Yes.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.
1-2(p) If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.	Not applicable.	In addition to the General Objections, PAETEC objects to this Data Request because it is *Not Relevant* and *Overly Broad*. Subject to, and without waiver of the foregoing objections, PAETEC responds as follows:	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 17 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		PAETEC asked AT&T if it could file the 2008 settlement agreement with the California Public Utilities Commission and AT&T consented. On August 17, 2009, PAETEC filed Advice Letter #118 and attachments, which included a redacted version of the settlement agreement, with the California Public Utilities Commission. In addition, On August 14, 2009, PAETEC also publicly filed a redacted version of this agreement with its Motion for Summary Judgment that was filed with the California Public					

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 18 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		Utilities Commission in Case No. C.08-08-006.					
1-2(q) During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: No as to outside of this litigation and the context of the CA PUC Case No. C08-08-006. *See also* objections and responses to Qwest FL-PAETEC Ints. 1-2(s) & 2(t) below.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: No as to outside of the context of this litigation or the CA PUC Case No. C08-08-006. *See also* objections and responses to Qwest FL-PAETEC Ints. 1-2(s) & 2(t) below.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no.
1-2(r) If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.	Not applicable.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: Not applicable. PAETEC's objections and	Not applicable.	Subject to, and without waiver of the General Objections, PAETEC responds as follows: Not applicable. PAETEC's objections and	Not applicable.	Not applicable.	Not applicable.

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 19 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		response to Qwest FL-PAETEC Int. 1-2(q) is self explanatory.		response to Qwest FL-PAETEC Int. 1-2(q) is self explanatory.			
1-2(s) During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, yes to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, yes to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no to both (a) and (b).	Subject to, and without waiver of the General Objections, PAETEC responds as follows: To the best of PAETEC's knowledge, no to both (a) and (b).
1-2(t) If your answer to subpart s. is other than an unqualified "no," fully explain your response.	Not applicable	Subject to, and without waiver of the General Objections, PAETEC responds as follows: As to Interrogatories	Not applicable	Subject to, and without waiver of the General Objections, PAETEC responds as follows: Copies of this	Not applicable	Not applicable	Not applicable

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 20 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		1-2(t)(a) & (b), as PAETEC explained in paragraph 10 of its Answer to Qwest's Complaint, "In response to the third sentence of Paragraph 10(p)(ii) of Qwest's Amended Complaint, PAETEC admits that Qwest made a demand dated February 25, 2008 on PAETEC to disclose copies of its off-price list arrangements and to provide Qwest intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. PAETEC denies that it did not honor Qwest's request.		settlement agreement were provided to Qwest in the context of the California Public Utilities Commission Case No. C0808006. *See also* objections and response to Qwest FL-PAETEC Int. 1-2(t) regarding the AT&T 2008 Settlement Agreement.			

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 21 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		On March 19, 2008, Tami Spocogee from PAETEC sent an email to Candace A. Mowers acknowledging receipt of the letter from Qwest. PAETEC stated in that email that although it did not have an agreement with AT&T, McLeodUSA, which is an affiliate of PAETEC did. PAETEC informed Qwest that it would share the general terms of the McLeodUSA/AT&T agreement with Qwest and was willing to offer a comparable deal to any company that could meet the requirements. PAETEC further					

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 22 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		informed Qwest that if Qwest required an agreement for the entire PAETEC Company, the discount and commitment amount contained in the McLeodUSA/AT&T agreement would need to be renegotiated as the current agreement is only applicable in the McLeodUSA territory. While PAETEC in September of 2008 entered into an Agreement with AT&T effective as of April 30, 2008, PAETEC has already offered the terms of the 2008 Agreement to Qwest retroactive to the effective date and as noted, in March of 2008, before					

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 23 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		PAETEC even entered into the 2008 Agreement with AT&T, PAETEC offered to negotiate with Qwest a similar agreement, an offer which Qwest did not accept. Finally, to the best of PAETEC's knowledge at this time, prior to 2008, Qwest never requested an Individual Case Basis arrangement from PAETEC pursuant to Section 6.3 of PAETEC's Price List." In addition, PAETEC, on August 14, 2009, again provided written email confirmation concerning a discussion that Mr. Messenger had with					

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 24 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		Qwest the prior week that "PAETEC is willing to, and hereby does, offer to Qwest the same rates, terms and conditions regarding intrastate switched access that PAETEC is providing to AT&T in our 2008 Services and Settlement Agreement, retroactive to the effective date of that agreement (April 30, 2008)." Furthermore, on August 14, 2009, PAETEC publicly filed a redacted version of this agreement with its Motion for Summary Judgment that was filed with the California Public Utilities					

Docket No. 090538-TP
PAETEC Discovery Responses
Exhibit WRE-34A, Page 25 of 26

Interrogatory	AT&T 2000 Settlement Agreement	AT&T 2008 Settlement Agreement	Sprint 2000 Settlement Agreement	Sprint 2004 Settlement Agreement	Global Crossing 2004 Settlement Agreement	Global Crossing 2006 Settlement Agreement	MCI 2000 Agreement
		Commission in Case No. C.08-080-006. Moreover, on August 17, 2009, PAETEC provided Qwest a courtesy copy of PAETEC's Advice Letter #118 and attachments which included a redacted version of the settlement agreement, that were filed with the California Public Utilities Commission on August 17, 2009.					

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Served: June 6, 2012

PAETEC COMMUNICATIONS, INC.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC's SECOND SET OF INTERROGATORIES (NOS. 11-12) AND DOCUMENT REQUESTS (NOS. 11-12)

PAETEC Communications, Inc. ("PAETEC") hereby submits its objections and responses to Qwest Communications Company, LLC d/b/a Century Link QCC's ("Qwest" or "QCC") Second Set of Interrogatories (Nos. 11-12) and Document Requests (Nos. 11-12) (collectively "Data Requests" and individually "Data Request") dated May 3, 2012 that are associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

PAETEC makes the General Objections, which also includes the reservation of rights, provided below to each and every Data Request and also incorporates each of the General

SPECIFIC RESPONSES TO DATA REQUESTS

INTERROGATORIES

Interrogatory No. 11. In response to QCC's First Set of Interrogatories and Document Requests, PAETEC produced the 2008 Services and Settlement Agreement ("2008 Agreement"). See bates numbers PAETEC-0000063-0000075. Credit Schedule A of the 2008 Agreement (PAETEC-0000068) identifies various intrastate switched access credits AT&T earned based on its monthly purchase level of "Other Services."

(a) Is the above an accurate summary of Credit Schedule A? If not, please explain it more accurately.

(b) Identify the specific services that AT&T purchased from PAETEC that constituted "Other Services" under the Agreement.

(c) What percentage of AT&T's purchase level of "Other Services" was comprised of intrastate switched access?

(d) By month, identify the net discount AT&T actually received for intrastate switched access in Florida based on Credit Schedule A.

(e) Alternatively to (d), by month identify AT&T's total Monthly Purchase Level of "Other Services," and AT&T's gross billing (from PAETEC) for intrastate switched access nationwide. For avoidance of doubt, QCC is simply trying to identify the percentage discount AT&T actually enjoyed under the 2008 Agreement on intrastate switched access in Florida.

RESPONSE:

Subject to its previously-raised general objections and reservation of rights, PAETEC states as follows:

(a) Credit Schedule A speaks for itself.

(b) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(c) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to

PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(d) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(e) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

Response Provided By: Stephen B. Weeks.

Interrogatory No. 12. In response to QCC Interrogatory No. 2(j), PAETEC explains that, "on a tacit basis, PAETEC did evaluate whether Qwest was similarly situated and determined that Qwest was not" at the time it entered the agreements at issue in this case.

(a) Fully explain what you mean by "on a tacit basis" in the context of your answer to Interrogatory No. 2(j).

(b) Identify any documents you reviewed which informed the understanding you related in your answer to Interrogatory No. 2(j).

(c) Identify all tangible or intangible bases for the "tacit" understanding you related in your answer to Interrogatory No. 2(j).

(d) Identify (by name, title, contact information and years of service with PAETEC) all individuals who can attest to the "tacit" understanding that you related in your answer to Interrogatory No. 2(j).

RESPONSE:

Subject to its previously-raised general objections and reservation of rights, PAETEC states as follows:

(a) By "on a tacit basis," PAETEC means that it did not conduct a formal evaluation that was reduced to writing or one based on formal quantitative analysis. Rather,

PAETEC based its evaluation on an understanding of its existing agreements, PAETEC's relationship with Qwest, and PAETEC's knowledge regarding Qwest.

(b) Given the age of the information requested, PAETEC is not able to produce such documents.

(c) Given the age of the information requested, PAETEC is not able to produce such documents.

(d) To the best of PAETEC's knowledge, no such person is currently employed by PAETEC.

Response Provided By: Stephen B. Weeks.

DOCUMENT REQUESTS

Document Request No. 11. Please produce copies of all documents supporting your response to Interrogatory No. 11.

RESPONSE:

Subject to its previously-raised general objections and reservation of rights, US LEC states as follows:

(a) US LEC is not in possession of any responsive documents.

(b) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(c) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(d) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

(e) This subpart of this interrogatory requests carrier confidential information that cannot be shared by PAETEC without consent of AT&T. PAETEC is currently attempting to obtain such consent with regard to the data in the form available to PAETEC, will continue to research whether it is in possession of other data, and will supplement this data request with any relevant information shortly after receiving a response from AT&T.

Response Provided By: Stephen B. Weeks.

Document Request No. 12. Please produce copies of all documents supporting your response to Interrogatory No. 12.

RESPONSE:

Subject to its previously-raised general objections and reservation of rights, PAETEC states it is not in possession of any responsive documents.

Response Provided By: Stephen B. Weeks

Dated this 6th day of June, 2012.

Respectfully submitted,

By: 

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
mfeil@gunster.com
(850) 521-1708
PAETEC Communications, Inc.

/s/ Edward B. Krachmer
Edward B. Krachmer
Windstream Communications, Inc.
4001 Rodney Parham Road
MS 1170-B1F03-53A
Little Rock, AR 72212
edward.krachmer@windstream.com
(501) 748-5777
[Not admitted in Florida]

PAETEC COMMUNICATIONS, INC.

FL P.S.C. Price List No. 3
Original Leaf No. 73

SECTION 6 - SPECIAL ARRANGEMENTS

6.1 SPECIAL CONSTRUCTION

6.1.1 Basis for Charges

Basis for Charges where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's price lists, charges will be based on the costs incurred by the Company (including return) and may include:

A. nonrecurring charges;

B. recurring charges;

C. termination liabilities; or

D. combinations of (a), (b), and C.

SECTION 6 - SPECIAL ARRANGEMENTS (Cont'd)

6.1 SPECIAL CONSTRUCTION (Cont'd)

6.1.2 Termination Liability

To the extent that there is no other requirement for use by the Company, a termination liability may apply for facilities specially constructed at the request of a customer.

A. The period on which the termination liability is based is the estimated service life of the facilities provided.

B. The amount of the maximum termination liability is equal to the estimate d amounts (including return) for:

1. Costs to install the facilities to be provided including estimated costs for the rearrangements of existing facilities. These costs include:

   a. equipment and materials provided or used;
   b. engineering, labor, and supervision;
   c. transportation; and
   d. rights of way and/or any required easements;

2. license preparation, processing, and related fees;

3. price list preparation, processing and related fees;

4. cost of removal and restoration, where appropriate; and

5. any other identifiable costs related to the specially constructed or re arranged facilities.

SECTION 6 - SPECIAL ARRANGEMENTS (Cont'd)

6.2 NON-ROUTINE INSTALLATION AND/OR MAINTENANCE

At the customer's request, installation and/or maintenance may be performed outside the Company's regular business hours, or (in the Company's sole discretion and subject to any conditions it may impose) in hazardous locations. In such cases, charges based on the cost of labor, material, and other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

6.3 INDIVIDUAL CASE BASIS (ICB) ARRANGEMENTS

Rates for ICB arrangements will be developed on a case-by-case basis in response to a bona fide request from a customer or prospective customer for services that vary from price listed arrangements. Rates quoted in response to such requests may be different for price listed services than those specified for such services in the Rate Attachment. ICB rates will be offered to customers in writing and will be made available to similarly situated customers. A summary of each ICB contract pricing arrangement offered pursuant to this paragraph will be filed as an addendum to this Price list within 30 days after the contract is signed by both the Company and the customer. The following information will be included in the summary:

1) LATA and type of switch
2) Service description
3) Rates and charges
4) Quantity
5) Length of the agreement.

PAETEC COMMUNICATIONS, INC.

FL P.S.C. Price List No. 3
Second Revised Leaf No. 98
Cancels First Revised Leaf No. 98

SECTION 10 - CURRENT RATES

A. Direct (Dedicated) Access

1. Recurring Charges

		Orig.	Term.	
A.	Network Switching*, per minute			
	Bell South Territory	$0.0087400	$0.0209930	(R)
	Verizon Territory	$0.0344212	$0.0431753	(R)
	Sprint Territory	$0.0337920	$0.0337920	(R)
	Smart City Territory	$0.0457609	$0.0680200	(R)

B. Transport Services:

Transport Termination, per minute	
Bell South & Smart City Telecom	$0.0003600
Verizon	$0.0001344
Sprint	$0.0001800
Transport Facility, per mile	
Bell South & Smart City Telecom	$0.0000400
Verizon	$0.0000135
Sprint	$0.0000360

C. Transport, InterLATA and IntraLATA

DS0 Port, per port, per month	$44.99
DS1 Port, per port, per month	$294.99

D. Multiplexing, per arrangement

DS3 to DS1	$124.99
DS1 to DS0	$47.99

E. Entrance Facility

DS 1 per facility, per port, per month	$ 100.00
DS3 per facility, per port, per month	$2,800.00
OC3 per facility, per port, per month	$ 16,000.00

* This rate element will apply to all calls from all Customers traffic transiting the Company network effective November 16, 2004.

Issued: October 26, 2005

Effective: November 1, 2005

Issued by:

Richard E. Ottalagana,
Executive Vice President
PaeTec Communications, Inc.
One PaeTec Plaza, 600 Willowbrook Office Park
Fairport, New York 14450

PAETEC COMMUNICATIONS, INC.

FL P.S.C. Price List No. 3
Seventh Revised Leaf No. 99
Cancels Sixth Revised Leaf No. 99

SECTION 10 - CURRENT RATES (cont'd)

B. Switched Access

1. Recurring Charges

A. Network Switching*, per minute	Orig.	Term.	
Bell South Territory	$0.0087400	$0.0209930	(R)
Verizon Territory	$0.0344212	$0.0431753	(R)
Sprint Territory	$0.0337920	$0.0337920	(R)
Smart City Territory	$0.0457609	$0.0680200	(R)

B. Transport Services:

Transport Termination, per minute	
Bell South & Smart City Telecom	$0.0003600
Verizon	$0.0001344
Sprint	$0.0001800
Transport Facility, per mile	
Bell South & Smart City Telecom	$0.0000400
Verizon	$0.0000135
Sprint	$0.0000360

C. Shared Switched Trunk Port, per minute

Bell South	$0.0008000
Sprint	$0.0000000

** Information previously found on this page has been moved to Page 98.

® This rate element will apply to all calls from all Customers traffic transiting the Company network effective November 16, 2004.

Issued: October 26, 2005

Effective: November 1, 2005

Issued by: Daniel J. Venuti , EVP. Secretary & General Counsel
PaeTec Communications, Inc.
One PaeTec Plaza, 600 Willowbrook Office Park
Fairport, New York 14450

SECTION 10 - CURRENT RATES (cont'd)

B. Switched Access

1. Recurring Charges

A. Network Switching*, per minute	Orig.	Term.	
Bell South Territory	$0.0087400	$0.0209930	
Verizon Territory	$0.0344212	$0.0431753	
Sprint Territory	$0.0337920	$0.0337920	(I)
Smart City Territory	$0.0457609	$0.0680200	

B. Transport Services:

Transport Termination, per minute

Bell South & Smart City Telecom	$0.0003600
Verizon	$0.0001344
Sprint	$0.0001800

Transport Facility, per mile

Bell South & Smart City Telecom	$0.0000400
Verizon	$0.0000135
Sprint	$0.0000360

C. Shared Switched Trunk Port, per minute

Bell South	$0.0008000
Sprint	$0.0000000

** Information previously found on this page has been moved to Page 98.

* This rate element will apply to all calls from all Customers traffic transiting the Company network effective November 16, 2004.

CURRENT RATES (cont'd)

Switched Access (Cont'd)

Standard Access (M)

Recurring Charges

Transport:

Local Transport Termination, per minute		
Bell South & Smart City	$0.0003600	(N)
Verizon	$0.0001344	(N)
Sprint	$0.0001800	
Local Transport Facility, per mile		
Bell South & Smart City	$0.0000400	(N)
Verizon	$0.0000135	(N)
Sprint	$0.0000360	
Shared End Office Trunk Port, per min.		
Bell South	$0.0008000	(N)
Sprint	$0.0000000	(M)

Issued by: Richard E. Ottalagana,
Executive Vice President
PaeTec Communications, Inc.
One PaeTec Plaza, 600 Willowbrook Office Park
Fairport, New York 14450

CURRENT RATES (Cont'd)

Other Services

800 Data Base Access Service		
Per Query:		
Bell South	$0.004000	
Sprint	$0.008037	(N)
Smart City Telecom	$0.008100	(N)
Billing and Collection		
Recording, per customer message	$0.034	
ANI, per attempt	$0.01184	
Blocking and Screening		
International Direct Dialed Blocking	There is currently no charge	
Originating Line Screening	There is currently no charge	
PAL Terminating (Billed) Number Screening	There is currently no charge	
BNA		
Service Establishment Charge (Non-recurring)	$144.99	
Query Charge per Telephone Number	$0.23	
Non-Recurring Charges		
Access Order Charge	$80.99	
Installation Charge	$180.99	
Terminating and blocking charge - ICB	See section 2.10.6	
ONP Rate		
Noncontractual rate	$0.0010 thru June 14,2003 $0.0007 thereafter	

***Information found on this page was previously listed on page 100.

Issued by: Richard E. Ottalagana,
Executive Vice President
PaeTec Communications, Inc.
One PaeTec Plaza, 600 Willowbrook Office Park
Fairport, New York 14450

****REDACTED****

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 55
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-36 (Direct)
CONFIDENTIAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: December 2, 2011

TW TELECOM OF FLORIDA, L.P.'S OBJECTIONS AND RESPONSES TO QWEST COMMUNICATIONS COMPANY, LLC's FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS

tw telecom of florida, l.p. ("TWTC") hereby submits its objections and responses to Qwest Communications Corporation, LLC's ("Qwest" or "QCC") First Set of Interrogatories and Document Requests (collectively "Data Requests" and individually "Data Request") dated October 21, 2011 that are associated with the above-captioned proceeding.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

TWTC makes the General Objections, which also includes the reservation of rights, provided below to each and every Data Request and also incorporates each of the General

FLORIDA PUBLIC COMMISSION
DOCKET NO. 090538-TP EXHIBIT 56
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-37 (Direct)

3. "Overly broad": The Data Request seeks a general category of information within which only certain portions of the information are reasonably related to the subject matter of this proceeding.

4. "Vague and ambiguous": The Data Request is vague and ambiguous in that it does not describe the data sought with particularity or fails to convey with reasonable clarity what is being requested and, as such, the TWTC cannot reasonably determine the intended meaning, scope or limits of Qwest's Data Request.

5. "Calls for a Legal Conclusion": The Data Request calls for a conclusion of law.

RESPONSES TO DATA REQUESTS

TWTC's responses to Qwest's Data Requests incorporate the above general objections and are provided subject to and without waiving those objections. Additional specific objections are provided below.

INTERROGATORIES

Interrogatory No. 1. Identify each and every agreement, whether or not still in effect, entered into since January 1, 1998 between you and any IXC relating to going-forward rates, terms or conditions (as of the date of the agreement) for the provision (by you) of intrastate switched access services to the IXC. These agreements include, but are not limited to, settlement agreements and so-called "switched access service agreements."

Any responsive agreements, and other requested documents related thereto, are confidential information and will only be provided to Qwest upon execution of a mutually acceptable non-disclosure agreement. Such documents will be provided to the Commission staff at the same time, subject to a claim for confidentiality in accordance with the Commission's rules. TWTC may therefore supplement this response and any related responses at a later date, as appropriate. TWTC also objects to the scope of this Data Request as seeking information outside the relevant time period for the applicable statute of limitations, expired agreements, settlement agreements and agreements consistent with a price list, and is therefore not relevant. Without waiving and subject to the general and specific objections, TWTC identifies the following agreements:

(1) Agreement dated January 1, 2001, between AT&T Corp. and tw holdings, inc., as amended ("AT&T/TWTC Agreement").
(2) Switched Access Service Agreement dated September 1, 2002, between Xspedius Management Co., LLC and AT&T Corp. ("AT&T/XC Agreement").

Answer provided by: Carolyn Ridley, V.P. Regulatory, TWTC

Interrogatory No. 2. For each agreement identified in response to No. 1:

In response to all subparts to Interrogatory No. 2, TWTC refers QCC to its response to Interrogatory No. 1 above.

Further, aside from the general objections stated above, TWTC also asserts the specific objections shown below for particular subparts to Interrogatory No. 2.

Answers to Interrogatory No. 2 subparts provided by: Counsel and Carolyn Ridley, V.P. Regulatory, TWTC.

a. Identify which rates, terms or conditions set by the agreement differ (or at any time differed) from the rates, terms or conditions stated in your filed Florida switched access price list effective at the time of such difference.

For any time period prior to August 24, 2008, the agreements speak for themselves and can be compared to the applicable price lists. For the period after August 24, 2008, the intrastate switched access rates applicable under both agreements were the filed price list rates of TWTC in Florida. See also TWTC response to Interrogatory No. 1 above.

b. Fully describe all reasons explaining and supporting your decision to offer the IXC rates, terms and conditions for intrastate switched access different from the rates, terms and conditions set forth in your then-effective price list.

See TWTC response to Interrogatory No. 1 above. For the AT&T/tw Agreement, the rates were agreed to only in conjunction with a total revenue commitment set forth in the AT&T/tw Agreement. To the extent the AT&T/tw Agreement resulted in the application of rates different from price list rates in periods prior to August 24, 2008, the rates, terms and conditions of the AT&T/tw Agreement resulted from a lengthy negotiation to resolve significant disputes between the parties under a previous agreement. In addition, the provisions regarding switched access were dependent upon all of the other provisions of the AT&T/TWTC Agreement, which also encompassed purchases of other, non-intrastate service, most notably a revenue

commitment on a "take or pay" basis that required AT&T to pay the difference between the applicable commitment in any contract year and its actual purchases of eligible services under the AT&T/TWTC Agreement.

For the AT&T/XC Agreement, TWTC acquired XC in November 2006 and does not have knowledge of the reasons for decisions or negotiation strategies related to that agreement.

c. Identify the precise date on which the agreement became effective.

The AT&T/TWTC Agreement became effective on January 1, 2001. The AT&T/XC Agreement states that it was effective September 1, 2002. See also TWTC response to Interrogatory No. 1 above.

d. Identify the precise date on which the agreement terminated. To clarify, QCC seeks the date you stopped providing the IXC the rates, terms and conditions under the agreement, not the date on which the original term of the agreement may have expired.

Effective August 24, 2008, the TWTC price list rates for switched access services apply under both the AT&T/TWTC Agreement and the AT&T/XC Agreement. This was reflected as of invoices rendered November 2008. The agreements remain in effect except for the provisions addressing switched access pricing. See also Response to Interrogatory No. 1 above.

e. Identify, by year, how many dollars, and for how many minutes of use, you billed the IXC for intrastate switched access services in Florida while the agreement was effective.

TWTC objects on the grounds that information responsive to this request, is unduly burdensome to produce, is carrier proprietary information and is not relevant. Without waiving and subject to the general and specific objections stated, TWTC states that any responsive documents it may produce will be confidential information and will not be provided to Qwest without a mutually acceptable non-disclosure agreement. TWTC may therefore supplement this response and any related responses at a later date, as appropriate.

f. Did you append the agreement (or a summary thereof) to your Florida switched access price list or file the agreement with the Commission as an off-tariff, individual-case-basis agreement or for any other reason?

TWTC objects to the foregoing as irrelevant. Appending or filing agreements is not required by Florida law and failure to append/file does not constitute a violation of

law. Without waiving and subject to its general and specific objections, TWTC responds in the negative.

g. Did you otherwise (i.e., apart from the filing of the agreement with the Commission) make the agreement, or the terms of the agreement, publicly known? If so, fully explain how you did so.

TWTC objects to the foregoing as irrelevant. Publication of agreements is not required by Florida law and failure to publish does not constitute a violation of law.

Without waiving and subject to its general and specific objections, TWTC responds that it filed a copy of the AT&T/TWTC Agreement, with certain confidential portions redacted, with the Securities Exchange Commission as Exhibit 10.1 to its Quarterly Report on Form 10-Q for the quarter ended June 30, 2005. The document is available to the public through the EDGAR filing system and can be accessed on www.sec.gov. It is apparent from the document text posted there that the agreement addresses switched access service. See:

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

h. Identify whether you offered equivalent rates, terms and conditions for switched access services to any other IXC, including but not limited to, QCC.

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to the AT&T/TWTC Agreement, as there were no other IXCs similarly situated to AT&T. TWTC does not have knowledge of whether XC made or did not make an offer to any other IXC and no other IXC would have qualified.

i. If you contend that QCC was not (at the time of the agreement became effective) similarly situated to the IXC party to the agreement, identify and fully explain all ways in which QCC and said IXC were not similarly situated.

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Subject to and without waiving its general or specific objections, TWTC states that, at a minimum, Qwest was not similarly situated in terms of its ability to make a revenue commitment at similar levels, Qwest's overall spend with TWTC was and remains significantly less and because the AT&T/TWTC Agreement was part of a broader settlement to resolve a number of prior disputes between TWTC and AT&T.

j. With regard to your answer to subpart i., did you evaluate, at the time the agreement became effective, whether QCC and the IXC party to the agreement were similarly situated?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Subject to and without waiving its general or specific objections, TWTC refers to its answer to Interrogatory No. 2(i) and states that in the case of the AT&T/TWTC Agreement, in particular, there would have been no need for such an evaluation, since AT&T and Qwest are patently and obviously not similarly situated. As to the AT&T/XC Agreement, TWTC does not know if such an evaluation was done at the time agreements became effective.

k. Does/did the rate or rates set forth in the agreement apply only to a set, minimum or maximum number of intrastate switched access minutes of use, or does/did the rate(s) apply to as many switched access minutes as the IXC would use while the agreement was effective? Please explain any such limitations/requirements.

As to the AT&T/TWTC Agreement, no, to the first portion of the question, and yes, to the second. *Nonetheless, the* AT&T/TWTC Agreement and AT&T/XC Agreement speak for themselves. Therefore, TWTC refers to its answer to Interrogatory No. 1.

l. Did you produce or rely on a cost study to establish the intrastate switched access rate set forth in the agreement?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative for the AT&T/TWTC Agreement and that it does not have knowledge as to the AT&T/XC Agreement.

m. Did you produce or rely on a demand study or an elasticity study to establish the intrastate switched access rate set forth in the agreement?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC responds in the negative for the AT&T/TWTC Agreement and that it does not have knowledge as to the AT&T/XC Agreement.

n. Identify (by name, job title and address) all employees or agents who participated in negotiating the agreement with the IXC.

TWTC objects to the foregoing as vague and ambiguous and as not relevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Without waiving and subject to its general and specific objections, TWTC states that for the original AT&T/TWTC Agreement in 2001, George Bykowski and Jill Greenblat were negotiators for TWTC. Mr. Bykowski is not presently employed by TWTC. For the Sixteenth Amendment to the AT&T/TWTC Agreement, whereby TWTC price list rates for switched access became applicable, the TWTC negotiators were Mr. Tom Marx and Mr. Graham Taylor. With respect to the AT&T/XC Agreement, we do not have knowledge of employees or agents who participated in negotiation. Mr. Marx, Mr. Taylor and Ms. Greenblat may only be contacted through counsel.

o. During the period of time the agreement was effective, did you ever ask the IXC's consent to file the agreement with the Commission or any other state regulatory Commission?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to regulatory commissions for both the AT&T/TWTC Agreement and the AT&T/XC Agreement, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement.

p. If your answer to subpart o. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

Not applicable. See response to Interrogatory No. 2(o).

q. During the period of time the agreement was effective, did you ever ask the IXC's consent to disclose a copy of the agreement to QCC or another IXC?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative as to regulatory commissions for both the AT&T/TWTC Agreement and the AT&T/XC Agreement, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement. TWTC further states that

it would not disclose one customer's agreement to another customer unless required by law to do so. Moreover, in this instance, Qwest is not similarly situated, and Qwest never indicated it has any interest in negotiating a comprehensive agreement for switched access and other services that included a revenue commitment similar to AT&T's.

r. If your answer to subpart q. is other than an unqualified "no," please fully explain your response and the IXC's response to your request.

Not applicable. See response to Interrogatory No. 2(q).

s. During the period of time the agreement was effective, did you ever (a) disclose or produce a copy of the agreement to QCC, or (b) solicit whether QCC was interested in negotiating a switched access agreement (relating to your provision of switched access to QCC)?

TWTC objects to the foregoing as irrelevant to the sections of the Florida Statutes and issues subject to adjudication in this proceeding. Filing agreements is not required by Florida law and failure to file does not constitute a violation of law. Without waiving and subject to its general and specific objections, TWTC responds in the negative, but refers to its answer to Interrogatory No. 2(g) regarding publication of the AT&T/TWTC Agreement. Qwest therefore knew of the agreement at that time, if not from the SEC filing, then from the Minnesota proceedings regarding CLEC switched access agreements (see In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Access Against AT&T Regarding Negotiated Contracts for Switched Access Services, Minnesota Public Utilities Commission, Docket No. 04-235 (2004). TWTC further responds that Qwest never indicated it has any interest in negotiating a comprehensive agreement for switched access and other services that included a revenue commitment similar to AT&T's.

t. If your answer to subpart s. is other than an unqualified "no," fully explain your response.

Not applicable. See response to subpart (s) above.

SECTION 3 - SWITCHED ACCESS SERVICE continued

3.6 Switched Access Service Rates and Charges

3.6.1 Carrier Common Line Charges

Carrier Common Line (Origination)	$0.01868
Carrier Common Line (Termination)	$0.02754

3.6.2 Transport Interconnection Charges

Transport Interconnection (Origination	$0.00577
Transport Interconnection (Termination)	$0.00577

3.6.3 Switched Transport

Tandem Transport Origination (per minute)	$0.00022
Tandem Transport Facility Origination (p minute)	$0.00015
Tandem Transport Origination (p minute/p mile)	$0.00022
Tandem Transport Facility Termination (p minute/p mile)	$0.00015

3.6.4 Tandem Switching

Local Switching (Originating)	$0.01439
Local Switching (Termination)	

3.6.5 Information Surcharge

Information Surcharge	$0.00000

3.6.6 8XX Database Query Surcharge

Per Query	$0.000735

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 57
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION William R. Easton WRE-38 (Direct)

ACCESS SERVICES PRICE LIST

SECTION 8 - CUSTOMER SPECIFIC CONTRACTS

8.1 General

The Company may provide any of the services offered under this terms and conditions document, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this terms and conditions document or the applicable price list do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under this terms and conditions document are not eligible for any promotional offerings which may be offered by the Company from time to time.

Contracts in this section are available to any similarly situated Customer that places and order within 90 days of their effective date.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO.	090538-TP	EXHIBIT	58
PARTY	Qwest Communications Co., LLC (QCC) - Direct		
DESCRIPTION	Lisa Hensley Eckert (LHE-1)		

Qwest
Spirit of Service

February 25, 2008

Julie Knight
BULLSEYE TELECOM
25900 Greenfield Rd-Suite 330
OAK PARK, MI 48237
USA

To: Julie Knight

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Bullseye Telecom may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[2] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[2] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service™

September 19, 2008

Steve Reynolds
Ernest Communications Inc
5275 Triangle Pkwy
Norcross, GA 30092
sreynolds@ernestgroup.com

TO:Steve Reynolds

Announcement Date:	**September 19, 2008**
Effective Date:	**NA**
Document Number:	**GNRL.09.19.08.A.002040.QCCIntraSwitchAccessSvc**
Notification Category:	**General Notifications**
Target Audience:	**Ernest Communications Inc**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

We have reason to believe that Ernest Communications Inc may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[1] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access

agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 7 calendar days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS
Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES
Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION
Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions. Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporation
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 7 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charlie Galvin Jr.
Qwest Communications

[1] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

If you would like to subscribe, unsubscribe or change your current profile to Qwest Wholesale mailouts please go to the "Subscribe/Unsubscribe" web site and follow the subscription instructions. The site is located at:

http://www.qwest.com/wholesale/notices/cnla/maillist.html

cc: Desiree Salas-Shelton
Roschelle Richardson

Qwest Communications 1600 7th Ave Room 1806 Seattle WA 98008

Qwest

August 6, 2010

Adriana Solar
Flatel Inc.
2300 Palm Beach Lakes Blvd - Suite 100
West Palm Beach, FL 33409
asolar@flatel.net

TO:Adriana Solar

Announcement Date:	**August 6, 2010**
Effective Date:	**N/A**
Document Number:	**GENL.ANNC.08.06.10.F.08164.QCC_Intrastate_Switched**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Flatel Inc. may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[1] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does

not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 7 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 7 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Sarah Nicholls
Director - Network Operations

Qwest Corporation

---

[1] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

Note: If you would like to subscribe, unsubscribe or change your current profile to Qwest Wholesale mailouts please go to the 'Subscribe/Unsubscribe' web site and follow the subscription instructions. The site is located at:

http://www.qwest.com/wholesale/notices/cnla/maillist.html

cc: Qwest Wholesale www.qwest.com/wholesale/index.html

Valerie Estorga

Qwest Communications, 120 Lenora St, 11th Floor, Seattle WA 98121

Qwest
Spirit of Service

June 10, 2008

Rand Currier
Granite Telecommunications LLC.
100 Newport Avenue
Quincy, MA 020171
rcurrier@granitenet.com

To: Rand Currier

Announcement Date:	**June 10, 2008**
Effective Date:	**NA**
Document Number:	**GNRL.06.10.08.A.002027.QCCIntraSwitchAccessSvc**
Notification Category:	**General Notifications**
Target Audience:	**Granite Telecommunications LLC.**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Granite Telecommunications LLC. may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[1] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or

[1] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

Qwest
Spirit of Service
Qwest Communications

cc: , Jolene Jackson, Shawna Lubner
Scott Ellefson

NoteIf you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:
http://www.qwest.com/wholesale/notices/cnla/maillist.html

Qwest
Spirit of Service

March 14, 2008

ITC DELTA COM
Norm Diekow
LOCKBOX PO BOX 1678
TALLAHASSEE, FL 32302-1678

To: Norm Diekow

Announcement Date:	**March 14, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.03.14.08.B.003020.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that ITC DELTA COM may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[1] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

1 Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

March 7, 2008

Level 3
Jennifer Torres
1025 Eldorado Blvd
Broomfield, Colorado 80021

To: Jennifer Torres

Announcement Date:	**March 7, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.03.07.08.B.003020.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Level 3 may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[20] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to

[20] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

February 25, 2008

Annette Wargo
NAVIGATOR TELECOM, LLC - AR
PO BOX 13860
NORTH LITTLE ROCK, AR 72113-386
USA

To: Annette Wargo

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Navigator Telecom LLC AR. may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[19] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[19] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

February 25, 2008

COLLECTIONS Dept
NUVOX COMMUNICATIONS
301 NORTH MAIN ST
GREENSVILLE, SC 29601
USA

To: COLLECTIONS Dept

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that NUVOX Communications may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[22] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[22] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

February 25, 2008

Lori Blakely
PAETEC COMMUNICATIONS - PAETECIL
ONE PAETEC PLAZA
FAIRPORT, NY 14450-4212
USA

To: Lori Blakely

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that PAETEC Communications may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[23] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[23] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

March 7, 2008

Time Warner
Tina Davis
10475 Park Meadows Drive
Littleton, CO 80124

To: Tina Davis

Announcement Date:	**March 7, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.03.07.08.B.003020.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Time Warner may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[32] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to

[32] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

March 7, 2008

US LEC
Augie Lindsay
600 Willowbrook Office Pk
Fairpoint, NY 14450

To: Augie Lindsay

Announcement Date:	**March 7, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.03.07.08.B.003020.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that US LEC may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[34] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to

[34] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

persons or entities other than Qwest. AT&T has not waived any objections it may have to disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Qwest
Spirit of Service

February 25, 2008

Brent Hampton
VERIZON BUSINESS
6929 North Lakewood Ave
Tulsa, OK 74117
USA

To: Brent Hampton

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Verizon Business may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[30] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[30] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

REDACTED

FINANCIAL ANALYSIS		INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	$	[redacted]		
MANUAL INVOICE TOTALS	$			
TOTAL	$			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]		
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 59
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-5) (Direct)
CONFIDENTIAL

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]		
	FL			
	FL			
	FL

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]		
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) Applied the BullsEye - AT&T agreement rates.

REDACTED

REDACTED

FINANCIAL ANALYSIS		INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	$	[redacted]		
MANUAL INVOICE TOTALS	$			
TOTAL	$			

800 queries

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						
	FL							
	FL							
	FL

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						
	FL							
	FL							
	FL

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]	FL	[redacted]						
	FL							
	FL							
	FL							
	FL							
	FL							
	MOU							
	[redacted]							
	Totals							

Manual

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMOUNT	VARIANCE
[redacted]	FL	[redacted]		
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			
	FL			

[redacted]

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMOUNT	VARIANCE
[redacted]	FL	[redacted]		
	FL			
	FL			
	FL

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTAL			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 61
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-9) (Direct)
CONFIDENTIAL

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) 6.99% of the minutes are tandem routed.
4) The average transport mileage for tandem routed traffic was 9 miles.
5) [redacted]
6) Applied the Ernest - [redacted] agreement rates.

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTAL			

800 queries

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]								

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 62
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-10) (Direct)
CONFIDENTIAL

REDACTED

REDACTED

[redacted]

BILL_DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	UOM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]								

REDACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]								

REDACTED

REDACTED

[redacted]

FIXED MOU

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]								

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
[redacted]								

ILEC RATE

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT AMOUNT	VARIANCE
						TANDEM	DIRECT		
[redacted]									

REDACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	

[redacted]

REDACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE TANDEM	AGREEMENT RATE DIRECT	AGREEMENT AMOUNT	VARIANCE

[redacted]

REDACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
[redacted]									

REDACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT AMOUNT	VARIANCE
						TANDEM	DIRECT		
[redacted]									

(((DACTED

REDACTED

[redacted]

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
[redacted]									

REDACTED

REDACTED

ILEC RATE	[redacted]	
FIXED RATE		
8xx		
Totals		[redacted]

Manual

BILL DATE	STATE	Face Page Amt	Calculated ITA Amt	Variance
[redacted]				

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) 6.99% of the minutes are tandem routed.
4) The average transport mileage for tandem routed traffic was 9 miles.
5) [redacted]
6) Applied the Ernest - [redacted] rates.

REDACTED

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTAL			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 63
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-11) (Direct)
CONFIDENTIAL

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
[redacted]				

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) 8.19% of the minutes are tandem routed.
4) The average transport mileage for tandem routed traffic was 8 miles.
5) [redacted]
6) Applied the Flatel - [redacted] rates.

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTAL			

800 queries

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	Agreement Rate	Agreeement Amt	VARIANCE
[redacted]								

MOU

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE TANDEM	AGREEMENT RATE DIRECT	AGREEMENT AMOUNT	VARIANCE
[redacted]									

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 64
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-12) (Direct)
CONFIDENTIAL

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE TANDEM	AGREEMENT RATE DIRECT	AGREEMENT AMOUNT	VARIANCE
[redacted]									
		MOU							
		8xx							
		Totals							

Manual

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMOUNT	VARIANCE
[redacted]				

REDACTED

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMOUNT	VARIANCE
[redacted]				

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.

2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.

3) 8.19% of the minutes are tandem routed.

4) The average transport mileage for tandem routed traffic was 8 miles.

5 [redacted]

6) Applied the Flatel [redacted] rates.

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTAL			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
21-Jun-02	FL	[redacted]		
21-Jul-02	FL			
21-Aug-02	FL			
21-Sep-02	FL			
21-Oct-02	FL			
21-Nov-02	FL			
21-Dec-02	FL			
21-Jan-03	FL			
21-Feb-03	FL			
21-Mar-03	FL			
21-Apr-03	FL			
21-May-03	FL			
21-Jun-03	FL			
21-Jul-03	FL			
21-Aug-03	FL			
21-Sep-03	FL			
21-Oct-03	FL			
21-Nov-03	FL			
21-Dec-03	FL			
21-Jan-04	FL			
21-Feb-04	FL			
21-Mar-04	FL			
21-Apr-04	FL			
21-May-04	FL			
21-Jun-04	FL			
21-Jul-04	FL			
21-Aug-04	FL			

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 65
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-20) (Direct)
CONFIDENTIAL

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
21-Sep-04	FL	[redacted]		
21-Oct-04	FL			
21-Nov-04	FL			
21-Dec-04	FL			
21-Jan-05	FL			
21-Feb-05	FL			
21-Mar-05	FL			
21-Apr-05	FL			
21-May-05	FL			
21-Jun-05	FL			
21-Jul-05	FL			
21-Aug-05	FL			
21-Sep-05	FL			
21-Oct-05	FL			
21-Nov-05	FL			
21-Dec-05	FL			
21-Jan-06	FL			
21-Feb-06	FL			
21-Mar-06	FL			
21-Apr-06	FL			
21-May-06	FL			
21-Jun-06	FL			
21-Jul-06	FL			
21-Aug-06	FL			
21-Sep-06	FL			
21-Oct-06	FL			
21-Nov-06	FL			
21-Dec-06	FL			
21-Jan-07	FL			
21-Feb-07	FL			
21-Mar-07	FL			
21-Apr-07	FL			
21-May-07	FL			
21-Jun-07	FL			

REDACTED

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
21-Jul-07	FL			
21-Aug-07	FL			
21-Sep-07	FL			
21-Oct-07	FL			
21-Nov-07	FL			
21-Dec-07	FL			
21-Jan-08	FL			
21-Feb-08	FL			
21-Mar-08	FL			
21-Apr-08	FL			
21-May-08	FL			
21-Jun-08	FL			
21-Jul-08	FL			
21-Aug-08	FL			
21-Sep-08	FL			
21-Oct-08	FL			
21-Nov-08	FL			
21-Dec-08	FL			
21-Jan-09	FL			
21-Feb-09	FL			
21-Mar-09	FL			
21-Apr-09	FL			
21-May-09	FL			
21-Jun-09	FL			
21-Jul-09	FL			
21-Aug-09	FL			
21-Sep-09	FL			
21-Oct-09	FL			
21-Nov-09	FL			
21-Dec-09	FL			
21-Jan-10	FL			
21-Feb-10	FL			
21-Mar-10	FL			
21-Apr-10	FL			

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
21-May-10	FL	[redacted]		
21-Jun-10	FL			
21-Jul-10	FL			
21-Aug-10	FL			
21-Sep-10	FL			
21-Oct-10	FL			
21-Nov-10	FL			
21-Dec-10	FL			
21-Jan-11	FL			
21-Feb-11	FL			
21-Mar-11	FL			
21-Apr-11	FL			
21-May-11	FL			
21-Jun-11	FL			
21-Jul-11	FL			
21-Aug-11	FL			
21-Sep-11	FL			
21-Oct-11	FL			
21-Nov-11	FL			
21-Dec-11	FL			
21-Jan-12	FL			
21-Feb-12	FL			
21-Mar-12	FL			

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) 10.29% of the electronic minutes are tandem routed.
4) The average transport mileage for tandem routed traffic was 14 miles.
5) [redacted]
6) Applied the Navigator - AT&T agreement rates.

REDACTED

Docket No. 090538-TP
Navigator Overcharge Analysis Detail
Exhibit DAC-21, Page 1 of 11

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	$		
MANUAL INVOICE TOTALS	$		
TOTAL	$		

800 queries

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
21-Nov-03	FL							
21-Dec-03	FL							
21-Jan-04	FL							
21-Feb-04	FL							
21-Mar-04	FL							
21-Apr-04	FL							
21-May-04	FL							
21-Jun-04	FL							
21-Jul-04	FL							
21-Aug-04	FL							
21-Sep-04	FL							
21-Oct-04	FL							
21-Nov-04	FL							
21-Dec-04	FL							
21-Jan-05	FL							
21-Feb-05	FL							
21-Mar-05	FL							
21-Apr-05	FL							
21-May-05	FL							
21-Jun-05	FL							
21-Jul-05	FL							
21-Aug-05	FL							
21-Sep-05	FL							
21-Oct-05	FL							
21-Nov-05	FL							
21-Dec-05	FL							
21-Jan-06	FL							
21-Feb-06	FL							
21-Mar-06	FL							
21-Apr-06	FL							
21-May-06	FL							

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 66
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-21) (Direct)
CONFIDENTIAL

REDACTED

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
21-Jun-06	FL	[redacted]						
21-Jul-06	FL							
21-Aug-06	FL							
21-Sep-06	FL							
21-Oct-06	FL							
21-Nov-06	FL							
21-Dec-06	FL							
21-Jan-07	FL							
21-Feb-07	FL							
21-Mar-07	FL							
21-Apr-07	FL							
21-May-07	FL							
21-Jun-07	FL							
21-Jul-07	FL							
21-Aug-07	FL							
21-Sep-07	FL							
21-Oct-07	FL							
21-Nov-07	FL							
21-Dec-07	FL							
21-Jan-08	FL							
21-Feb-08	FL							
21-Mar-08	FL							
21-Apr-08	FL							
21-May-08	FL							
21-Jun-08	FL							
21-Jul-08	FL							
21-Aug-08	FL							
21-Sep-08	FL							
21-Oct-08	FL							
21-Nov-08	FL							
21-Dec-08	FL							
21-Jan-09	FL							
21-Feb-09	FL							
21-Mar-09	FL							
21-Apr-09	FL							
21-May-09	FL							
21-Jun-09	FL							
21-Jul-09	FL							

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMOUNT	VARIANCE
21-Aug-09	FL	[redacted]						
21-Sep-09	FL							
21-Oct-09	FL							
21-Nov-09	FL							
21-Dec-09	FL							
21-Jan-10	FL							
21-Feb-10	FL							
21-Mar-10	FL							
21-Apr-10	FL							
21-May-10	FL							
21-Jun-10	FL							
21-Jul-10	FL							
21-Aug-10	FL							
21-Sep-10	FL							
21-Oct-10	FL							
21-Nov-10	FL							
21-Dec-10	FL							
21-Jan-11	FL							
21-Feb-11	FL							
21-Mar-11	FL							
21-Apr-11	FL							
21-May-11	FL							
21-Jun-11	FL							
21-Jul-11	FL							
21-Aug-11	FL							
21-Sep-11	FL							
21-Oct-11	FL							
21-Nov-11	FL							
21-Dec-11	FL							
21-Jan-12	FL							
21-Feb-12	FL							
21-Mar-12	FL							

MOU

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT AMOUNT	VARIANCE
						TANDEM	DIRECT		
21-Nov-03	FL	[redacted]							

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
21-Dec-03	FL	[redacted]							
21-Jan-04	FL								
21-Feb-04	FL								
21-Mar-04	FL								
21-Apr-04	FL								
21-May-04	FL								
21-Jun-04	FL								
21-Jul-04	FL								
21-Aug-04	FL	[redacted]							
21-Sep-04	FL								
21-Oct-04	FL								
21-Nov-04	FL								
21-Dec-04	FL								
21-Jan-05	FL								
21-Feb-05	FL								
21-Mar-05	FL								
21-Apr-05	FL								
21-May-05	FL								
21-Jun-05	FL								
21-Jul-05	FL								
21-Aug-05	FL								
21-Sep-05	FL								
21-Oct-05	FL								
21-Nov-05	FL								
21-Dec-05	FL								
21-Jan-06	FL								
21-Feb-06	FL								
21-Mar-06	FL								
21-Apr-06	FL								
21-May-06	FL								
21-Jun-06	FL								
21-Jul-06	FL								
21-Aug-06	FL								
21-Sep-06	FL								
21-Oct-06	FL								
21-Nov-06	FL								
21-Dec-06	FL								

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
21-Jan-07	FL	[redacted]							
21-Feb-07	FL								
21-Mar-07	FL								
21-Apr-07	FL								
21-May-07	FL								
21-Jun-07	FL								
21-Jul-07	FL								
21-Aug-07	FL								
21-Sep-07	FL								
21-Oct-07	FL								
21-Nov-07	FL								
21-Dec-07	FL								
21-Jan-08	FL								
21-Feb-08	FL								
21-Mar-08	FL								
21-Apr-08	FL								
21-May-08	FL								
21-Jun-08	FL								
21-Jul-08	FL								
21-Aug-08	FL								
21-Sep-08	FL								
21-Oct-08	FL								
21-Nov-08	FL								
21-Dec-08	FL								
21-Jan-09	FL								
21-Feb-09	FL								
21-Mar-09	FL								
21-Apr-09	FL								
21-May-09	FL								
21-Jun-09	FL								
21-Jul-09	FL								
21-Aug-09	FL								
21-Sep-09	FL								
21-Oct-09	FL								
21-Nov-09	FL								
21-Dec-09	FL								
21-Jan-10	FL								

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
21-Feb-10	FL	[redacted]							
21-Mar-10	FL								
21-Apr-10	FL								
21-May-10	FL								
21-Jun-10	FL								
21-Jul-10	FL								
21-Aug-10	FL								
21-Sep-10	FL								
21-Oct-10	FL								
21-Nov-10	FL								
21-Dec-10	FL								
21-Jan-11	FL								
21-Feb-11	FL								
21-Mar-11	FL								
21-Apr-11	FL								
21-May-11	FL								
21-Jun-11	FL								
21-Jul-11	FL								
21-Aug-11	FL								
21-Sep-11	FL								
21-Oct-11	FL								
21-Nov-11	FL								
21-Dec-11	FL								
21-Jan-12	FL								
21-Feb-12	FL								
21-Mar-12	FL								
21-Nov-03	FL								
21-Dec-03	FL								
21-Jan-04	FL								
21-Feb-04	FL								
21-Mar-04	FL								
21-Apr-04	FL								
21-May-04	FL								
21-Jun-04	FL								
21-Jul-04	FL								
21-Aug-04	FL								
21-Sep-04	FL								

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
21-Oct-04	FL								
21-Nov-04	FL								
21-Dec-04	FL								
21-Jan-05	FL								
21-Feb-05	FL								
21-Mar-05	FL								
21-Apr-05	FL								
21-May-05	FL								
21-Jun-05	FL								
21-Jul-05	FL								
21-Aug-05	FL								
21-Sep-05	FL								
21-Oct-05	FL								
21-Nov-05	FL								
21-Dec-05	FL								
21-Jan-06	FL								
21-Feb-06	FL								
21-Mar-06	FL								
21-Apr-06	FL								
21-May-06	FL								
21-Jun-06	FL								
21-Jul-06	FL								
21-Aug-06	FL								
21-Sep-06	FL								
21-Oct-06	FL								
21-Nov-06	FL								
21-Dec-06	FL								
21-Jan-07	FL								
21-Feb-07	FL								
21-Mar-07	FL								
21-Apr-07	FL								
21-May-07	FL								
21-Jun-07	FL								
21-Jul-07	FL								
21-Aug-07	FL								
21-Sep-07	FL								
21-Oct-07	FL								

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE		AGREEMENT	VARIANCE
						TANDEM	DIRECT	AMOUNT	
21-Nov-07	FL	[redacted]							
21-Dec-07	FL								
21-Jan-08	FL								
21-Feb-08	FL								
21-Mar-08	FL								
21-Apr-08	FL								
21-May-08	FL								
21-Jun-08	FL								
21-Jul-08	FL								
21-Aug-08	FL								
21-Sep-08	FL								
21-Oct-08	FL								
21-Nov-08	FL								
21-Dec-08	FL								
21-Jan-09	FL								
21-Feb-09	FL								
21-Mar-09	FL								
21-Apr-09	FL								
21-May-09	FL								
21-Jun-09	FL								
21-Jul-09	FL								
21-Aug-09	FL								
21-Sep-09	FL								
21-Oct-09	FL								
21-Nov-09	FL								
21-Dec-09	FL								
21-Jan-10	FL								
21-Feb-10	FL								
21-Mar-10	FL								
21-Apr-10	FL								
21-May-10	FL								
21-Jun-10	FL								
21-Jul-10	FL								
21-Aug-10	FL								
21-Sep-10	FL								
21-Oct-10	FL								
21-Nov-10	FL								

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE TANDEM	AGREEMENT RATE DIRECT	AGREEMENT AMOUNT	VARIANCE
21-Dec-10	FL	[redacted]							
21-Jan-11	FL								
21-Feb-11	FL								
21-Mar-11	FL								
21-Apr-11	FL								
21-May-11	FL								
21-Jun-11	FL								
21-Jul-11	FL								
21-Aug-11	FL								
21-Sep-11	FL								
21-Oct-11	FL								
21-Nov-11	FL								
21-Dec-11	FL								
21-Jan-12	FL								
21-Feb-12	FL								
21-Mar-12	FL								

Manual

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMT	VARIANCE
21-Jun-02	FL	[redacted]		
21-Jun-02	FL			
21-Jul-02	FL			
21-Jul-02	FL			
21-Aug-02	FL			
21-Aug-02	FL			
21-Sep-02	FL			
21-Sep-02	FL			
21-Oct-02	FL			
21-Oct-02	FL			
21-Nov-02	FL			
21-Nov-02	FL			
21-Dec-02	FL			
21-Dec-02	FL			

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMT	VARIANCE
21-Jan-03	FL	[redacted]		
21-Jan-03	FL			
21-Feb-03	FL			
21-Feb-03	FL			
21-Feb-03	FL			
21-Mar-03	FL			
21-Mar-03	FL			
21-Apr-03	FL			
21-Apr-03	FL			
21-Apr-03	FL			
21-May-03	FL			
21-May-03	FL			
21-May-03	FL			
21-Jun-03	FL			
21-Jun-03	FL			
21-Jun-03	FL			
21-Jul-03	FL			
21-Jul-03	FL			
21-Aug-03	FL			
21-Aug-03	FL			
21-Sep-03	FL			
21-Sep-03	FL			
21-Oct-03	FL			
21-Oct-03	FL			
21-Jan-04	FL			
21-May-05	FL			
21-Apr-05	FL			
21-Apr-03	FL			
21-May-03	FL			
21-Jun-03	FL			
21-Jul-03	FL			
21-Sep-03	FL			
21-Oct-03	FL			
21-Nov-03	FL			
21-Jun-05	FL			
21-Jun-06	FL			
21-Jul-06	FL			

BILL DATE	STATE	FACE PAGE AMOUNT	CALCULATED ITA AMT
21-Aug-06	FL	[redacted]	
21-Sep-06	FL		
21-Oct-06	FL		
21-Jul-08	FL		
21-Sep-08	FL		
21-Oct-08	FL		
21-Jun-09	FL		
21-Oct-09	FL		
21-Jan-10	FL		
21-Feb-10	FL		
21-Apr-10	FL		
21-May-10	FL		
21-Oct-10	FL		
21-Nov-10	FL		

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) 10.29% of he electronic minutes are tandem routed.
4) The average transport mileage for tandem routed traffic was 14 miles.
5) [redacted]
6) Applied the Navigator - AT&T agreement rates.

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTALS			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
1-Jan-02	FL	[redacted]		
1-Feb-02	FL			
1-Mar-02	FL			
1-Apr-02	FL			
1-May-02	FL			
1-Jun-02	FL			
1-Jul-02	FL			
1-Aug-02	FL			
1-Sep-02	FL			
1-Oct-02	FL			
1-Nov-02	FL			
1-Dec-02	FL			
1-Jan-03	FL			
1-Feb-03	FL			
1-Mar-03	FL			
1-Apr-03	FL			
1-May-03	FL			
1-Jun-03	FL			
1-Jul-03	FL			
1-Aug-03	FL			
1-Sep-03	FL			
1-Oct-03	FL			
1-Nov-03	FL			
1-Dec-03	FL			
1-Jan-04	FL			
1-Feb-04	FL			
1-Mar-04	FL			
1-Apr-04	FL			
1-May-04	FL			
1-Jun-04	FL			
1-Jul-04	FL			

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 67
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-25) (Direct)
CONFIDENTIAL

REDACTED

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
1-Aug-04	FL	[redacted]		
1-Sep-04	FL			
1-Oct-04	FL			
1-Nov-04	FL			
1-Dec-04	FL			
1-Jan-05	FL			
1-Feb-05	FL			
1-Mar-05	FL			
1-Apr-05	FL			
1-May-05	FL			
1-Jun-05	FL			
1-Jul-05	FL			
1-Aug-05	FL			
1-Sep-05	FL			
30-Sep-05	FL			
1-Oct-05	FL			
1-Nov-05	FL			
1-Dec-05	FL			
1-Jan-06	FL			
1-Feb-06	FL			
1-Mar-06	FL			
1-Apr-06	FL			
1-May-06	FL			
1-Jun-06	FL			
1-Jul-06	FL			
1-Aug-06	FL			
1-Sep-06	FL			
1-Oct-06	FL			
1-Nov-06	FL			
1-Dec-06	FL			
1-Jan-07	FL			
1-Feb-07	FL			
1-Mar-07	FL			
1-Apr-07	FL			
1-May-07	FL			
1-Jun-07	FL			
1-Jul-07	FL			
1-Aug-07	FL			

BILL DATE	STATE	AMOUNT BILLED	AGREEMENT AMOUNT	VARIANCE
1-Sep-07	FL	[redacted]		
1-Oct-07	FL			
1-Nov-07	FL			
1-Dec-07	FL			
1-Jan-08	FL			
1-Feb-08	FL			
1-Mar-08	FL			
1-Apr-08	FL			
1-May-08	FL			
1-Jun-08	FL			
1-Jul-08	FL			
1-Aug-08	FL			
1-Sep-08	FL			
1-Oct-08	FL			

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) Applied the AT&T - TW Telecom agreement rates.
4) No rates provided for September 2003 through February 2004; used previous period's rates; will update once actual rate is received.
5) TW Telecom bills multiple states on an invoice; for BAN C1253XXFGB301 a FL intrastate percentage was created by looking at the month before & month after. That percentage is then aplied to the Face Page amount to derive an intrastate amount.

REDACTED

FINANCIAL ANALYSIS	INTRASTATE BILLED AMOUNT	VARIANCE AMOUNT	VARIANCE PERCENT
ELECTRONIC INVOICE TOTALS	[redacted]		
MANUAL INVOICE TOTALS			
TOTALS			

800 queries

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	VARIANCE
1-Oct-03	FL	[redacted]						
1-Nov-03	FL							
1-Dec-03	FL							
1-Jan-04	FL							
1-Feb-04	FL							
1-Mar-04	FL							
1-Apr-04	FL							
1-May-04	FL							
1-Jun-04	FL							
1-Jul-04	FL							
1-Aug-04	FL							
1-Sep-04	FL							
1-Oct-04	FL							
1-Nov-04	FL							
1-Dec-04	FL							
1-Jan-05	FL							
1-Feb-05	FL							
1-Mar-05	FL							
1-Apr-05	FL							
1-May-05	FL							
1-Jun-05	FL							
1-Jul-05	FL							
1-Aug-05	FL							
1-Sep-05	FL							
1-Oct-05	FL							
1-Nov-05	FL							
1-Dec-05	FL							
1-Feb-06	FL							
1-Mar-06	FL							
1-Apr-06	FL							
1-May-06	FL							
1-Jun-06	FL							
BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	VARIANCE
1-Jul-06	FL	[redacted]						

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 68
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Derek Canfield (DAC-26) (Direct)
CONFIDENTIAL

REDACTED

1-Aug-06	FL	[redacted]
1-Sep-06	FL	
1-Oct-06	FL	
1-Nov-06	FL	
1-Dec-06	FL	
1-Jan-07	FL	
1-Feb-07	FL	
1-Mar-07	FL	
1-Apr-07	FL	
1-May-07	FL	
1-Jun-07	FL	
1-Jul-07	FL	
1-Aug-07	FL	
1-Sep-07	FL	
1-Oct-07	FL	
1-Nov-07	FL	
1-Dec-07	FL	
1-Jan-08	FL	
1-Feb-08	FL	
1-Mar-08	FL	
1-Apr-08	FL	
1-May-08	FL	
1-Jun-08	FL	
1-Jul-08	FL	
1-Aug-08	FL	
1-Sep-08	FL	
1-Oct-08	FL	

MOU

BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	Variance
1-Jan-02	FL	[redacted]						
1-Feb-02	FL							
1-Mar-02	FL							
1-May-02	FL							
1-Jun-02	FL							
1-Jul-02	FL							
1-Aug-02	FL							
BILL DATE	STATE	TRAFFIC_TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	Variance
1-Sep-02	FL	[redacted]						
1-Oct-02	FL							

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	Variance
1-Nov-02	FL	[redacted]						
1-Dec-02	FL							
1-Jan-03	FL							
1-Feb-03	FL							
1-Mar-03	FL							
1-Apr-03	FL							
1-May-03	FL							
1-Jun-03	FL							
1-Jul-03	FL							
1-Aug-03	FL							
1-Sep-03	FL							
1-Oct-03	FL							
1-Nov-03	FL							
1-Dec-03	FL							
1-Jan-04	FL							
1-Feb-04	FL							
1-Mar-04	FL							
1-Apr-04	FL							
1-May-04	FL							
1-Jun-04	FL							
1-Jul-04	FL							
1-Aug-04	FL							
1-Sep-04	FL							
1-Oct-04	FL							
1-Nov-04	FL							
1-Dec-04	FL							
1-Jan-05	FL							
1-Feb-05	FL							
1-Mar-05	FL							
1-Apr-05	FL							
1-May-05	FL							
1-Jun-05	FL							
1-Jul-05	FL							
1-Aug-05	FL							
1-Sep-05	FL							
1-Oct-05	FL							
1-Nov-05	FL							
1-Dec-05	FL	[redacted]						
1-Feb-06	FL							
1-Mar-06	FL							

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	Variance
1-Apr-06	FL							
1-May-06	FL							
1-Jun-06	FL							
1-Jul-06	FL							
1-Aug-06	FL							
1-Sep-06	FL							
1-Oct-06	FL							
1-Nov-06	FL							
1-Dec-06	FL							
1-Jan-07	FL							
1-Feb-07	FL							
1-Mar-07	FL							
1-Apr-07	FL							
1-May-07	FL							
1-Jun-07	FL							
1-Jul-07	FL							
1-Aug-07	FL							
1-Sep-07	FL							
1-Oct-07	FL							
1-Nov-07	FL							
1-Dec-07	FL							
1-Jan-08	FL							
1-Feb-08	FL							
1-Mar-08	FL							
1-Apr-08	FL							
1-May-08	FL							
1-Jun-08	FL							
1-Jul-08	FL							
1-Aug-08	FL							
1-Sep-08	FL							
1-Oct-08	FL							
1-Oct-03	FL							
1-Nov-03	FL							
1-Dec-03	FL							
1-Jan-04	FL							
1-Feb-04	FL							
1-Mar-04	FL							
1-Apr-04	FL							
1-May-04	FL							
1-Jun-04	FL							

BILL DATE	STATE	TRAFFIC TYPE	AMOUNT BILLED	QUANTITY	CPM	AGREEMENT RATE	AGREEMENT AMT	Variance
1-Jul-04	FL	[redacted]						
1-Aug-04	FL							
1-Sep-04	FL							
1-Oct-04	FL							
1-Nov-04	FL							
1-Dec-04	FL							
1-Jan-05	FL							
1-Feb-05	FL							
1-Mar-05	FL							
1-Apr-05	FL							
1-May-05	FL							
1-Jun-05	FL							
1-Jul-05	FL							
1-Aug-05	FL							
1-Sep-05	FL							
1-Oct-05	FL							
1-Nov-05	FL							
1-Dec-05	FL							
1-Feb-06	FL							
1-Mar-06	FL							
1-Apr-06	FL							
1-May-06	FL							
1-Jun-06	FL							
1-Jul-06	FL							
1-Aug-06	FL							
1-Sep-06	FL							
1-Oct-06	FL							
1-Nov-06	FL							
1-Dec-06	FL							
1-Jan-07	FL							
1-Feb-07	FL							
1-Mar-07	FL							
1-Apr-07	FL							
1-May-07	FL							
1-Jun-07	FL							
1-Jul-07	FL							
1-Aug-07	FL							
1-Sep-07	FL							
1-Oct-07	FL							
1-Nov-07	FL							

1-Dec-07	FL			
1-Jan-08	FL			
1-Feb-08	FL			
1-Mar-08	FL			
1-Apr-08	FL			
1-May-08	FL			
1-Jun-08	FL			
1-Jul-08	FL			
1-Aug-08	FL			
1-Sep-08	FL			
1-Oct-08	FL			
		MOU		
		8xx		
		Totals		

Manual

BILL DATE	STATE	FACE PAGE AMT	CALCULATED ITA AMT	VARIANCE
1-Mar-02	FL			
1-Apr-02	FL			
1-Jul-02	FL			
1-Aug-02	FL			
1-Sep-02	FL			
1-Oct-02	FL			
1-Nov-02	FL			
1-Dec-02	FL			
1-Jan-03	FL			
1-Feb-03	FL			
1-Mar-03	FL			
1-Apr-03	FL			
1-May-03	FL			
1-Jun-03	FL			
1-Jul-03	FL			
1-Aug-03	FL			

BILL DATE	STATE	FACE PAGE AMT	CALCULATED ITA AMT	VARIANCE
1-Sep-03	FL			
1-Oct-03	FL			
1-Nov-03	FL			
1-Dec-03	FL			
1-Jan-04	FL			
1-Feb-04	FL			

BILL DATE	STATE	FACE PAGE AMT	CALCULATED ITA AMT	VARIANCE
1-Mar-04	FL	[redacted]		
1-Apr-04	FL			
1-May-04	FL			
1-Jun-04	FL			
1-Jul-04	FL			
1-Aug-04	FL			
1-Sep-04	FL			
1-Oct-04	FL			
1-Nov-04	FL			
1-Dec-04	FL			
1-Jan-05	FL			
1-Feb-05	FL			
1-Mar-05	FL			
1-Apr-05	FL			
1-May-05	FL			
1-Jun-05	FL			
1-Jul-05	FL			
1-Aug-05	FL			
1-Sep-05	FL			
1-Oct-05	FL			
1-Nov-05	FL			
1-Dec-05	FL			
1-Jan-06	FL			
1-Mar-06	FL			
1-Apr-06	FL			
1-May-06	FL			
1-Jun-06	FL			
1-Jul-06	FL			
1-Aug-06	FL			
1-Oct-06	FL			
1-Nov-06	FL			
1-Dec-06	FL			
1-Jan-07	FL	[redacted]		
1-Feb-07	FL			
1-Mar-07	FL			
1-Apr-07	FL			
1-May-07	FL			
1-May-07	FL			
1-Jun-07	FL			
1-Jul-07	FL			

1-Aug-07	FL	[redacted]
1-Sep-07	FL	
1-Oct-07	FL	
1-Nov-07	FL	
1-Dec-07	FL	
1-Jan-08	FL	
1-Feb-08	FL	
1-Mar-08	FL	
1-Apr-08	FL	
1-May-08	FL	
1-Jun-08	FL	
1-Jul-08	FL	
1-Aug-08	FL	
1-Sep-08	FL	
1-Sep-08	FL	
1-Apr-02	FL	
1-May-02	FL	
30-Sep-05	FL	
1-Jan-06	FL	

ASSUMPTIONS

1) The percentage intrastate usage charges of total usage is the same for manual invoices as for electronic invoices.
2) The percentage variance when applying the contract rate is the same for manual invoices as for electronic invoices.
3) Applied the AT&T - TW Telecom agreement rates.
4) No rates provided for September 2003 through February 2004; used previous period's rates; will update once actual rate is received.
5) TW Telecom bills multiple states on an invoice; for BAN C1253XXFGB301 a FL intrastate percentage was created by looking at the month before & month after.
That percentage is then aplied to the Face Page amount to derive an intrastate amount.
Because of minimal billing on the remaining FL BAN, an average of all the FL intrastate was calculated and then applied to the Face Page Amount to derive an intrastate amount.

DENNIS L. WEISMAN

Department of Economics, Kansas State University
Waters Hall, Manhattan, Kansas 66506-4001
(785) 532-4588 (Office), (785) 539-7225 (Fax)
(785) 539-7071 (Home)
weisman@ksu.edu (e-mail)

EDUCATION:

1993	Ph.D.,	Economics, University of Florida
1981	M.A.,	Economics, University of Colorado
1979	B.A.,	Economics and Mathematics, University of Colorado

PROFESSIONAL EXPERIENCE:

1993 - Present Kansas State University:

Professor of Economics (2000 – Present)
Associate Professor of Economics (1996 – 2000)
Assistant Professor of Economics (1993 – 1996)

1989 - 1993 SBC Communications Inc. (now AT&T):

Director – Strategic Marketing
Director – Special Project with Florida Public Service Commission

1982 - 1989 Southwestern Bell Telephone Company – Demand Analysis:

District Manager
Staff Manager
Staff Specialist
Assistant Staff Manager

OTHER POSITIONS HELD:

2008 – Present Board of Academic Advisors, The Free State Foundation.

2007 – 2008 Co-Guest Editor, Symposium Commemorating the Economic and Public Policy Contributions of Professor Alfred E. Kahn on the Occasion of His 90th Birthday, *The Review of Network Economics*, 2008.

2007 – 2008 Program Committee Member, International Telecommunications Society.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 69
PARTY Qwest Communications Co., LLC (QCC) - Direct
DESCRIPTION Dennis L. Weisman (DLW-1) (Direct))

OTHER POSITIONS HELD (CONTINUED):

2005 – 2006	Regulatory Framework Working Group, Digital Age Communications Act (DACA) Project, Progress and Freedom Foundation.
2004 – 2005	Chairperson, Site Council, Frank V. Bergman Elementary School.
2003 – 2006	Advisory Board, The Institute for Regulatory Law and Economics.
2002 – 2003	Guest Editor, Symposium on Incentive Regulation, *The Review of Network Economics*, Vol. 2(4), December 2003.
2000 - 2003	Dean's Advisory Council On Tenure and Promotion in Arts and Sciences.
1998 - 2005	Associated Faculty Member, Center For Research In Regulated Industries, Rutgers University.
1990 - 1992	Research Fellow, Public Utility Research Center, University of Florida.

PUBLICATIONS:

"An Instructional Exercise in Price Controls: Product Quality, Misallocation, and Public Policy." *Journal of Industrial Organization Education* (with S. Sanders and M. Moundigbaye), forthcoming.

"An Essay On The Art and Science of Teaching." *The American Economist*, Spring 2012, Vol. 57(1), pp. 111-125.

"Regulating Regulators in Transitionally Competitive Markets." *Journal of Regulatory Economics,* February 2012, Vol. 41(1), pp. 19-40 (with D. Sappington).

"Effective Market Shares and Antitrust." *The Antitrust Bulletin*, Vol. 56(1), Spring 2011, pp. 139-163.

"A Note On Sibling Rivalry and Good-Kid, Bad-Kid Equilibria." *Applied Economics Letters*, Vol. 18(16), 2011, pp. 1559-1563.

"A Note on Subsidy-Free Prices and Scope Economies." *Applied Economics Letters*, Vol. 18(15), 2011, pp. 1463-1468.

"Why Preferences in College Admissions May Yield a More-Able Student Body." *Economics of Education Review*, Vol. 30, 2011, pp. 724-728 (with D. Li).

PUBLICATIONS (CONTINUED):

"Market Power in U.S. Broadband Services." *Review of Industrial Organization*, Vol. 38(2), 2011, pp. 151-171 (with T. Hazlett).

"Price Discrimination, Two-Sided Markets and Net Neutrality Regulation." *Tulane Journal of Technology and Intellectual Property*, Vol. 13, Fall 2010, pp. 81-102 (with R. Kulick).

"A 'Principled' Approach to the Design of Telecommunications Policy." *Journal of Competiton Law & Economics*, Vol. 6(4), December 2010, pp. 927-956.

"Price Cap Regulation: What Have We Learned from Twenty-Five Years of Experience in the Telecommunications Industry?" *Journal of Regulatory Economics*, Vol. 38(3), December 2010, pp. 227-257 (with D. Sappington).

"Optimal Price Allocations in Two-Sided Markets." *The Review of Network Economics*, Vol. 9(3), Article 5, September 2010, pp. 1-8.

"Productivity Growth and Merger Efficiencies in the U.S. Wireline Telecommunications Industry." *Review of Industrial Organization*, Vol. 36(3), May 2010, pp. 271-294 (with A. Featherstone, Y. Gao and D. Seo).

"The Dominant Firm Revisited." *Journal of Competition Law & Economics*, Vol. 5(3), September 2009, pp. 517-536 (with T. Tardiff).

"Designing Competition Policy for Telecommunications." *The Review of Network Economics*, Vol. 7(4), December 2008, pp. 509-546 (with G. Robinson).

"Child Safety Seats On Commercial Airliners: A Demonstration of Cross-Price Elasticities." *The Journal of Economic Education*, Vol. 39(2), Spring 2008, pp. 135-144 (with D. Li and S. Sanders).

"Market Power Measurement for Multi-Market Dominant Firms." *The Antitrust Bulletin*, Vol. 52(2), Summer 2007, pp. 169-178.

"Are Input Prices Irrelevant for Make-or-Buy Decisions?" *Journal of Regulatory Economics*, Vol. 32(2), October 2007, pp. 195-207 (with P. Gayle).

"Efficiency Trade-offs in the Design of Competition Policy for the Telecommunications Industry." *The Review of Network Economics*, Vol. 6(3), September 2007, pp. 297-317 (with P. Gayle).

PUBLICATIONS (CONTINUED):

"An Instructional Exercise in Cost-Raising Strategies and Perfect Complements Production." *The Journal of Economic Education*, Vol. 38(2), 2007, pp. 215-221.

"Market Concentration, Multi-Market Participation and Antitrust." *Research In Law and Economics: A Journal of Policy*, Volume 22, Spring 2007, pp. 233-257.

"When Can Regulation Defer to Competition for Constraining Market Power?: Complements and Critical Elasticities." *Journal of Competition Law & Economics*, Vol. 2(1), March 2006, pp. 101-112.

"Assessing Market Power: Market Concentration and Multi-Market Participation." *Journal of Competition Law & Economics*, Vol. 1(2), 2005, pp. 339-354.

"Market Concentration, Multi-Market Participation and Mergers In Network Industries." *The Review of Network Economics*, Vol. 4(2), June 2005, pp. 129-141.

"Sibling Rivalry and Strategic Parental Transfers." *Southern Economic Journal*, Vol. 71(4), April 2005, pp. 821-836 (with Y-M. Chang).

"Self-Sabotage." *Journal of Regulatory Economics*, Vol. 27(2), March 2005, pp. 155-175 (with D. Sappington).

"Price Regulation and Quality." *Information Economics and Policy*, Vol. 17(2), March 2005, pp. 165-174.

"Competition Policy, Parity Regulation and Self-Sabotage." *Info*, Vol. 6(1), 2004, pp. 52-56 (with D. Sappington).

"A Generalized Pricing Rule For Multi-Market Cournot Oligopoly." *Economics Letters*, Vol. 81(1), October 2003, pp. 95-99.

"Accommodative Competitive Entry Policies and Telecommunications Regulation." *info*, Vol. 5(1), Spring 2003, pp. 34-40 (with M. Kolesar).

"Incentives For Non-Price Discrimination." *Information Economics and Policy*, Vol. 15(2), June 2003, pp. 147-171 (with I. Kondaurova).

"Efficiency as a Discovery Process: Why Enhanced Incentives Outperform Regulatory Mandates." *The Electricity Journal*, Vol. 16(1), January/February 2003, pp. 55-62 (with J. Pfeifenberger).

PUBLICATIONS (CONTINUED):

"Is There *'Hope'* For Price Cap Regulation?" *Information Economics and Policy*, Vol. 14(3), September 2002, pp. 349-370.

"Did The High Court Reach An Economic Low in *Verizon v. FCC*?" *The Review of Network Economics*, Vol. 1(2), September 2002, pp. 90-105.

"The Law and Economics of Price Floors In Regulated Industries." *The Antitrust Bulletin*, Vol. XLVII(1), Spring 2002, pp. 107-131.

"Strategic Sharing In Regulatory Regimes." *Economics Letters*, Vol. 75(3), May 2002, pp. 361-367.

"Incentives For Discrimination When Upstream Monopolists Participate In Downstream Markets." *Journal of Regulatory Economics*, Vol. 20(2), September 2001, pp. 125-139 (with J. Kang).

"Access Pricing and Exclusionary Behavior." *Economics Letters*, Vol. 72(1), 2001, pp. 121-126.

"Simulating The Effects of Railroad Mergers." *Southern Economic Journal*, Vol. 67(4), 2001, pp. 938-953 (with M. Babcock, J. Park and K. Lemke).

"The Costs and Benefits of Long-Distance Entry: Regulation and Non-Price Discrimination." *Review of Industrial Organization*, Vol. 18, 2001, pp. 275-282 (with M. Williams).

"The (In)Efficiency of the 'Efficient-Firm' Cost Standard." *The Antitrust Bulletin*, Vol. XLV(1), Spring, 2000, pp. 195-211.

"The Political Economy of Price Cap Regulation." *Review of Industrial Organization*, Vol. 16, June 2000, pp. 343-356 (with D. Lehman).

"Do Consumers Benefit From Tighter Price Cap Regulation?" *Economics Letters*, Vol. 67, 2000, pp. 113-119 (with J. Kang and M. Zhang).

"The 1996 Telecommunications Act At Three Years: An Economic Evaluation of Its Implementation By The FCC." *Information Economics and Policy*, Vol. 11(4), December 1999, pp. 319-365 (with A. Kahn and T. Tardiff).

PUBLICATIONS (CONTINUED):

"Will Competitors Be Allowed To Compete? The Regulation of Long-Term Contracts in the Telecommunications Industry." *info*, Vol. 1(5), October 1999, pp. 441-447 (with A. Kleit).

"Footprints In Cyberspace: Toward A Theory of Mergers In Network Industries." i*nfo*, Vol. 1(4), August 1999, pp. 305-308.

"Raising Rivals' Costs: Entry of an Upstream Monopolist into Downstream Markets." *Information Economics and Policy*, Vol. 10(4), December 1998, pp. 551-570 (with D. Sibley).

"The Incentive To Discriminate By A Vertically-Integrated Regulated Firm: A Reply." *Journal of Regulatory Economics*, Vol. 14(1), July 1998, pp. 87-91.

"The Economics of Access Pricing, Imputation, and Essential Facilities With Application To Telecommunications." *Communication Law and Policy*, Vol. 3(1), January 1998, pp.1-33 (with A. Larson).

"The Competitive Incentives of Vertically Integrated Local Exchange Carriers: An Economic and Policy Analysis." *Journal of Policy Analysis and Management*, Vol. 17(1), Winter 1998, pp. 74-93 (with D. Sibley).

"Opportunities vs. Incentives To Discriminate In The U.S. Telecommunications Industry." *Telecommunications Policy*, Vol. 21(4), May 1997, pp. 309-316 (with M. Zhang).

"Revenue Sharing In Incentive Regulation Plans." *Information Economics and Policy*, Vol. 8, 1996, pp. 229-248 (with D. Sappington).

"A Note On Price Cap Regulation and Competition." *Review of Industrial Organization*, Vol. 11(4), August 1996, pp. 459-479 (with L. Taylor).

"Telephone Pools and Economic Incentives." *Journal of Regulatory Economics*, Vol. 10, September 1996, pp. 123-146 (with D. Lehman).

"Potential Pitfalls in Empirical Investigations of the Effects of Incentive Regulation Plans in The Telecommunications Industry." *Information Economics and Policy*, Vol. 8, 1996, pp. 125-140 (with D. Sappington).

PUBLICATIONS (CONTINUED):

"The Effects of Incentive Regulation In The Telecommunications Industry: A Survey." *Journal of Regulatory Economics*, Vol. 9(3), May 1996, pp. 269-306 (with D. Kridel and D. Sappington). [Reprinted in ECONOMIC REGULATION, ed. by Paul Joskow, Northampton MA: Edward Elgar Publishing, 2000, pp. 602-639.]

"Regulation and the Vertically Integrated Firm: The Case of RBOC Entry Into InterLATA Long Distance." *Journal of Regulatory Economics*, Vol. 8(3), November 1995, pp. 249-266.

"Why Less May Be More Under Price-Cap Regulation." *Journal of Regulatory Economics*, Vol. 6(4), December 1994, pp. 339-362.

"Asymmetrical Regulation." *Telecommunications Policy*, Vol. 18(7), October 1994, pp. 499-505.

"Designing Carrier of Last Resort Obligations." *Information Economics and Policy*, Vol. 6(2), June 1994, pp. 97-119.

"Designing Superior Incentive Regulation: Modifying Plans to Preclude Recontracting and Promote Performance." *Public Utilities Fortnightly*, Vol. 132(5), March 1, 1994, pp. 27-32 (with D. Sappington).

"Designing Superior Incentive Regulation: Accounting for All of the Incentives All of the Time." *Public Utilities Fortnightly*, Vol. 132(4), February 15, 1994, pp. 12-15 (with D. Sappington).

"Why Employer Discretion May Lead To More Effective Affirmative Action Policies." *Journal of Policy Analysis and Management*, Vol. 13(1), Winter 1994, pp. 157-162.

"Superior Regulatory Regimes in Theory and Practice." *Journal of Regulatory Economics*, Vol. 5(4), December 1993, pp. 355-366.

"Option Value, Telecommunications Demand and Policy." *Information Economics and Policy*, Vol. 5(2), June 1993, pp. 125-144 (with D. Lehman and D. Kridel).

"The Industry That Cried 'Wolf': Telcos and Bypass: Past, Present, and Future." *Public Utilities Fortnightly*, Vol. 131(13), July 1, 1993, pp. 21-24; and "Reply," Vol. 131(17), September 15, 1993, pp. 5-6 (with D. Lehman).

"Dominance, Non-Dominance and the Public Interest in Telecommunications Regulation." *Telecommunications Policy*, Vol. 17(2), March 1993, pp. 98-106 (with J. Haring).

PUBLICATIONS (CONTINUED):

"Imputation Rules in Regulated Industries: The Case of Telecommunications." *Telecommunications Policy*, Vol. 17(1), January 1993, pp. 49-60 (with L. Gapenski).

"A Guide to Cross-Subsidization and Price Predation: Ten Myths." *Telecommunications Policy*, Vol. 16(6), August 1992, pp. 447-459 (with S. Berg).

"A Note On First-Best Marginal Cost Measures In Public Enterprise." *Energy Economics*, Vol. 13(4), October 1991, pp. 250-253.

"How Cost Allocation Systems Can Lead Managers Astray." *Journal of Cost Management*, Vol. 5(1), Spring 1991, pp. 4-10.

"Option Value And Telecommunications Pricing." *Telecommunications Journal*, Vol. 57(12), December 1990, pp. 840-845.

"Forecasting Competitive Entry: The Case of Bypass Adoption In Telecommunications." *International Journal of Forecasting*, Vol. 6(1), Fall 1990, pp. 65-74 (with D. Kridel).

"The Emerging Market For Faultless Telecommunications." *Telecommunications Policy*, Vol. 14(4), August 1990, pp. 333-342.

"The Proliferation of Private Networks And Its Implications For Regulatory Reform." *Federal Communications Law Journal*, Vol. 41(3), July 1989, pp. 331-367.

"Optimal Re-contracting, Market Risk And The Regulated Firm In Competitive Transition." *Research in Law and Economics*, Vol. 12, 1989, pp. 153-172.

"Competitive Markets And Carriers of Last Resort." *Public Utilities Fortnightly*, Vol. 124(1), July 6, 1989, pp. 17-24.

"Default Capacity Tariffs: Smoothing The Transitional Regulatory Asymmetries In The Telecommunications Market." *Yale Journal on Regulation*, Vol. 5(1), Winter 1988, pp. 149-178.

"Transition To Telecommunications Competition Amid Residual Regulatory Obligations." *Public Utilities Fortnightly*, Vol. 120(3), August 6, 1987, pp. 14-18.

"In Search of Industry Unity On Carrier Access Pricing: A Vision of The Future." *Telematics*, Vol. 4(6), June 1987, pp. 1-7.

PUBLICATIONS (CONTINUED):

"Competition In U.S. Telecommunications." *Telecommunications Policy*, Vol. 11(1), March 1987, pp. 82-86 (with D. Kridel).

"Throttling Competition: A Reply." *Telecommunications Policy*, Vol. 10(3), September 1986, pp. 271-272 (with B. Egan).

"The Telecommunications Industry In Transition: Bypass, Regulation and the Public Interest." *Telecommunications Policy*, Vol. 10(2), June 1986, pp. 164-176 (with B. Egan).

"Tobin on Keynes: A Suggested Interpretation." *Journal of Post-Keynesian Economics*, Vol. 6(3), Spring 1984, pp. 411-420.

BOOKS AND MONOGRAPHS:

PRINCIPLES OF REGULATION AND COMPETITION POLICY FOR THE TELECOMMUNICATIONS INDUSTRY - A Guide For Policymakers. The Center for Applied Economics, KU School of Business, Technical Report 06-0525, 2006.

THE TELECOMMUNICATIONS ACT OF 1996: THE "COSTS" OF MANAGED COMPETITION. Washington D.C.: American Enterprise Institute and New York: Kluwer Academic Publishers, 2000 (with D. Lehman).

DESIGNING INCENTIVE REGULATION FOR THE TELECOMMUNICATIONS INDUSTRY. Washington D.C.: American Enterprise Institute and Cambridge MA: MIT Press, 1996 (with D. Sappington).

BOOK CHAPTERS:

"Lessons for Modern Regulators from Hippocrates, Schumpeter and Kahn" In NEW DIRECTIONS IN COMMUNICATIONS POLICY, ed. by Randolph J. May, Durham, NC: Carolina Academic Press, 2009, pp. 3-37 (with G. Robinson).

"Vertical Integration In Telecommunications" In THE INTERNATIONAL HANDBOOK OF TELECOMMUNICATIONS ECONOMICS, ed. by Gary Madden and Scott J. Savage, Northampton MA: Edward Elgar Publishing, 2003, pp. 232-255.

"Regulatory Moral Hazard: Price Caps and Endogenous Entry Under the 1996 Telecommunications Act," In EXPANDING COMPETITION IN REGULATED INDUSTRIES, ed. by Michael A. Crew, Boston, MA: Kluwer Academic Publishers, 2000, pp. 1-21.

BOOK CHAPTERS (CONTINUED):

"A Yardstick Approach To Optimal Access Pricing," In TELECOMMUNICATIONS TRANSFORMATION: TECHNOLOGY, STRATEGY, AND POLICY, ed. by E. Bohlin and S. L. Levin, Amsterdam: IOS Press, 1998, pp. 175-188 (with D. Lehman).

"Seven Myths About Incentive Regulation," In PRICING AND REGULATORY INNOVATIONS UNDER INCREASING COMPETITION AND OTHER ESSAYS, ed. by Michael A. Crew, Boston: Kluwer Academic Publishers, 1996, pp. 1-19 (with D. Sappington).

"Access Charges For Private Networks Interconnecting With Public Systems," In PRIVATE NETWORKS PUBLIC OBJECTIVES, ed. by Eli Noam and Áine NíShúilleabháin, Amsterdam: Elsevier Science Publishers, 1996, pp. 209-227, (with D. Lehman).

"Pricing Trends In Telecommunications Since Divestiture," In AFTER THE BREAKUP: ASSESSING THE NEW POST AT&T DIVESTITURE ERA, ed. by Barry G. Colc. New York: Columbia University Press, 1991, pp. 218-224.

"A General Theory of Point-to-Point Long Distance Demand," In TELECOMMUNICATIONS DEMAND MODELING: AN INTEGRATED VIEW, ed. by Alain De Fontenay, Mary. H. Shugard and David S. Sibley. New York: North-Holland, 1990, pp. 299-318 (with D. Lehman and A. Larson).

"Protecting The Right To Be Served By Regulated Utilities Subject To Competition: A Critical Assessment," In *Retrofit Opportunities For Energy Management and Cogeneration*, PROCEEDINGS OF THE 11TH WORLD ENERGY ENGINEERING CONGRESS, 1989, pp. 555-564.

"The Impact of Telecommunications Regulation On The Economics of Private Network Deployment," PROCEEDINGS OF THE NATIONAL COMMUNICATIONS FORUM, Vol. 42(1), 1988, pp. 558-571.

BOOK REVIEWS:

Review of Blackmon's INCENTIVE REGULATION AND THE REGULATION OF INCENTIVES, *Review of Industrial Organization*, Vol. 11, No. 4, August 1996, pp. 563-566.

OTHER PUBLICATIONS:

"Eliminating Racial Preferences in College Admissions." *The Economists' Voice*, Vol. 9(1), 2012, Article 1, June 2012, pp. 1-3 (with G. Robinson).

OTHER PUBLICATIONS (CONTINUED):

"The 'Third Way' for Broadband Regulation: Goldilocks or the Big Bad Wolf?" The Free State Foundation, *Perspectives from FSF Scholars*, June 9, 2010, Vol. 5(16). http://www.freestatefoundation.org/images/The_Third_Way_for_Broadband_Regulation_060810.pdf.

"Guest Editor's Foreword." Symposium Commemorating the Contributions of Alfred E. Kahn. *The Review of Network Economics*, Vol. 7(4), December 2008, pp. 448-459 (with T. Tardiff).

"On Market Power and the Power of Markets: A Schumpeterian View of Dynamic Industries." The Free State Foundation, *Perspectives from FSF Scholars*, February 26, 2008, Vol. 3(5). http://www.freestatefoundation.org/images/Power_of_Markets.pdf.

"Guest Editor's Foreword." Symposium on Incentive Regulation. *The Review of Network Economics*, Vol. 2(4), December 2003, pp. 287-288.

WORK IN PROGRESS:

"The Use and Abuse of Competition Law Principles for Regulatory Forbearance."

"Safe Harbor Input Prices and Market Exclusion."

"On *Goldilocks* Input Prices and Exclusionary Conduct."

"The Law and Economics of Vertical Integration and Exclusionary Conduct."

TESTIMONY AND AFFIDAVITS:

Alberta Utilities Commission

Arkansas Public Service Commission

California Public Utilities Commission

Canadian Radio-Television and Telecommunications Commission

Colorado Public Utilities Commission

Federal Communications Commission

Kansas Corporation Commission

Kansas State Legislature (Commerce Committee)

Missouri Public Service Commission

TESTIMONY AND AFFIDAVITS (CONTINUED):

Texas Public Utilities Commission

United States Court of Appeals for the District of Columbia

United States Supreme Court (Research Citation)

INVITED PRESENTATIONS:

"Telecommunications: Assessing The Lessons from the 1996 Telecommunications Act," Deregulation Revisited: A Tribute to Fred Kahn. University of Colorado Law School, Boulder, Colorado, September 2008.

"Properly Structured Incentive Plans." Missouri Public Service Commission, Electric Roundtable Discussion Group. Jefferson City, Missouri, December 2001.

"Regulatory Moral Hazard: Price Caps and Endogenous Entry Under the 1996 Telecommunications Act." Competitive Entry In Regulated Industries. Center For Research In Regulated Industries, Rutgers University, Newark, New Jersey, May 2000.

"The Telecommunications Act of 1996: The 'Costs' of Managed Competition." American Enterprise Institute, Washington D.C., September 1999 (with D. Lehman).

"Vertical Integration and Exclusionary Behavior in Network Industries." The Rutgers University 12th Annual Western Conference of the Advanced Workshop In Regulation and Competition, San Diego, California, July 1999.

"The Political Economy of Price Cap Regulation." The Rutgers University 11th Annual Western Conference of the Advanced Workshop In Regulation and Competition, Monterey, California, July 1998.

"Regulation and Common Costs: Estimation versus Allocation – A Discussion." Pricing and Costing A Competitive Local Telecommunications Network. American Enterprise Institute, Washington D.C., November 1997.

"Does Tighter Price Cap Regulation Increase Consumer Welfare?" The Rutgers University 10th Annual Western Conference of the Advanced Workshop In Regulation and Public Utility Economics, San Diego, California, July 1997.

"Competition, Incentive Regulation, and Strategic Behavior Under The 1996 Telecommunications Act." Utility Regulation And Strategy: The Basics Revisited. Conference sponsored by the Public Utility Research Center at the University of Florida, Gainesville, Florida, February 1997.

INVITED PRESENTATIONS (CONTINUED):

"Competitive Incentives of Vertically Integrated Local Exchange Carriers." Twenty-Third Annual Telecommunications Policy Research Conference. Solomons, Maryland, October 1995; and The Rutgers University 9th Annual Western Conference of the Advanced Workshop In Regulation and Public Utility Economics, San Diego, California, July 1996.

"Seven Myths About Incentive Regulation." Pricing and Regulatory Innovations Under Increasing Competition. Conference sponsored by the Center for Research in Regulated Industries, Rutgers University, Newark, New Jersey, October 1995.

"Strategic Behavior of the Vertically Integrated Firm: The Case of RBOC Entry Into InterLATA Long Distance." The Rutgers University 8th Annual Western Conference of the Advanced Workshop In Regulation and Public Utility Economics, San Diego, California, July 1995.

"The Promise and Pitfalls of Incentive Regulation." Market and Technological Convergence: Implications For Regulation. Conference sponsored by the Public Utility Research Center at the University of Florida, Gainesville, Florida, April 1995.

"Potential Pitfalls in Empirical Investigations of the Effects of Incentive Regulation Plans in The Telecommunications Industry." Telecommunications Infrastructure and the Information Economy: Interaction Between Public Policy and Corporate Strategy. Conference sponsored by the School of Business at the University of Michigan, Ann Arbor, Michigan, March 1995.

"Designing Incentive Regulation For The Telecommunications Industry." American Enterprise Institute, Washington D.C., March 1995 (with D. Sappington).

British Broadcasting Corporation (BBC) Radio Interview with Dan Corry of the Institute For Public Policy Research, London, England. Documentary. "Analysis: The Regulatory State?" October 23, 1994.

"Designing Carrier of Last Resort Obligations." The Rutgers University 7th Annual Western Conference of the Advanced Workshop in Regulation and Public Utility Economics, San Diego, California, July 1994.

"Incentive Regulation: Lessons From Telecommunications." Innovative Incentive Rate Regulation for a Competitive Electric Utility Industry. Conference co-sponsored by the Center for Regulatory Studies and the Institute of Government and Public Affairs. Chicago, Illinois, April 1994.

INVITED PRESENTATIONS (CONTINUED):

"Why Less May Be More Under Price Cap Regulation." Twenty-First Annual Telecommunications Policy Research Conference. Solomons, Maryland, October 1993; and The Rutgers University 12th Annual Eastern Conference of the Advanced Workshop in Regulation and Public Utility Economics, Brewster, Cape Cod, Massachusetts, May 1993.

"Managed Competition In Telecommunications." Regulation and Planning In A Market Economy. Conference sponsored by the Public Utility Research Center, University of Florida. Gainesville, Florida, April 1993.

"Cross-Subsidization and Price Predation in Public Enterprise;" and "Incentive Regulation: Theory and Practice." Southeastern Regional Business and Economics Utilities Conference, Atlanta, Georgia, September 1991.

"Post-Divestiture Pricing Trends In The Telecommunications Industry." Divestiture: Five Years Later. Conference sponsored by the Center for Telecommunications and Information Studies at Columbia University, Washington, D.C., March 1989.

"The Impact of Telecommunications Regulation On The Economic Incentives of Private Network Deployment." National Communications Forum, Chicago, Illinois, October 1988.

"Protecting The Right To Be Served By Regulated Utilities Subject To Competition: A Critical Assessment." 11th World Engineering Congress, Atlanta, Georgia, October 1988.

"Default Capacity Tariffs: Smoothing The Transitional Regulatory Asymmetries In The Telecommunications Marketplace." Fifteenth Annual Telecommunications Policy Research Conference, Airlie, Virginia, November 1987.

"Traffic Sensitive Costs, Bypass and Pricing For Carrier of Last Resort." Bell Communications Research Conference on Traffic Sensitive Cost Recovery. Seattle, Washington, July 1986.

"Forecasting Bypass Adoption In Telecommunications." National Forecasting Conference, Denver, Colorado, June 1985.

"A General Theory of Point-to-Point Long Distance Demand." Bell Communications Research Business Research Conference, Durango, Colorado, October 1984.

HONORS, AWARDS, AND GRANTS:

2008	MBA Student's Professor of the Semester (First Time Award Presented to a Faculty Member Outside the College of Business Administration)
2004 – 2005	Center for Applied Economics Grant (Principal Investigator)
2004	Edgar S. Bagley Research Award
2001	Edgar S. Bagley Research Award
1999 – 2000	American Enterprise Institute Grant (Co-Principal Investigator)
1996	William L. Stamey Teaching Award
1995	Edgar S. Bagley Research Award
1993	First-Place (Shared) In Graduate Student Paper Competition, Twenty-First Annual Telecommunications Policy Research Conference
1990 – 1993	Florida Public Service Commission Grant to the Public Utility Research Center at the University of Florida (Co-Principal Investigator)
1984 – 1993	Designated Very High Potential Manager, SBC Communications
1991	First-Place In Paper Competition sponsored by Public Utilities Reports, Inc., Southeastern Business and Economics Utilities Conference (with S. Berg)
1991	University of Florida Research Fellowship
1989	Management Stock Award, Southwestern Bell Corporation
1979	B.A. Conferred with High Honors
1971	Eagle Scout Award

EDITOR AND EDITORIAL BOARD SERVICE:

2009 – Present	The Review of Network Economics	(Editor)
1997 – Present	Journal of Regulatory Economics	(Editorial Board)
1996 – Present	Information Economics and Policy	(Editorial Board)
2003 – 2009	The Review of Network Economics	(Editorial Board)

REFEREE/REVIEWER FOR:

Addison-Wesley
American Economic Review
Applied Stochastic Models in Business and Industry
Cambridge University Press
Contemporary Economic Policy
Eastern Economic Journal
Economic Inquiry
Economics Letters
Edward Elgar Publishing
Empirical Economics
Encyclopedia of Energy Engineering and Technology
Energy Studies Review
Information Economics and Policy
International Economics and Economic Policy
International Journal of Industrial Organization
International Tax and Public Finance
Journal of Competition Law & Economics
Journal of Economic Behavior and Organization
Journal of Economic Education
Journal of Economics
Journal of Economics and Business
Journal of Industrial Economics
Journal of Public Economics
Journal of Industry, Competition and Trade
Journal of Productivity Analysis
Journal of Regulatory Economics
Kluwer Academic Publishers
McGraw-Hill
MIT Press
Oxford Economic Papers
Review of Industrial Organization
Southern Economic Journal
Springer Science + Business Media LLC
Telecommunications Policy
Telecommunications Systems
The Antitrust Bulletin
The Energy Journal
The Journal of Law, Economics, & Organization
The Review of Economics and Statistics
The Review of Network Economics
World Scientific

Curriculum Vitae of Don J. Wood

914 Stream Valley Trail, Alpharetta, Georgia 30022
770.475.9971, don.wood@woodandwood.net

CURRENT EMPLOYMENT

Don J. Wood is a principal in the firm of Wood & Wood. He provides economic, financial, and regulatory analysis services in technology-driven industries, specializing in economic policy related to the development of competitive markets, cost of service issues, and the calculation of financial damages. In addition, Mr. Wood advises industry associations on regulatory and economic policy and assists investors in their evaluation of investment opportunities.

In the area of administrative law, Mr. Wood has presented testimony before the regulatory bodies of forty-three states, the District of Columbia, and Puerto Rico, and has prepared comments and testimony for filing with the Federal Communications Commission. The subject matter of his testimony has ranged from broad policy issues to detailed cost and rate analysis.

Mr. Wood has also presented testimony in state, federal, and overseas courts regarding business plans and strategies, competition policy, intercarrier compensation disputes, and cost of service issues. He has presented studies of the damages incurred by plaintiffs and has provided rebuttal testimony to damage calculations performed by others. Mr. Wood has also testified in alternative dispute resolution proceedings conducted pursuant to both AAA and CPR rules.

Mr. Wood is an experienced commercial mediator and is registered as a neutral with the Georgia Office of Dispute Resolution.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 70
PARTY TW Telecom of FL, I.P. (CLEC GROUP) (Direct and Rebuttal)
DESCRIPTION Don J. Wood (DJW-1) (Direct)

PREVIOUS EMPLOYMENT

Klick, Kent & Allen/FTI Consulting, Inc.
Regional Director.

GDS Associates, Inc.
Senior Project Manager.

MCI Telecommunications Corporation
Manager of Regulatory Analysis, Southeast Division.
Manager, Corporate Economic Analysis and Regulatory Affairs.

BellSouth Services, Inc.
Staff Manager.

Georgia Power Company/Southern Company Services, Inc.
Generating Plant Construction cost analyst and scheduler.

EDUCATION

Emory University, Atlanta, Ga.
BBA in Finance, with Distinction (1985).

College of William and Mary, Williamsburg, Va.
MBA, with concentrations in Finance and Microeconomics (1987).

TESTIMONY - STATE REGULATORY COMMISSIONS:

Alabama Public Service Commission

Docket No. 19356, Phase III: Alabama Public Service Commission vs. All Telephone Companies Operating in Alabama, and Docket 21455: AT&T Communications of the South Central States, Inc., Applicant, Application for a Certificate of Public Convenience and Necessity to Provide Limited IntraLATA Telecommunications Service in the State of Alabama.

Docket No. 20895: In Re: Petition for Approval to Introduce Business Line Termination for MCI's 800 Service.

Docket No. 21071: In Re: Petition by South Central Bell for Introduction of Bidirectional Measured Service.

Docket No. 21067: In Re: Petition by South Central Bell to Offer Dial Back-Up Service and 2400 BPS Central Office Data Set for Use with PulseLink Public Packet Switching Network Service.

Docket No. 21378: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. 21865: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Introduce Network Services to be Offered as a Part of Open Network Architecture.

Docket No. 25703: In Re: In the Matter of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 25704: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated and CONTEL of the South, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996.

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Docket No. 26029: In Re: Generic Proceeding - Consideration of TELRIC Studies.

Docket No. 25980: Implementation of the Universal Support Requirements of Section 254 of the Telecommunications Act of 1996.

Docket No. 27091: Petition for Arbitration by ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 27821: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements.

Docket Nos. 27989 and 15957: BellSouth "Full Circle" Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions.

Docket No. 28841: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 29075: Petition of CenturyTel to Establish Wholesale Avoidable Cost Discount Rates for Resale of Local Exchange Service.

Docket No. 29054: IN RE: Implementation of the Federal Communications Commission's Triennial Review Order (Phase II – Local Switching for Mass Market Customers).

Docket No. 29172: Southern Public Communication Association, Complainant, and BellSouth Telecommunications, Inc., Defendant.

Docket No. 31176: Deltacom, Inc. v. KMC Data, LLC, Hypercube, LLC, and Hypercube Telecom LLC.

The Regulatory Commission of Alaska

Case No. U-02-039: In the Matter of Request by Alaska Digitel, LLC for Designation as a Carrier Eligible To Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

Case No. U-04-62: In the Matter of the Request by Alaska Wireless Communications, LLC For Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

Arkansas Public Service Commission

Docket No. 92-337-R: In the Matter of the Application for a Rule Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Public Utilities Commission of the State of California

Rulemaking 00-02-005: Order Instituting Rulemaking on the Commission's Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Service Provider Modems.

Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, 02-02-034, 02-03-002: Applications for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application No. 05-02-027: In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application No. 05-04-020: In the Matter of the Joint Application of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.

Public Utilities Commission of the State of Colorado

Docket No. 96A-345T: In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Mountain States, Inc., and US West Communications, Inc., Pursuant to 47 U.S.C. Section 252. Docket No. 96A-366T: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West Communications, Inc. (consolidated).

Docket No. 96S-257T: In Re: The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc., with Advice Letter No. 2608 Regarding Proposed Rate Changes.

Docket No. 98F-146T: Colorado Payphone Association, Complainant, v. US West Communications, Inc., Respondent.

Docket No. 02A-276T: In the Matter of the Application of Wiggins Telephone Association for Approval of its Disaggregation Plan

Docket No. 02A-444T: In the Matter of NECC's Application to Redefine the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc., and Sunflower Telephone Co., Inc.

Docket No. 07A-153T: In the Matter of the Combined Application of N.E. Colorado Cellular, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Provider in Additional Areas of Colorado.

Docket No. 09a-107t: In the Matter of the Application of N.E. Colorado Cellular, Inc. D/B/A Viaero Wireless for Initial Receipt of Support From Colorado High Cost Support Mechanism for New Territories.

Docket No. 10R-191T: In the Matter of Proposed Rules Relating to the Colorado High Cost Support Mechanism Regulations 723-2.

State of Connecticut, Department of Utility Control

Docket 91-12-19: DPUC Review of Intrastate Telecommunications Services Open to Competition (Comments).

Docket No. 94-07-02: Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the Eight Criteria Set Forth in Section 6 of Public Act 94-83 (Comments).

Docket No. 03-11-16: Petition of Tel Comm Technologies, et. al., for Review and Amendment of Southern New England Telephone Company's Charges for Pay Telephone Access Services.

Delaware Public Service Commission

Docket No. 93-31T: In the Matter of the Application of The Diamond State Telephone Company for Establishment of Rules and Rates for the Provision of IntelliLinQ-PRI and IntelliLinQ-BRI.

Docket No. 41: In the Matter of the Development of Regulations for the Implementation of the

Telecommunications Technology Investment Act.

Docket No. 96-324: In the Matter of the Application of Bell Atlantic-Delaware, Inc. for Approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996 (Phase II).

Docket No. 02-001: In the Matter of the Inquiry into Verizon Delaware Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c).

Florida Public Service Commission

Docket No. 881257-TL: In Re: Proposed Tariff by Southern Bell to Introduce New Features for Digital ESSX Service, and to Provide Structural Changes for both ESSX Service and Digital ESSX Service.

Docket No. 880812-TP: In Re: Investigation into Equal Access Exchange Areas (EAEAs), Toll Monopoly Areas (TMAs), 1+ Restriction to the Local Exchange Companies (LECs), and Elimination of the Access Discount.

Docket No. 890183-TL: In Re: Generic Investigation into the Operations of Alternate Access Vendors.

Docket No. 870347-TI: In Re: Petition of AT&T Communications of the Southern States for Commission Forbearance from Earnings Regulation and Waiver of Rule 25-4.495(1) and 25-24.480 (1) (b), F.A.C., for a trial period.

Docket No. 900708-TL: In Re: Investigation of Methodology to Account for Access Charges in Local Exchange Company (LEC) Toll Pricing.

Docket No. 900633-TL: In Re: Development of Local Exchange Company Cost of Service Study Methodology.

Docket No. 910757-TP: In Re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies.

Docket No. 920260-TL: In Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization, Implementation Orders, and Other Relief.

Docket No. 950985-TP: In Re: Resolution of Petitions to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

Docket No. 960846-TP: In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a proposed agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 and Docket No. 960833-TP: In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 960847-TP and 960980-TP: In Re: Petition by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Service, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Inc. Concerning

Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 961230-TP: In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996.

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP: Investigation to develop permanent rates for certain unbundled network elements.

Docket No. 980696-TP: In Re: Determination of the cost of basic local telecommunications service, pursuant to Section 364.025 Florida Statutes.

Docket No. 990750-TP: Petition by ITC^DeltaCom Communications, Inc., d/b/a/ ITC^DeltaCom, for arbitration of certain unresolved issues in interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc.

Docket No. 991605-TP: Petition of BellSouth Telecommunications, Inc. for Arbitration of the Interconnection Agreement Between Time Warner Telecom of Florida, L.P., pursuant to Section 252 (b) of the Telecommunications Act of 1996.

Docket No. 030137-TP: In re: Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

Docket No. 030300-TP: In re: Petition for expedited review of BellSouth Telecommunications, Inc.'s intrastate tariffs for pay telephone access services (PTAS) rate with respect to rates for payphone line access, usage, and features, by Florida Public Telecommunications Association.

Docket No. 030851-TP: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 040353-TP: In Re: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered In Conjunction with its New Flat Rate Service Known as PreferredPack.

Docket No. 040604-TL: In Re: Adoption of the National School Lunch Program and an Income-based Criterion at or Below 135% of the Federal Poverty Guidelines as Eligibility Criteria for the Lifeline and Linkup Programs.

Docket No. 050119-TP: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC ("Joint Petitioners") objecting to and requesting suspension of Proposed Transit Traffic Service Tariff filed by BellSouth Telecommunications, Inc. and Docket No. 050125-TP: Petition and complaint for suspension and cancellation of Transit Tariff Service No. FL 2004-284 filed by BellSouth Telecommunications, Inc. by AT&T Communications of the Southern States, LLC (consolidated).

Docket No. 060598-TL: In Re: Petition by BellSouth Telecommunications, Inc., Pursuant to Florida

Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses.

Docket No. 060644-TL: Petition by Embarq Florida, Inc., Pursuant to Florida Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses.

Docket No. 060763-TL: In Re: Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay, by Embarq Florida, Inc.

Docket No. 090327-TP: In re: Petition of DeltaCom, Inc. for order determining DeltaCom, Inc. not liable for access charges of KMC Data LLC and Hypercube Telecom, LLC.

Docket No. 110087-TP: In re: Notice of the Adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT& T Florida d/b/a AT&T Southeast and Image Access, Inc. d/b/a New Phone, Inc. by Express Phone Service, Inc.

Georgia Public Service Commission

Docket No. 3882-U: In Re: Investigation into Incentive Telephone Regulation in Georgia.

Docket No. 3883-U: In Re: Investigation into the Level and Structure of Intrastate Access Charges.

Docket No. 3921-U: In Re: Compliance and Implementation of Senate Bill 524.

Docket No. 3905-U: In Re: Southern Bell Rule Nisi.

Docket No. 3995-U: In Re: IntraLATA Toll Competition.

Docket No. 4018-U: In Re: Review of Open Network Architecture (ONA) (Comments).

Docket No. 5258-U: In Re: Petition of BellSouth Telecommunications for Consideration and Approval of its "Georgians FIRST" (Price Caps) Proposal.

Docket No. 5825-U: In Re: The Creation of a Universal Access Fund as Required by the Telecommunications Competition and Development Act of 1995.

Docket No. 6801-U: In Re: Interconnection Negotiations Between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., Pursuant to Sections 251-252 and 271 of the Telecommunications Act of 1996.

Docket No. 6865-U: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Docket No. 7061-U: In Re: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services.

Docket No. 10692-U: In Re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements.

Docket No. 10854-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 16583-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 17749-U: In Re: FCC's Triennial Review Order Regarding the Impairment of Local Switching for Mass Market Customers.

Docket No. 22682-U: In Re: Notice of Merger of AT&T, Inc. and BellSouth Corporation together with its Certificated Georgia Subsidiaries.

Public Utilities Commission of Hawaii

Docket No. 7702: In the Matter of Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii.

Idaho Public Utilities Commission

Case No. GNR-T-03-08: In the Matter of the Petition of IAT Communications, Inc., d/b/a NTCDIdaho, Inc., or ClearTalk, for Designation as an Eligible Telecommunications Carrier, and Case No. GNR-T-03-16: In the Matter of the Application of NCPR, Inc., d/b/a Nextel Partners, seeking designation as an Eligible Telecommunications Carrier.

Illinois Commerce Commission

Docket No. 04-0653: USCOC of Illinois RSA #1, LLC., USCOC of Illinois RSA #4 LLC., USCOC of Illinois Rockford, LLC., and USCOC of Central Illinois, LLC. Petition for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. Section 214(e)(2).

Docket Nos. 05-0644, 05-0649, and 05-0657: Petition of Hamilton County Telephone Co-Op et. al. for Arbitration under the Telecommunications Act to Establish Terms and Conditions for Reciprocal Compensation with Verizon Wireless and its Constituent Companies.

Indiana Utility Regulatory Commission

Cause No. 42303: In the Matter of the Complaint of the Indiana Payphone Association for a Commission Determination of Just and Reasonable Rates and Charges and Compliance with Federal Regulations.

Cause No. 41052-ETC-43: In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders. In Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be Designated.

Cause No. 42530: In the Matter of the Indiana Utility Regulatory Commission's Investigation of Matters Related to Competition in the State of Indiana Pursuant to Ind. Code 8-1-2 *et seq*.

Iowa Utilities Board

Docket No. RPU-95-10.

Docket No. RPU-95-11.

State Corporation Commission of the State of Kansas

Docket No. 00-GIMT-1054-GIT: In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should Be Paid for Traffic to an Internet Service Provider.

Docket No. 04-RCCT-338-ETC:In the Matter of Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Docket No. 07-GIMT-498-GIT: In the Matter of a Review of the Commission's Federal USF Certification Requirements to Remove All Expenses and Investments by Competitive Eligible Telecommunications Carriers in a Southwestern Bell Telephone, L.P., Study Area from the Competitive Eligible Telecommunications Carrier's Justification of Use of High Cost Federal USF Support.

Docket No. 06-GIMT-187-GIT: IN the Matter of the General Investigation into the Commission's Telecommunications Billing Practices Standards.

Docket No. 11-CELZ-176-ETC: In the Matter of the Application of Cellco Partnership and Affiliates to Amend Eligible Telecommunications Carrier Designation Docket No. 11-CELZ-176-ETC in the State of Kansas.

Kentucky Public Service Commission

Administrative Case No. 10321: In the Matter of the Tariff Filing of South Central Bell Telephone Company to Establish and Offer Pulselink Service.

Administrative Case No. 323: In the Matter of An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

- Phase IA: Determination of whether intraLATA toll competition is in the public interest.
- Phase IB: Determination of a method of implementing intraLATA competition.
- Rehearing on issue of Imputation.

Administrative Case No. 90-256, Phase II: In the Matter of A Review of the Rates and Charges and Incentive Regulation Plan of South Central Bell Telephone Company.

Administrative Case No. 336: In the Matter of an Investigation into the Elimination of Switched Access Service Discounts and Adoption of Time of Day Switch Access Service Rates.

Administrative Case No. 91-250: In the Matter of South Central Bell Telephone Company's Proposed Area

Calling Service Tariff.

Administrative Case No. 96-431: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-478: In Re: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-482: In Re: The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Administrative Case No. 360: In the Matter of: An Inquiry into Universal Service and Funding Issues.

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Administrative Case No. 382: An Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements.

Case No. 2003-00143: In the Matter of: Petition of NCPR, Inc., d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky.

Case No. 2003-00397: Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements.

Case Nos. 2006-00215: Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and consolidated Case Nos. 2006-00217, 2006-00218, 2006-00220, 2006-00252, 2006-00255, 2006-00288, 2006-00292, 2006-00294, 2006-00296, 2006-00298, and 2006-00300.

Case No. 2008-00135: In the Matter of Complaint of Sprint Communications Company L.P. Against Brandenburg Telephone Company for the Unlawful Imposition of Access Charges.

Louisiana Public Service Commission

Docket No. 17970: In Re: Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of AT&T Communications of the South Central States, Inc., in its Louisiana Operations.

Docket No. U-17949: In the Matter of an Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of South Central Bell Telephone Company, Its Louisiana Intrastate Operations, The Appropriate Level of Access Charges, and All Matters Relevant to the Rates and Service Rendered by the Company.

- Subdocket A (SCB Earnings Phase)

- Subdocket B (Generic Competition Phase)

Docket No. 18913-U: In Re: South Central Bell's Request for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. U-18851: In Re: Petition for Elimination of Disparity in Access Tariff Rates.

Docket No. U-22022: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost Based Tariffed Rates and Docket No. U-22093: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms and Conditions for Such Service Offerings (consolidated).

Docket No. U-22145: In the Matter of Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271 (c) (2) (b) in order to verify compliance with section 271 and provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Docket No. U-20883 Subdocket A: In Re: Submission of the Louisiana Public Service Commission's Forward Looking Cost Study to the FCC for Purposes of Calculating Federal Universal Service Support.

Docket No. U-24206: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. U-22632: In Re: BellSouth Telecommunications, Inc. Filing of New Cost Studies for Providing Access Line Service for Customer Provided Public Telephones and Smartline Service for Public Telephone Access.

Docket No. Docket No. U-24714-A: In Re: Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates Pursuant to FCC 96-45 Ninth Report and Order and Order on Eighteenth Order on Reconsideration Released November 2, 1999.

Docket No. U-27571: In Re: Louisiana Public Service Commission Implementation of the Requirements Arising from The Federal Communications Commission's Triennial Review Order, Order 03-36: Unbundled Local Circuit Switching for Mass Market Customers and Establishment of a Batch Cut Migration Process.

Public Service Commission of Maryland

Case 8584, Phase II: In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Intrastate Telecommunications Services in Areas Served by C&P Telephone Company of Maryland.

Case 8715: In the Matter of the Inquiry into Alternative Forms of Regulating Telephone Companies.

Case 8731: In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996.

Massachusetts Department of Telecommunications and Energy

D.P.U./D.T.E. 97088/97-18 (Phase II): Investigation by the Department of Telecommunications & Energy on its own motion regarding (1) implementation of section 276 of the Telecommunications Act of 1996 relative to public interest payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Service, and (4) the rate policy for operator service providers.

Michigan Public Service Commission

Case No. U-14781: In the matter on the Commission's Own Motion to examine the total service long run incremental costs of the Michigan Exchange Carriers Association Companies, including Ace Telephone Company, Barry County Telephone Company, Deerfield Farmers' Telephone Company, Kaleva Telephone Company, Lennon telephone Company, Ogden telephone Company, Pigeon Telephone Company, Upper Peninsula Telephone Company, and Waldron Telephone Company.

Minnesota Public Utilities Commission

PUC Docket No. PT6153/AM-02-686, OAH Docket No. 3-2500-14980-2: In the Matter of Petition of Midwest Wireless Communications, LLC for Designation as an Eligible Communications carrier under 47 U.S.C. § 214(e)(2).

PUC Docket No. PT-6182, 6181/M-02-1503: In the Matter of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Mississippi Public Service Commission

Docket No. U-5086: In Re: MCI Telecommunications Corporation's Metered Use Service Option D (Prism I) and Option E (Prism II).

Docket No. U-5112: In Re: MCI Telecommunications Corporation's Metered Use Option H (800 Service).

Docket No. U-5318: In Re: Petition of MCI for Approval of MCI's Provision of Service to a Specific Commercial Banking Customers for Intrastate Interexchange Telecommunications Service.

Docket 89-UN-5453: In Re: Notice and Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan for its Mississippi Operations.

Docket No. 90-UA-0280: In Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition in the Telecommunications Industry and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies in Addition to Access Charges.

Docket No. 92-UA-0227: In Re: Order Implementing IntraLATA Competition.

Docket No. 96-AD-0559: In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 98-AD-035: Universal Service.

Docket No. 97-AD-544: In Re: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements.

Docket No. 2003-AD-714: Generic Proceeding to Review the Federal Communications Commission's Triennial Review Order.

Public Service Commission of the State of Missouri

Case No. TO-2004-0527: In the Matter of the Application of WWC License, LLC, d/b/a CellularOne, for Designation as an Eligible Telecommunications Carrier, and Petition for Redefinition of Rural Telephone Company Areas.

Case No. to-2005-0384: Application of USCOC of Greater Missouri, LLC For Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Public Service Commission of the State of Montana

Docket No. D2000.8.124: In the Matter of Touch America, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Terms and Conditions of Interconnection with Qwest Corporation, f/k/a US West Communications, Inc.

Docket No. D2000.6.89: In the Matter of Qwest Corporation's Application to Establish Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale Services.

Docket No. D2003.1.14: In the Matter of WWC Holding Co. Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation.

Docket No. D2007.7.86: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Ronan Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA; and Docket No. D.2007.7.87: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Hot Springs Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA (consolidated).

Nebraska Public Service Commission

Docket No. C-1385: In the Matter of a Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Midwest, Inc., and US West Communications, Inc.

Application No. C-3324: In the Matter of the Petition of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless

for designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Docket No. 3725: In the Matter of Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant To Section 214(e)(2) of the Communications Act of 1934.

Application No. C-4302: In the Matter of the Application of Cellco Partnership and its Subsidiaries and Affiliates to Amend Eligible Telecommunications Carrier Designation in the State of Nebraska.

Public Utilities Commission of Nevada

Docket No. 04-3030: In re: Application of WWD License LLC, d/b/a CellularOne, for redefinition of its service area as a designated Eligible Telecommunications Carrier.

Docket No. 08-12017: In the Matter of Commnet of Nevada, LLC, Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support.

Docket No. 10-09007: Application of Cellco Partnership and its Subsidiaries and Affiliates to Amend Eligible Telecommunications Carrier Designation in the State of Nevada.

New Jersey Board of Public Utilities

Docket No. TM0530189: In the Matter of the Joint Petition of Verizon Communications Inc., and MCI, Inc. for Approval of Merger.

New Mexico Public Regulation Commission

Case No. 10-00315-UT: In the Matter of the Application of Sacred Wind Communications, Inc., for Approval of Initial Rates, Terms and Conditions of Service for Support from the New Mexico Rural Universal Service Fund and Petition for Variance from Commission Rules.

New York Public Service Commission

Case No. 28425: Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgement and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State.

North Carolina Public Utilities Commission

Docket No. P-100, Sub 72: In the Matter of the Petition of AT&T to Amend Commission Rules Governing Regulation of Interexchange Carriers (Comments).

Docket No. P-141, Sub 19: In the Matter of the Application of MCI Telecommunications Corporation to Provide InterLATA Facilities-Based Telecommunications Services (Comments).

Docket No. P-55, Sub 1013: In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation.

Docket Nos. P-7, Sub 825 and P-10, Sub 479: In the Matter of Petition of Carolina Telephone and Telegraph and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5.

Docket No. P-19, Sub 277: In the Matter of Application of GTE South Incorporated for and Election of, Price Regulation.

Docket No. P-141, Sub 29: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. (consolidated).

Docket No. P-141, Sub 30: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc. (consolidated).

Docket No. P-100, Sub 133b: Re: In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133d: Re: Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

Docket No. P-100, Sub 84b: Re: In the Matter of Petition of North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services (Comments).

Docket No. P-561, Sub 10: BellSouth Telecommunications, Inc., Complainant, v. US LEC of North Carolina, LLC, and Metacomm, LLC, Respondents.

Docket No. P-472, Sub 15: In the Matter of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of North Carolina, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Docket Nos. P-7, Sub 995; P-10, Sub 633: ALEC., Inc. v. Carolina Telephone and Telegraph Company and Central Telephone Company.

Docket No. P-500, Sub 18: In the Matter of: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. P-118, Sub 30: In the matter of: Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133q: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Public Utilities Commission of Ohio

Case No. 93-487-TP-ALT: In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.

Case No. 05-0269-TP-ACO: In the matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. for Consent and Approval of a Change of Control.

Oklahoma Corporation Commission

Cause No. PUD 01448: In the Matter of the Application for an Order Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Cause No. PUD 200300195: Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200300239: Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200500122: In the matter of Dobson Cellular Systems, Inc., and American Cellular Corporation application for designation as a competitive eligible telecommunications carrier and redefinition of the service area requirement pursuant to Section 214(e) of the Telecommunications Act of 1996.

Public Utility Commission of Oregon

Docket No. UT 119: In the Matter of an Investigation into Tariffs Filed by US West Communications, Inc., United Telephone of the Northwest, Pacific Telecom, Inc., and GTE Northwest, Inc. in Accordance with ORS 759.185(4).

Docket No. ARB 3: In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996. Docket No. ARB 6: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (consolidated).

Docket No. ARB 9: In the Matter of the Petition of an Interconnection Agreement Between MCIMetro Access Transportation Services, Inc. and GTE Northwest Incorporated, Pursuant to 47 U.S.C. Section 252.

Docket No. UT-125: In the Matter of the Application of US West Communications, Inc. for an Increase in Revenues.

Docket No. UM 1083: RCC Minnesota, Inc. Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996.

Docket No. UM 1084: United States Cellular Corporation Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996.

Docket No. UM 1217: Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support.

Pennsylvania Public Utilities Commission

Docket No. I-00910010: In Re: Generic Investigation into the Current Provision of InterLATA Toll

Service.

Docket No. P-00930715: In Re: The Bell Telephone Company of Pennsylvania's Petition and Plan for Alternative Form of Regulation under Chapter 30.

Docket No. R-00943008: In Re: Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc. (Investigation of Proposed Promotional Offerings Tariff).

Docket No. M-00940587: In Re: Investigation pursuant to Section 3005 of the Public Utility Code, 66 Pa. C. S. §3005, and the Commission's Opinion and Order at Docket No. P-930715, to establish standards and safeguards for competitive services, with particular emphasis in the areas of cost allocations, cost studies, unbundling, and imputation, and to consider generic issues for future rulemaking.

Docket No. A-310489F7004: Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996.

Docket Nos. A-310580F9, A-310401F6, A-310407F3, A-312025F5, A-310752F6, A-310364F3: Joint Application of Verizon Communications Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger.

South Carolina Public Service Commission

Docket No. 90-626-C: In Re: Generic Proceeding to Consider Intrastate Incentive Regulation.

Docket No. 90-321-C: In Re: Petition of Southern Bell Telephone and Telegraph Company for Revisions to its Access Service Tariff Nos. E2 and E16.

Docket No. 88-472-C: In Re: Petition of AT&T of the Southern States, Inc., Requesting the Commission to Initiate an Investigation Concerning the Level and Structure of Intrastate Carrier Common Line (CCL) Access Charges.

Docket No. 92-163-C: In Re: Position of Certain Participating South Carolina Local Exchange Companies for Approval of an Expanded Area Calling (EAC) Plan.

Docket No. 92-182-C: In Re: Application of MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and Sprint Communications Company, L.P., to Provide IntraLATA Telecommunications Services.

Docket No. 95-720-C: In Re: Application of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company for Approval of an Alternative Regulation Plan.

Docket No. 96-358-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 96-375-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and GTE South Incorporated Pursuant to 47 U.S.C. § 252.

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

Docket No. 97-374-C: In Re: Proceeding to Review BellSouth Telecommunications, Inc. Cost for

Unbundled Network Elements.

Docket No. 97-239-C: Intrastate Universal Service Fund.

Docket No. 97-124-C: BellSouth Telecommunications, Inc. Revisions to its General Subscriber Services Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

Docket No. 1999-268-C: Petition of Myrtle Beach Telephone, LLC, for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.

Docket No. 1999-259-C: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 2001-65-C: Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services.

Docket No. 2003-326-C: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 2003-227-C: Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. 214(e)(2).

South Dakota Public Utilities Commission

Docket No. TC03-191: In the Matter of the Filing by WWC License, LLC d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas.

Docket No. TC03-193: In the Matter of the Petition of RCC Minnesota, Inc., and Wireless Alliance, L.L.C., for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. §214(e)(2).

Docket No. TC10-090: In the Matter of the Petition of Cellco Partnership and Its Subsidiaries and Affiliates to Amend and Consolidate Eligible Telecommunications Carrier Designations in the State of South Dakota and to Partially Relinquish ETC Designation.

Tennessee Public Service Commission

Docket No. 90-05953: In Re: Earnings Investigation of South Central Bell Telephone Company.

Docket Nos. 89-11065, 89-11735, 89-12677: AT&T Communications of the South Central States, MCI Telecommunications Corporation, US Sprint Communications Company -- Application for Limited IntraLATA Telecommunications Certificate of Public Convenience and Necessity.

Docket No. 91-07501: South Central Bell Telephone Company's Application to Reflect Changes in its Switched Access Service Tariff to Limit Use of the 700 Access Code.

Tennessee Regulatory Authority

Docket No. 96-01152: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration under the Telecommunications Act of 1996 and Docket No. 96-01271: In Re: Petition by MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 96-01262: In Re: Interconnection Agreement Negotiations Between AT&T of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252.

Docket No. 97-01262: Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements.

Docket No. 97-00888: Universal Service Generic Contested Case.

Docket No. 99-00430: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

Docket No. 97-00409: In Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission Docket No. 96-128.

Docket No. 03-00119: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc.

Docket No. 03-00491: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 06-00093: In Re: Joint Filing of AT&T, Inc., BellSouth Corporation, and BellSouth's Certified Tennessee Subsidiaries Regarding Change of Control.

Public Utility Commission of Texas

Docket No. 12879: Application of Southwestern Bell Telephone Company for Expanded Interconnection for Special Access Services and Switched Transport Services and Unbundling of Special Access DS1 and DS3 Services Pursuant to P. U. C. Subst. R. 23.26.

Docket No. 18082: Complaint of Time Warner Communications against Southwestern Bell Telephone Company.

Docket No. 21982: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996.

Docket No. 23396: Joint Petition of CoServ, LLC d/b/a CoServ Communications and Multitechnology Services, LP d/b/a CoServ Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company.

Docket No. 24015: Consolidated Complaints and Requests of Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for FX-Type Traffic Against Southwestern Bell Telephone Company.

PUC Docket No. 27709: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).

PUC Docket No. 28744: Impairment Analysis for Dedicated Transport.

PUC Docket No. 28745: Impairment Analysis for Enterprise Loops.

PUC Docket No. 29144: Application of Dobson Cellular Systems, Inc., for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 241 (e) and P.U. C. Subst. Rule 26.418.

State of Vermont Public Service Board

Docket No. 6533: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271.

Docket No. 6882: Investigation into Public Access Line Rates of Verizon New England, Inc., d/b/a Verizon Vermont.

Docket No. 6934: Petition of RCC Atlantic Inc. for designation as an Eligible Telecommunications Carrier in areas served by rural telephone companies under the Telecommunications Act of 1996.

Virginia State Corporation Commission

Case No. PUC920043: Application of Virginia Metrotel, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA Interexchange Telecommunications Services.

Case No. PUC920029: Ex Parte: In the Matter of Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies.

Case No. PUC930035: Application of Contel of Virginia, Inc. d/b/a GTE Virginia to implement community calling plans in various GTE Virginia exchanges within the Richmond and Lynchburg LATAs.

Case No. PUC930036: Ex Parte: In the Matter of Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, & Etc.

Case No. PUC-200540051: Application of Verizon Communications Inc. and MCI, Inc. for approval of Agreement and Plan of Merger resulting in the indirect transfer of control of MClmetro Access Transmission Services of Virginia, Inc., to Verizon Communications Inc.

Washington Utilities and Transportation Commission

Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Consolidated): Washington Utilities and Transportation Commission, Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle and Digital Direct of Seattle, Inc., Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle, Complainant, vs. GTE Northwest Inc., Respondent; Electric Lightwave, Inc., vs. GTE Northwest, Inc., Respondent.

Docket No. UT-950200: In the Matter of the Request of US West Communications, Inc. for an Increase in its Rates and Charges.

Docket No. UT-000883: In the Matter of the Petition of U S West Communications, Inc. for Competitive

Classification.

Docket No. UT-050814: In the Matter of the Joint Petition of Verizon Communications Inc., and MCI, Inc. for a Declaratory Order Disclaiming Jurisdiction Over or, in the Alternative a Joint Application for Approval of, Agreement and Plan of Merger.

Public Service Commission of West Virginia

Case No. 02-1453-T-PC: Highland Cellular, Inc. Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia.

Case No. 03-0935-T-PC: Easterbrooke Cellular Corporation Petition for consent and approval to be designated as an eligible telecommunications carrier in the area served by Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia.

Public Service Commission of Wyoming

Docket No. 70000-TR-95-238: In the Matter of the General Rate/Price Case Application of US West Communications, Inc. (Phase I).

Docket No. PSC-96-32: In the Matter of Proposed Rule Regarding Total Service Long Run Incremental Cost (TSLRIC) Studies.

Docket No. 70000-TR-98-420: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase III).

Docket No. 70000-TR-99-480: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase IV).

Docket No. 70000-TR-00-556: In the Matter of the Filing by US West Communications, Inc. for Authority to File its TSLRIC 2000 Annual Input Filing and Docket No. 70000-TR-00-570: In the Matter of the Application of US West Communications, Inc. for Authority to File its 2000 Annual TSLRIC Study Filing.

Docket No. 70042-AT-04-4: In the Matter of the Petition of WWC Holding Co., Inc., d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Areas Served by Qwest Corporation, and Docket No. 70042-AT-04-5: In the Matter of the Petition of WWC Holding Co., Inc., d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Clark, Basin, Frannie, Greybull, Lovell, Meeteetse, Burlington, Hyattville, and Tensleep (consolidated).

Public Service Commission of the District of Columbia

Formal Case No. 814, Phase IV: In the Matter of the Investigation into the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic - Washington, D. C. Inc.'s Jurisdictional Rates.

Puerto Rico Telecommunications Regulatory Board

Case No. 98-Q-0001: In Re: Payphone Tariffs.

Case No. JRT-2001-AR-0002: In the Matter of Interconnection Rates, Terms and Conditions between WorldNet Telecommunications, Inc. and Puerto Rico Telephone Company.

Case No. JRT-2003-AR-0001: Re: Petition for Arbitration pursuant to Section 252(b) of the Federal Communications Act, and Section 5(b), Chapter II of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms, and conditions.

Case No. JRT-2004-Q-0068: Telefónica Larga Distancia de Puerto Rico, Inc., Complainant, v. Puerto Rico Telephone Company, Defendant.

Case Nos. JRT-2005-Q-0121 and JRT-2005-Q-0218: Telefónica Larga Distancia de Puerto Rico, Inc., and WorldNet Telecommunications, Inc., Plaintiffs, v. Puerto Rico Telephone Company, Inc., Defendant.

Case No. JRT-2010-AR-0001: In the Matter of WorldNet Telecommunications, Inc., Petition for arbitration pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms, and conditions with Puerto Rico Telephone Company.

COMMENTS/DECLARATIONS - FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 92-91: In the Matter of Open Network Architecture Tariffs of Bell Operating Companies.

CC Docket No. 93-162: Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access.

CC Docket No. 91-141: Common Carrier Bureau Inquiry into Local Exchange Company Term and Volume Discount Plans for Special Access.

CC Docket No. 94-97: Review of Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 94-128: Open Network Architecture Tariffs of US West Communications, Inc.

CC Docket No. 94-97, Phase II: Investigation of Cost Issues, Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 96-98: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996.

CC Docket No. 97-231: Application by BellSouth to Provide In-Region InterLATA Services.

CC Docket No. 98-121: Application by BellSouth to Provide In-Region InterLATA Services.

CCB/CPD No. 99-27: In the Matter of Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services.

CC Docket No. 96-128: In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CCB/CPD No. 99-31: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (consolidated).

CCB/CPD No. 00-1: In the Matter of the Wisconsin Public Service Commission Order Directing Filings.

CC Docket No. 99-68: In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic.

File No. EB-01-MD-020: In the Matter of Sprint Communications Company, L.P., Complainant v. Time Warner Telecom, Inc. Defendant.

WC Docket No. 03-225: Request by the American Public Communications Council that the Commission Issue a Notice of Proposed Rulemaking to Update the Dial-Around Compensation Rate.

File Nos. EB-02-MD-018-030: In the Matter of Communications Vending Corp. of Arizona, et. al., Complainants, v. Citizens Communications Co. f/k/a Citizens Utilities Co. and Citizens Telecommunications Co., et. al., Defendants.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Cellular South License, Inc., RCC Holdings, Inc., Petitions for designation as an Eligible Telecommunications Carrier in the State of Alabama.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Declaration in

Support of the Comments to the Federal-State Joint Board of the Rural Cellular Association and the Alliance of Rural CMRS Carriers.

WC Docket No. 07-245/GN Docket No. 09-51: In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments.

REPRESENTATIVE TESTIMONY – STATE, FEDERAL, AND OVERSEAS COURTS

Court of Common Pleas, Philadelphia County, Pennsylvania

Shared Communications Services of 1800-80 JFK Boulevard, Inc., Plaintiff, v. Bell Atlantic Properties, Inc., Defendant.

Texas State Office of Administrative Hearings

SOAH Docket No. 473-00-0731: Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continuing Violations of PUC Substantive Rule §26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246 Administrative Penalties.

SOAH Docket No. 473-03-3673: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).

SOAH Docket No. 473-04-4450: Application of Dobson Cellular Systems, Inc., for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 241 (e) and P.U. C. Subst. Rule 26.418.

Superior Court for the State of Alaska, First Judicial District

Richard R. Watson, David K. Brown and Ketchikan Internet Services, a partnership of Richard R. Watson and David K. Brown, Plaintiffs, v. Karl Amylon and the City of Ketchikan, Defendants.

Superior Court for the State of Alaska, Third Judicial District

Dobson Cellular Systems, Inc., Plaintiff, v. Frontline Hospital, LLC, Defendant.

United States District Court for the Southern District of Iowa, Central Division

Iowa Network Services, Inc., Plaintiff, v. Sprint Communications Company, L.P., Defendant.

United States District Court for the District of Oregon

Time Warner Telecom of Oregon, LLC, and Qwest Communications Corporation, Plaintiffs, v. The City of Portland, Defendant.

United States District Court for the District of South Carolina, Columbia Division

Brian Wesley Jeffcoat, on behalf of himself and others similarly situated, Plaintiffs, v. Time Warner Entertainment - Advance/Newhouse Partnership, Defendant.

United States District Court for the Northern District of Texas, Fort Worth Division

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Southwestern Bell Telephone Company, Defendant.

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Verizon Southwest f/k/a GTE Southwest Incorporated, Defendant.

High Court of the Hong Kong Special Administrative Region, Court of First Instance

Commercial List No. 229 of 1999: Cable and Wireless HKT International Limited, Plaintiff v. New World Telephone Limited, Defendant.

REPRESENTATIVE TESTIMONY – PRIVATE COMMERCIAL ARBITRATION TRIBUNALS

American Arbitration Association

Southwestern Bell Telephone Company, Claimant vs. Time Warner Telecom, Respondent.

New Access Communications LLC, Choicetel LLC and Emergent Communications LLC, Claimants vs. Qwest Corporation, Respondent (Case No. 77 Y 1818 0031603).

CPR Institute for Dispute Resolution

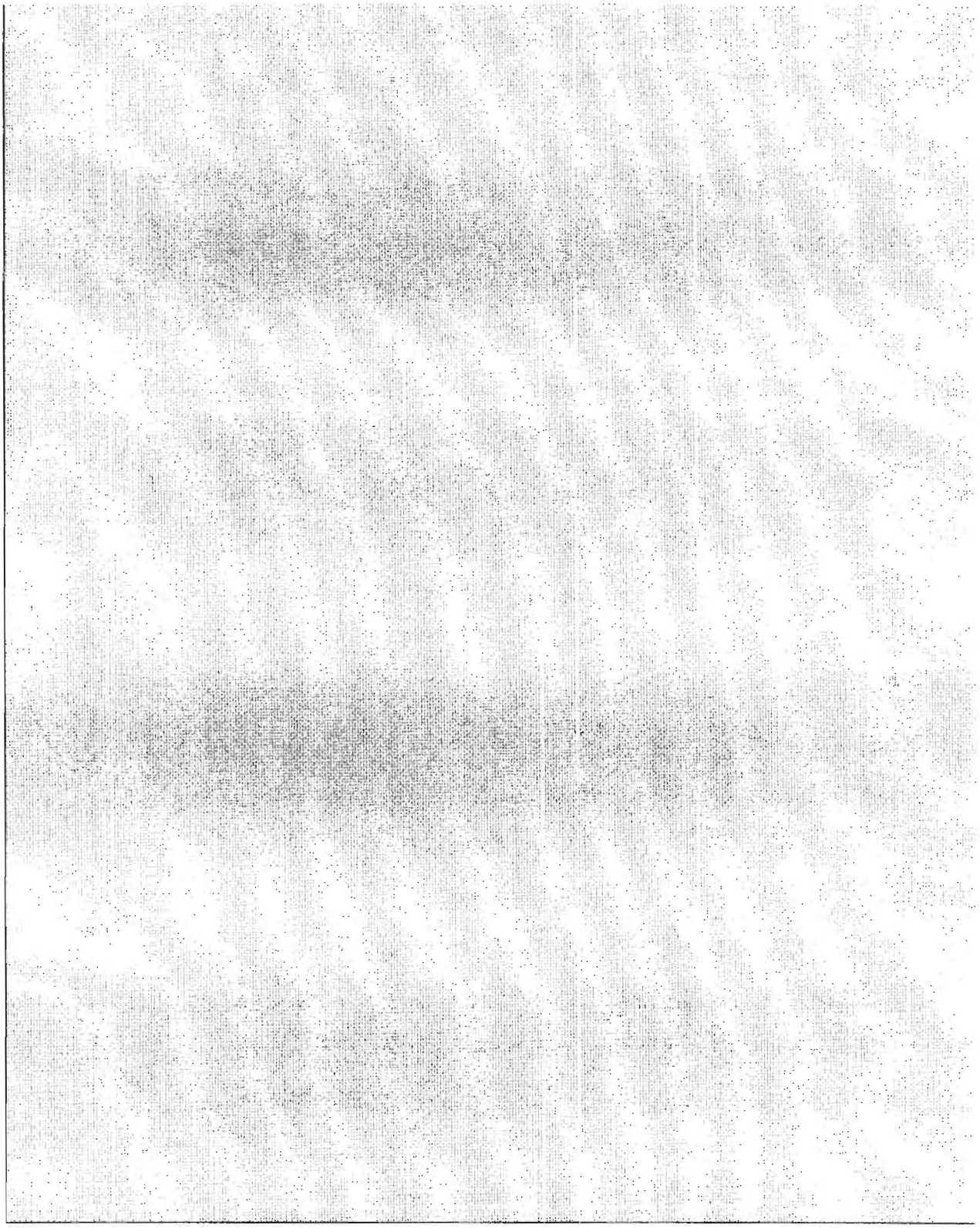
Supra Telecommunications and Information Systems, Inc., Claimant vs. BellSouth Telecommunications, Inc., Respondent.

RECENT WHITE PAPERS

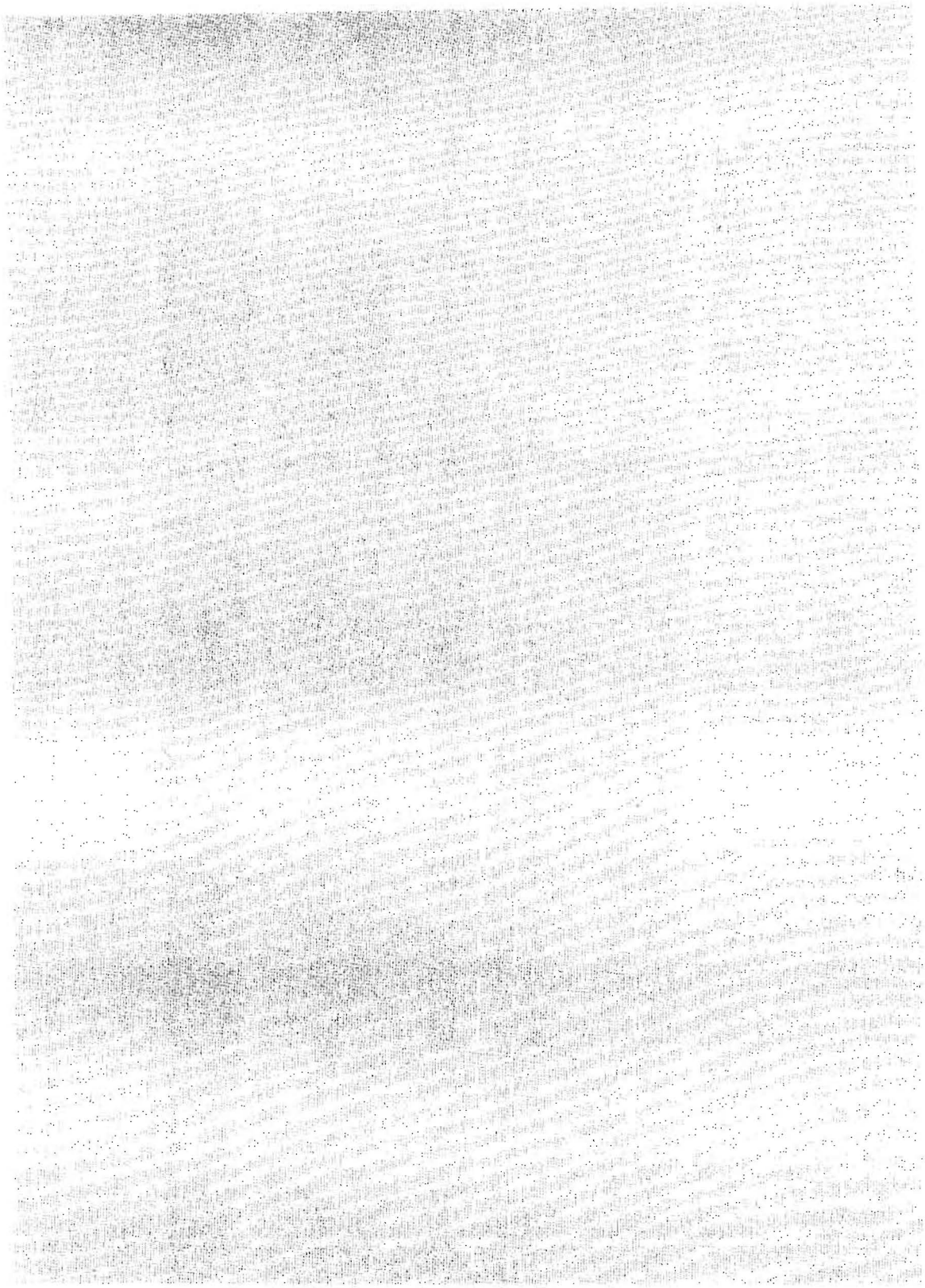
There's No Shortcut to Fundamental Reform: A Path to Meaningful Reform of the Federal Universal Service Program That Will Meet the Needs of Rural Customers While Avoiding Costly Artificial Constraints.

Effective Long Run Management of the High-Cost Universal Service Support Mechanism: An Outline for Managing Fund Size Over the Long Run While Encouraging Efficient Competitive Entry and Maximizing Consumer Benefit in Rural and High-Cost Areas.

No Steps Forward, Two Steps Back: An Analysis of the RLEC Plan for Regulatory Reform.



FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 71
PARTY TW Telecom of FL, I.P. (CLEC GROUP) (Direct and Rebuttal)
DESCRIPTION Don J. Wood (DJW-2) (Direct)
CONFIDENTIAL



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

Exhibit ____ (DJW-4)

MN PUC Agenda Notice: July 20, 2004

Rebuttal Exhibit of Don J. Wood
Filed August 9, 2012

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 73
PARTY TW Telecom of FL, I.P. (CLEC GROUP) (Direct and Rebuttal)
DESCRIPTION Don J. Wood (DJW-4) (Rebuttal)

C7-02-582

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

July 20, 2004

NOTICE OF SECOND ADDENDUM TO COMMISSION MEETING

PLEASE TAKE NOTICE that the items listed on the attached agenda will be heard at the Commission's regularly scheduled telecommunications meeting on **Thursday, July 22, 2004** at **9:30 a.m.** The meeting will be held in the Commission's large hearing room, Suite 350, 121 7th Place East, St. Paul, MN 55101-2147.

Occasionally items may need to be rescheduled. Commission staff will make all reasonable efforts to notify you if your item is rescheduled. However, if you wish to confirm this hearing date, or to request permission to address the Commission at the meeting, please call (651) 282-6446, and you will be directed to the appropriate staff person.

The Commission hearing rooms have wheelchair access. If other reasonable accommodations are needed to enable you to fully participate in a Commission meeting (i.e., sign language, or large print materials), please call (651) 297-4596 or 1-800-657-3782 at least one week in advance of the meeting.

BY THE COMMISSION
Burl W. Haar
Executive Secretary

Attachment

COMMISSION MEETING
THURSDAY, JULY 22, 2004 AT 9:30 A.M.
TELECOMMUNICATIONS AGENDA

***1. P-6028/RV-04-943 World Communications Satellite Systems, Inc.**

Revocation of the Company's certificate of authority. (PUC: Oberlander; DOC; Dietz)

***2. PT-6182,6181/M-02-1503 RCC Minnesota, Inc.; Wireless Alliance, LLC**

In the Matter of the Petition of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2).

Should the Commission amend its July 31, 2003 Order to permit the petitioners to file directly with the FCC on their service area redefinition proposal? (PUC: **Brion**)

***3. P-421/C-03-1024 Qwest Corporation; Velocity Telephone, Inc.**

In the Matter of the Complaint of Velocity Telephone, Inc. Against Qwest Corporation Regarding Qwest's Anti-competitive Conduct and Request for Expedited Proceeding.

I. Should the Commission approve the parties' settlement and dismiss the complaint?
II. What other action, if any, should the Commission take regarding the settlement agreement? (PUC: **Lindell)**

****4. ~~P-5695/M-04-226~~ PULLED WWC Holding Co., Inc. d/b/a CellularOne**

In the Matter of the Petition by WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement.

Commission consideration of WWC Holding Co.'s ETC Petition. (PUC: **Brion)**

****5. P-421/CI-02-582 Qwest Corporation**

In the Matter of a Commission Investigation into the Issues Raised by New Access Communications Regarding the Application of Qwest's Avoided Cost Discount to its Competitive Response Program.

What action, if any, should the Commission take on the arbitration award concerning damage claims made by New Access regarding the application of Qwest's "win-back" tariff? (PUC; **Krishnan**)

ADDENDUM

*6.	**P-421/C-02-1597**	**Desktop Media, Inc.;** **Qwest Corporation**

In the Matter of the Complaint of Desktop Media, Inc. Against Qwest Corporation Regarding Interconnection Terms:

Should the Commission approve the settlement agreement? (PUC: **O'Grady**)

SECOND ADDENDUM

*7.	**P-442,5798,5340,5826,** **5025,5643,443,5323** **5668,466/C-04-235**	**AT&T Communications of the Midwest, Inc.;** **Arizona Dialtone, Inc.;** **Eschelon Telecom of Minnesota, Inc.;** **Focal Communications Corporation of Minnesota;** **Global Crossing Telecommunications, Inc.;** **Integra Telecom of Minnesota, Inc.;** **MCI WorldCom Network Services, Inc.;** **McLeodUSA Telecommunications Services, Inc.;** **NorthStar Access, L.L.C.;** **Sprint Communications Company L.P.**

In the Matter of DOC Investigation into Many Companies' Negotiated Contracts for Switched Access Services.

Consideration of proposed protective agreement. (PUC: **Moy**)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651-297-4596 (voice) or 1-800-627-3529 (TTY relay service).

Service List for Agenda of

JULY 22, 2004

Burl W. Haar (0+15)
Executive Secretary
MN Public Utilities Commission
Suite 350
121 East Seventh Place
St. Paul, MN 55101-2147

John Lindell
Public Utilities Commission
Suite 350
121 Seventh Place East
St. Paul, MN 55101

Linda Chavez (4)
Docket Coordinator
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul, MN 55101-2198

Julia Anderson
MN Office Of The Attorney General
1400 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Curt Nelson
OAG-RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Mary Crowson
Assistant Attorney General
Residential & Small Business Util Div
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2127

Karen Hammel
Office Of The Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Linda S. Jensen
Office Of The Attorney General
1400 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2131

Peter R. Marker
Assistant Attorney General
Office Of The Attorney General - RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2127

Dennis Ahlers
Eschelon Telecom, Inc.
Suite 900
730 Second Avenue South
Minneapolis, MN 55402

Mark J. Ayotte
Briggs And Morgan
2200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101

Service List for Agenda of

JULY 22, 2004

Monica M. Barone
Sr. Attorney
Sprint
KSOPHN0212-2A203
6450 Sprint Parkway
Overland Park, KS 66251

Caterina Bergeron
World Communications Satellite Systems
Suite 1200
3730 Kirby
Houston, TX 77098

James H. Blundell
WWC Holding Co., Inc.
3650 131 Avenue SE
Bellevue, WA 98006

Michael J. Bradley
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Patrick Chow
Manager-Rates and Tariffs
MCImetro Access Transmission Services
9th Floor
201 Spear Street
San Francisco, CA 94105

Steven C. Clay
New Access Communications LLC
Suite 350
801 Nicollet Mall
Minneapolis, MN 55402

Victor E Dobras
State Executive
Sprint Minnesota, Inc.
Suite 1630
30 East 7th Street
St. Paul, MN 55101-4901

Mike Duke
KMC Telecom Inc.
3rd Floor
1755 North Borwn Road
Lawrenceville, GA 30043

Brent G. Eilefson, Esq.
Leonard, Street & Deinard, P.A.
Suite 2300
150 South Fifth Street
Minneapolis, MN 55402

Larry Espel
Greene Espel, P.L.L.P.
Suite 1200
200 S. Sixth Street
Minneapolis, MN 55402-1415

Pat Gideon
Intermedia Communications, Inc.
Floor 5-10
201 Spear Street
San Francisco, CA 94105

JoAnn Hanson
Qwest Corporation
Room 2200
200 South Fifth Street
Minneapolis, MN 55402

Sandra Hofstetter
10157 Ivywood Court
Eden Prairie, MN 55347

Andrew Isar
Association Of Communications Ent.
Suite 240
7901 Skansie Avwenue
Gig Harbor, WA 98335

Service List for Agenda of

JULY 22, 2004

Karen J. Johnson
Integra Telecom Of MN, Inc.
1200 Minnesota Center
7760 France Avenue
Bloomington, MN 55435

Richard J. Johnson
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Elizabeth Kohler
Rural Cellular Corporation
1100 Mountail View Drive
Colchester, VT 05446

David A. LaFuria
Lukas, Nace, Gutierrez And Sachs
Suite 1200
1111 19Th Street, N.W.
Washington, DC 20036

Lesley James Lehr
MCI Western Law And Public Policy
638 Summit Avenue
St. Paul, MN 55105

Lesley J. Lehr
Brooks Fiber Communicatons Of MN
22001 Loudoun County Parkway
Ashburn, VA 20147

Michael Lewis
Office Of Administrative Hearing
Suite 1700
100 Washington Square
Minneapolis, MN 55402-2138

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Richard C. Luis
Administrative Law Judge
Office of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

Teresa Lynch
AT&T Communications Of The Midwest
1455 Bussard Court
St. Paul, MN 55112

Mac McIntyre
Winstar Communications, LLC
Suite 300
1850 M Street
Washington, DC 20036

Robin R. McVeigh
Ovation Communications of Minnesota
McLeodUSA Telecommunications Services
P.O. Box 3177
6400 C St. SW
Cedar Rapids, IA 52406-3177

Gregory Merz
Attorney
Gray, Plant, Mooty, Mooty & Bennett
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Christopher Morris
Bassford, Lockhart, Truesdell
& Briggs, P.A.
33 S. Sixth Street, Suite 3550
Minneapolis, MN 55402

Service List for Agenda of

JULY 22, 2004

Cathy Murray
Manager, Regulatory Affairs
Eschelon Telecom, Inc.
Suite 900
730 Second Ave. S.
Minneapolis, MN 55402

Mark A. Myhra
Greene Espel
Suite 1200
200 S. Sixth Street
Minneapolis, MN 55402-1415

Adam Nathe
Gray, Plant, Mooty, Mooty & Bennett
Suite 3400
33 South Sixth Street
Minneapolis, MN 55402

J. Jeffery Oxley
Eschelon Telecom, Inc.
Suite 1200
730 2nd Avenue South
Minneapolis, MN 55402

Diane Peters
Global Crossing Local Services, Inc.
1080 Pettsford Victor Road
Pittsford, NY 14534

Joan C. Peterson
Qwest Corporation
200 South Fifth Street, Room 395
Minneapolis, MN 55402

Paavo Pyykkonen
NorthStar Access, LLC
P.O. Box 207
Big Lake, MN 55309

Carrie Ranges
Arizona Dialtone, Inc.
7170 W. Oakland Street
Chandler, AZ 85226

M. Cecilia Ray
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402

Paul Rebey
Focal Communications Corp.
Suite 1100
200 N. LaSalle
Chicago, IL 60601

Lewis Remele
Bassford, Lockhart, Truesdell
& Briggs, P.A.
33 S. Sixth Street, Suite 3550
Mineapolis, MN 55402

Carrie Rice
Regulatory Affairs Administrator
Hickory Tech
221 E. Hickory Street
Mankato, MN 56002-3248

Kevin Saville
Citizens/Frontier Communications
2378 Wilshire Blvd.
Mound, MN 55364

Kenneth A. Schifman
Sprint
6450 Sprint Parkway
KSOPHN0212-2A303
Overland Park, KS 66251-6105

Service List for Agenda of

JULY 22, 2004

Kathleen D. Sheehy
Administrative Law Judge
Office Of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

Michael Shortley
Global Crossing
1080 Pittsford Victor Road
Pittsford, NY 14534

Michael Spead
USAC
Suite 600
2120 L. Street
Washington, DC 20037

David Starr
Allegiance Telecom Of Minnesota, Inc.
9201 N. Central Expressway
Dallas, TX 75231

Eric F. Swanson
Winthrop & Weinstine
Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629

Sandra L. Talley
Focal Communications
Suite 1100
200 N. LaSalle Street
Chicago, IL 60601

Jason Topp
Qwest Corporation
Room 395
200 South Fifth Street
Minneapolis, MN 55402

Susan Travis
Metro Fiber Systems Of Mpls/St. Paul
707 17Th St
Ste 3600
Denver, CO 80202

Gregory L. Wilmes
New Access Communications LLC
Suite 350
801 Nicollet Mall
Minneapolis, MN 55402

Timothy Zeat
Z-Tel Communications, Inc.,
Stuite 220
601 South Harbour Island Blvd.
Tampa, FL 33602

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

Exhibit ____ (DJW-5)

AT&T Comments: August 19, 2004

Rebuttal Exhibit of Don J. Wood
Filed August 9, 2012

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 74
PARTY TW Telecom of FL, I.P. (CLEC GROUP) (Direct and Rebuttal)
DESCRIPTION Don J. Wood (DJW-5) (Rebuttal)

RECEIVED
AUG 1 9 2004
MN PUBLIC UTILITIES COMMISSION

Steven H. Weigler
Senior Attorney
Law & Government Affairs

Suite 1524
Western Region
1875 Lawrence St.
Denver, CO 80202
303 298-6957
FAX 303 298-6301
weigler@lga.att.com

August 18, 2004

Via Overnight Mail

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 East Seventh Place, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of Negotiated Contracts for the Provision of Switched Access Services, Docket No. P-422,5798,5340,5826,437,5643,443,5323,5668, 466/C-04-235.

Dear Dr. Haar:

Enclosed for filing are the original and fifteen copies of AT&T's Comments, Motion to Dismiss and Motion for Summary Judgment in this matter.

Sincerely,

Steven H. Weigler

cc: Service List

Recycled Paper

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for Switched Access Services	)	Docket No. P-442,5798, 5340,5826 5025,5643,443,5323,5668,466/ C-04-235

AT&T'S COMMENTS, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

AT&T Communications of the Midwest, Inc. ("AT&T") hereby submits Comments regarding the Minnesota Department of Commerce's "Complaint and Request for Commission Action" (hereinafter "Complaint") in the above styled action. AT&T submits these comments to demonstrate that the Minnesota Department of Commerce ("MDOC" or "Department") is incorrect on many of the factual and legal assertions it makes in its Complaint. Accordingly, when the facts and relevant law are examined in proper context, it is clear that AT&T should be dismissed from this Complaint as a party. However, as further articulated below, AT&T would seek non-party participant status in order to protect its legal interests essentially because AT&T has determined that it will not be protected by the other parties in this proceeding.

I. INTRODUCTION

In the fall of 2003, the Department made a formal request of AT&T to supply agreements that AT&T has with competitive local exchange carriers ("CLEC(s)") that provide AT&T with access services within the state of Minnesota at other than tariffed

rates[1]. In AT&T's annual report to the Department for 2002, AT&T had stated that it had such agreements and had provided a list of the CLEC providers from which it was purchasing access services in Minnesota pursuant to those agreements. AT&T fully complied with the MDOC Information Requests to produce the agreements. AT&T also provided the CLEC providers with which AT&T had entered into the agreements the pre-disclosure notice that the agreements required.

In its Complaint, the Department refers to agreements that AT&T has with six CLEC providers of switched access services: Arizona Dialtone ("AZD"), Eschelon Telecom ("Eschelon"), Focal Communications Corp. ("Focal"), Integra Telecom ("Integra"), McLeod USA Inc. ("McLeod"), and NorthStar Access ("NorthStar").[2] The agreements all follow the same basic form, with modifications specific to the business relationship between AT&T and the individual CLEC providers. In the past four years or so, AT&T has entered into hundreds of agreements based on the same form with CLEC providers of switched access services throughout the United States. AT&T undertook this substantial contracting effort because CLECs were charging interexchange carriers ("IXC(s)"), including AT&T, exorbitant rates for switched access services.[3] Often, both

[1] *State of Minnesota Department of Commerce Utility Information Request 7 Response* (dated October 17, 2003); Docket Number: Telecommunications Carrier Annual Report 2002 (hereinafter referred to as "Information Requests").

[2] Most of the agreements have been in effect for years. The Effective Dates of the agreements are as follows: AZD agreement: January 21, 2003; Eschelon agreement: May 1, 2000; Focal agreement: December 25, 2001; Integra agreement: July 1, 2001; McLeod agreement: July 1, 2001; and NorthStar agreement: September 11, 2002. In fact, AT&T had difficulty finding employees with knowledge of the agreements, given the considerable passage of time since their negotiation.

[3] On this point, AT&T is in agreement with the Department which states, at page 2 of its Complaint, that "Since [IXCs] are captive customers of the local service providers for switched access services, and the rate levels of CLECs receive little regulatory oversight, the switched access rates of CLECs are often higher than the switched access rates of the incumbent local exchange carrier ["ILEC"]".

the CLEC providers' interstate *and* intrastate rates (in states that did not have mandated access rates) were exorbitant.[4]

In the agreements with the six CLEC providers specified above, AT&T is solely and exclusively a customer purchasing switched access services and not a provider.

Each agreement has a section entitled "[CLEC Provider] Regulatory Approvals and Tariffs" in which the CLEC provider warranted "that it has and will maintain, at its own expense, all regulatory certifications, authorizations, and permits needed to offer the Switched Access Service described in this Agreement." All but one of the agreements also include language explicitly anticipating the CLEC provider's filing of tariffs; for example, " [CLEC provider] will not file any tariff or tariff revisions that alter the terms and conditions, or pricing of switched access as specified in this Agreement," unless required to do so.

As discussed in detail in Section II below, the Regulatory Approvals and Tariffs section in each of the agreements effectively memorialized an obligation that both parties knew belonged and continues to belong only to the CLEC providers; that is, the filing of terms of the CLEC provider's service pursuant to applicable law. Although the agreements also contain broad mutual protection for each party's confidential and proprietary information, the CLEC providers would not have been prohibited from adhering to applicable regulatory obligations, if any.

[4] It was not until the middle of 2001 that the Federal Communications Commission ("FCC") imposed a benchmark rate above which most CLECs were not permitted to tariff interstate switched access rates. *FCC's Seventh Report and Order and Further Notice of Proposed Rulemaking re Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Docket 96-262, Released April 27, 2001. The benchmark rate established in that Order is a rate that declined over the past 3 years until now, when the rate most CLECs may charge IXCs may be no greater than the rate the competing ILEC would charge the IXC.

The AZD and Focal agreements included the settlement of formal actions and the Eschelon, Integra. McLeod and NorthStar agreements included the settlement of informal disputes. Thus, AT&T agreed to pay each CLEC no less than a six- or seven-figure settlement amount before any of the individual agreements went into effect. The agreements also include comprehensive mutual releases generally of all issues arising or that could have arisen as of an agreement's effective date[5].

Finally, as discussed in greater detail in Section III, NorthStar's position (as articulated by the Department in its Complaint) is correct, at least as it applies to AT&T: NorthStar does not have agreements with IXCs to charge untariffed rates for the provision of intrastate access services.[6] Among other reasons, because the NorthStar agreement does not contain intrastate access rates, this Commission does not have jurisdiction over that agreement. AT&T provides a few key facts to put the NorthStar agreement in context in order to allay any regulatory concerns. *See* Exhibit A, Affidavit of Debbie H. Joyce.

With these facts in mind, AT&T's legal analysis will establish that the Department's Complaint, as related to AT&T, is meritless as a matter of law and should be dismissed as a matter of law.

[5] The Eschelon agreement, the oldest agreement of the six by more than a year, is the sole exception.
[6] *See* Complaint at page 12.

II. THE DEPARTMENT FAILS TO ESTABLISH VALID CLAIMS AGAINST AT&T AS A MATTER OF LAW

As a threshold matter, AT&T submits that the Commission's seven year-old comprehensive access proceeding would be the appropriate forum to address the Department's policy position on access rather than the instant matter.[7] Furthermore, in this docket, AT&T is simply the customer in the above-referenced agreements with the CLEC providers. Finally, the Department's summation of why these settlements occurred and its perspective on the parties positions,[8] besides being extremely oversimplified and factually suspect, has no relevance under Minnesota law as there is an actual contract that spells out, in unambiguous terms the intent, terms and conditions of the parties' agreements. We develop these points more fully below.

In all events, the settlement agreements at issue were the "result of a compromise" between the parties and constitute "full and final satisfaction of the dispute."[9] Minnesota law is clear that compromise and settlement of a lawsuit is contractual in nature. *Ryan v. Ryan*, 292 Minn. 52, 55, 193, 295, 297, 193 N.W.2d 295 (1971).[10] The only reasons to invalidate a settlement agreement/contract is because of "**mutual** mistake, fraud or misrepresentation," *Ryan v. Ryan*, 292 Minn. 52, 55, 193, 295, 297, 193 N.W.2d 295 (1971)(emphasis added), *Sorenson v. Coast-to-Coast Stores, Inc.*, 353 666, 669-70 (Minn. App. 1984), or if the contracts are illegal. *Barna, Guzy, & Steffen, Ltd. v. Beans*, 541 N.W.2d 354, 356 (MN. App. 1995). No such reasons exist in the instant circumstance.

---

[7] *In the Matter of a Commission Investigation of Intrastate Access Charge Reform*, Docket No. P999/CI-98-674.
[8] *See* Department's Complaint at p.12-14.
[9] *See* e.g. McLeod Agreement, Department's Exhibit ML-1 at A.2 and 3.
[10] Although the Eschelon agreement does not contain these terms, the result is the same under law.

Because the issues the Department is pursuing relate to the existence and interpretation of a contract, this matter must be decided as a matter of law, *Knudsen v. Transport Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (MN App. 2004), looking exclusively at the four corners of the instrument(s) in question. *Id.* Accordingly, the unsubstantiated assertions in the Department's Complaint such as:

1) "The switched access agreements appear to have been formed as a means for the CLECs to obtain some payment from the interexchange carrier, which, in some cases, refused to pay the tariffed rates of the CLECs.[11]
2) "CLECs felt that resolving their billing dispute by engaging in contracts to charge lower access rates was the best way to avoid litigation and resume some cash flow."[12]
3) "Interexchange Carriers believed the CLECs were taking advantage of their captive status with high access rates"[13]
4) "...large interexchange carriers are able to exert market power to receive lower switched access rates."[14]

are irrelevant in the instant dispute (even though AT&T may agree with some of the characterizations)[15] because none of these facts are found in the four corners of the settlement agreement. *Knudsen v. Transport Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (MN App. 2004).

Furthermore, as a practical matter, there is extreme peril if this Commission decided to look outside the four corners of the settlement agreement/contract, essentially reviewing the parties' positions *de novo.* For example, as Exhibit B attached demonstrates, Eschelon would dispense with the exchange the parties bargained for -- a commercial bargain that has lasted and worked for both parties ***for more than four years***

[11] Complaint at p.12.
[12] *Id.* at p.14.
[13] *Id.* at p.13.
[14] *Id.*
[15] AT&T notes that this Commission is looking at these issues in the generic access reform docket which has been pending in front of this Commission for seven years. *See* Docket No. P999/CI-98-674.

-- in an attempt to gain more revenue from AT&T in terms of increased retroactive access rates where AT&T is wholly without fault.

A real question exists, furthermore, as to whether this Commission would have the power to, or would want to engage in precedent where, it sought to collect past due amounts from AT&T, which is the customer under the Eschelon and the other five agreements with the CLEC providers. When the FCC was presented with similar facts, it found that it did not have the power to collect past amounts due from a customer. See *Tel-Central v. United Tel.Co.*, File No. E-87-59, Memorandum Opinion and Order, 4 FCC Rcd 8338 (1988) which states: "the complaint procedures make a carrier liable to a customer for damages that result from the carrier's unlawful actions or omissions...However, this statutory scheme does not constitute the Commission as a collection agent for carriers with respect to unpaid tariff charges. In the normal situation if the carrier has failed to pay the lawful charges for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action **in contract** to compel payment." (Emphasis added.)

As expressed above, this Commission should summarily dispose of this Complaint as a matter of law because the Department cannot establish that the contract terms are void or voidable. No party, including the Department, has raised that there has been mutual mistake, fraud or misrepresentation that would invalidate a contract thus permitting the Department or any other party to restructure, reinterpret or suppose the intent behind a settlement agreement. *See e.g., TNT Properties, LTD v. Tri-Star Developers LCC*, 677 N.W.2d 94, 98-102 Minn. App. 2004). As such the terms of the agreements remain.

More importantly, in looking at the four corners of the settlement agreements at issue, no terms make those settlement agreements illegal or suggest in any way that AT&T violated its Certificate of Authority or any relevant law. In order to establish this point, AT&T will compare the specific allegations made by the Department with the actual terms of the contract.

A. AT&T as an IXC Customer Had No Obligation Under Minnesota Law or Rule to File Tariffs or Assure that Tariffs were Filed

AT&T, as the customer of access service, had no obligation to submit tariffs to the Commission for services that it bought. That obligation, if it indeed exists, falls exclusively on the provider in question. *See e.g., Minn. Stat. § 237.07.* The Department fails to acknowledge that AT&T, as the purchaser of access services, is completely distinguishable under law from the CLEC provider of service. Without specific citation, the Department claims that "Minnesota law requires all regulated telephone and telecommunication carriers, including CLECs and interexchange carriers, to operate in accordance with their tariffs and accordance with Commission rules and Orders."[16] The Department then cites MN Stat. §237.121(a)(3) which states "(a) telephone company or telecommunications carrier may not...fail to **provide** a service, product or facility to a telephone company or telecommunications carrier in accordance with the applicable tariffs, price lists, **or** contracts and with the Commissions rules and orders." (Emphasis added). As the Commission can see, the statutory responsibility under law falls exclusively to the *provider* of services. The Department further cites *Minn. Rule* 7810.8400 which states "(a) telephone company shall keep on file with the department its tariffs and price lists showing or referencing specific rates, tolls, rentals, and other

[16] Complaint at p.9.

charges **for the services offered by it** either alone or jointly and concurrently with other telephone companies." (Emphasis added). Again, the rule applies to the *provider* of services. As the very rules that the Department relies on are inapplicable to AT&T as a customer, AT&T cannot be found to have violated any law or Commission rules in this matter.

Furthermore, the four corners of the settlement agreements in question alone (entirely apart from the Department's extrinsic innuendo), mirror Minnesota Statute and Rule requirements by assigning the obligation to file such tariffs and otherwise adhere to legal requirements to the CLECs and not AT&T. The relevant sections of the settlement agreements all include the following statement:

> [CLEC provider] warrants that it has and will maintain, at its own expense, all regulatory certifications, authorizations, and permits needed to offer the Switched Access Service described in this Agreement.

Furthermore, all but one of the agreements include language explicitly anticipating the CLEC provider's filing of tariffs: for example, (the CLEC) "will not file any tariff or tariff revisions that alter the terms and conditions or pricing of switched access as specified in this Agreement". In summary, the settlement agreements each specifically acknowledge what is clear under Minnesota law: that the obligation is on the provider of service to comply with the provisions of Minnesota laws and rules in providing its services not the purchaser. Accordingly, AT&T as the purchaser of these services should be dismissed from this proceeding as a matter of law.

B. AT&T Has Not Violated "Conditions Associated With" Its Certificate of Authority

Unable to establish that AT&T violated any specific Minnesota rule or statute, the Department recommends that this Commission find that AT&T (and other IXCs) violated conditions associated with its certificate of authority.[17]

The Department cites no legal authority for its position that AT&T would have to assure that it was purchasing only tariffed services to be in compliance with its certificate of authority.[18] A review of AT&T's certificate of authority conclusively shows that it contains no conditions that prohibit it from a negotiating an access rate. AT&T has attached its certificate of authority, which contains no terms about purchasing access services as an interexchange provider at set tariffed rates.[19]

To the extent that the Department claims that the violations were not in the *actual* certificates of authority, but in the conditions associated with the Commission's October 15, 1985 Order in Docket No. P442, 443, 444, 421, 433/NA-84-212 [20] such claims are factually incorrect. Neither of the Orders cited in the Department's Complaint contain such a condition, nor does the original Order granting AT&T Interexchange authority contain any condition related to assuring that AT&T was buying tariffed services.

- Pages 27-28 of the October 15, 1985 Findings of Fact, Conclusions of Law and Order listed the ten conditions for expanding AT&T's certificate to include intraLATA toll services. While some conditions concern the rates AT&T may charge as a provider, none of the conditions concern "payment of switched access services at tariffed rates." Thus, Item 2 states "AT&T/MW is hereby granted an extension of its existing certificate of public convenience and necessity in such a manner as to authorize it to provide intraLATA telecommunications services to

[17] *See* Complaint at pp. 18-19.
[18] Instead, as discussed above, the Department cites Minn. Stat. §237.121(a)(3) and Minn. Rule 7810.8400. The Department's proposition of law is related to the *provider* of service, and not AT&T, which is the *purchaser* of services in these agreements.
[19] *See* Exhibit C.
[20] Department's Complaint at p.14.

customers within Minnesota in addition to its present authority to provide interLATA telecommunications subject to all requirements of this order including a requirement to submit an annual report of its Minnesota intrastate operations and financial results in accordance with the Uniform System of Accounts and as specified by the DPS." Item 5 states "Changes in intrastate toll rates sought by any interexchange carrier, including AT&T/MW and NWB, shall be evaluated and considered in accordance with the provisions of this Order." Item 6 states "No interexchange carrier, including AT&T/MW and NWB, shall implement rates or tariffs that deaverage toll rates based on the basis of geographic location or that discriminate in the terms and conditions under which services will be made available on the basis of geographic location without the express approval of the Commission."

- The November 2, 1987 85-582 docket is void of the condition that requires AT&T as the purchaser of services to assure that rates that are paid are tariffed. See Ordering paragraphs 1 through 28 on pages 58 through 63.
- Finally the Order Granting Certificate of Public Convenience and Necessity in Docket P-442/M-83-640 issued on December 23, 1983 which grants AT&T's certificate of Public Convenience and Necessity to provide the intrastate, interLATA toll service contains no condition on paying tariffed rates. See Order at page 3 for the six ordering paragraphs.

Furthermore, even if AT&T's certificate of authority contained terms requiring AT&T to tariff terms as a purchaser of access services, as discussed in Section II, A. above. there are specific terms in each of the agreements that addressed each CLEC provider's responsibility to obtain "all regulatory certifications, authorizations, and permits needed to offer these switched access services." Accordingly, the four corners of the settlement agreements acknowledged the responsibility to comply with regulatory requirements, and just as Minnesota Statutes and Rules do, place that responsibility on the CLEC provider of services to comply with any tariffing requirements, not the IXC purchaser.

Finally even if the statute, rules, certificates of authority, and relevant settlement agreements were not unanimous that customers of services have no responsibility to file tariffs, as a policy matter, it would be inappropriate to impose on customers any obligation to assure that the bargained-for rate of services that they were buying were

properly tariffed by the provider of those services.[21] Quite simply, it would turn the customers' simple purchase decision into a decision about the regulatory compliance of the provider.

In sum, AT&T did not violate any conditions associated with its certificate of authority.

C. The Settlement Agreements in Question Did Not Contain Discriminatory Non-Disclosure Terms

The Department claims that "(t)he confidentiality clauses in [the] agreements [in question] prevented regulatory agencies such as the Department and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and Orders." Such a position is not supported by the only relevant evidence: the four corners of the settlement agreements themselves.

Confidentiality provisions are commonplace in settlement agreements and adjudicative bodies should take proper steps to safeguard the confidential nature of settlement terms. *See e.g., In re: L-Tryptophan Cases*, 518 N.W.2d 616, 622 (MN App. 1994). As such, there is nothing wrong with the parties making the settlement terms confidential as long as there were provisions that would allow the parties to meet the various regulatory and legal requirements, if applicable. The relevant provisions of the AZD, Focal, Integra, and NorthStar agreements contain the following language:

> For purposes of this agreement, "Proprietary Information" means information that is marked or otherwise specifically identified in writing as proprietary, confidential or trade secret. Proprietary Information includes, but is not limited to, this Agreement, the payments to [CLEC Provider] by

[21] AT&T notes that the Department did not take this position in the Qwest Secret Deals case where the responsibility to file agreements pursuant to 42 U.S.C. 252 was far more straightforward. The Department filed a complaint against the seller of such services, Qwest, and not against the purchasers including Eschelon and McLeod.

> AT&T and volume of traffic between the parties. Notwithstanding the forgoing, either party may advise a state or federal regulatory body, including without limitation the FCC, that it has reached a resolution of the Dispute, although neither party may disclose the terms of the Agreement except as expressly provided for elsewhere in this Agreement.
>
> Each party will hold in confidence Proprietary Information disclosed by the other party except if it (1) was previously known by the receiving party free from any obligation to keep it confidential, (2) is independently developed by the receiving party, (3) becomes publicly available, or (4) is disclosed to the receiving party by a third party without breach of any confidentiality obligation.
>
> If either party is compelled to disclose Proprietary Information in judicial or administrative proceedings, such party will give the other party the opportunity, in advance of such disclosure, to seek protective arrangements and will cooperate with the other party in that regard.[22]

The Eschelon and McLeod agreements contain the foregoing language (except for a sentence from the first paragraph)[23], as follows: "Notwithstanding the forgoing, either party may advise a state or federal regulatory body, including without limitation the FCC, that it has reached a resolution of the Dispute, although neither party may disclose the terms of the Agreement except as expressly provided for elsewhere in this Agreement."

As discussed above, the Regulatory Approvals and Tariffs Section in each of the agreements – in which the CLEC providers warranted that they have "and will maintain...all regulatory certifications, authorizations, and permits necessary to offer the Switched Access Service" described in each agreement[24] -- effectively memorialized an obligation belonging to the CLEC providers: the filing of terms of each CLEC provider's

[22] Department's Exhibit AD-3 at B11.
[23] The Eschelon agreement also contains some terms in the section on confidentiality and proprietary information relating to the treatment of such information in the event that Eschelon becomes a publicly-held company or undergoes a "private placement or other financial arrangement", which are not relevant here.
[24] *See e.g., id.*, at B3.

service pursuant to applicable law. Accordingly, AT&T would have no reason to assume that the CLEC providers would not have either tariffed the rates or more likely sought special pricing consideration. The provisions in the agreements regarding the treatment of confidential and proprietary information would not have stood in the way of the CLEC providers' compliance with those obligations. AT&T's responses to the Department's Information Requests demonstrate how the provision related to the treatment of confidential and proprietary information operate (*See* Statement of Facts). Quite simply, AT&T merely first notified the CLEC providers that AT&T intended to produce the agreements in response to the Information Requests, and then AT&T produced the agreements[25]. Furthermore, four of the agreements contain the statement that each party "may disclose the terms of this Agreement . . . as expressly provided for elsewhere in this Agreement". To the extent, then, that the CLEC providers have or had obligations to file terms of their agreements with state regulatory bodies, the Regulatory Approvals and Tariffs section of each agreement provides a permitted exception to the general prohibition against disclosure of confidential and proprietary information. Thus, if the CLECs believed the access rates needed to be tariffed or otherwise reviewed, they simply needed to "give [AT&T] the opportunity in the advance of such disclosure, to seek protective agreements"[26] and then tariff the terms. That notification process was precisely what AT&T engaged in, without objection of the CLECs, in an extremely

[25] We note that all of the agreements contain the language stating that "If either party is compelled to disclose Proprietary Information in judicial or administrative proceedings, such party will give the other party the opportunity, in advance of such disclosure, to seek protective arrangements and will cooperate with the other party in that regard."
[26] *See* e.g., Department's Exhibit AD-3 at B11(c).

straightforward manner. [27]

The Department also argues that the AT&T/CLEC negotiated agreements "foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T, MCI WorldCom, Sprint and Global Crossing [and that the] impact on the marketplace is that the interexchange carrier with an agreement has an unfair competitive advantage over other interexchange carriers."[28] The Department offers no facts to support these vague, conclusory allegations, and the Commission should wholly disregard them.

Furthermore, if the Department seeks to rely on language in certain agreements stating that (the CLEC) "will not file any tariff or tariff revisions that alter the terms and conditions or pricing of this agreement,"[29] such language merely requires the CLEC not to alter the terms of the agreement *through* a tariff. It does not preclude other IXCs from receiving the same terms and conditions that AT&T received; rather it simply ensures that the CLEC will not undermine the mutual agreement through unilateral use of the tariffing process.

Again, in looking at the four corners of the documents in question, there is no language that suggests discriminatory non-disclosure terms. Accordingly, the Department's claim that "(t)he confidentiality clauses in these agreements prevented regulatory agencies such as the Department and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and Orders,

[27] Furthermore, in reviewing the terms of the agreements in question, it is debatable if the access rates that AT&T was paying to the CLECs were even confidential as the terms regarding confidentiality did not specifically include the pricing. *See e.g., Exhibit AD-3* at B11(A) indicating proprietary information includes, but is not limited to, this Agreement, the payments to (the CLEC) by AT&T and the volume of traffic between the parties.
[28] Complaint at p.12.
[29] *See* Department's Exhibit AD-3 at 3.

and foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T...."[30] is groundless.

In summary, there were no terms in any of the agreements that violated Minnesota law and this Commission should dismiss AT&T from this proceeding as a matter of law.

III. THE COMMISSION SHOULD DISMISS THE NORTHSTAR PIU CLAIM OR GRANT AT&T SUMMARY JUDGMENT

Without any discussion or legal analysis, the Department seeks to have this Commission "(f)ind that the percentage interstate use in the agreement between NorthStar Access and AT&T should be the percentage used prior to entry into the contract, since the intent of the change is to evade interstate access charges."[31] As established below, the issue of what percentage of interstate usage ("PIU") factor is appropriate is determined by application of the federal tariff; thus, this question is not properly before this Commission. In all events, even if this matter were properly before this Commission, as established below, the Department brings forward no evidence for the claim that the parties' "intent" in using a 100% PIU was to "evade interstate access charges". In fact, all evidence is contrary to that proposition. For those reasons, summary judgment would be appropriate.

Summary judgment is appropriate when the pleadings, affidavits, and other documents before the court show that there is no genuine issue of material fact and judgment is appropriate as a matter of law. *Jorgensen v. Knudson,* 662 N.W.2d 893, 897 (Minn. 2003); *Mon-Ray v. Granite Re, Inc.* 677 N.W.2d 434, 439 (MN App. 2004). As discussed in greater detail below, based on the sworn affidavits of both NorthStar and

[30] Department's Complaint at p.12.
[31] Department's Complaint at p.15.

AT&T witnesses, the Department cannot bring forward any *genuine* issue of material fact, and based on FCC rules and case law, summary judgment is appropriate as a matter of law.

As discussed in the affidavit of Debbie H. Joyce, as corroborated by NorthStar witnesses. the parties believed that the majority of the traffic exchanged was interstate but could not determine the exact amount of traffic being transported. Accordingly, the parties applied a factor of 100% PIU.[32] Because the Department was not part of the negotiations, it would not be able to provide contradictory material facts. Accordingly, because the Department cannot establish that there is a *de minimis* amount of interstate traffic traveling over the trunks at issue, the traffic is interstate in nature, affording jurisdiction exclusively to the Federal Communications Commission, and requiring judgment in favor of the parties' agreement to be entered as a matter of law.

This Commission is well aware of the U.S. District Court's decision in *Qwest v. Scott*, 2003 WL 79054 (D.Minn.) (attached) which addresses the FCC's 10% Rule of dual jurisdiction. The Court accurately articulates the FCC's 10% Rule as follows:

> The FCC had.... assigned all lines with even a de minimums amount of interstate traffic "to interstate jurisdiction," such that parties could avoid the state tariff by including even a tiny proportion of interstate communications on these circuits. *In the Matter of GTE Operating Cos.*, 13 F.C.C.R. 22,466 ¶25 (1998) ("10% Order"); *In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 4 F.C.C.R. 1352 ¶¶ 1,30 (1989) *adopted by 10% Order ¶8,9.* The FCC adopted the 10% allocation rule to allow states to retain control over intrastate lines carrying small amounts of interstate transmissions. *See 10% Order* ¶2. The FCC concluded that permitting intrastate circuits with 10% or less interstate traffic to be tariffed at the state level would accord "proper recognition (to) state regulatory interests. *Id.* ¶7. Thus, the FCC concluded "that the (10% Rule) separations

[32] *See* Exhibit A: Affidavit of Debbie H. Joyce. *See also*, Initial Comments of NorthStar.

> procedure properly reflect the dual jurisdictional regulatory structure of the Act. *Id.*

Qwest Corporation v. Scott, 2003 WL 79054 (D.Minn.) at p.2.

As the affidavits disclose, the parties reasonably believed that 92% of the traffic was interstate in nature, thus making interstate rates applicable to all switched access traffic under the agreement. Accordingly, because the Department cannot establish that there was 10% or less interstate traffic being routed, judgment must be afforded to AT&T as a matter of law on the Department's claim.

IV. EQUITABLE AND POLICY CONSIDERATIONS

Even if there were not a compelling legal basis to dismiss AT&T from this matter, there are numerous equitable and policy considerations that this Commission should take into consideration while determining how to address this matter.

A. Fairness and Consistency

As AT&T expressed to the Department,[33] it is puzzled by the inconsistencies of the Department's position in different fora: it did not complain about the consumer of services in one docket (specifically the Minnesota Qwest Secret Deals Complaint (Docket No. P-421/C-02-197) in which the Department filed a Complaint against the provider of services, Qwest, but here it is seeking remedies against both the seller and purchaser of services. This is especially true when in this docket, the agreements contain an express warranty from the seller of those services to the buyer that the seller would comply with any regulatory requirements. Such regulatory warranties were certainly not

[33] AT&T notes, that as expressed in Section I above, its discussion with the Minnesota Department of Commerce was perfunctory with no discussion about the actual terms of the agreements.

included in the Secret Deals Complaint. Regardless, taking enforcement action against the purchaser of services, especially when there is an express warranty from the seller of regulatory compliance, would have serious chilling effect on the purchase of telecommunications services in Minnesota and is unprecedented under law.

B. Ramifications of Action

The Department suggests that this Commission redefine and invalidate legal agreements that were entered into by two willing parties. For example, the Department wishes that this Commission "(f)ind that the percentage interstate usage in the agreement between NorthStar Access and AT&T should be the percentage used prior to entry into the contract."[34]

AT&T respectfully suggests that this Commission will commit regulatory overkill if it begins to second guess PIU factor declarations and other mutually agreed to terms in a contract.

More importantly, by reformulating contracts, this Commission would actually be rewarding the *non-compliant party*: the provider of services to which any tariff-obligation belongs. For example, as shown by Exhibit B, Eschelon Telecom, Inc. has notified AT&T that "it may be required to begin charging AT&T the standard tariffed rates for switched access services in Minnesota as of June 16, 2004, the date the Complaint was filed. Furthermore, Eschelon may seek to adjust previous bills so as to charge AT&T the standard Minnesota tariffed access rate for all previous applicable billing periods." [35] As one can see, Eschelon has every reason to seek such an inequitable windfall in response to the allegation of failing to file tariffs for services. It is for that

[34] Complaint at p.15.
[35] *See* Exhibit B.

reason that AT&T would seek to continue participating in this case as a participant to protect its interests against parties like Eschelon, unless this Commission dismisses AT&T from this matter and orders that there be no recourse against AT&T.

C. Need for Complete Investigation

If the Commission decides to go forward in this matter, AT&T notes that the Department investigation was far from complete. As the Department indicated, its investigation began when AT&T was the only party who voluntarily disclosed and provided the existence of agreements.[36] The Department complains that some parties have been evasive in their answers, while others have failed to respond.[37] Because the Department only relied upon the agreements and other information that were voluntarily provided by AT&T and some of the CLEC providers and IXCs before filing its complaint, this Commission has an extremely incomplete picture of the issue, because neither the Department nor the Commission have reviewed the plethora of agreements that exist in Minnesota which contain access terms.

If the Commission is interested in proceeding, AT&T would suggest a complete investigation of industry practices including Department investigation and disclosure of how many access agreements with similar terms exist, the terms of such agreements, if other access agreements not yet disclosed contain material differences, PIU factors contained in every agreement filed in Minnesota, and ILEC access agreement differences.

---

[36] Complaint at p.2.

[37] Complaint at p.2-3. AT&T notes that that the Department did not name the parties who failed to answer the Department's information requests. Accordingly, the Department only pursued violations on those who voluntarily provided information. Again, questions of equity are presented with respect to AT&T, which not only did not have an obligation to file, or assure that the CLEC providers filed, information about the terms of the agreements, but also fully complied with the Department's requests and its contractual obligations towards the CLEC providers.

Otherwise, the Commission would be acting on this matter without complete disclosure of industry practices and the effect on any purchaser of services.

V. LEGAL RESERVATION OF RIGHTS

AT&T notes that this Commission sought comments on this matter and accordingly, provides the facts and law necessary to demonstrate to the Commission that all claims against AT&T should either be dismissed as a matter of law, or AT&T should be granted summary judgment. AT&T reserves its rights to present additional evidence or pursue additional legal remedies afforded to it by law if it is not dismissed from this Complaint. For example, AT&T believes that there are additional reasons why this Commission does not have jurisdiction over this matter: all six of the agreements contain a choice of law provision, with only one agreement – Eschelon's -- providing for the application of Minnesota law to "all substantive matters pertaining to the interpretation and enforcement of the terms of th[e] Agreement"[38] AT&T will address this and other legal issues in due course, if required.

VI. CONCLUSION

For the foregoing reasons, AT&T requests that this Commission dismiss it from the Complaint as to the Department's allegation that it failed to adhere to conditions associated with its certificate of authority and grant summary judgment to it regarding the Department's allegation that the PIU factor should be changed in the NorthStar agreement. AT&T also notes that there are numerous equitable considerations in play that would weigh against moving forward on this Complaint. Finally, AT&T reserves the right to pursue all remedies available to it against any party as allowed by law.

[38] The AZD agreement provides for Arizona law to apply, while the other four agreements provide for New York law to apply.

Respectfully submitted on August 19, 2004.

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

By _____

Mary B. Tribby
Steven H. Weigler
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202
303-298-6957

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for Switched Access Services	)))	Docket No. P-442,5798, 5340,5826 5025,5643,443,5323,5668,466/ C-04-235

AFFIDAVIT OF DEBBIE H. JOYCE

I, Debbie H. Joyce, being first duly sworn, depose and state as follows:

1. I am currently employed by AT&T Corp. ("AT&T") as a Business Developer. I have been in this position since 1999.

2. I negotiated the Settlement and Switched Access Agreement between AT&T and NorthStar Access, LLC ("NorthStar"), effective date September 11, 2002 ("Agreement"), on behalf of AT&T.

3. I submit this Affidavit in support of AT&T's Comments in the above-captioned proceeding, which I understand involves the Agreement.

4. AT&T has direct trunks in Minnesota with a NorthStar affiliate and decided to use those trunks for the switched access traffic that it would be sending to NorthStar for termination in Minnesota.

5. At the time the parties entered into the Agreement, like many telecommunications companies trying to achieve efficiencies, the NorthStar affiliate did not break out actual percentages of usage over such trunks, but instead applied a set percentage to all traffic: 92% interstate usage ("PIU"); 8% intrastate usage.

6. NorthStar was thus unable to determine the jurisdiction of the traffic that AT&T sent to NorthStar over those trunks, although NorthStar believed that the majority of the traffic was interstate.

7. Because of the difficulties in determining jurisdiction, and the likelihood that the traffic was mostly interstate, NorthStar informed AT&T that it preferred to apply a factor of 100% PIU.

8. In addition to the reasons listed above, NorthStar stated that a 100% PIU would simplify its billing process, therefore the parties did not pursue discussions regarding intrastate rates at the time the Agreement was negotiated.

9. In the Spring of this year, the parties have had discussions in which NorthStar has informed AT&T that it may soon be able to determine the jurisdiction of traffic and, if so, AT&T has indicated its willingness to revisit the PIU factor and, consequently, reasonable intrastate switched access rates.

Dated August 17, 2004.

Debbie H. Joyce

STATE OF GEORGIA)
)ss.
COUNTY OF COBB)

Subscribed and sworn to before me
this 17th day of August, 2004.

Leanne M. Turnis
Notary Public

My Commission Expires: Jan. 12, 2008

LEANNE M. TURNIS NOTARY PUBLIC EXPIRES GEORGIA January 12, 2008 FULTON COUNTY

RECEIVED
AT&T Corp. Legal - Denver
JUL

July 1, 2004

Via Airborne Express Mail

Robert P. Handal, Jr.
AT&T Corp.
900 Route 202/206 North--Room 2A109
Bedminster, NJ 07921-0752

Re: Switched Access Service Agreement - Minnesota

This is to notify AT&T that the Minnesota Department of Commerce has filed a complaint with the Minnesota Public Utilities Commission in Docket No. P442,5798, 5340,5826,437,5643,443,5323,5668,466/C-04-235, in which it alleges that several carriers, including Eschelon Telecom of Minnesota, Inc. have violated state law by not charging AT&T Communications of the Midwest, Inc. the filed tariffed rate for switched access services in Minnesota. The Department also alleges that AT&T and others violated conditions of their certificates of authority by failing to pay switched access services at tariffed rates.

While Eschelon disagrees with the allegations of the Department of Commerce as to Eschelon and intends to dispute them, Eschelon is giving AT&T notice pursuant to Section 8 of the Switched Access Service Agreement that it may be required to begin charging AT&T the standard tariffed rates for switched access services in Minnesota as of June 16, 2004, the date the complaint was filed. Futhermore, Eschelon may also be required to adjust previous bills so as to charge AT&T the standard Minnesota tariffed rate for all previous applicable billing periods under the Agreement.

Eschelon is not implementing these changes at this time since it does not appear that the Department has ordered Eschelon to take any action at this time.
However, we wanted to give AT&T notice of the possibility of a regulatory order that would require such actions.

Please contact me if you have any questions about Eschelon's position in this matter.

Sincerely,

Dennis D. Ahlers
Senior Attorney
Eschelon Telecom, Inc.
612.436.6249 (direct)
612.436.6349 (fax)
ddahlers@eschelon.com

cc: Steve Weigler

12-29-83

RECEIVED
JAN 3 1984

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Terry Hoffman	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Cynthia A. Kitlinski	Commissioner
Lillian Warren-Lazenberry	Commissioner

1/3/84

In the Matter of the Application of AT&T Communications of the Midwest, Inc. for Authority to Engage in the Construction, Operation, or Extension of Telecommunications Systems and Services within the State of Minnessota.

DOCKET NO. P-442/M-83-640

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Procedural History

On October 25, 1983, AT&T Communications of the Midwest, Inc. (AT&T/MW or the Company) filed a request with the Minnesota Public Utilties Commission (the Commission) for a Certificate of Public Convenience and Necessity (Certificate) to engage in the construction, operation or extension of telecommunications systems and services, within Minnesota, pursuant to Minn. Stat. § 237.16, subd. 4 (1982). AT&T/MW is an Iowa corporation and is currently a wholly-owned subsidiary of Northwestern Bell Telephone Company (NWB). It is managed by its own officers and directors.

This matter arises out of the Modified Final Judgment (MFJ) Order in United States of Aserica v. Western Electric Corporation, Inc. and American Telephone and Telegraph Company, Civil Action No. 83-0192 (D.C. Cir., August 24, 1982). The MFJ requires that American Telephone and Telegraph Company (AT&T) divest NWB and leave to NWB sufficient facilities, personnel, systems and technical information to permit NWB to perform exchange telecommunications and exchange access functions. Under the MFJ, beginning on January 1, 1984, AT&T/MW will separately conduct interexchange switching and transmission service, using certain facilities, equipment, etc., presently owned in the name of NWB. The Company will provide intrastate, interLATA long distance (toll) telephone service in Minnesota, Iowa, North Dakota, South Dakota and Nebraska. It will have its headquarters in Omaha, Nebraska as well as offices and staff in the five jurisdictions where it operates.

Ownership of AT&T/MW is to be transferred to AT&T on January 1, 1984; its financial strength will reflect the resources of its parent organization. In this request for a Certificate, the Company is asking for authority to provide the intrastate, interLATA toll service for telephone users within Minnesota to be divested by NWB on January 1, 1984, and authority to "[respond] where appropriate in the future to the demands and opportunities of increased competition in the telecommunications marketplace which it faces from other interexchange carriers, resellers and common carriers."

The names and addresses of the Company's Board of Directors are:

M. Tanenbaum	295 North Maple Avenue Basking Ridge, N.J. 07920
B. H. Gaynor	Rt. 202/206 Bedminster, N.J. 07921
A. A. Green	295 North Maple Avenue Basking Ridge, N.J. 07920
J. E. Harrington	295 North Maple Avenue Basking Ridge, N.J. 07920
R. W. Kleinert	Rt. 202/206 Bedminster, N.J. 07921
A. C. Partoll	295 North Maple Avenue Basking Ridge, N.J. 07920
S. P. Willcoxon	295 North Maple Avenue Basking Ridge, N.J. 07920

The names, addresses and phone numbers of the Company's present officers are:

J. A. Blanchard, III
President
811 Main, P.O.Box 1418
Room 1200
Kansas City, Missouri 64141
816-391-3131

K. E. McClintock
Vice President & General Counsel
AT&T
1 S. Wacker, 11th Floor
Chicago, Illinois 60606
312-592-5102

W. A. Garrett
Vice President, Marketing
AT&T Long Lines
10 S. Canal St., 26th Floor
Chicago, Illinois 60606
312-855-3000

T. O. Davis
Secretary
195 Broadway
New York, New York 10007
212-393-5161

J. D. Reed
Vice President
External Affairs
1 South Wacker, 11th Floor
Chicago, Illinois 60606
312-592-5100

A. G. Walton
Assistant Secretary
AT&T Long Lines
Bedminster, New Jersey 07921
201-234-6324

P. H. McHale
Vice President
Regulatory Relations
10825 Old Mill Road
Omaha, Nebraska 68154
402-691-2001

A. J. Batson
Assistant Secretary
195 Broadway
New York, New York 10007
212-393-3021

W. M. Howard Jr.
Treasurer
AT&T Long Lines
Room 18-5280
340 Mt. Kemble Avenue
Morristown, New Jersey 07960
201-326-3760

C. J. Gustafson
Assistant Secretary
340 Mt. Kemble Avenue
Morristown, New Jersey 07690
201-326-2610

D. L. Steinmeyer
Comptroller
1314 Douglas-on-the-Mall
13th Floor
Omaha, Nebraska 68102
402-633-7776

On December 14, 1983, the Minnesota Department of Public Service (DPS) filed comments to the Company's request for a Certificate. The DPS alleged that if the Company desired a Certificate prior to January 1, 1984, it must file a joint petition with NWB for Commission approval of the purchase/transfer of NWB property to AT&T/MW pursuant to Minn. Stat. § 237.23 (1982). Furthermore the DPS argued that if AT&T/MW's request for a Certificate were denied, the intrastate, interLATA toll services would be transferred to the Company on January 1, 1984 by operation of law pursuant to the MFJ. The DPS further claimed that the Certificate being requested was overly broad.

The Company's Reply dated December 9, 1983 denied the allegations contained in the DPS comments.

On December 20, 1983, the Commission met to consider AT&T/MW's application for a Certificate. Based upon the information contained in the application, supporting documents, map and files, the Commission made the following findings:

FINDINGS

1. That the MFJ requires NWB to discontinue performing intrastate, interLATA toll services beginning January 1, 1984.

2. That public convenience and necessity requires that telephone users within Minnesota continue to have intrastate, interLATA toll services available to them.

3. That AT&T/MW has agreed to file a joint petition with NWB for Commission approval of the transfer of assets necessary for performing intrastate, interLATA toll services. As a successor company to Northwestern Bell, AT&T/MW will perform intrastate, interLATA toll services. The Company will pruvide telephone services of the same quality and, initially at the same rate levels that have been authorized for NWB.

4. That the standards for authorizing a Certificate set forth in Minn. Stat. § 237.16, subd. 4 (1982) have been met.

5. That the Commission finds that the broader authority requested in the Company's petition will be better addressed at a later date.

IT IS THEREFORE ORDERED:

ORDER

1. AT&T/MW is granted a Certificate of Public Convenience and Necessity to provide the intrastate, interLATA toll service for telephone users within Minnesota as a successor company to Northwestern Bell on January 1, 1984. The Company shall provide telephone services of the same quality and, initially at the same rate levels that have been authorized for NWB.

2. The granting of this Certificate is contingent upon the filing by NWB and AT&T/MW of a joint petition pursuant to Minn. Stat. § 237.23 (1982) for the Commission's approval of the transfer of assets from NWB to AT&T/MW pursuant to the federally mandated divestiture.

3. AT&T/MW shall operate in conformance with Minn. Stat. Ch. 237 (1982) and all other applicable Minnesota Statutes.

4. AT&T/MW shall operate in conformance with all applicable Rules of the Public Utilities Commission, including Minn. Reg. PSC 170 - 219.

5. Other authority requested in the Company's petition will be addressed at a later date.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Randall D. Young
Executive Secretary

SERVICE DATE: DEC 29 1983

(S E A L)

RDY:RC:sj

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for the Provision of Switched Access Services	Docket No. P-422,5798,5340,5826,437, 5643,443,5323,5668,466/C-04-235

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
)ss.
COUNTY OF DENVER)

Janet Keller, being first duly sworn, deposes and says that on the 18th day of August, 2004, she served AT&T's Comments, Motion to Dismiss and Motion for Summary Judgment to the attached service list by U.S. Mail and/or overnight delivery service.

Janet Keller

Subscribed and sworn to before me
this 18th day of August, 2004.

Adam W Walczak
Notary Public

My Commission Expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO

My Commission Expires 1/22/06

SERVICE LIST
Docket No. P-422,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235.

Dr. Burl W. Haar (15)
Executive Secretary
Minnesota Public Utilities Commission
121 East 7th Place, Suite 350
St. Paul, MN 55101-2147

Linda Chavez (4)
Telephone Docketing Coordinator
MN Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Curt Nelson
OAG-RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Julie Anderson
Attorney General's Office
1400 NCL Tower
445 Minnesota Street
St Paul, MN 55101-2131

David Starr
Allegiance Telecom of MN, Inc.
9201 N. Central Expressway
Dallas, TX 75231

Thomas Bade
Arizona Dialtone, Inc.
7170 Oakland Street
Chandler, AZ 85226

Cathy Murray
Eschelon Telecom of MN, Inc.
730 2nd Avenue S, Suite 1200
Minneapolis, MN 55402-2456

Diane Peters
Global Crossing Local Services, Inc.
1080 Pittsford Victor Road
Pittsford, NY 14534

Sandra L. Talley
Focal Communications of MN
200 N LaSalle, Suite 1100
Chicago, IL 60601

Karen L. Johnson
Integra Telecom of MN, Inc.
1200 Minnesota Center
7760 France Avenue
Bloomington, MN 55435

Robin R. McVeigh
McLeodUSA Telecommunications Services, Inc.
6400 C Street W
P.O. Box 3177
Cedar Rapids, IA 52406

Paavo Pyykkonen
NorthStar Access, L.L.C.
P.O. Box 207
Big Lake, MN 55309

Mac McIntyre
Winstar Communications, LLC
1850 M Street NW, Suite 300
Washington, DC 20036

Timothy Zeat
Z-Tel Communications, Inc.
601 S Harbour Island Blvd. Suite 220
Tampa, FL 33602

Lesley J. Lehr
638 Summit Avenue
St. Paul, MN 55105

Pat Chow
MCImetro Access Transmission Services LLC
201 Spear Street, 9th floor
San Francisco, CA 94105

Mike Duke
KMC Telecom III LLC
1755 N. Brown Road, 3rd Floor
Lawrenceville, GA 30043

Teresa Lynch
AT&T
1455 Bussard Court
St. Paul, MN 55112

Paul Rebey
Focal Communications Corp. of MN
200 N. LaSalle, Suite 1100
Chicago, IL 60601

Michael Shortley
Global Crossing
1080 Pittsford Victor Road
Pittsford, NY 14534

Dennis Ahlers
Eschleon Telecom of Minnesota
730 Second Avenue South, Suite 900
Minneapolis, MN 55402

Steven Weigler
AT&T
1875 Lawrence Street, 15th Floor
Denver, CO 80202

Pat Gideon
Intermedia Communications, Inc.
201 Spear Street, Floors 5-10
San Francisco, CA 94105

Sue Travis
Metro Fiber Systems of Minneapolis/St. Paul
707 17th Street, Suite 3600
Denver. CO 80202

Sandra Hofstetter
AT&T
10157 Ivywood Court
Eden Prairie, MN 55347

Gregory Mertz
Gray Plant Moody
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55412

Monica Barone*
Sprint Communications Company
6450 Sprint Parkway
KSOPHN0212-2A203
Overland Park, KS 66251

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Greg Kopta
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688

Paula Block
AT&T
55 Corporate Drive, Room 32D47
Bridgewater, NJ 08807

Terry Deason*



Special Consultant (Non-Lawyer)*
Phone: (850) 425-6654
Fax: (850) 425-6694
E-Mail: tdeason@radeylaw.com

Practice Areas:

- Energy, Telecommunications, Water and Wastewater and Public Utilities

Education:

- United States Military Academy at West Point, 1972
- Florida State University, B.S., 1975, Accounting, summa cum laude
- Florida State University, Master of Accounting, 1989

Professional Experiences:

- Radey Thomas Yon & Clark, P.A., Special Consultant, 2007 - Present
- Florida Public Service Commission, Commissioner, 1991 – 2007
- Florida Public Service Commission, Chairman, 1993 – 1995, 2000 – 2001
- Office of the Public Counsel, Chief Regulatory Analyst, 1987 – 1991
- Florida Public Service Commission, Executive Assistant to the Commissioner, 1981 – 1987
- Office of the Public Counsel, Legislative Analyst II and III, 1979 - 1981
- Ben Johnson Associates, Inc., Research Analyst, 1978 – 1979
- Office of the Public Counsel, Legislative Analyst I, 1977 – 1978
- Quincy State Bank Trust Department, Staff Accountant and Trust Assistant, 1976 - 1977

Professional Associations and Memberships:

- National Association of Regulatory Utility Commissioners (NARUC), 1993 – 1998, *Member, Executive Committee*
- National Association of Regulatory Utility Commissioners (NARUC), 1999 – 2006, *Board of Directors*

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP **EXHIBIT** 75
PARTY TW Telecom of FL, I.P. (CLEC GROUP) (Direct and Rebuttal)
DESCRIPTION J. Terry Deason (TD-1) (Rebuttal)

Terry Deason*

- National Association of Regulatory Utility Commissioners (NARUC), 2005-2006, *Member, Committee on Electricity*
- National Association of Regulatory Utility Commissioners (NARUC), 2004 - 2005, *Member, Committee on Telecommunications*
- National Association of Regulatory Utility Commissioners (NARUC), 1991 - 2004, *Member, Committee on Finance and Technology*
- National Association of Regulatory Utility Commissioners (NARUC), 1995 - 1998, *Member, Committee on Utility Association Oversight*
- National Association of Regulatory Utility Commissioners (NARUC) 2002 *Member, Rights-of-Way Study*
- Nuclear Waste Strategy Coalition, 2000 - 2006, *Board Member*
- Federal Energy Regulatory Commission (FERC) South Joint Board on Security Constrained Economic Dispatch, 2005 - 2006, *Member*
- Southeastern Association of Regulatory Utility Commissioners, 1991 - 2006, *Member*
- Florida Energy 20/20 Study Commission, 2000 - 2001, *Member*
- FCC Federal/State Joint Conference on Accounting, 2003 - 2005, *Member*
- Joint NARUC/Department of Energy Study Commission on Tax and Rate Treatment of Renewable Energy Projects, 1993, *Member*
- Bonbright Utilities Center at the University of Georgia, 2001, *Bonbright Distinguished Service Award Recipient*
- Eastern NARUC Utility Rate School - Faculty Member

Docket No. 09538-TP

Qwest Complaint Against AT&T (2007)

Exhibit PKL-1

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 76
PARTY Bullseye Telecom, Inc. (Bullseye) - (Rebuttal)
DESCRIPTION Peter K. LaRose (PKL-1) (Rebuttal)

Submitted to Colorado PUC E-Filings System

FILED PSL
07 JAN 29 PM 3:13
HENNEPIN DISTRICT COURT ADMINISTRATOR

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY — Case Type: Other Civil

Qwest Communications Corporation, a Delaware corporation, Plaintiff, v. AT&T Inc., a Delaware corporation; AT&T Communications of the Midwest, Inc., an Iowa corporation; and TCG Minnesota, Inc., a Delaware corporation, Defendants.	Case No. **COMPLAINT** **Exhibit #** 107 **Docket #** _____ **Witness** _____ **Date** 7/27/12

For its complaint against Defendants, Plaintiff Qwest Communications Corporation ("Qwest") states the following:

Introduction and Overview

1. AT&T is a telecommunications carrier that has, since at least 1998, engaged in a broad-scale national effort to evade the legally-mandated intrastate switched-access tariffs filed in numerous states and thereby gain a significant illegal and unfair competitive advantage at the expense of Qwest, one of AT&T's competitors, among others.

2. Many states, including Minnesota, require telephone companies and telecommunications carriers to file and honor tariffs for intrastate access charges. A purpose of such legal requirements is to protect against price discrimination and unfair competition.

3. AT&T flouted state tariff requirements and coerced nascent competitive local exchange telephone companies ("CLECs") to provide off-tariff rates with various threats and

incentives, including withholding compensation from the CLECS for services provided to AT&T until the CLECs agreed to accept contracts for illegal and discriminatory intrastate switched-access rates and charges. AT&T used a non-negotiable form for these contracts that required the CLECs to keep the agreements confidential. With the exception of a small subset in Minnesota for which disclosure was forced by agency action, none of these agreements have been filed. Nor has the discrimination in favor of AT&T been justified.

4. The Minnesota Department of Commerce uncovered AT&T's conduct and initiated administrative proceedings against AT&T. The Minnesota Public Utilities Commission determined that AT&T had a duty as a long-distance telephone company (also known as an inter-exchange carrier or "IXC") to pay tariffed amounts for intrastate switched access. Those proceedings have caused AT&T to enter into a "Minnesota exception," under which AT&T has begun to pay tariff rates in Minnesota. However, AT&T's actions have not been fully remedied in Minnesota and its conduct continues unabated in other states. AT&T's scheme involves hundreds of agreements, many of which have multi-state applications and effects.

5. AT&T has violated state requirements directly; it has committed and participated in frauds and misrepresentations; it has conspired with other companies to procure and exploit violations; and it has aided and abetted the violations of other companies. AT&T continues to enforce and exploit these agreements in a large number of states in which they were and are unlawful.

6. AT&T's actions have caused and are causing harm to Qwest, one of AT&T's competitors, in the form of lost market share, lost profits and other consequential harm.

7. Qwest brings this action to seek declaratory relief, injunctive relief, damages, and other relief warranted by AT&T's illegal actions.

Parties

8. Qwest is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest has participated and currently participates in the long distance market or markets at issue in this case and owns the claims at issue, either by virtue of its own dealings or as a result of mergers, assignments and other consolidations from predecessor or affiliate organizations. Qwest is authorized to do business in the State of Minnesota.

9. Defendant AT&T Inc. is a Delaware corporation with its headquarters in San Antonio, Texas. At the time that most of the contracts described herein were formed, AT&T Corp. was a New York corporation with headquarters in New Jersey, but on November 18, 2005, SBC Communications, Inc. merged with AT&T Corp. and changed its name to AT&T Inc. AT&T Inc. is the successor in interest, parent, or affiliate of all AT&T entities described herein. (The term "AT&T" in this Complaint will be used to refer to AT&T Inc. and its predecessors and affiliates and will be used to refer to AT&T's predecessors and affiliates, including the co-defendants, in their roles as CLECs or IXCs, as applicable.)

10. Defendant AT&T Communications of the Midwest, Inc. ("AT&T Midwest") is an Iowa corporation headquartered at One AT&T Way, Bedminster, NJ 07921. It is a wholly-owned subsidiary of AT&T.

11. Defendant TCG Minnesota, Inc. is a Delaware corporation with its principal place of business in New Jersey. It too is a wholly-owned subsidiary of AT&T.

Jurisdiction and Venue

12. Jurisdiction in this Court is proper pursuant to Minn. Stat. § 484.01.

13. Venue in this District is proper pursuant to Minn. Stat. § 542.09.

Factual Background

Role of Regulation and Competition in the Relevant Markets in the Telecommunications Industry

14. This lawsuit pertains to an important aspect of the telecommunications industry that may be virtually unnoticed by most consumers of long-distance phone calls but that has enormous economic implications for the CLECs and IXCs that connect and transport those calls.

15. "Local exchange carriers" ("LECs") provide local telephone service to customers ("subscribers"). LECs own and control most of the plant and facilities used to provide local telephone service in their geographic areas. By way of general illustration, in local telephone networks, the subscribers' wired telephones are connected to the network in the subscribers' local service areas by cable strung on telephone poles or buried underground. The cable connects each telephone subscriber to a local "central office" switch in the LEC's service area. A switch is a machine that receives telephone calls and "switches" (that is, connects) the calls to the next step along the path to the destination that the subscriber dialed. If the call is for a subscriber on another switch, the central office sends the call to another switch that routes the call on its way. Thus, the telephone network is in essence a series of switches connected to one another. (While technologies such as internet protocol networks are beginning to change the structure of local telephone systems, this description remains a generally accurate explanation of the network structure involved in this case.)

16. Local telephone networks: (1) complete local calls; and (2) originate and terminate long-distance calls. When a subscriber places a call to someone whom the subscriber's LEC also services, then that LEC originates and terminates the call. In some cases involving "local toll" traffic, if the call is outside the free local service area but not necessarily outside the territory of the LEC that originates the call (known as "local toll service"), the subscriber dials

"1" plus the phone number and the call goes to the subscriber's preselected IXC to carry the call from the originating LEC exchange to the terminating LEC exchange. When a subscriber dials a number outside the LEC's service area with "1+" dialing, the caller's LEC originates the call, but then routes it outside the local service area. If the call is long-distance, the LEC sends the call to the subscriber's preselected IXC.

17. Generally, IXCs may not maintain their own networks to the end user's location and in many cases it is economical for IXCs to rely, therefore, on access to the networks maintained by LECs when bringing long distance calls from the calling party (originating) or to the receiving party (terminating). When a subscriber places a long-distance call (or when the subscriber has chosen a company other than its LEC to provide its local toll service), the customer's IXC generally must access both the calling party's local network and the receiving party's local network to complete the call. LECs charge IXCs a fee for using their local networks to complete customers' long-distance or local toll calls. In other words, IXCs must pay the LECs' "access charges" to use the local networks on each end of the call. Local access on the calling party's end of the call is called "originating access," while access on the receiving party's end is "terminating access."

18. This lawsuit pertains specifically to the subset of long-distance phone calls that are handled on an intrastate basis—that is, phone calls that originate in one local telephone exchange, are carried by one or more IXCs, and are terminated in another local telephone exchange within the same state.

19. LECs may be incumbent local exchange carriers ("ILECs"), including the successors to the Bell Telephone Company, or they may be CLECs, which are companies that have come into existence after the enactment of the Telecommunications Act of 1996. This

lawsuit pertains to the intrastate switched-access charges for origination or termination with CLECs.

20. The larger IXCs during the period from approximately 1998 through the present have included AT&T, MCI, Sprint, and Qwest. Some IXCs, such as AT&T, have also acted as CLECs in some states or nationally.

21. Since a merger in 2000, Qwest has been affiliated with an ILEC known as Qwest Corporation ("QC"), that has provided local exchange services in 14 states, including Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. These 14 states are referred to herein as Qwest's "In-Region States." Qwest has provided retail and wholesale long-distance inter-exchange telephone service in states other than its In-Region States at all pertinent times since 1998. Qwest has provided retail long-distance inter-exchange service in its In-Region States prior to the merger in 2000, and, thereafter, only after receiving certain approvals from various state and federal agencies, the dates of which range from about December 2002 through December 2003.

22. The switched-access charges for calls made within the same state are intrastate switched-access charges and are subject to regulation, to the extent exercised, by the given state and its administrative agencies charged with regulation of intrastate telephone service. The switched-access charges for calls that cross state lines are interstate switched-access charges and are subject to regulation by the Federal Government and, specifically, by the Federal Communications Commission ("FCC"). This lawsuit pertains to intrastate calls and not to interstate calls.

23. Nearly all states, including Minnesota, subscribe to the filed rate doctrine as reflected in statutes, regulations, and case law. The filed rate doctrine, sometimes referred to as the filed tariff doctrine, generally requires that the specific filed rate, toll, charge or price for a service be published in a tariff and charged to customers until the rate, toll, charge, or price for the service is changed through a new tariff filing or through an order of the appropriate regulatory agency requiring a going-forward change to the tariff. Under the filed rate doctrine, parties providing or receiving a tariffed service, including many telephone or telecommunications services, are governed by the tariffed rate or price, and are not free to negotiate an off-tariff rate. Many states, including Minnesota, also have had or have policies requiring CLECs and other telephone companies or telecommunications carriers to provide services and prices without discrimination between or among customers.

24. Many states have required or currently require CLECs to keep on file with the appropriate public agency the specific rate, toll, charge, or price for intrastate switched-access services provided by CLECs and or mandate non-discrimination with respect to such charges. This lawsuit pertains to states that have required or require such filings for intrastate switched-access services provided by CLECs or that mandate non-discrimination with respect to such matters. For purposes of this Complaint, the states at issue, referred to herein as "Filed-Rate States," include the following:

- Alabama;
- Arizona;
- Arkansas;
- California;
- Colorado;

- Connecticut;
- Delaware;
- Florida;
- Georgia;
- Iowa;
- Kansas;
- Kentucky;
- Louisiana;
- Maryland;
- Massachusetts;
- Mississippi;
- Missouri;
- Minnesota;
- Nebraska;
- Nevada;
- New Jersey;
- New Mexico;
- New York;
- North Carolina;
- North Dakota;
- Oklahoma;
- Pennsylvania;
- Rhode Island;
- South Dakota;

- Tennessee;
- Texas;
- Vermont;
- Virginia;
- West Virginia; and
- Wyoming.

Qwest reserves the right to amend and supplement this listing of Filed-Rate States to bring into play other states that currently have similar requirements or that have had similar requirements at material times.

25. In Filed-Rate States, LECs charge tariff rates to the IXCs for use of their networks for the origination and termination of long-distance calls. Minutes of Use (MOU) provide a common measurement for the traffic that is routed through the LEC switches and a basis for common intrastate switched-access charges.

26. Since interstate switched-access charges are regulated by the FCC and intrastate switched-access charges are regulated, if at all, by the many Filed-Rate States, intrastate switched-access charges for CLECs can vary from state to state and can (and generally do) vary from the interstate rates. Moreover, intrastate switched-access charges for CLECs can (and generally do) vary from those charged by ILECs. Intrastate switched-access charges are often higher than interstate switched-access charges.

27. There has been and remains fierce competition among IXCs for inter-exchange telephone traffic both for intrastate and interstate calls at both retail and wholesale levels. IXCs want to control and minimize variable costs, and switched-access charges represent a large share of those costs. In Filed-Rate States, however, intrastate switched-access charges are governed by

tariffed prices. Accordingly, fair competition as between and among IXCs for intrastate long-distance telephone calls is to be pursued in relation to prices of other service inputs, quality of service, and other factors besides the intrastate switched-access charges.

28. The long distance market includes the retail market, in which services are sold directly to end-user customers, and the wholesale market, which involves resale or transport and termination services for another IXC's traffic. Both the retail long distance market and the wholesale long distance market are and have been competitive markets during the times relevant to this lawsuit. At the same time, IXCs have also routinely entered into transactions with other IXCs in the wholesale market for resale and transport and termination services. The expectation and express or implied representation and obligation for such wholesale services is that the terminating IXC will terminate the call lawfully and will assume and satisfy all associated obligations to pay the tariffed charges in Filed-Rate States for intrastate switched-access.

29. Access charges are one of the largest costs of doing business for Qwest, AT&T, MCI, and Sprint, as well as other long-distance companies.

30. Revenues from IXCs for intrastate switched-access charges and interstate switched-access charges represent a large share of the income expected by CLECs for their local exchange services.

AT&T's Self-Help and Off-Tariff Deals

31. AT&T decided in 1998 to adopt a national policy under which it would refuse to pay for CLEC access services in exchanges where the ILEC access charges were lower than those of the CLEC. AT&T pursued its national policy without regard to the unlawful results of its policy in Filed-Rate States.

32. AT&T obtained enormous financial leverage over the CLECs through its unilateral decision to withhold payment of the tariffed access charges. This created a financial squeeze on CLECs that effectively eliminated meaningful opportunities for negotiation, and put the CLECs at the mercy of AT&T's demands.

33. AT&T has publicly admitted its self-help measures and has attempted to justify those measures by complaining that the public policy-makers have failed to mandate reforms, failed to do so with sufficient speed, or failed to mandate adequate reforms. Rather than abide by decisions of the regulators of Filed-Rate States, AT&T instead elected to engage in self-help to pay less than state law required it to pay, and carried out its wishes in a deceptive, intentional and knowing manner.

34. AT&T conceived, undertook, and implemented its self-help measures without regard for the law as it existed and currently exists. As set forth below, AT&T reached a bilateral deal with MCI for untariffed prices between their respective IXC and CLEC operations as early as 1998, imposed its self-help deals on other CLECs as early as 2000, and the deals have continued apace since then.

35. Over the years, AT&T used the financial leverage gained through its size, and the volume of its intrastate calls originated or terminated with CLECs, to refuse to pay CLECs for access services at lawful tariffed rates and to induce, coerce, or persuade the CLECs to enter into agreements for the purpose of avoiding lawful tariffed access charges. In the words of one of the CLECs pressured by AT&T's self-help measures:

> AT&T asserts that CLECs "voluntarily" agreed to these contracts. This is the equivalent of Stalin saying that Poland voluntarily agreed to occupation by the Soviet Union. The fact is that AT&T refused to pay <u>any</u> access charges unless and until an agreement was signed. AT&T not only refused to pay the tariffed rate, it refused to pay anything, even the rate that it claimed was reasonable, until the CLEC signed the agreement. This denied the CLECs millions of dollars at a

> time that they were struggling to merely survive. Thus the agreements were hardly "voluntary" on the part of the CLECs.

Eschelon's Reply to AT&T's Response to Department Exhibit, p. 3, *In the Matter of Negotiated Contracts for the Provision of Switched-access Services*, Minnesota Public Utilities Commission ("PUC"), Docket No. P442, etc./C-04-235, May 23, 2005. In the words of another group of CLECs:

> AT&T misleadingly suggests that the CLECs "voluntarily" agreed to these contracts in exchange for not having to defend their excessive tariff rates in complaint proceedings. More accurately, the CLECs entered into these contracts because AT&T was refusing to pay any of the multiple millions of dollars in access charges that the CLECs had properly billed at tariffed rates for services already received. The CLECs had to enter into these contracts to receive even a portion of these very large past due payments.

Reply of Focal Communications, Inc., Integra Telecom of Minnesota, Inc., KMC Telecom, Inc. McLeodUSA, Inc., and XO Communications, Inc. to AT&T's Comments on Department's Exhibit, PUC Docket No. P442, etc./C-04-235, May 23, 2005. In the same vein, the CLEC McLeodUSA provided the proper characterization of the conduct of AT&T and MCI in *Reply Comments of McLeodUSA, Inc.*, PUC Docket No. P442, etc./C-04-235, September 9, 2004:

> AT&T was usurping the Minnesota Public Utilities Commission's authority to determine the reasonableness of switched-access rates. Rather than address the reasonableness of CLEC access rates in proper proceedings, AT&T flexed its considerable market power in a policy of "self help" and extracted from CLECs the access rates it wanted. . . . MCI did the same. . . . The market power disparity between the IXCs and CLECs is apparent in the striking similarity between all of the agreements in which all the key terms were dictated by the IXCs.

36. For the Filed-Rate States, AT&T unilaterally decided to engage in self-help through confidential, coerced deals that afforded discriminatory pricing in its favor rather than to obtain lawful revisions to tariffs in compliance with applicable law.

37. AT&T's conduct caused disadvantage and harm not only to the CLECs, but also to AT&T's competitors and to the public. One of the affected CLECs explained the public harm:

> IXCs had already billed their customers for the long distance services that the IXCs were able to provide by virtue of the access services provided by McLeodUSA and other CLECs. Yet, when an IXC used its market power (in the form of withholding very large sums of money that CLECs desperately needed to fund their day-to-day operations) to extract reduced access rates, IXCs did not pass the benefits they reaped to their customers in the form of refunds. Instead, this money simply went to improve the bottom line profits of the IXCs [who had thereby avoided the tariffed access rates].

Reply Comments of McLeodUSA, September 9, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services,* C-04-235.

38. In a document dated August 18, 2004, AT&T admitted to the PUC that its agreements all follow the same basic form, stating:

> In the past four years or so, AT&T has entered into hundreds of agreements based on the same form with CLEC providers of switched-access services throughout the United States.

AT&T Comments, Motion to Dismiss and Motion for Summary Judgment, August 18, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services,* C-04-235. On information and belief, AT&T has continued to enter into additional and similar agreements since August 2004, continues to rely upon those agreements at the present time, and plans to continue to do so for the foreseeable future, barring specific rulings to the contrary.

39. Illustrative Settlement and Switched-Access Service Agreements, which have become known to Qwest by virtue of disclosures obtained by the Minnesota Department of Commerce ("DOC"), include:

a. Agreement with MCI on July 23, 1998;

b. Agreement with Eschelon Telecom, Inc. on May 1, 2000;

c. Agreement with Time Warner on January 1, 2001;

d. Agreement with Integra on July 1, 2001;

e. Agreement with McLeod on July 1, 2001;

f. Agreement with XO Communications on July 1, 2001;

g. Agreement with Focal Communications Corporation of Minnesota on December 25, 2001;

h. Agreement with NorthStar on September 11, 2002;

i. Agreement with Granite on April 1, 2003;

j. Agreement with New Access, Stonebridge, Choicetel, Emergent on May 1, 2003;

k. Agreement with Digital on July 31, 2003;

l. Agreement with Desktop Media on August 15, 2003;

m. Agreement with Mainstreet on September 4, 2003;

n. Agreement with OrbitCom, Inc. on January 1, 2004;

o. Agreement with VAL-ED on February 16, 2004;

p. Agreement with Time Warner on February 20, 2004, superseding prior Agreement; and

q. Agreement with Tekstar on April 5, 2004.

40. The following provisions are generally found in all or the vast majority of these "Settlement and Switched-Access Service Agreements":

a. The agreements were entered into by and between AT&T Corp. on behalf of itself and each of its subsidiaries, all collectively referred to as "AT&T," and any given CLEC.

b. Part A of the agreements documented a payment by AT&T of a "Settlement Amount," representing, on information and belief, a substantially discounted payment for switched-access services provided to AT&T by the CLEC prior to the date of the agreement.

c. The agreements provided for a resolution of the so-called "Dispute," which AT&T had created by withholding the payments unlawfully withheld from CLECs in need of cash, providing a release in favor of AT&T (to protect the discount it had extracted) as of the "Effective Date," for all claims in any court or agency.

d. The agreements provided for a contract period in Part B.1 governing prices relating to "Switched-access Services," although the contract periods varied from CLEC to CLEC.

e. The agreements pertained to Switched-access Services throughout the nation or at least the entire area served by any particular CLEC.

f. The agreements provided for "Pricing Principles" in Part B.6, which usually referred to a Schedule A, to govern the charges for intrastate switched-access service as between AT&T and the given CLEC. The agreements did not provide for or authorize the CLEC to make filings of the agreements or otherwise comply with filing requirements for the Filed-Rate States.

g. Schedule A provided for the same charges to be used in all states served by the CLEC, and only in a few instances did Schedule A include exceptions for particular states.

h. The agreements contained provisions that made the agreements and the terms of the agreements, both in their literal wording and their practical effect, confidential.

i. The agreements used by AT&T have remained essentially the same over the several years that AT&T has been employing self-help measures, without changes

prompted by various decisions that were adverse to AT&T's practices and that put AT&T on notice of its violations of the laws in the Filed-Rate States.

41. The settlement amounts AT&T paid to any particular CLEC for intrastate switched-access charges constituted only partial payments for the tariffed rates for those services that had been used for long-distance calls prior to the dates of the settlements.

42. Not only did AT&T achieve significant savings through its off-tariff prices for services predating the agreements, AT&T also achieved significant savings with the prospective, unique, off-tariff rates it achieved through each deal.

43. Since off-tariff savings were and are not lawful in the Filed-Rate States, AT&T's gains are unlawful. The specific amounts of these unlawful gains are not yet known to Qwest.

44. As explained below, AT&T eventually agreed to abide by tariffed rates for intrastate switched access in Minnesota. However, AT&T continues to enjoy the benefits of its untariffed rate agreements for Filed-Rate States other than Minnesota, and continues to threaten CLECs with economic hardship, sanctions, claims for breach of contract, and other disincentives against complying with their tariffed rates for AT&T's use of their intrastate switched-access services in any state other than Minnesota.

45. Even in Minnesota, and except for a repayment to MCI, AT&T has not repaid to CLECs the amount of illegal rate relief it achieved through its deals with any CLEC for any services received prior to the date on which the DOC filed a complaint against AT&T and various CLECs. Rather, AT&T has agreed merely to honor specific tariffs in Minnesota on a going-forward basis.

Bi-Lateral Off-Tariff Deals Between AT&T and MCI

46. AT&T and MCI entered into a National Services Agreement (as amended) between Metro Access Transmission Services, Inc. and AT&T Communications, Inc., dated November 1, 1996, and a Switched-Access Services Agreement (as amended) between AT&T Corp. and MCI WorldCom Network Services, Inc., dated July 23, 1998. One or both of these agreements served as private contractual arrangements between these two competitors governing the respective amounts which AT&T's CLEC charged to MCI's IXC and which MCI's CLEC charged to AT&T's IXC.

47. On or about February 25, 2004, AT&T and MCI entered into a settlement to resolve, among other things, a complaint that AT&T had filed against MCI in the United States District Court, Eastern District of Virginia, in September, 2003. In addition to the settlement of the lawsuit, the parties also resolved a dispute about access charges, confirming that the access charges would be paid at contract rates, rather than tariff rates, for the period in question prior to the settlement. In addition, AT&T and MCI entered into reciprocal switched-access service agreements with two-year terms in a format consistent with the same format AT&T used with other CLEC deals. Under these reciprocal agreements, AT&T's CLEC agreed to charge MCI's IXC an off-tariff rate for all calls, including intrastate switched-access calls. And, MCI's CLEC agreed to charge AT&T's IXC the same off-tariff rate for the same classes of calls. During this time, AT&T maintained a filed tariff for its own switched-access for services for terminating calls at a rate that is higher than the rate it granted solely to MCI in the reciprocal deal.

48. The rates charged by AT&T's CLEC and MCI's CLEC deviated below their tariffed rates for intrastate switched-access service in Filed-Rate States.

49. Neither AT&T nor MCI complied with applicable filing and non-discrimination requirements for tariffed rates with respect to any of their reciprocal agreements as required under laws and regulations in the Filed-Rate States.

50. In reference to the reciprocal agreements between AT&T and MCI, Gregory J. Doyle, a Manager for the DOC, stated: "AT&T . . . engaged in self-help which resulted in discrimination and a thumbing of its nose at legal requirements." Doyle Rebuttal Testimony filed in *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-access Contracts,* October 6, 2006 ("Doyle Rebuttal"), p. 18.

AT&T's Deceptions Concerning Tariffed Rates

51. Beginning in about 2001 and from time to time thereafter, AT&T filed its own tariffs in various states, including, without limitation, Arkansas, Colorado, Florida, Massachusetts, Minnesota, Missouri, New Jersey and New York, for the purpose of collecting a monthly "In-State Connection Fee" ("ISCF") from residential customers of approximately $1.95.

52. AT&T specifically or implicitly represented to regulators, the public and other parties in each of these states that it needed the ISCF in order to cover the difference between the rates for tariffed access charges for intrastate long-distance calls as compared with the rates for tariffed access charges for interstate long-distance calls.

53. AT&T concealed or failed to reveal to regulators, the public and other parties that AT&T was at that same time refusing to pay the tariffed intrastate switched-access rates to CLECs and demanding and obtaining off-tariff intrastate switched-access rates from CLECs far lower than the tariffed intrastate switched-access charges.

54. AT&T profited by collecting the ISCF from its residential customers at the same time as it was refusing to pay and avoiding payment of the tariffed intrastate switched-access charges upon which the ISCF was ostensibly predicated.

Tolling of Claims

55. The existence, terms, and conditions of the off-tariff agreements were not known to Qwest until recently and even now Qwest has only limited information about these off-tariff agreements.

56. AT&T required pre-negotiation confidentiality agreements as a condition of negotiations with a large number of CLECs.

57. Nearly all of the agreements AT&T imposed upon CLECs contained provisions that made the agreements confidential.

58. The DOC obtained information about a small number of off-tariff agreements, which led the DOC to file an administrative complaint with the PUC on June 15, 2004, against AT&T, MCI, and a number of other CLECs and IXCs. However, at that time, while the DOC's complaint described some information about the unfiled, off-tariff agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public. As explained by Mr. Doyle: "[T]his case was initiated in early 2004, and for two years, AT&T and the other parties to the agreements continued to abide by the veil of secrecy. Doyle Rebuttal, p. 3. Eventually, all of the CLECs and IXCs agreed to abide by tariffed rates in Minnesota going forward, and the DOC's complaint was dismissed against all parties, except against AT&T for its conduct as a CLEC with respect to the bi-lateral deal with MCI. The majority of AT&T's off-tariff intrastate switched-access pricing agreements, except for a small subset of those

agreements that formed the basis of certain administrative proceedings in Minnesota, have not yet been made public.

59. On December 30, 2005, the DOC filed an additional complaint with the PUC against AT&T and a number of other CLECs. The DOC had only recently become aware of those additional agreements between AT&T and those CLECs. Again, while the DOC's complaint described some information about the unfiled agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public.

60. As a result of AT&T's representation to the PUC in April 2006, Qwest has finally been permitted to receive and review a handful of AT&T's secret agreements with CLECs, including the discriminatory pricing rates that AT&T was able to extract from CLECs through its predatory practices. Qwest had no access to these agreements until after April 2006.

61. Even now, the only subset of agreements that has been made available to Qwest is the handful of agreements that have been revealed in Minnesota. The other similar agreements and pricing arrangements AT&T extracted from other CLECs, including a large number of those entered into applicable to Minnesota and including all of those affecting only other states, still have not been filed or made available to Qwest. Accordingly, while the veil of secrecy has been lifted enough to glimpse a small fraction of AT&T's conduct, AT&T continues to profit by its illegal actions in Filed-Rate States across the nation.

Regulators Reject AT&T's Assertions of Right to Evade Tariffed Rates

62. The Iowa Supreme Court confirmed that AT&T was obligated to comply with tariffed switched-access rates in *AT&T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd.*, 687 N.W.2d 554 (Iowa 2004). The court affirmed an Iowa Utilities Board ruling that AT&T was

obligated to pay the tariffed rates for past intrastate switched-access services. The court relied upon the filed-rate doctrine, observing that this doctrine "provides that the legal rights of the utility in the customer are measured exclusively by the published tariff." *Id.* at 562. The court concluded that the tariff rate on file was applicable and enforceable until it was found to be unlawful. (The Iowa case commenced when five CLECs filed an administrative complaint filed against AT&T Midwest with the Utilities Board for the State of Iowa Department of Commerce on August 16, 2000, objecting that AT&T had refused to provide payment for billed originating and terminating access services. Other CLECs intervened. Each of the CLECs had adopted and filed an intrastate switched-access tariff. AT&T argued that it should not be required to purchase and pay for access services from the CLECs at rates AT&T deemed to be non-competitive.) The Iowa Utilities Board ruling against AT&T, affirmed by the Iowa Supreme Court, had been reflected in a Decision and Order issued October 25, 2001. The Board ruled that:

> Any interexchange calls originating outside the called user's exchange using AT&T's services must be completed to the called user's telephone number and AT&T must pay the tariffed terminating access charges, even if the user's chosen LEC has terminating access charges that are higher than AT&T might like. Similarly, calls originating from customers of the complainant CLECs must be carried by AT&T, so long as AT&T serves any LEC in the exchange, and AT&T must pay the tariffed originating access charges.
>
> This does not put AT&T at the mercy of an "unconstrained monopoly," as AT&T argues. If AT&T (or any other interexchange carrier) believes at any time that a particular CLEC's access charges are unreasonable, the interexchange carrier may file a written complaint with the Board ..., asking the Board to determine the just and reasonable terms and procedures for exchange of toll traffic with the CLEC ....

The Board ordered that AT&T was obligated to pay for the access services at the CLEC's tariffed rates in effect at the time the services were used.

63. The Minnesota PUC has also ruled against AT&T on the off-tariff conduct. For example, the PUC issued its Order Finding Failure to Pay Tariffed Rate, Requiring Filing, and

Notice and Order for Hearing on February 8, 2006, in *In the Matter of the Complaint of PrairieWave Telecommunications, Inc. Against AT&T Communications of the Midwest,* PUC Docket No. P-442/C-05-1842. In that Order, the PUC explicitly ruled:

> The Commission finds that AT&T is obligated to pay PrairieWave's tariffed access rates and that it has failed to do so. The Commission rejects AT&T's contention that it was authorized to withhold payment on the basis of its belief that the tariffed rates were excessive, unjust, unreasonable, and therefore illegal.

Order, at p. 2. The matter had come before the PUC on the complaint of PrairieWave that AT&T Midwest was refusing to pay PrairieWave's tariffed rates for intrastate switched-access services. AT&T Midwest admitted that it had not paid monthly invoices submitted by PrairieWave, but asserted in a counterclaim that the tariffed rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal. The DOC urged the PUC to resolve PrairieWave's complaint on legal and policy issues and to refer the counterclaim for an evidentiary hearing. At a hearing before the PUC on January 12, 2006, the PUC rejected AT&T's contention that it was allowed to withhold payment on the grounds that AT&T deemed the rates excessive. The PUC provided a detailed explanation in support of its decision that "AT&T was and is obligated to pay tariffed access rates," Order, at p. 2, starting with the invocation of the filed rate doctrine, embracing the following definition:

> **Filed rate doctrine.** Doctrine which forbids a regulated entity from charging for its services other than those properly filed with the appropriate federal regulatory authority.

Order, at p. 2. The PUC went on to explain:

> Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service areas, including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics.

> PrairieWave therefore lacked the right to accede to AT&T's request to retroactively adjust its access rates, and AT&T lacked the right to pay any rate other than the tariffed rate.
>
> Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications network on which the public depends and the competitive telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations.

Order, at p. 3 (citations omitted).

64. As noted above, in another proceeding, the Minnesota DOC initiated a complaint against AT&T and others in June 2004. That administrative proceeding was given the Docket Number P-442 et seq./C-04-235. Eventually, the parties to that proceeding agreed to abide by filed tariffs on a prospective basis, except that AT&T did not reach an agreement with the DOC concerning its conduct as a CLEC with respect to the bi-lateral deals with MCI. The Minnesota PUC referred that complaint to the Office of Administrative Hearings ("OAH") for an evidentiary proceeding.

65. In the ensuing contested case proceeding concerning AT&T's conduct as a CLEC, on June 26, 2006, in a Recommendation on Motion for Summary Disposition, Administrative Law Judge Steve M. Mihalchick recommended that the Commission should find, among other violations, that "AT&T knowingly and intentionally violated applicable provisions of Minn. Stat. Ch. 237, Commission orders, and rules of the Commission adopted under Minn. Stat. Ch. 237," and

> That AT&T engaged in discrimination by knowingly or willfully charging, demanding, collecting, and receiving the untariffed rates for intrastate-switched-access service under the terms of its unfiled Agreement with MCI, while offering, charging, demanding, collecting, or receiving tariffed rates for intrastate-switched-access service with regard to other IXCs under similar circumstances, in violation of Minn. Stat. § 237.09, subd. 1.

Recommendation, pp. 1-2. In explaining these recommendations, Judge Mihalchick explained that AT&T is required to file its tariff or price list for each service and noted that AT&T entered into two unfiled Agreements with MCI but did not file the terms as a unique price list or tariff term. "Instead, AT&T filed and maintained a separate tariff under which AT&T provided less favorable terms to other carriers that did not reach a unique agreement with AT&T." Recommendation, p. 9. The Administrative Law Judge continued:

> [B]y offering unique pricing to MCI that it did not file as a tariff, AT&T engaged in unreasonable discrimination .... CLECs, like AT&T [are permitted] to offer telecommunications service within the State only if the rates are uniform and the terms and rates are not "unreasonably discriminatory." . . . [A] CLEC's abililty to reasonably discriminate with respect to its rates and terms is limited to ... specific exceptions; anything else, is unreasonable discrimination. Moreover, ... a CLEC may only qualify for one of these exceptions if it first files its unique price offering with the Commission ....

Recommendation, pp. 12-13. The Administrative Law Judge concluded that AT&T's purposeful election to enter into an agreement with MCI—in which AT&T charged MCI less for intrastate switched-access than it charged other carriers and provided intrastate switched-access service to MCI on a unique separate basis, not pursuant to tariff under which the service was offered to all similarly situated carriers—was "illegal conduct" in which "AT&T purposefully engaged . . . [and] its actions were knowing and intentional." Recommendation, p. 14.

66. As noted earlier, the DOC initiated another complaint against AT&T and other parties in Docket No. P442/C-05-1282, filed December 30, 2005. This matter was resolved by stipulations confirming that the parties would honor filed tariffs on a prospective basis in April 2006.

67. Also, the DOC initiated another complaint against AT&T's subsidiary TCG in Docket No. P442/C-05-1282, filed June 7, 2006. On October 12, 2006, the PUC referred this complaint to the OAH for contested case proceedings.

Defendants' Ongoing Off-Tariff Deals in Filed-Rate States outside Minnesota

68. Although AT&T has agreed to abide by tariffed rates for intrastate switched-access service in Minnesota for agreements discovered and specifically challenged by the DOC, AT&T has not agreed to abide by tariffed rates for intrastate switched-access service for any other Filed-Rate States, and AT&T continues to enjoy the illegal fruits of off-tariff intrastate switched-access pricing agreements in all or at least most other Filed-Rate States.

69. AT&T continues to pursue tactics based upon the leverage afforded by the volume of its interexchange traffic rather than lawful compliance with filed tariffs. For example, on information and belief, while AT&T has begun to pay PrairieWave for its intrastate switched-access services at tariffed rates, AT&T has simultaneously determined to withhold other payments for which it is legally obligated. Thus, AT&T is honoring only the form of compliance with the PUC order while effectively flaunting requirements by transferring its withholding to other categories so that PrairieWave is given no net benefit by AT&T's ostensible compliance.

70. On information and belief, Defendants continue to pursue and enforce even the agreements with specific CLECs that operate in Minnesota, after those agreements have plainly been exposed as illegal contracts in Minnesota, so that even though it may be paying tariffed rates in Minnesota, it continues to pay the agreement rates for those same CLECs in all other jurisdictions, including other Filed-Rate States.

71. Defendants have no legitimate justification to use, enforce, or threaten to enforce their illegal off-tariff intrastate switched-access pricing contracts in Filed-Rate States.

72. Defendants' activities, and the activities of those with whom Defendants are in privity, violate statutes or cause violations of statutes in the Filed-Rate States, including but not limited to the following:

a. Alabama: The laws that those activities violated include Ala. Code § 37-2-10.

b. Arizona: The laws that those activities violated include Ariz. Rev. Stat. Ann. § 40-365, Ariz. Admin. Code §§ R14-2-1115 and R14-2-510, and Ariz. Rev. Stat. Ann. § 40-334.

c. Arkansas: The laws that those activities violated include Ark. Code Ann. §§ 23-4-88-107, 23-4-105, 23-4-106, and 23-3-114(a).

d. California: The laws that those activities violated include Cal. Pub. Util. Code §§ 489 (and General Order 96A adopted pursuant thereto), 556, and 558.

e. Colorado: The laws that those activities violated include Colo. Rev. Stat. §§ 40-15-105 and 40-3-101.

f. Connecticut: The laws that those activities violated include Conn. Stat. Ann §§ 42-110b, 16-247f, and16-247b.

g. Delaware: The laws that those activities violated include Del. Code Ann. tit. 26, § 304, Del. Code Regs §§ 10-800-020-3.5, 10-800-050-48.1, 10-800-050-5.2.1, and Del. Code Regs § 10-800-050-6 and Del. Code Ann. tit. 26, § 303.

h. Florida: The laws that those activities violated include, but are not limited to, Fla. Stat. §§ 501.204, 364.04, 364.08, and 364.09.

i. Georgia: The laws that those activities violated include Ga. Code Ann. §§ 46-2-25, 46-5-164, and 46-5-166.

j. Iowa: The laws that those activities violated include Iowa Code §§ 476.4 and 476.101.

k. Kansas: The laws that those activities violated include Kan. Stat. Ann. §§ 66-109, 66-1,190, 66-1,189, and 66-154a.

l. Kentucky: The laws that those activities violated include Ky. Rev. Stat. Ann. § 278.160.

m. Louisiana: The laws that those activities violated include La. Competition Reg. § 401(A).

n. Maryland: The laws that those activities violated include Md. Code Ann., Pub. Util. Cos. § 4-202.

o. Massachusetts: The laws that those activities violated include Mass. Gen. Laws 93A § 2, 159 § 19 and 116 § 14, and orders entered pursuant thereto.

p. Minnesota: The laws that those activities violated include Minn. Stat. §§ 325F.67, 325F.69, 237.07, 237.035, 237.74, 237.09, 237.60, and Minn. R. 7811.2210.

q. Mississippi: The laws that those activities violated include Miss. Code Ann. § 77-3-35.

r. Missouri: The laws that those activities violated include Mo. Stat. §§ 392.220, Mo. Code Regs tit. 4 § 240- 3.545, and Mo. Stat. § 392.200.

s. Nebraska: The laws that those activities violated include Neb. Rev. Stat. Ann. § 86-143.

t. Nevada: The laws that those activities violated include Nev. Rev. Stat. Ann. §§ 598.969, 598.0923, and 704.061 through 704.0130.

u. New Jersey: The laws that those activities violated include N.J. Stat. Ann. § 56:8-2, N.J. Admin. Code §§ 14:1-4, 14:10-5.3 through 14:10 10-5.11, and 48:3-1.

v. New Mexico: The laws that those activities violated include N.M. Stat. §§ 57-12-2, 57-12-3, and 63-9A-8.1.

w. New York: The laws that those activities violated include N.Y. Pub. Serv. L. §§ 92, N.Y. Comp. Codes R & Regs tit. 16 § 720-1.3, and N.Y. Pub. Serv. Law § 91.

x. North Carolina: The laws that those activities violated include N.C. Gen. Stat. §§ 62-133.5 and 62-134.

y. North Dakota: The laws that those activities violated include N.D. Cent. Code §§ 51.15-02, 49-05-05, 49-21-04, 49-04-07, 49-21-07, and 49-21-10.

z. Oklahoma: The laws that those activities violated include Okla. Stat. §§ 165:55-5-1 and 165:55-5-2.

aa. Pennsylvania: The laws that those activities violated include 66 Pa. Cons. Stat. Ann. §§ 1302, 1303 and 1304.

bb. Rhode Island: The laws that those activities violated include R.I. Gen. Laws §§ 39-3-10, 39-3-11, 39-2-2, 39-2-3, and 39-2-4.

cc. South Dakota: The laws that those activities violated include S.D. Stat. §§ 37-24-6, 49-31-12.2 49-31-19, 49-31-4, 49-31-4.2, and 49-31-11, and S.D. Admin. R. 20:10:27:06 and 20:10:27:17.

dd. Tennessee: The laws that those activities violated include Tenn. Code Ann. § 65-5-102 and Tenn. Comp. R. & Regs. 1220-4-1-.03 to .04.

ee. Texas: The laws that those activities violated include Tex. Util. Code § 52.251 and Tex. PUC Subst. R. 26.89(a)(3).

ff. Vermont: The laws that those activities violated include Vt. Stat. Ann. § 225.

gg. Virginia: The laws that those activities violated include Va. Code Ann. §§ 56-479.2(b), 56-236, 56-237, and 56-234.

hh. West Virginia: The laws that those activities violated include W. Va. Code §§ 24-3-1, 24-3-2, and 24-3-5, W. Va. Code R. §§ 150-2-2, 150-2-7, 150-2-16, 150-2-28, 150-6-9, and 150-6-15.

ii. Wyoming: The laws that those activities violated include Wyo. Stat. Ann. §§ 37-15-204, 37-15-404, and 37-15-404.

Effects of Defendants' Off-Tariff Deals

73. Qwest brings this action to obtain relief for harm that cannot be remedied in any other forum. Qwest has incurred loss of market share in the wholesale market for intrastate inter-exchange telephone service as a direct result of AT&T's practices since 1998. There is no adequate remedy for such damages to be had in the administrative agencies in the Filed-Rate States.

74. AT&T gained competitive advantages by exploiting evasion and secrecy in states that depended upon the filed rates for uniformity and even-handed, non-discriminatory treatment of competitors. In other words, IXCs like Qwest, which complied with the lawful requirements to pay the tariffed rates for intrastate switched access, were put at a disadvantage in the face of AT&T's conspiracy to deceive regulators, CLECs, the public, and competitors.

75. Defendants have no right to create wealth for themselves by exploiting a regulatory regime with illegal practices inuring to the exclusive benefit of Defendants. In the words of Mr. Doyle:

> AT&T, like other businesses, has an incentive to maximize shareholder wealth. This is generally healthy for the marketplace. However, that does not mean that a company can choose to create wealth by violating the law if it is unlikely that it will be caught, and even if caught, any penalty is unlikely to be as great as the benefit received.

Doyle Rebuttal, p. 4.

76. Defendants have no right to profit by their illegal conduct in Minnesota or in any other state that employs a comparable tariff filing requirement for switched-access services offered by CLECs. In the words of Mr. Doyle:

> There is value to regulatory certainty in the marketplace and regulatory certainty is created when all competitors are confident that, if they operate in compliance with the law, they will be operating on a level playing field and will not be disadvantaged by their honesty. AT&T's discriminatory tactics, if anything, created financial hardship on those companies that did not have the economic advantage of an illegal contract, and would create a disincentive for such companies to invest.

Doyle Rebuttal, p. 19.

77. Defendants' conduct has enabled them to gain unfair and illegal advantage at the expense of their competitors. In the words of Mr. Doyle:

> [N]ot all IXCs engaged in such contracts. Thus, only the very few IXCs that also obtained contracts with the same beneficial terms could compete effectively with each other. IXCs without contracts are clearly harmed. IXCs with fewer contracts are also harmed. If competition suffers, consumer benefits achieved through competition will also suffer. Only through non-discrimination by application of the tariffed rates for access services are IXCs effectively competing with one another.

Doyle Rebuttal, p. 20.

78. Defendants have harmed consumers by achieving their desired rate reductions through their illegal self-help measures rather than through appropriate regulatory channels. The IXC market is highly competitive and, as costs decline, prices for consumers tend to decline as well. However, because the Defendants secured secret cost reductions, market forces operated differently for those IXCs like Qwest whose costs were kept higher as they complied with filed rates. Mr. Doyle provided an additional perspective:

> In the P421/C-90-1184 and P999/C-93-90 dockets, AT&T was required to pass through the access charge savings to consumers through lower toll rates. Interexchange carriers would prefer that there be no regulatory requirement to reduce their toll rates if access rates are reduced. However, a pass-through was agreed to in the course of negotiations to reach a settlement in these previous cases. Thus, access charge reductions reached through the regulatory process, if a pass through of cost savings is required, does not have the same financial benefit to AT&T as access charge reductions achieved, as AT&T has done, through the unfiled agreements.

Doyle Testimony, *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-Access Services*, July 28, 2006. In fact, AT&T's actions actually compounded the illegal consequences insofar as AT&T obtained authority to impose the ISCF upon its customers by representing that it was paying tariffed rates that it was in fact not paying.

79. AT&T was able to exploit the benefits of their bilateral off-tariff agreements. They were in a position to hoard the gains made possible by their mutual deception, because competitors in the marketplace, including Qwest, were driven to higher prices by incurring the full costs required by following the filed tariffs. Thus, since AT&T engaged in a conspiracy of self-help, it deprived the public consumers of the true benefit of open and fair competition.

80. Not only was the public harmed by the bilateral off-tariff agreements of AT&T, but so also were competitors such as Qwest that paid tariffed rates to AT&T and to other CLECs with whom AT&T had secret deals. In the words of Mr. Doyle:

> [T]here are a significant number of competitors in the interexchange market. In a competitive market, price moves toward cost and no individual company has the ability to establish the market price. . . . If a competitor is able to achieve a cost advantage that is not achievable by others, profit margins (if any) will be squeezed .... Obtaining a cost advantage from a self-help scheme can significantly harm competitors and reduce the benefits that legitimate competition brings to consumers.

Doyle Testimony, p. 21. Mr. Doyle also explained:

> [C]ompanies can compete on non-price factors, such as quality of service. The issue of discrimination resulting from the contract should legitimately consider cost and non-cost factors. Even though AT&T and MCI may not have changed prices during the term of the contract[s], to the extent the margin between price and cost increased, the contract created a competitive advantage. To the extent the company [such as AT&T and MCI] could afford to improve service quality since access costs were reduced, the contract created a competitive advantage.

Doyle Rebuttal, p. 21. Further,

> If one company has a sweetheart deal that no other company has, that company may use that cost advantage to directly improve the company's net income. The prices charged by competitors cannot squeeze out excessive profits if the underlying costs, over which a carrier has no control, are not the same. Over the long term, companies must keep their service prices above costs to stay in business. If a company is able to obtain a cost advantage, that company may simply flow that advantage to its bottom line.

Doyle Rebuttal, pp. 23-24. Defendants have exploited their series of sweetheart off-tariff deals in Filed-Rate States to impose illegal harm upon Qwest.

81. There is no legitimate competitive benefit in Defendants' practices of breaking the law to secure gains, nor is there any competitive benefit in Defendants' practices to discriminate against other IXCs (apart from the co-conspiring IXC with which they conspired).

82. Defendants' practices have caused direct and indirect harm to Qwest through an unfair competitive advantage, price manipulations, exploiting unlawful and hidden cost savings, causing a loss of market share, and other direct and consequential harm.

Claims

Count One
Statutory Claims for Violation of Tariffing and Related State Law Requirements

83. The allegations of paragraphs 1 through 82 are incorporated herein as if fully restated.

84. Defendants have engaged in violations of law in Filed-Rate States with respect to their off-tariff intrastate switched-access pricing agreements.

85. Defendants have engaged in, procured, assisted, aided, abetted, encouraged or conspired in the violations of law knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

86. Defendants' conduct constitutes anti-competitive acts or practices in connection with Defendants' provision of telecommunications services.

87. Qwest has suffered substantial harm as a result of Defendants' violations of law in Filed-Rate States in an amount yet to be determined.

88. Qwest is entitled to recover damages and other relief, including attorneys' fees, for the violations of law of the Filed-Rate States with respect to Defendants' unfiled, off-tariff agreements for special pricing for intrastate switched-access service pursuant to applicable statutes, including but not limited to the following:

a. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arizona pursuant to the law of Arizona, including without limitation, Ariz. Rev. Stat. Ann. § 40-423, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

b. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arkansas pursuant to the law of Arkansas, including without limitation, Ark. Code Ann. § 4-88-113, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

c. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of California pursuant to the law of California, including without limitation, Cal. Pub. Util. Code § 2106 and California Public Utilities Commission Decision No. 77406, 71 Cal. P.U.C. 229, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

d. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Colorado pursuant to the law of Colorado, including without limitation, Colo. Rev. Stat § 40-7-102, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

e. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Connecticut pursuant to the law of Connecticut, including without limitation, Conn. Stat. Ann § 42-110g, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

f. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Delaware pursuant to the law of Delaware, including without limitation, Del. Code Ann. tit. 6, §§ 2513, 2525 and 2533, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

g. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Florida pursuant to the law of Florida, including without limitation, Fla. Stat. §§ 501.204 and 501.211, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

h. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Georgia pursuant to the law of Georgia, including without limitation, Ga. Code Ann. § 46-2-90, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

i. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Kansas pursuant to the law of Kansas, including without limitation, Kan. Stat. Ann. §§ 66-176 and 66-178, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

j. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Massachusetts pursuant to the law of Massachusetts, including without limitation, Mass. Gen. Laws ch. 93A, §§ 2 and 11, and,

by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

k. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Minnesota pursuant to the law of Minnesota, including without limitation, Minn. Stat. §§ 325F.67, 325F.69, 325D.13, and 8.31, subd. 3a.

l. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Missouri pursuant to the law of Missouri, including without limitation, Mo. Stat. § 392.350, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

m. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Nevada pursuant to the law of Nevada, including without limitation, Nev. Rev. Stat. Ann. §§ 41.600(e), 598.0923, 598.9694, and 598.969, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

n. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Jersey pursuant to the law of New Jersey, including without limitation, N.J. Stat. Ann. § 56:8-2.12 and 56.8-19, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

o. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Mexico pursuant to the law of New Mexico, including without limitation, N.M. Stat. § 57-12-10, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

p. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New York pursuant to the law of New York, including without limitation, N.Y. Pub. Serv. Law § 93 and 349, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

q. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of North Dakota pursuant to the law of North Dakota, including without limitation, N.D. Cent Code § 49-05-10, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

r. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Pennsylvania pursuant to the law of Pennsylvania, including without limitation, 66 Pa. Cons. Stat. Ann. § 3309, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

s. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Rhode Island pursuant to the law of Rhode Island, including without limitation, R.I. Gen. Laws §§ 39-2-7, 39-2-8, and 39-1-22, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

t. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of South Dakota pursuant to the law of South Dakota, including without limitation, S.D. Stat. § 37-24-31, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

u. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Virginia pursuant to the law of Virginia, including without limitation, Va. Code Ann. § 56-479.2(b), and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

v. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of West Virginia pursuant to the law of West Virginia, including without limitation, W. Va. Code §§ 24-4-7 and 24-4-3, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

w. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Wyoming pursuant to the law of Wyoming, including without limitation, Wyo. Stat. Ann. § 37-12-208, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

89. Qwest is entitled to judgment for damages caused by Defendants' violations in an amount to be determined by the trier of fact.

Count Two
Misrepresentation, Omission or Fraud

90. The allegations of paragraphs 1 through 89 are incorporated herein as if fully restated.

91. AT&T has made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

92. AT&T has made indirect representations of material fact to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made indirect representations of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

93. AT&T has endorsed or confirmed representations of material fact made by others to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States.

94. The statements made directly or indirectly, implied, endorsed or confirmed, to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading. And, the statements to

the effect that CLECs were charging tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading.

95. AT&T knew or should have known that its statements of material fact and those procured, assisted, encouraged and in common with CLECs were false or misleading.

96. AT&T made misstatements of material fact, and procured, assisted, encouraged, and acted in common with CLECs and others with whom it was in privity in misstatements of material fact, in order to induce reliance upon those misstatements by others including, but not limited to, Qwest.

97. Qwest actually and justifiably relied upon the misstatements of fact by AT&T and those with whom AT&T was in privity.

98. Qwest has suffered damages in an amount yet to be determined through its reliance upon the direct and indirect misstatements of fact by AT&T and those with whom AT&T was in privity.

99. Qwest is entitled to judgment for damages caused by the violations of law frauds and misrepresentations engaged in, procured by, assisted, encouraged, and made in concert with, for, and by AT&T in an amount to be determined by the trier of fact.

Count Three
Conspiracy to Violate Tariffing Requirements

100. The allegations of paragraphs 1 through 99 are incorporated herein as if fully restated.

101. CLECs, including AT&T and MCI, which have entered into off-tariff agreements with Defendants for special pricing for intrastate switched-access service, have violated applicable statutes, regulations, orders and other laws in the Filed-Rate States.

102. Defendants have combined, conspired and agreed with MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

103. The conspiracy or conspiracies have involved unlawful purposes or lawful purposes to be achieved by unlawful means.

104. Defendants have engaged in overt acts in furtherance of the conspiracy or conspiracies.

105. Defendants have engaged in the violations of law and the conspiracy or conspiracies for such violations, knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

106. Qwest suffered substantial harm as a result of Defendants' conspiracy or conspiracies with CLECs in an amount yet to be determined.

107. Qwest is entitled to judgment for damages caused by the violations of law Defendants' conspiracy or conspiracies with MCI and CLECs and other parties in an amount to be determined by the trier of fact.

Count Four
Aiding and Abetting the Violations of Tariffing Requirements

108. The allegations of paragraphs 1 through 107 are incorporated herein as if fully restated.

109. Defendants have aided and abetted MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

110. Defendants acted under a common design to violate the law or to encourage and assist violations of law by the CLECs.

111. Defendants have purposefully engaged in the violations of law and the aiding and abetting of such violations knowing that their unlawful conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

112. Qwest suffered substantial harm as a result of MCI's, CLECs' and other parties' violations of law and the Defendants' aiding and abetting of such violations in an amount yet to be determined.

113. Qwest is entitled to judgment for damages caused by the violations of law by MCI, CLECs and other parties and the aiding and abetting of such violations.

114. Qwest is entitled to judgment for damages caused by the violations of law by Defendants with MCI, CLECs and other parties in an amount to be determined by the trier of fact.

Count Five
Declaratory Judgment and Injunctive Relief

115. The allegations of paragraphs 1 through 114 are incorporated herein as if fully restated.

116. Defendants have violated applicable statutes, regulations, orders, and other laws in the Filed-Rate States directly or indirectly with respect to their agreements for off-tariff special pricing for intrastate switched-access service.

117. Qwest is entitled to a declaration that Defendants have violated applicable law in the Filed-Rate States with respect to off-tariff intrastate switched-access charges and rates.

118. Qwest is entitled to a declaration that Defendants are obligated to comply with filed tariffs for intrastate switched-access service.

119. Qwest is entitled to a declaration that Defendants' off-tariff agreements for special pricing for intrastate switched-access service have been and are void, illegal and unenforceable in the Filed-Rate States.

120. Qwest is entitled to an injunction requiring Defendants to abide by filed tariffs with respect to intrastate switched-access service in the Filed-Rate States without evasion or offset.

WHEREFORE, Qwest demands judgment against Defendants:

1. For declaratory and injunctive relief against Defendants;
2. For damages in an amount yet to be determined greater than $50,000;
3. For attorneys' fees, costs and other relief as is allowed by applicable laws; and
4. For such other and further relief as the Court may deem just and proper.

Dated: January 29, 2007

GREENE ESPEL, P.L.L.P.

By _____
Larry D. Espel, Reg. No. 27595
John M. Baker, Reg. No. 174403
William J. Otteson, Reg. No. 290440
200 S. Sixth Street, Suite 1200
Minneapolis, MN 55402
(612) 373-0830

Attorneys for Plaintiff Qwest Communications Corporation

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subdivision 2, to the party against whom the allegations in this pleading are asserted.

Larry D. Espel

#290772v12

Docket No. 09538-TP

FCC Statistics of Carriers (2004-2005)

Exhibit PKL-2

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 77
PARTY Bullseye Telecom, Inc. (Bullseye) - (Rebuttal)
DESCRIPTION Peter K. LaRose (PKL-2) (Rebuttal)

NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:
November 7, 2005

NEWS MEDIA CONTACT:
Mark Wigfield at (202) 418-0253
Email: mark.wigfield@fcc.gov

FEDERAL COMMUNICATIONS COMMISSION RELEASES *STATISTICS OF COMMUNICATIONS COMMON CARRIERS*

Washington, D.C. – Each year since 1939, the FCC has published the *Statistics of Communications Common Carriers*, a reference work widely used by academics, consultants, and other researchers in the field of telecommunications. This report includes a wealth of data on telecommunications costs, revenues, prices, and usage.

In order to expedite release of the information, the FCC is making all of the data available electronically at this time, before the report's formal publication in December 2005. A second notice will be issued when printed versions can be purchased from the U.S. Government Printing Office.

The electronic version of the publication is available to the public free of charge. The 160-page volume is divided into the following five sections:

- Part 1 contains general information on industry structure.
- Part 2 contains financial and operating data relating to telephone carriers.
- Part 3 contains data on international communications.
- Part 4 contains historical financial and operating statistics.
- Part 5 contains data on industry trends.

The full report is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554. This report may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone 800-378-3160 or via their website at www.bcpiweb.com. The publication also may be downloaded from the Wireline Competition Bureau's Internet site at www.fcc.gov/wcb/stats.

- FCC -

Wireline Competition Bureau contact: Katie Rangos, Industry Analysis and Technology Division at (202) 418-0940; TTY (202) 418- 0484.

Statistics of Communications Common Carriers

2004/2005 Edition

Federal Communications Commission
Washington, DC 20554

Introduction and Overview

The *Statistics of Communications Common Carriers (SOCC)*, which has been published annually since 1939, is one of the most widely used reference works in the field of telecommunications. It is the only permanent record of common carrier activity published by the Government Printing Office and sent to repository libraries. The most recent edition may be purchased by mail from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling GPO's Order and Inquiry Desk at (866) 512-1800.

Sources of Information

Much of the material contained in this volume is available well before the *SOCC* is published by the Government Printing Office.

Internet

The Wireline Competition Bureau has a home page on the World Wide Web. This home page can be accessed directly at www.fcc.gov/wcb/ through a link from the main FCC home page at www.fcc.gov. The materials available include orders, notices of proposed rulemaking, statistical reports, public notices, news releases, fact sheets, and answers to frequently asked questions (FAQs). The Wireline Competition Bureau Statistical Reports web pages include all of the files contained in the *SOCC* and a variety of other reports that are used in the preparation of the *SOCC*. It can be reached directly at www.fcc.gov/wcb/stats/. The annual carrier submissions that are used in developing many of the tables in this publication can also be found at www.fcc.gov/wcb/armis/.

Duplicating Contractors and Reference Information Center

Several private firms specialize in locating, duplicating, and distributing FCC documents. The Commission's current duplicating contractor is Best Copy and Printing, Inc. Documents may be purchased by calling Best Copy and Printing, Inc., 1-800-378-3160, or via e-mail at FCC@bcpiweb.com. Reports and the summaries used in the preparation of the *SOCC* are also available in the FCC's Reference Information Center, located on the Courtyard Level, 445 12th Street S.W., Washington, D.C.

Coverage

Local Telephone Companies

There are approximately 1,300 companies that have historically provided local telephone service in the United States. These companies, often referred to as incumbent local exchange carriers (ILECs), range in size from rural cooperatives serving fewer than 100 customers to large holding companies serving millions of telephone lines. In most cases, only larger companies (those with more than $125 million in annual revenues in 2004) are required to file information with the FCC, and only telephone companies affiliated with the four largest holding companies are required to file the most extensive information. New telephone service providers, referred to as competitive local exchange carriers (CLECs), and providers of wireless telephone service are not required to file detailed statistical data with the Commission.

In 2004, as shown in the detailed statistics in Table 2.8, there were 28 reporting large ILECs required to file the ARMIS USOA Report 43-02. In addition to these large carriers, 28 mid-sized ILECs report less detailed data in

the ARMIS Annual Summary Report 43-01, and statistical tabulations based on this report are shown in Tables 2.9 through 2.17. While these 56 companies account for more than 90% of the local telephone lines served by ILECs, they do not reflect a complete census of the industry.

Long Distance Companies

Over 900 firms buy access from local telephone companies in order to provide long distance service, and a limited amount of information on the larger long distance companies is contained in various tables throughout the *SOCC*. Among long distance carriers, only AT&T and Alascom, which once were regarded as dominant carriers possessing market power, were ever required to file detailed reports. These data are contained in earlier editions of this publication. The reporting requirements, however, were eliminated when the FCC determined that AT&T was no longer a dominant carrier.

Accounting Standards

A new Uniform System of Accounts (USOA) for the telephone industry became effective at the beginning of 1988. The detailed tables in this report are based on that system. Full Class A reporting requirements are imposed only where the aggregate revenues of an ILEC and its affiliates exceed $7.403 billion. In 2004, only BellSouth, Qwest, SBC, and Verizon remained subject to full Class A reporting requirements. The results for the 28 carriers affiliated with these firms appear in Table 2.8. The amount of state-by-state information varies from company to company. Ameritech, now a subsidiary of SBC, has historically maintained a separate operating company in each state served and consequently files information for each one. In contrast, Qwest, formerly U S WEST, has consolidated its operations into a single company servicing 14 states, for which it files aggregated information.

Where a company's revenues from all its affiliated ILECs total less than $7.403 billion, each of the affiliated ILECs earning revenues over the reporting threshold is eligible for Class B (streamlined) reporting treatment. Summary tabulations for these mid-sized companies are included in Tables 2.9 through 2.17.

The USOA applies to telephone operating companies. It is not designed to capture the activities of parent holding companies or subsidiaries. Where activities have been transferred from telephone companies to holding companies or subsidiaries, the revenues from those activities cease to be reported by the operating companies. For this reason, along with several other differences between financial and regulatory accounting systems, the results contained in reports to the FCC may differ markedly from reports to the Securities and Exchange Commission (SEC).

Timing of the *SOCC*

Most companies report information for the prior calendar year to stockholders and to the SEC by April 1. At the same time, they provide annual reports on their domestic operations to the FCC. The basic raw data are made available to the public as soon as received. This statistical summary is produced after the data have been checked, inquiries on suspect items sent to the carriers, corrected submissions received, and the industry tables compiled. Unlike data for domestic operations, corrected data for international services are typically not received until at least ten months after the end of the year being reported. Summaries of the international data are usually prepared and released by the end of the year.

We have shortened the production cycle in order to reduce the delay in publication and we now complete the production within a six-month timeframe. This has been done by lagging the publication of international data

by one year. Thus, this edition of the *SOCC* contains the international statistics *only through 2003.* International data for 2004 will be available via the Internet, from duplicating contractors, and in the FCC's public reference center, but it will not be published in the *SOCC* until next year.

Other Information Sources

The United States Telecom Association represents most local telephone companies. Like many trade associations, it collects information from each of its members. Annually, it prepares, publishes and sells statistical publications such as *Phone Facts.*

The Cellular Telecommunications & Internet Association (CTIA) represents the wireless industry. Since January 1985, it has conducted a semi-annual wireless survey, which consists of data on the wireless industry including the number of subscribers, revenues, employees, and average local monthly bill.

The Telecommunications Industry Association's (TIA) members consist of manufacturers and suppliers of the products and services used in telecommunications. TIA publishes annually the *Telecommunications Market Review and Forecast,* which provides an overview of the telecommunications industry.

* * * * * * * * * * * *

The 2004/2005 volume of the *Statistics of Communications Common Carriers,* was prepared by John Adesalu and Katie Rangos under the supervision and direction of Alan Feldman. All have worked long and hard to expand and improve the publication.

We invite comments and suggestions for further improvements. For your convenience, the survey form on the following page may be used for your response.

Rodger A. Woock, Chief
Industry Analysis and Technology Division
(202) 418-0940

November 2005

Part 1

General Tables

Statistics of Communications Common Carriers

Table 1.4 – Total Toll Service Revenues by Provider
(Dollar Amounts Shown in Millions)

Company	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
AT&T Companies [1]											
AT&T Communications, Inc.	$37,166	$38,069	$39,264	$39,470	$40,551	$39,680	$37,646	$33,310	$27,094	$22,418	$22,243
Alascom, Inc.	329	325									
Teleport Communications Group, Inc.						284	464	632	437	396	1,376
ACC Long Distance Corp.			118	122	123						
MCI Companies [2]											
MCI - L.D. Operations					22,192	23,431	22,554	21,259	17,659	16,062	11,602
MCI Telecomunications Corp.	11,715	14,617	16,372	17,150							
WorldCom, Inc.	2,221	3,640	4,485	5,897							
Wiltel, Inc.	917										
MFS Intelenet, Inc.		118	122								
Intermedia Communications, Inc.					380	516	444				
Sprint Corporation - Long Distance Division	6,805	7,277	7,944	8,595	7,994	9,708	9,038	8,424	7,077	6,326	5,900
SBC Companies											
SBC Communications, Inc. [ILEC] [3]							2,748	2,420	2,182	2,083	1,692
SBC Long Distance, Inc.*								449	729	1,572	2,892
SNET America, Inc.*				142	162	186	189	177	158	154	143
Verizon Companies											
Bell Atlantic Comm, Inc. d/b/a Verizon Long Dist.*							130	864	1,433	1,802	2,041
Verizon Communications, Inc. [ILEC] [3]							2,278	1,988	1,668	1,629	1,555
Verizon Select Services, Inc.				340	607	834	1,004	509		223	441
NYNEX LD Co. d/b/a Verizon Enter. Solutions *										316	316
Qwest Companies [4]											
Qwest Communications Corp.*					320	517	1,773	2,309	3,202	2,824	3,307
Qwest Communications, Inc. [ILEC] [3]							374	264	175	124	78
Qwest LD Corp.											366
Qwest Interprise America, Inc.											339
LCI Int'l Telecom Corp. d/b/a Qwest Comm. Svcs. *	453	671	1,103	1,001	1,664	1,394	1,271	871			
USLD Communications, Inc.*	136	155	188	241	279	216					
IDT Corporation					376	850	945	1,303	1,532	1,835	2,217
Global Crossing Companies											
Global Crossing Bandwidth, Inc.	144	127		324	539	692	1,555	1,225	1,312	1,565	1,317
Global Crossing Telecommunications, Inc.	568	827	1,119	775	874	874	801	817	786	615	625
Global Crossing North American Networks, Inc.	306	309	323	223			196				
International Exchange Ntwks, Ltd. (IXnet, Inc.)							131				
BellSouth Companies											
BellSouth Long Distance, Inc. *								294	486	928	1,483
BellSouth Telecommunications, Inc. [ILEC] [3]							466	412	341	341	268
WilTel Communications, LLC [5]				227	126	184	413	593	737	1,112	1,302
VarTec Companies											
VarTec Telecom, Inc.	107	125	470	820	836	819	923	947	793	404	c
Excel Telecommunications, Inc.	156	363	1,091	1,179	1,219	942	703	611	427	665	c
eMeritus Communications, Inc.	215	429	379	264	260	169					
Long Distance Wholesale Club			176	121	131						
Broadwing Communications, LLC										310	658
Teleglobe America Inc.					275	557	282	208	269	409	508
ITC^DeltaCom Cos. [6]											
ITC^DeltaCom Communications, Inc					122	172	270	259	311	308	324
Business Telecom, Inc.		115	149	195	212	260	271	286	251	228	177
Citizens Communications Cos. [7]											
Frontier Communications of America, Inc.	133	121									193
Electric Lightwave, Inc.							145	227	180	176	169
General Communication, Inc. [8]	106	120	143	158	175	184	211	238	227	263	283
McLeodUSA Telecommunications Services, Inc.						232	448	463	358	274	225
Evercom Systems, Inc.						205	206	245	239	184	206
Level 3 Communications, LLC								160	131	134	190
ALLTEL Communications, Inc. (ACI)						120	175	174	160	175	188
Primus Telecommunications, Inc.										219	183
Talk America Inc.		180	232	305	426	398	428	249	160	158	176
Americatel Corporation						129	188	269	246	193	139
Norlight Telecommunications, Inc.							119	142	140	141	136
Sum of Above Companies [9]											65,258
Toll Service Revenues of Above Companies											58,537
Incumbent Local Exchange Carriers [8]	13,375	11,332	11,248	10,215	9,429	8,046					
Other Toll Service Providers [9]	9,626	10,709	14,765	13,029	15,783	16,647	20,827	16,702	12,797	12,034	11,561
Total Toll Service Revenues [10]	$84,478	$89,629	$99,691	$100,793	$105,055	$108,246	$109,616	$99,300	$83,697	$78,600	$70,098 p

Note: Total toll service revenues include intrastate, interstate and international toll revenues. Also, some numbers for previous years have been revised for consistency with other reports.

Some of the companies included non toll-related revenues in their annual submissions filed pursuant to section 43.21(c) of the Commission's rules.

* Regional Bell Operating Company's long distance subsidiaries.

c - Confidential

p - preliminary

Statistics of Communications Common Carriers

Notes for Table 1.4.

The revenue information for the larger long distance telephone companies, shown in Table 1.4, is reported annually to the FCC pursuant to 47 CFR 43.21(c) filings. The revenue information for large local exchange telephone companies is based on the annual filings of ARMIS (Automated Reporting Management Information System) Reports 43-02. The Commission also collects revenue information on FCC Form 499-A (Telecommunications Reporting Worksheet) and, in previous years, on FCC Forms 431 (Telecommunications Relay Service Worksheet) and 457 (Universal Service Worksheet). Revenues for carriers that are not subject to the filing requirements under § 43.21(c), or ARMIS Reports, are estimated by the FCC staff based on carriers' filings of the FCC Forms 431, 457, and 499-A.

Company Notes

[1] ACC Long Distance Corp. and Teleport Communications Group merged in April of 1998, and the combined company, Teleport Communications Group, merged with AT&T Communications, Inc., in July of that year. AT&T Communications acquired Alascom, Inc., August 7, 1995 and began filing a consolidated revenue statement in 1996.

[2] On July 21, 2002, WorldCom and substantially all of its U.S. subsidiaries filed voluntary petitions for relief in the U.S. Bankruptcy Court for the Southern District of New York under Chapter 11 of Title 11 of the U.S. Bankruptcy Code. On April 20, 2004, WorldCom emerged from bankruptcy and merged with and into MCI whereby the separate existence of WorldCom ceased and MCI became the surviving company.

[3] For the years 1994 - 1999, the RBOC ILEC toll service revenues are included in total ILEC toll revenues.

[4] Qwest Interprise America, Inc. is a subsidiary for out-of-region DSL (digital subscriber line); and Qwest LD Corp. is a subsidiary for in-region long distance.

[5] In November 2003, WilTel Communications, LLC became a wholly-owned, indirect subsidiary of Leucadia National Corporation. Thus, it no longer files with the SEC (Securities & Exchange Commission) on a stand-alone basis.

[6] In October 2004, ITC^DeltaCom completed its acquisition (begun in July 2003) of BTI Telecom Corp. outstanding common stock.

[7] Frontier was acquired by Citizens Communications Company in June of 2001 and Electric Lightwave on June 20, 2002.

[8] ILECs' totals are shown separately through 1999 because they primarily carried intraLATA calls due, in part, to the restrictions imposed on the RBOCs by the 1984 Divestiture agreement. By 2000 most local exchange customers could presubscribe to any carrier for intraLATA toll service and some RBOCs began to receive section 271 approval to provide interLATA toll services.

[9] Includes wireless toll service revenues reported by wireless carriers, toll service revenues reported by CLECs, and toll service revenues reported by non-RBOC ILECs.

[10] Estimated by the FCC staff.

Docket No. 09538-TP

Qwest Announcement 2-25-08

Exhibit PKL-3

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 78
PARTY Bullseye Telecom, Inc. (Bullseye) - (Rebuttal)
DESCRIPTION Peter K. LaRose (PKL-3) (Rebuttal)

Qwest
Spirit of Service

February 25, 2008

Julie Knight
BULLSEYE TELECOM
25900 Greenfield Rd-Suite 330
OAK PARK, MI 48237
USA

To: Julie Knight

Announcement Date:	**February 25, 2008**
Effective Date:	**N/A**
Document Number:	**GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc**
Notification Category:	**General Notification**
Subject:	**QCC Intrastate Switched Access Services**

Qwest is requesting your assistance in confirming that the switched access services purchased by Qwest are priced at the most favorable and non-discriminatory rates made available by your company.

As a result of information made available to Qwest Communications Corporation ("QCC") in a recent state commission investigation, we have reason to believe that Bullseye Telecom may have been and may continue to provide intrastate switched access services to AT&T Corp. and its subsidiaries and affiliates ("AT&T"), and perhaps other interexchange carriers, at rates that are lower than those provided under tariffs to QCC for the same services. We are also concerned that you may have granted AT&T and other interexchange carriers and CLECs preferential treatment regarding 800/8YY database queries and reciprocal compensation. We understand that these lower rates have been made available in all states in which you do business pursuant to agreements (rather than tariffs) that have not been filed with the applicable state commissions and/or made available to QCC.

QCC requests that you agree to provide to QCC intrastate switched access services at the lowest rates upon which you provide the same services to AT&T or any other interexchange carrier. The provision of switched access services to QCC at rates, terms and conditions other than as stated in your filed tariffs will require, of course, compliance with all applicable regulatory filing obligations. QCC also requests reimbursement for all past charges that exceeded the lowest, off-tariff rates offered to AT&T or to other interexchange carriers.[2] We would prefer to resolve this issue through business discussions rather than through litigation. Please note that this letter does not relate to or waive other disputes between our companies, and does not resolve whether QCC is required to pay your company for switched access services that are not properly tariffed.

To these ends, QCC requests that you provide copies of any and all agreements you have with AT&T or other interexchange carriers relating to the provisioning of intrastate switched access at off-tariffed rates. To the extent any of your agreements with AT&T contain confidentiality or non-disclosure clauses, AT&T has waived any objections to disclosure of these agreements to Qwest. AT&T's waiver of confidential treatment was specific to the switched access agreements described above, and does not waive any objections it may have to disclosures to persons or entities other than Qwest. AT&T has not waived any objections it may have to

[2] Qwest is not attempting to collect on any debt discharged in bankruptcy or otherwise released.

disclosure of any documentation that is not part of the consideration of the rates, terms and conditions for the provisioning by you of switched access services to AT&T. As agreements that are required to be filed with governing state commissions and made available to other carriers, they are public documents for which there are no grounds for non-disclosure.

We would be happy to discuss this to address any questions you may have. Please contact Ms. Candace Mowers within 14 days of the date of this letter. We ask that your response to Ms. Mowers address the following questions:

INTRASTATE SWITCHED ACCESS

Are you charging, or have you ever charged, AT&T or other IXC intrastate switched access rates at a different or lesser amount than your tariffed rates? If so, please identify the state commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

800/8YY DATABASE QUERIES

Are you charging, or have you ever charged, AT&T or other IXC 800/8YY database query rates different or lesser amounts than your tariffed rates, which were offered to QCC? If so, please identify the commission with which the agreement is filed. If it is not filed, please identify the IXCs, date of the agreement, and whether the agreement is currently in effect, or date of termination. Please also provide copies of all such off-tariff agreements.

RECIPROCAL COMPENSATION

Have you agreed to provide reciprocal compensation to other CLECs in Qwest Corporation's 14-state ILEC region at terms, rates or conditions different than those offered to Qwest Corporation? If so, please identify the state commission with which the agreement is filed, and provide copies of such agreements and an explanation of the rates, terms and conditions.

Ms. Mowers can be reached as follows:

Candace A. Mowers
Qwest Communications Corporations
1801 California St., Suite 4720
Denver, CO 80202-2658
Telephone: (303) 896-9577
Email: candace.mowers@qwest.com

Absent a response from you to Ms. Mowers within 14 days, please be on notice that QCC will proceed to file administrative and judicial actions asserting all remedies as available under governing law. Our strong preference, however, is to reach a business solution to this immediately.

Sincerely,

Charles Galvin Jr.

Charlie Galvin Jr.
Qwest Communications

Docket No. 09538-TP

Minnesota DOC Comments

Exhibit PKL-4

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 79
PARTY Bullseye Telecom, Inc. (Bullseye) - (Rebuttal)
DESCRIPTION Peter K. LaRose (PKL-4) (Rebuttal)

MINNESOTA
DEPARTMENT OF
COMMERCE

RECEIVED
MAR 13 2006
MINNESOTA PUBLIC
UTILITIES COMMISSION

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
651.296.4026 FAX 651.297.1959 TTY 651.297.3067

March 13, 2006

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: Department Reply to Comments Submitted by Other Parties in the Complaint and Request for Commission Action
Docket No. P442,5243,5934,5681,6287,5656,5936,6144,5542,5981,5720/C-05-1282

Dear Dr. Haar:

Enclosed is the Department's reply to the comments submitted by other parties on February 21, 2006 in response to the Department Complaint and Request for Commission Action filed with the Commission on December 30, 2005.

Respectfully submitted,

GREGORY J. DOYLE
Manager, Telecommunications

GJD/DD/sm
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. P442,5243,5934,5681,6287,5656,5936,6144,5542,5981, 5720/C-05-1282

I. BACKGROUND

On December 30, 2005, the Minnesota Department of Commerce (Department) filed a Complaint and Request for Commission Action with the Minnesota Public Utilities Commission (Commission) describing several agreements for the provision of switched access services at rates that were different than the tariffed rates of the CLECs offering the service. These agreements involved the following carriers: Desktop Media, Inc., Granite Telecommunications, LLC, OrbitCom, Inc., New Access Communications, LLC, Choicetel Communications, LLC, Digital Telecommunications, Inc., Mainstreet Communications, LLC, Tekstar Communications, Inc., VAL-ED Joint Venture, LLP d/b/a 702 Communications, and Time Warner Telecom of Minnesota, LLC (the Affected CLECs), and AT&T Communications of the Midwest, Inc. (AT&T).

On January 24, 2006, the Department filed Additional Comments recommending dismissal of the complaint against Mainstreet Communications, LLC and VAL-ED Joint Venture, LLP d/b/a 702 Communications.

On February 21, 2006, Reply Comments were filed by AT&T and Granite Telecommunications, LLC.

II. DEPARTMENT REPLY COMMENTS

The Department stands by its December 30, 2005 and January 24, 2006 complaint and comments, but addresses some of the issues raised by the other parties in comments filed on February 21, 2006. The Department does not attempt to address each of the issues raised by other parties unless further clarification of the Department's position is helpful or a new issue was raised.

A. THE AFFECTED CARRIERS HAVE NOT OPERATED IN ACCORDANCE WITH THEIR EXISTING TARIFFS

Minnesota law requires all regulated telephone and telecommunications carriers, including competitive local exchange carriers (CLECs) and interexchange carriers, to operate in accordance with their tariffs and in accordance with the Commission rules and orders. At pages 3 through 6 of its February 21, 2006 comments, Granite recognizes that CLECs must file tariffs pursuant to Minn. Rules pt. 7812.2210, subp. 2 and must operate in accordance with the applicable tariffs, rules and orders.

Minn. Stat. Section 237.09, subd. 1 is an anti-discrimination statute that states that a telephone company may not "***collect, or receive***" from any purchaser, any greater or less compensation for an intrastate service than it "***collects, or receives***" from any other purchaser of the service. Under this section of the law, CLECs have a duty to supply intrastate switched access service at a non-discriminatory rate, and interexchange carriers (IXCs) must pay for switched access service at that rate.[1] Any IXC who disputes the terms of service as provided pursuant to the rules, orders, and tariffs, may seek resolution of the dispute by filing a complaint with the Commission. While IXCs may have no statutory directive to ensure that CLECs make appropriate tariff filings, the Affected CLECs did in fact bill their tariffed rates to AT&T prior to AT&T withholding payment in order to obtain a lower rate from the Affected CLECs.

Granite's comments of February 21, 2006 provide a description of the impact of AT&T's refusal to pay tariffed access rates. AT&T has not denied that it refused to pay (and continues to refuse to pay) the Affected CLECs' tariffed access rates. This refusal to pay lawful tariffed access rates set the stage for AT&T eventually forming the unfiled agreements that are described in the Department's comments of December 30, 2005.

Granite notes at page 4 of its February 21, 2006 comments: "...By design, AT&T leveraged its considerable market power in the long-distance market to coerce Granite and many other CLECs into signing an unfiled switched access agreement. To accomplish its scheme, AT&T withheld from Granite switched access payments pursuant to Granite's lawfully filed tariffs. In addition, AT&T threatened costly litigation if Granite did not agree to enter into the unfiled agreement. AT&T's conduct left Granite in the untenable position of accepting the terms of the unfiled agreement or losing the considerable switched access charges that AT&T owed Granite under its lawful tariffs that AT&T refused to pay." Commission enforcement of state tariffs is needed so there is no incentive for interexchange carriers to withhold payment of access charges and demand similar illegal preferential contract rates in the future.

---

[1] Pursuant to Minn. Stat. §**237.035(e)** a telecommunications carrier's local service is subject to chapter 237 except that: (1) a telecommunications carrier is not subject to rate-of-return or earnings investigations under §§237.075 or 237.081; and (2) a telecommunications carrier is not subject to §237.22.

B. INDIVIDUAL CASE BASED PRICING IS ONLY PERMITTED IF FILED AND APPROVED BY THE COMMISSION

CLECs have a number of legal duties set forth in Minn. Rules pt. 7812.2210. Among those duties, is the duty to maintain a comprehensive tariff of regulated local services: "For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority."

AT&T hypothesizes at page 2 of its February 21, 2006 comments that the contracts could have been permitted by law because "under the Commission's rules, individualized contracts may contain volume discounts — among other things — that justify differing treatment. AT&T's contracts with the Affected CLECs are in the nature of such contracts." First, the Department respectfully submits that one very large carrier's refusal to pay the lawful rate in duly filed tariffs of dozens of small CLECs and the threat of waging litigation against them does not constitute adequate justification, under Minn. Rules pt. 7812.2210, to obtain unique prices.

Second, AT&T has offered no explanation showing that a so-called "volume" discount to a large carrier could be reasonable, even if it were tariffed. To the contrary, AT&T is well known for its arguments that access services are priced too high in relationship to cost. If AT&T is correct, there is no reason for AT&T to receive a preferential rate, creating an uneven playing field in both the IXC and CLEC markets, and causing its CLEC and IXC competitors to attempt to survive with lower margins. Further, AT&T is among the largest interexchange carriers in Minnesota and other companies are forced to follow AT&T's prices if they wish to remain competitive. If AT&T has lower costs through the preferential contract rates, over time AT&T would be able to reduce prices and squeeze its CLEC and IXC competitors out of the marketplace.

Third, for a "volume discount" rate to be available, it must first be duly filed under 7812.2210, subp. 2., which includes filing the tariff with the Department of Commerce and the Office of the Attorney General. AT&T's special deals in this case, like the dozen or so special pricing deals demanded by AT&T in the Commission's P442 et al/C-04-235 docket were not filed, but were instead concealed from all state regulators and from AT&T's IXC and LEC competitors.

Fourth, the Commission recently found in its February 8, 2006 Order in Docket No. P442/C-05-1842, pages 2 and 3, that AT&T was and is obligated to pay the duly tariffed access rates of LECs.[2]

C. *THE TERMS OF THE AGREEMENT HINDERED DISCLOSURE OF THE AGREEMENTS TO THE PERTINENT REGULATORY AGENCIES*

The circumstances that lead to the formation of the agreements and the confidentiality provisions in the agreements, protected the agreements from regulatory review until several years after the agreements went into effect. The Complaint of December 30, 2005 suggests that the terms of the agreements provided for disclosure if a regulatory agency specifically requested a given agreement. However, none of the agreements provided for voluntary disclosure of the actual agreement or even disclosure of the mere existence of the agreement unless the regulatory agency made a pointed request for a given agreement.

At page 2 of AT&T's February 21, 2006 Answer, AT&T states:

> the contracts between AT&T and the Affected CLECs do not contain provisions that require secrecy or in any way interfere with the Affected CLECs ability to comply with any legal obligation that may have existed under state law or Commission rules. The contracts expressly obligate the Affected CLECs to take whatever steps necessary to obtain any required regulatory authorizations to offer the service in accordance with the contracts. The confidentiality provisions in the contracts merely required the Affected CLECs to give AT&T prior notice of disclosure so that AT&T could seek confidential protection of the information if it deemed it necessary.

While AT&T is down playing the secrecy that it required of the CLECs, to this day, to the best of the Department's knowledge, none of the agreements have been disclosed by AT&T to a single other carrier. Thus, IXCs remain unaware of the unique rates and terms that AT&T was and is paying for access services from the Affected CLECs. CLECs that entered into these agreements

---

[2] In issuing its February 8, 2006 Order Finding Failure to Pay Tariffed Rate, Requiring Filing, and Notice and Order for Hearing, the Commission made the following statement: The filed rate doctrine is the longstanding regulatory principle that common carriers are bound by the terms of their tariffs; they cannot make side agreements with individual customers, and any side agreements they do make will be stricken. . . Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service area, including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics. . . Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations. Failing to promptly satisfy these obligations threatens the integrity of the network by creating grounds for disconnection and jeopardizes competition by depriving unpaid carriers of the funds they need to stay in business. For these reasons, the Commission has long viewed prompt payment of access charges as an integral part of providing adequate service."

with AT&T remain unaware of the rates and terms of other CLEC/AT&T agreements. CLECs and LECs that have remained in compliance with the law and have not entered into secret agreements remain unaware of the rates and terms of the agreements. If in fact the Department is incorrect about the shroud of secrecy that AT&T attempted to maintain surrounding each and every agreement, then it is time for AT&T to step forward and agree that the agreements can be made open for inspection by the public.

Through these comments the Department wishes to place AT&T on notice that it should be prepared to declare the agreements public in the presence of the Commission, if it has not done so prior to the hearing.

III. DEPARTMENT RECOMMENDATION

The Department continues to recommend that the Commission grant the relief requested by the Department in its December 30, 2005, Complaint and Request for Commission Action. It should be noted that the Department is attempting to negotiate a settlement agreement with the parties, which will be filed in the near future if negotiations are successful. The Department requests that the Commission proceed as it normally would to schedule the hearing in this matter, and that there should be no delay due to the possibility of a settlement.

/sm

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, **Linda Chavez,** on the **13th** day of **March, 2006**, served the attached **Minnesota Department of Commerce – REPLY**

Docket Number(s): **P442,5243,5934,5681,6287,5656,5936,6144,5542,5981/C-05-1282**

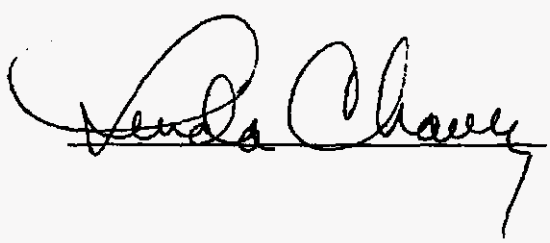
X by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

X by personal service

by express mail

by delivery service

to all persons at the addresses indicated below &/or on the attached list:



P999/C-05-1282

Pamela Rieck
Regulatory
Choicetel LLC
801 Nicollet Mall Ste 350
Minneapolis MN 55401

Burl W Haar Exec Sec
MN Public Utilities Commission
350 Metro Square Bldg
121 7th Place East
St Paul MN 55101

Jenny Woodward
Internal Sales Supervisor
Digital Telecommunications Inc
111 Riverfront Ste 305
Winona, MN 55987

Linda Chavez (4)
MN Dept of Commerce
85 7th Place Ste 500
St Paul MN 55101-2198

Dean Mohs
General Manager
Mainstreet Communications LLC
831 Main St S
Sauk Centre MN 56378

Linda S Jensen
Attorney Generals Office
1400 Bremer Tower
445 Minnesota Street
St Paul MN 55101

David Schornack
General Manager
Tekstar Communications Inc.
150 2nd st SW
Perham MN 56573

Curt Nelson
Attorney Generals Office-RUD
900 Bremer Tower
445 Minnesota Street
St Paul MN 55101

Jennifer Rise
VAL-ED Joint Venture LLP
702 Main Ave
Moorhead MN 56560

Corey Hauer
President
Desktop Media Inc
1143 S Broadway
Albert Lea MN 56007

Brian Thomas
Vice President – Regulatory
Time Warner Telecom of Minnesota LLC
223 Taylor Ave N
Seattle WA 98109

Brad VanLeur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

Letty S D Friesen
AT&T Law Dept
2535 E 40th Ave Rm B1223
Denver CO 80205-3601

Rebecca B DeCook
Holland & Hart LLP
8390 E Crescent Pkwy Ste 400
Greenwood Village CO 80111-2800

Joshua M Bobeck
Swidler Berlin LLP
3000 K S NW Ste 300
Washington DC 20007

Neill MacLeod
Corporate Counsel
Granite Telecommunications LLC
234 Copeland St
Quincy MA 02169

Steve M Mihalchick
ALJ
Office of Administrative Hearings
100 Washington Sq
Minneapolis MN 55401

Docket No. 09538-TP

AT&T Public Comments (2004)

Exhibit PKL-5

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 80
PARTY Bullseye Telecom, Inc. (Bullseye) - (Rebuttal)
DESCRIPTION Peter K. LaRose (PKL-5) (Rebuttal)

RECEIVED
AUG 1 9 2004
MN PUBLIC UTILITIES COMMISSION

Steven H. Weigler
Senior Attorney
Law & Government Affairs

Suite 1524
Western Region
1875 Lawrence St.
Denver, CO 80202
303 298-6957
FAX 303 298-6301
weigler@lga.att.com

August 18, 2004

Via Overnight Mail

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 East Seventh Place, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of Negotiated Contracts for the Provision of Switched Access Services, Docket No. P-422,5798,5340,5826,437,5643,443,5323,5668, 466/C-04-235.

Dear Dr. Haar:

Enclosed for filing are the original and fifteen copies of AT&T's Comments, Motion to Dismiss and Motion for Summary Judgment in this matter.

Sincerely,

Steven H. Weigler

cc: Service List

Recycled Paper

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for Switched Access Services	)))	Docket No. P-442,5798, 5340,5826 5025,5643,443,5323,5668,466/ C-04-235

AT&T'S COMMENTS, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

AT&T Communications of the Midwest, Inc. ("AT&T") hereby submits Comments regarding the Minnesota Department of Commerce's "Complaint and Request for Commission Action" (hereinafter "Complaint") in the above styled action. AT&T submits these comments to demonstrate that the Minnesota Department of Commerce ("MDOC" or "Department") is incorrect on many of the factual and legal assertions it makes in its Complaint. Accordingly, when the facts and relevant law are examined in proper context, it is clear that AT&T should be dismissed from this Complaint as a party. However, as further articulated below, AT&T would seek non-party participant status in order to protect its legal interests essentially because AT&T has determined that it will not be protected by the other parties in this proceeding.

I. INTRODUCTION

In the fall of 2003, the Department made a formal request of AT&T to supply agreements that AT&T has with competitive local exchange carriers ("CLEC(s)") that provide AT&T with access services within the state of Minnesota at other than tariffed

rates[1]. In AT&T's annual report to the Department for 2002, AT&T had stated that it had such agreements and had provided a list of the CLEC providers from which it was purchasing access services in Minnesota pursuant to those agreements. AT&T fully complied with the MDOC Information Requests to produce the agreements. AT&T also provided the CLEC providers with which AT&T had entered into the agreements the pre-disclosure notice that the agreements required.

In its Complaint, the Department refers to agreements that AT&T has with six CLEC providers of switched access services: Arizona Dialtone ("AZD"), Eschelon Telecom ("Eschelon"), Focal Communications Corp. ("Focal"), Integra Telecom ("Integra"), McLeod USA Inc. ("McLeod"), and NorthStar Access ("NorthStar").[2] The agreements all follow the same basic form, with modifications specific to the business relationship between AT&T and the individual CLEC providers. In the past four years or so, AT&T has entered into hundreds of agreements based on the same form with CLEC providers of switched access services throughout the United States. AT&T undertook this substantial contracting effort because CLECs were charging interexchange carriers ("IXC(s)"), including AT&T, exorbitant rates for switched access services.[3] Often, both

[1] *State of Minnesota Department of Commerce Utility Information Request 7 Response* (dated October 17, 2003); Docket Number: Telecommunications Carrier Annual Report 2002 (hereinafter referred to as "Information Requests").

[2] Most of the agreements have been in effect for years. The Effective Dates of the agreements are as follows: AZD agreement: January 21, 2003; Eschelon agreement: May 1, 2000; Focal agreement: December 25, 2001; Integra agreement: July 1, 2001; McLeod agreement: July 1, 2001; and NorthStar agreement: September 11, 2002. In fact, AT&T had difficulty finding employees with knowledge of the agreements, given the considerable passage of time since their negotiation.

[3] On this point, AT&T is in agreement with the Department which states, at page 2 of its Complaint, that "Since [IXCs] are captive customers of the local service providers for switched access services, and the rate levels of CLECs receive little regulatory oversight, the switched access rates of CLECs are often higher than the switched access rates of the incumbent local exchange carrier ["ILEC"]".

the CLEC providers' interstate *and* intrastate rates (in states that did not have mandated access rates) were exorbitant.[4]

In the agreements with the six CLEC providers specified above, AT&T is solely and exclusively a customer purchasing switched access services and not a provider.

Each agreement has a section entitled "[CLEC Provider] Regulatory Approvals and Tariffs" in which the CLEC provider warranted "that it has and will maintain, at its own expense, all regulatory certifications, authorizations, and permits needed to offer the Switched Access Service described in this Agreement." All but one of the agreements also include language explicitly anticipating the CLEC provider's filing of tariffs; for example, " [CLEC provider] will not file any tariff or tariff revisions that alter the terms and conditions, or pricing of switched access as specified in this Agreement," unless required to do so.

As discussed in detail in Section II below, the Regulatory Approvals and Tariffs section in each of the agreements effectively memorialized an obligation that both parties knew belonged and continues to belong only to the CLEC providers; that is, the filing of terms of the CLEC provider's service pursuant to applicable law. Although the agreements also contain broad mutual protection for each party's confidential and proprietary information, the CLEC providers would not have been prohibited from adhering to applicable regulatory obligations, if any.

[4] It was not until the middle of 2001 that the Federal Communications Commission ("FCC") imposed a benchmark rate above which most CLECs were not permitted to tariff interstate switched access rates. *FCC's Seventh Report and Order and Further Notice of Proposed Rulemaking re Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Docket 96-262, Released April 27, 2001. The benchmark rate established in that Order is a rate that declined over the past 3 years until now, when the rate most CLECs may charge IXCs may be no greater than the rate the competing ILEC would charge the IXC.

The AZD and Focal agreements included the settlement of formal actions and the Eschelon, Integra. McLeod and NorthStar agreements included the settlement of informal disputes. Thus, AT&T agreed to pay each CLEC no less than a six- or seven-figure settlement amount before any of the individual agreements went into effect. The agreements also include comprehensive mutual releases generally of all issues arising or that could have arisen as of an agreement's effective date[5].

Finally, as discussed in greater detail in Section III, NorthStar's position (as articulated by the Department in its Complaint) is correct, at least as it applies to AT&T: NorthStar does not have agreements with IXCs to charge untariffed rates for the provision of intrastate access services.[6] Among other reasons, because the NorthStar agreement does not contain intrastate access rates, this Commission does not have jurisdiction over that agreement. AT&T provides a few key facts to put the NorthStar agreement in context in order to allay any regulatory concerns. *See* Exhibit A, Affidavit of Debbie H. Joyce.

With these facts in mind, AT&T's legal analysis will establish that the Department's Complaint, as related to AT&T, is meritless as a matter of law and should be dismissed as a matter of law.

[5] The Eschelon agreement, the oldest agreement of the six by more than a year, is the sole exception.
[6] *See* Complaint at page 12.

II. THE DEPARTMENT FAILS TO ESTABLISH VALID CLAIMS AGAINST AT&T AS A MATTER OF LAW

As a threshold matter, AT&T submits that the Commission's seven year-old comprehensive access proceeding would be the appropriate forum to address the Department's policy position on access rather than the instant matter.[7] Furthermore, in this docket, AT&T is simply the customer in the above-referenced agreements with the CLEC providers. Finally, the Department's summation of why these settlements occurred and its perspective on the parties positions,[8] besides being extremely oversimplified and factually suspect, has no relevance under Minnesota law as there is an actual contract that spells out, in unambiguous terms the intent, terms and conditions of the parties' agreements. We develop these points more fully below.

In all events, the settlement agreements at issue were the "result of a compromise" between the parties and constitute "full and final satisfaction of the dispute."[9] Minnesota law is clear that compromise and settlement of a lawsuit is contractual in nature. *Ryan v. Ryan*, 292 Minn. 52, 55, 193. 295. 297, 193 N.W.2d 295 (1971).[10] The only reasons to invalidate a settlement agreement/contract is because of "**mutual** mistake, fraud or misrepresentation," *Ryan v. Ryan*, 292 Minn. 52, 55, 193, 295, 297, 193 N.W.2d 295 (1971)(emphasis added), *Sorenson v. Coast-to-Coast Stores, Inc.*, 353 666, 669-70 (Minn. App. 1984), or if the contracts are illegal. *Barna, Guzy, & Steffen, Ltd. v. Beans*, 541 N.W.2d 354, 356 (MN. App. 1995). No such reasons exist in the instant circumstance.

---

[7] *In the Matter of a Commission Investigation of Intrastate Access Charge Reform*, Docket No. P999/CI-98-674.
[8] *See* Department's Complaint at p.12-14.
[9] *See* e.g. McLeod Agreement, Department's Exhibit ML-1 at A.2 and 3.
[10] Although the Eschelon agreement does not contain these terms. the result is the same under law.

Because the issues the Department is pursuing relate to the existence and interpretation of a contract, this matter must be decided as a matter of law, *Knudsen v. Transport Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (MN App. 2004), looking exclusively at the four corners of the instrument(s) in question. *Id.* Accordingly, the unsubstantiated assertions in the Department's Complaint such as:

1) "The switched access agreements appear to have been formed as a means for the CLECs to obtain some payment from the interexchange carrier, which, in some cases, refused to pay the tariffed rates of the CLECs.[11]
2) "CLECs felt that resolving their billing dispute by engaging in contracts to charge lower access rates was the best way to avoid litigation and resume some cash flow."[12]
3) "Interexchange Carriers believed the CLECs were taking advantage of their captive status with high access rates"[13]
4) "...large interexchange carriers are able to exert market power to receive lower switched access rates."[14]

are irrelevant in the instant dispute (even though AT&T may agree with some of the characterizations)[15] because none of these facts are found in the four corners of the settlement agreement. *Knudsen v. Transport Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (MN App. 2004).

Furthermore, as a practical matter, there is extreme peril if this Commission decided to look outside the four corners of the settlement agreement/contract, essentially reviewing the parties' positions *de novo*. For example, as Exhibit B attached demonstrates, Eschelon would dispense with the exchange the parties bargained for -- a commercial bargain that has lasted and worked for both parties ***for more than four years***

[11] Complaint at p.12.
[12] *Id.* at p.14.
[13] *Id.* at p.13.
[14] *Id.*
[15] AT&T notes that this Commission is looking at these issues in the generic access reform docket which has been pending in front of this Commission for seven years. *See* Docket No. P999/CI-98-674.

-- in an attempt to gain more revenue from AT&T in terms of increased retroactive access rates where AT&T is wholly without fault.

A real question exists, furthermore, as to whether this Commission would have the power to, or would want to engage in precedent where, it sought to collect past due amounts from AT&T, which is the customer under the Eschelon and the other five agreements with the CLEC providers. When the FCC was presented with similar facts, it found that it did not have the power to collect past amounts due from a customer. See *Tel-Central v. United Tel.Co.*, File No. E-87-59, Memorandum Opinion and Order, 4 FCC Rcd 8338 (1988) which states: "the complaint procedures make a carrier liable to a customer for damages that result from the carrier's unlawful actions or omissions...However, this statutory scheme does not constitute the Commission as a collection agent for carriers with respect to unpaid tariff charges. In the normal situation if the carrier has failed to pay the lawful charges for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action **in contract** to compel payment." (Emphasis added.)

As expressed above, this Commission should summarily dispose of this Complaint as a matter of law because the Department cannot establish that the contract terms are void or voidable. No party, including the Department, has raised that there has been mutual mistake, fraud or misrepresentation that would invalidate a contract thus permitting the Department or any other party to restructure, reinterpret or suppose the intent behind a settlement agreement. *See e.g., TNT Properties, LTD v. Tri-Star Developers LCC*, 677 N.W.2d 94, 98-102 Minn. App. 2004). As such the terms of the agreements remain.

More importantly, in looking at the four corners of the settlement agreements at issue, no terms make those settlement agreements illegal or suggest in any way that AT&T violated its Certificate of Authority or any relevant law. In order to establish this point, AT&T will compare the specific allegations made by the Department with the actual terms of the contract.

A. AT&T as an IXC Customer Had No Obligation Under Minnesota Law or Rule to File Tariffs or Assure that Tariffs were Filed

AT&T, as the customer of access service, had no obligation to submit tariffs to the Commission for services that it bought. That obligation, if it indeed exists, falls exclusively on the provider in question. *See e.g., Minn. Stat. § 237.07.* The Department fails to acknowledge that AT&T, as the purchaser of access services, is completely distinguishable under law from the CLEC provider of service. Without specific citation, the Department claims that "Minnesota law requires all regulated telephone and telecommunication carriers, including CLECs and interexchange carriers, to operate in accordance with their tariffs and accordance with Commission rules and Orders."[16] The Department then cites MN Stat. §237.121(a)(3) which states "(a) telephone company or telecommunications carrier may not...fail to **provide** a service, product or facility to a telephone company or telecommunications carrier in accordance with the applicable tariffs, price lists, **or** contracts and with the Commissions rules and orders." (Emphasis added). As the Commission can see, the statutory responsibility under law falls exclusively to the *provider* of services. The Department further cites *Minn. Rule* 7810.8400 which states "(a) telephone company shall keep on file with the department its tariffs and price lists showing or referencing specific rates, tolls, rentals, and other

[16] Complaint at p.9.

charges **for the services offered by it** either alone or jointly and concurrently with other telephone companies." (Emphasis added). Again, the rule applies to the *provider* of services. As the very rules that the Department relies on are inapplicable to AT&T as a customer, AT&T cannot be found to have violated any law or Commission rules in this matter.

Furthermore, the four corners of the settlement agreements in question alone (entirely apart from the Department's extrinsic innuendo), mirror Minnesota Statute and Rule requirements by assigning the obligation to file such tariffs and otherwise adhere to legal requirements to the CLECs and not AT&T. The relevant sections of the settlement agreements all include the following statement:

> [CLEC provider] warrants that it has and will maintain, at its own expense, all regulatory certifications, authorizations, and permits needed to offer the Switched Access Service described in this Agreement.

Furthermore, all but one of the agreements include language explicitly anticipating the CLEC provider's filing of tariffs; for example, (the CLEC) "will not file any tariff or tariff revisions that alter the terms and conditions or pricing of switched access as specified in this Agreement". In summary, the settlement agreements each specifically acknowledge what is clear under Minnesota law: that the obligation is on the provider of service to comply with the provisions of Minnesota laws and rules in providing its services not the purchaser. Accordingly, AT&T as the purchaser of these services should be dismissed from this proceeding as a matter of law.

B. AT&T Has Not Violated "Conditions Associated With" Its Certificate of Authority

Unable to establish that AT&T violated any specific Minnesota rule or statute, the Department recommends that this Commission find that AT&T (and other IXCs) violated conditions associated with its certificate of authority.[17]

The Department cites no legal authority for its position that AT&T would have to assure that it was purchasing only tariffed services to be in compliance with its certificate of authority.[18] A review of AT&T's certificate of authority conclusively shows that it contains no conditions that prohibit it from a negotiating an access rate. AT&T has attached its certificate of authority, which contains no terms about purchasing access services as an interexchange provider at set tariffed rates.[19]

To the extent that the Department claims that the violations were not in the *actual* certificates of authority, but in the conditions associated with the Commission's October 15, 1985 Order in Docket No. P442, 443, 444, 421, 433/NA-84-212 [20] such claims are factually incorrect. Neither of the Orders cited in the Department's Complaint contain such a condition, nor does the original Order granting AT&T Interexchange authority contain any condition related to assuring that AT&T was buying tariffed services.

- Pages 27-28 of the October 15, 1985 Findings of Fact, Conclusions of Law and Order listed the ten conditions for expanding AT&T's certificate to include intraLATA toll services. While some conditions concern the rates AT&T may charge as a provider, none of the conditions concern "payment of switched access services at tariffed rates." Thus, Item 2 states "AT&T/MW is hereby granted an extension of its existing certificate of public convenience and necessity in such a manner as to authorize it to provide intraLATA telecommunications services to

[17] *See* Complaint at pp. 18-19.
[18] Instead, as discussed above, the Department cites Minn. Stat. §237.121(a)(3) and Minn. Rule 7810.8400. The Department's proposition of law is related to the *provider* of service, and not AT&T, which is the *purchaser* of services in these agreements.
[19] *See* Exhibit C.
[20] Department's Complaint at p.14.

customers within Minnesota in addition to its present authority to provide interLATA telecommunications subject to all requirements of this order including a requirement to submit an annual report of its Minnesota intrastate operations and financial results in accordance with the Uniform System of Accounts and as specified by the DPS." Item 5 states "Changes in intrastate toll rates sought by any interexchange carrier, including AT&T/MW and NWB, shall be evaluated and considered in accordance with the provisions of this Order." Item 6 states "No interexchange carrier, including AT&T/MW and NWB, shall implement rates or tariffs that deaverage toll rates based on the basis of geographic location or that discriminate in the terms and conditions under which services will be made available on the basis of geographic location without the express approval of the Commission."

- The November 2, 1987 85-582 docket is void of the condition that requires AT&T as the purchaser of services to assure that rates that are paid are tariffed. See Ordering paragraphs 1 through 28 on pages 58 through 63.
- Finally the Order Granting Certificate of Public Convenience and Necessity in Docket P-442/M-83-640 issued on December 23, 1983 which grants AT&T's certificate of Public Convenience and Necessity to provide the intrastate, interLATA toll service contains no condition on paying tariffed rates. See Order at page 3 for the six ordering paragraphs.

Furthermore, even if AT&T's certificate of authority contained terms requiring AT&T to tariff terms as a purchaser of access services, as discussed in Section II, A. above. there are specific terms in each of the agreements that addressed each CLEC provider's responsibility to obtain "all regulatory certifications, authorizations, and permits needed to offer these switched access services." Accordingly, the four corners of the settlement agreements acknowledged the responsibility to comply with regulatory requirements, and just as Minnesota Statutes and Rules do, place that responsibility on the CLEC provider of services to comply with any tariffing requirements, not the IXC purchaser.

Finally even if the statute, rules, certificates of authority, and relevant settlement agreements were not unanimous that customers of services have no responsibility to file tariffs, as a policy matter, it would be inappropriate to impose on customers any obligation to assure that the bargained-for rate of services that they were buying were

properly tariffed by the provider of those services.[21] Quite simply, it would turn the customers' simple purchase decision into a decision about the regulatory compliance of the provider.

In sum, AT&T did not violate any conditions associated with its certificate of authority.

C. The Settlement Agreements in Question Did Not Contain Discriminatory Non-Disclosure Terms

The Department claims that "(t)he confidentiality clauses in [the] agreements [in question] prevented regulatory agencies such as the Department and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and Orders." Such a position is not supported by the only relevant evidence: the four corners of the settlement agreements themselves.

Confidentiality provisions are commonplace in settlement agreements and adjudicative bodies should take proper steps to safeguard the confidential nature of settlement terms. *See e.g., In re: L-Tryptophan Cases*, 518 N.W.2d 616, 622 (MN App. 1994). As such, there is nothing wrong with the parties making the settlement terms confidential as long as there were provisions that would allow the parties to meet the various regulatory and legal requirements, if applicable. The relevant provisions of the AZD, Focal, Integra, and NorthStar agreements contain the following language:

> For purposes of this agreement, "Proprietary Information" means information that is marked or otherwise specifically identified in writing as proprietary, confidential or trade secret. Proprietary Information includes, but is not limited to, this Agreement, the payments to [CLEC Provider] by

[21] AT&T notes that the Department did not take this position in the Qwest Secret Deals case where the responsibility to file agreements pursuant to 42 U.S.C. 252 was far more straightforward. The Department filed a complaint against the seller of such services, Qwest, and not against the purchasers including Eschelon and McLeod.

> AT&T and volume of traffic between the parties. Notwithstanding the forgoing, either party may advise a state or federal regulatory body, including without limitation the FCC, that it has reached a resolution of the Dispute, although neither party may disclose the terms of the Agreement except as expressly provided for elsewhere in this Agreement.
>
> Each party will hold in confidence Proprietary Information disclosed by the other party except if it (1) was previously known by the receiving party free from any obligation to keep it confidential, (2) is independently developed by the receiving party, (3) becomes publicly available, or (4) is disclosed to the receiving party by a third party without breach of any confidentiality obligation.
>
> If either party is compelled to disclose Proprietary Information in judicial or administrative proceedings, such party will give the other party the opportunity, in advance of such disclosure, to seek protective arrangements and will cooperate with the other party in that regard.[22]

The Eschelon and McLeod agreements contain the foregoing language (except for a sentence from the first paragraph)[23], as follows: "Notwithstanding the forgoing, either party may advise a state or federal regulatory body, including without limitation the FCC, that it has reached a resolution of the Dispute, although neither party may disclose the terms of the Agreement except as expressly provided for elsewhere in this Agreement."

As discussed above, the Regulatory Approvals and Tariffs Section in each of the agreements – in which the CLEC providers warranted that they have "and will maintain...all regulatory certifications, authorizations, and permits necessary to offer the Switched Access Service" described in each agreement[24] -- effectively memorialized an obligation belonging to the CLEC providers: the filing of terms of each CLEC provider's

[22] Department's Exhibit AD-3 at B11.
[23] The Eschelon agreement also contains some terms in the section on confidentiality and proprietary information relating to the treatment of such information in the event that Eschelon becomes a publicly-held company or undergoes a "private placement or other financial arrangement", which are not relevant here.
[24] *See e.g., id.*, at B3.

service pursuant to applicable law. Accordingly, AT&T would have no reason to assume that the CLEC providers would not have either tariffed the rates or more likely sought special pricing consideration. The provisions in the agreements regarding the treatment of confidential and proprietary information would not have stood in the way of the CLEC providers' compliance with those obligations. AT&T's responses to the Department's Information Requests demonstrate how the provision related to the treatment of confidential and proprietary information operate (*See* Statement of Facts). Quite simply, AT&T merely first notified the CLEC providers that AT&T intended to produce the agreements in response to the Information Requests, and then AT&T produced the agreements[25]. Furthermore, four of the agreements contain the statement that each party "may disclose the terms of this Agreement . . . as expressly provided for elsewhere in this Agreement". To the extent, then, that the CLEC providers have or had obligations to file terms of their agreements with state regulatory bodies, the Regulatory Approvals and Tariffs section of each agreement provides a permitted exception to the general prohibition against disclosure of confidential and proprietary information. Thus, if the CLECs believed the access rates needed to be tariffed or otherwise reviewed, they simply needed to "give [AT&T] the opportunity in the advance of such disclosure, to seek protective agreements"[26] and then tariff the terms. That notification process was precisely what AT&T engaged in, without objection of the CLECs, in an extremely

[25] We note that all of the agreements contain the language stating that "If either party is compelled to disclose Proprietary Information in judicial or administrative proceedings, such party will give the other party the opportunity, in advance of such disclosure, to seek protective arrangements and will cooperate with the other party in that regard."
[26] *See* e.g., Department's Exhibit AD-3 at B11(c).

straightforward manner. [27]

The Department also argues that the AT&T/CLEC negotiated agreements "foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T, MCI WorldCom, Sprint and Global Crossing [and that the] impact on the marketplace is that the interexchange carrier with an agreement has an unfair competitive advantage over other interexchange carriers."[28] The Department offers no facts to support these vague, conclusory allegations, and the Commission should wholly disregard them.

Furthermore, if the Department seeks to rely on language in certain agreements stating that (the CLEC) "will not file any tariff or tariff revisions that alter the terms and conditions or pricing of this agreement,"[29] such language merely requires the CLEC not to alter the terms of the agreement *through* a tariff. It does not preclude other IXCs from receiving the same terms and conditions that AT&T received; rather it simply ensures that the CLEC will not undermine the mutual agreement through unilateral use of the tariffing process.

Again, in looking at the four corners of the documents in question, there is no language that suggests discriminatory non-disclosure terms. Accordingly, the Department's claim that "(t)he confidentiality clauses in these agreements prevented regulatory agencies such as the Department and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and Orders,

---

[27] Furthermore, in reviewing the terms of the agreements in question, it is debatable if the access rates that AT&T was paying to the CLECs were even confidential as the terms regarding confidentiality did not specifically include the pricing. *See e.g., Exhibit AD-3* at B11(A) indicating proprietary information includes, but is not limited to, this Agreement, the payments to (the CLEC) by AT&T and the volume of traffic between the parties.
[28] Complaint at p.12.
[29] *See* Department's Exhibit AD-3 at 3.

and foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T...."[30] is groundless.

In summary, there were no terms in any of the agreements that violated Minnesota law and this Commission should dismiss AT&T from this proceeding as a matter of law.

III. THE COMMISSION SHOULD DISMISS THE NORTHSTAR PIU CLAIM OR GRANT AT&T SUMMARY JUDGMENT

Without any discussion or legal analysis, the Department seeks to have this Commission "(f)ind that the percentage interstate use in the agreement between NorthStar Access and AT&T should be the percentage used prior to entry into the contract, since the intent of the change is to evade interstate access charges."[31] As established below, the issue of what percentage of interstate usage ("PIU") factor is appropriate is determined by application of the federal tariff; thus, this question is not properly before this Commission. In all events, even if this matter were properly before this Commission, as established below, the Department brings forward no evidence for the claim that the parties' "intent" in using a 100% PIU was to "evade interstate access charges". In fact, all evidence is contrary to that proposition. For those reasons, summary judgment would be appropriate.

Summary judgment is appropriate when the pleadings, affidavits, and other documents before the court show that there is no genuine issue of material fact and judgment is appropriate as a matter of law. *Jorgensen v. Knudson*, 662 N.W.2d 893, 897 (Minn. 2003); *Mon-Ray v. Granite Re, Inc.* 677 N.W.2d 434, 439 (MN App. 2004). As discussed in greater detail below, based on the sworn affidavits of both NorthStar and

[30] Department's Complaint at p.12.
[31] Department's Complaint at p.15.

AT&T witnesses, the Department cannot bring forward any *genuine* issue of material fact, and based on FCC rules and case law, summary judgment is appropriate as a matter of law.

As discussed in the affidavit of Debbie H. Joyce, as corroborated by NorthStar witnesses. the parties believed that the majority of the traffic exchanged was interstate but could not determine the exact amount of traffic being transported. Accordingly, the parties applied a factor of 100% PIU.[32] Because the Department was not part of the negotiations, it would not be able to provide contradictory material facts. Accordingly, because the Department cannot establish that there is a *de minimis* amount of interstate traffic traveling over the trunks at issue, the traffic is interstate in nature, affording jurisdiction exclusively to the Federal Communications Commission, and requiring judgment in favor of the parties' agreement to be entered as a matter of law.

This Commission is well aware of the U.S. District Court's decision in *Qwest v. Scott*, 2003 WL 79054 (D.Minn.) (attached) which addresses the FCC's 10% Rule of dual jurisdiction. The Court accurately articulates the FCC's 10% Rule as follows:

> The FCC had.... assigned all lines with even a de minimums amount of interstate traffic "to interstate jurisdiction," such that parties could avoid the state tariff by including even a tiny proportion of interstate communications on these circuits. *In the Matter of GTE Operating Cos.*, 13 F.C.C.R. 22,466 ¶25 (1998) ("10% Order"); *In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 4 F.C.C.R. 1352 ¶¶ 1,30 (1989) *adopted by 10% Order ¶8,9.* The FCC adopted the 10% allocation rule to allow states to retain control over intrastate lines carrying small amounts of interstate transmissions. *See 10% Order* ¶2. The FCC concluded that permitting intrastate circuits with 10% or less interstate traffic to be tariffed at the state level would accord "proper recognition (to) state regulatory interests. *Id.* ¶7. Thus, the FCC concluded "that the (10% Rule) separations

[32] *See* Exhibit A: Affidavit of Debbie H. Joyce. *See also*, Initial Comments of NorthStar.

> procedure properly reflect the dual jurisdictional regulatory structure of the Act. *Id.*

Qwest Corporation v. Scott, 2003 WL 79054 (D.Minn.) at p.2.

As the affidavits disclose, the parties reasonably believed that 92% of the traffic was interstate in nature, thus making interstate rates applicable to all switched access traffic under the agreement. Accordingly, because the Department cannot establish that there was 10% or less interstate traffic being routed, judgment must be afforded to AT&T as a matter of law on the Department's claim.

IV. EQUITABLE AND POLICY CONSIDERATIONS

Even if there were not a compelling legal basis to dismiss AT&T from this matter, there are numerous equitable and policy considerations that this Commission should take into consideration while determining how to address this matter.

A. Fairness and Consistency

As AT&T expressed to the Department,[33] it is puzzled by the inconsistencies of the Department's position in different fora: it did not complain about the consumer of services in one docket (specifically the Minnesota Qwest Secret Deals Complaint (Docket No. P-421/C-02-197) in which the Department filed a Complaint against the provider of services, Qwest, but here it is seeking remedies against both the seller and purchaser of services. This is especially true when in this docket, the agreements contain an express warranty from the seller of those services to the buyer that the seller would comply with any regulatory requirements. Such regulatory warranties were certainly not

[33] AT&T notes, that as expressed in Section I above, its discussion with the Minnesota Department of Commerce was perfunctory with no discussion about the actual terms of the agreements.

included in the Secret Deals Complaint. Regardless, taking enforcement action against the purchaser of services, especially when there is an express warranty from the seller of regulatory compliance, would have serious chilling effect on the purchase of telecommunications services in Minnesota and is unprecedented under law.

B. Ramifications of Action

The Department suggests that this Commission redefine and invalidate legal agreements that were entered into by two willing parties. For example, the Department wishes that this Commission "(f)ind that the percentage interstate usage in the agreement between NorthStar Access and AT&T should be the percentage used prior to entry into the contract."[34]

AT&T respectfully suggests that this Commission will commit regulatory overkill if it begins to second guess PIU factor declarations and other mutually agreed to terms in a contract.

More importantly, by reformulating contracts, this Commission would actually be rewarding the *non-compliant party*: the provider of services to which any tariff-obligation belongs. For example, as shown by Exhibit B, Eschelon Telecom, Inc. has notified AT&T that "it may be required to begin charging AT&T the standard tariffed rates for switched access services in Minnesota as of June 16, 2004, the date the Complaint was filed. Furthermore, Eschelon may seek to adjust previous bills so as to charge AT&T the standard Minnesota tariffed access rate for all previous applicable billing periods." [35] As one can see, Eschelon has every reason to seek such an inequitable windfall in response to the allegation of failing to file tariffs for services. It is for that

[34] Complaint at p.15.
[35] *See* Exhibit B.

reason that AT&T would seek to continue participating in this case as a participant to protect its interests against parties like Eschelon, unless this Commission dismisses AT&T from this matter and orders that there be no recourse against AT&T.

C. Need for Complete Investigation

If the Commission decides to go forward in this matter, AT&T notes that the Department investigation was far from complete. As the Department indicated, its investigation began when AT&T was the only party who voluntarily disclosed and provided the existence of agreements.[36] The Department complains that some parties have been evasive in their answers, while others have failed to respond.[37] Because the Department only relied upon the agreements and other information that were voluntarily provided by AT&T and some of the CLEC providers and IXCs before filing its complaint, this Commission has an extremely incomplete picture of the issue, because neither the Department nor the Commission have reviewed the plethora of agreements that exist in Minnesota which contain access terms.

If the Commission is interested in proceeding, AT&T would suggest a complete investigation of industry practices including Department investigation and disclosure of how many access agreements with similar terms exist, the terms of such agreements, if other access agreements not yet disclosed contain material differences, PIU factors contained in every agreement filed in Minnesota, and ILEC access agreement differences.

---

[36] Complaint at p.2.

[37] Complaint at p.2-3. AT&T notes that that the Department did not name the parties who failed to answer the Department's information requests. Accordingly, the Department only pursued violations on those who voluntarily provided information. Again, questions of equity are presented with respect to AT&T, which not only did not have an obligation to file, or assure that the CLEC providers filed, information about the terms of the agreements, but also fully complied with the Department's requests and its contractual obligations towards the CLEC providers.

Otherwise, the Commission would be acting on this matter without complete disclosure of industry practices and the effect on any purchaser of services.

V. LEGAL RESERVATION OF RIGHTS

AT&T notes that this Commission sought comments on this matter and accordingly, provides the facts and law necessary to demonstrate to the Commission that all claims against AT&T should either be dismissed as a matter of law, or AT&T should be granted summary judgment. AT&T reserves its rights to present additional evidence or pursue additional legal remedies afforded to it by law if it is not dismissed from this Complaint. For example, AT&T believes that there are additional reasons why this Commission does not have jurisdiction over this matter: all six of the agreements contain a choice of law provision, with only one agreement -- Eschelon's -- providing for the application of Minnesota law to "all substantive matters pertaining to the interpretation and enforcement of the terms of th[e] Agreement"[38] AT&T will address this and other legal issues in due course, if required.

VI. CONCLUSION

For the foregoing reasons, AT&T requests that this Commission dismiss it from the Complaint as to the Department's allegation that it failed to adhere to conditions associated with its certificate of authority and grant summary judgment to it regarding the Department's allegation that the PIU factor should be changed in the NorthStar agreement. AT&T also notes that there are numerous equitable considerations in play that would weigh against moving forward on this Complaint. Finally, AT&T reserves the right to pursue all remedies available to it against any party as allowed by law.

[38] The AZD agreement provides for Arizona law to apply, while the other four agreements provide for New York law to apply.

Respectfully submitted on August 19, 2004.

AT&T COMMUNICATIONS OF THE MIDWEST, INC.

By _____

Mary B. Tribby
Steven H. Weigler
AT&T Law Dept.
1875 Lawrence St., Suite 1575
Denver, CO 80202
303-298-6957

Exhibit A

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for Switched Access Services	)	Docket No. P-442,5798, 5340,5826 5025,5643,443,5323,5668,466/ C-04-235

AFFIDAVIT OF DEBBIE H. JOYCE

I, Debbie H. Joyce, being first duly sworn, depose and state as follows:

1. I am currently employed by AT&T Corp. ("AT&T") as a Business Developer. I have been in this position since 1999.

2. I negotiated the Settlement and Switched Access Agreement between AT&T and NorthStar Access, LLC ("NorthStar"), effective date September 11, 2002 ("Agreement"), on behalf of AT&T.

3. I submit this Affidavit in support of AT&T's Comments in the above-captioned proceeding, which I understand involves the Agreement.

4. AT&T has direct trunks in Minnesota with a NorthStar affiliate and decided to use those trunks for the switched access traffic that it would be sending to NorthStar for termination in Minnesota.

5. At the time the parties entered into the Agreement, like many telecommunications companies trying to achieve efficiencies, the NorthStar affiliate did not break out actual percentages of usage over such trunks, but instead applied a set percentage to all traffic: 92% interstate usage ("PIU"); 8% intrastate usage.

6. NorthStar was thus unable to determine the jurisdiction of the traffic that AT&T sent to NorthStar over those trunks, although NorthStar believed that the majority of the traffic was interstate.

7. Because of the difficulties in determining jurisdiction, and the likelihood that the traffic was mostly interstate, NorthStar informed AT&T that it preferred to apply a factor of 100% PIU.

8. In addition to the reasons listed above, NorthStar stated that a 100% PIU would simplify its billing process, therefore the parties did not pursue discussions regarding intrastate rates at the time the Agreement was negotiated.

9. In the Spring of this year, the parties have had discussions in which NorthStar has informed AT&T that it may soon be able to determine the jurisdiction of traffic and, if so, AT&T has indicated its willingness to revisit the PIU factor and, consequently, reasonable intrastate switched access rates.

Dated August 17, 2004.

Debbie H. Joyce

STATE OF GEORGIA)
)ss.
COUNTY OF COBB)

Subscribed and sworn to before me
this 17th day of August, 2004.

Leanne M. Turnis
Notary Public

My Commission Expires: Jan. 12, 2008

LEANNE M. TURNIS NOTARY PUBLIC FULTON COUNTY EXPIRES GEORGIA January 12, 2008

Exhibit B

RECEIVED
AT&T Corp. Legal - Denver
JUL

July 1, 2004

Via Airborne Express Mail

Robert P. Handal, Jr.
AT&T Corp.
900 Route 202/206 North--Room 2A109
Bedminster, NJ 07921-0752

Re: Switched Access Service Agreement - Minnesota

This is to notify AT&T that the Minnesota Department of Commerce has filed a complaint with the Minnesota Public Utilities Commission in Docket No. P442,5798, 5340,5826,437,5643,443,5323,5668,466/C-04-235, in which it alleges that several carriers, including Eschelon Telecom of Minnesota, Inc. have violated state law by not charging AT&T Communications of the Midwest, Inc. the filed tariffed rate for switched access services in Minnesota. The Department also alleges that AT&T and others violated conditions of their certificates of authority by failing to pay switched access services at tariffed rates.

While Eschelon disagrees with the allegations of the Department of Commerce as to Eschelon and intends to dispute them, Eschelon is giving AT&T notice pursuant to Section 8 of the Switched Access Service Agreement that it may be required to begin charging AT&T the standard tariffed rates for switched access services in Minnesota as of June 16, 2004, the date the complaint was filed. Futhermore, Eschelon may also be required to adjust previous bills so as to charge AT&T the standard Minnesota tariffed rate for all previous applicable billing periods under the Agreement.

Eschelon is not implementing these changes at this time since it does not appear that the Department has ordered Eschelon to take any action at this time.
However, we wanted to give AT&T notice of the possibility of a regulatory order that would require such actions.

Please contact me if you have any questions about Eschelon's position in this matter.

Sincerely,

Dennis D. Ahlers
Senior Attorney
Eschelon Telecom, Inc.
612.436.6249 (direct)
612.436.6349 (fax)
ddahlers@eschelon.com

cc: Steve Weigler

Exhibit C

12-29-83

RECEIVED
JAN 3 1984

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Terry Hoffman	Chairman
Leo G. Adams	Commissioner
Roger L. Hanson	Commissioner
Cynthia A. Kitlinski	Commissioner
Lillian Warren-Lazenberry	Commissioner

In the Matter of the Application of AT&T Communications of the Midwest, Inc. for Authority to Engage in the Construction, Operation, or Extension of Telecommunications Systems and Services within the State of Minnessota.

DOCKET NO. P-442/M-83-640

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Procedural History

On October 25, 1983, AT&T Communications of the Midwest, Inc. (AT&T/MW or the Company) filed a request with the Minnesota Public Utilities Commission (the Commission) for a Certificate of Public Convenience and Necessity (Certificate) to engage in the construction, operation or extension of telecommunications systems and services, within Minnesota, pursuant to Minn. Stat. § 237.16, subd. 4 (1982). AT&T/MW is an Iowa corporation and is currently a wholly-owned subsidiary of Northwestern Bell Telephone Company (NWB). It is managed by its own officers and directors.

This matter arises out of the Modified Final Judgment (MFJ) Order in United States of America v. Western Electric Corporation, Inc. and American Telephone and Telegraph Company, Civil Action No. 83-0192 (D.C. Cir., August 24, 1982). The MFJ requires that American Telephone and Telegraph Company (AT&T) divest NWB and leave to NWB sufficient facilities, personnel, systems and technical information to permit NWB to perform exchange telecommunications and exchange access functions. Under the MFJ, beginning on January 1, 1984, AT&T/MW will separately conduct interexchange switching and transmission service, using certain facilities, equipment, etc., presently owned in the name of NWB. The Company will provide intrastate, interLATA long distance (toll) telephone service in Minnesota, Iowa, North Dakota, South Dakota and Nebraska. It will have its headquarters in Omaha, Nebraska as well as offices and staff in the five jurisdictions where it operates.

Ownership of AT&T/MW is to be transferred to AT&T on January 1, 1984; its financial strength will reflect the resources of its parent organization. In this request for a Certificate, the Company is asking for authority to provide the intrastate, interLATA toll service for telephone users within Minnesota to be divested by NWB on January 1, 1984, and authority to "(respond) where appropriate in the future to the demands and opportunities of increased competition in the telecommunications marketplace which it faces from other interexchange carriers, resellers and common carriers."

The names and addresses of the Company's Board of Directors are:

M. Tanenbaum	295 North Maple Avenue Basking Ridge, N.J. 07920
B. H. Gaynor	Rt. 202/206 Bedminster, N.J. 07921
A. A. Green	295 North Maple Avenue Basking Ridge, N.J. 07920
J. E. Harrington	295 North Maple Avenue Basking Ridge, N.J. 07920
R. W. Kleinert	Rt. 202/206 Bedminster, N.J. 07921
A. C. Partoll	295 North Maple Avenue Basking Ridge, N.J. 07920
S. R. Willcoxon	295 North Maple Avenue Basking Ridge, N.J. 07920

The names, addresses and phone numbers of the Company's present officers are:

J. A. Blanchard, III
President
811 Main, P.O.Box 1418
Room 1200
Kansas City, Missouri 64141
816-391-3131

K. E. McClintock
Vice President & General Counsel
AT&T
1 S. Wacker, 11th Floor
Chicago, Illinois 60606
312-592-5102

W. A. Garrett
Vice President, Marketing
AT&T Long Lines
10 S. Canal St., 25th Floor
Chicago, Illinois 60606
312-855-3000

T. O. Davis
Secretary
195 Broadway
New York, New York 10007
212-393-5161

J. D. Reed
Vice President
External Affairs
1 South Wacker, 11th Floor
Chicago, Illinois 60606
312-592-5100

A. G. Walton
Assistant Secretary
AT&T Long Lines
Bedminster, New Jersey 07921
201-234-6324

P. H. McHale
Vice President
Regulatory Relations
10825 Old Mill Road
Omaha, Nebraska 68154
402-691-2001

A. J. Batson
Assistant Secretary
195 Broadway
New York, New York 10007
212-393-3021

W. M. Howard Jr.
Treasurer
AT&T Long Lines
Room 18-S280
340 Mt. Kemble Avenue
Morristown, New Jersey 07960
201-326-3760

C. J. Gustafson
Assistant Secretary
340 Mt. Kemble Avenue
Morristown, New Jersey 07690
201-326-2610

D. L. Steinmeyer
Comptroller
1314 Douglas-on-the-Mall
13th Floor
Omaha, Nebraska 68102
402-633-7776

On December 14, 1983, the Minnesota Department of Public Service (DPS) filed comments to the Company's request for a Certificate. The DPS alleged that if the Company desired a Certificate prior to January 1, 1984, it must file a joint petition with NWB for Commission approval of the purchase/transfer of NWB property to AT&T/MW pursuant to Minn. Stat. § 237.23 (1982). Furthermore the DPS argued that if AT&T/MW's request for a Certificate were denied, the intrastate, interLATA toll services would be transferred to the Company on January 1, 1984 by operation of law pursuant to the MFJ. The DPS further claimed that the Certificate being requested was overly broad.

The Company's Reply dated December 9, 1983 denied the allegations contained in the DPS comments.

On December 20, 1983, the Commission met to consider AT&T/MW's application for a Certificate. Based upon the information contained in the application, supporting documents, map and files, the Commission made the following findings:

FINDINGS

1. That the MFJ requires NWB to discontinue performing intrastate, interLATA toll services beginning January 1, 1984.

2. That public convenience and necessity requires that telephone users within Minnesota continue to have intrastate, interLATA toll services available to them.

3. That AT&T/MW has agreed to file a joint petition with NWB for Commission approval of the transfer of assets necessary for performing intrastate, interLATA toll services. As a successor company to Northwestern Bell, AT&T/MW will perform intrastate, interLATA toll services. The Company will provide telephone services of the same quality and, initially at the same rate levels that have been authorized for NWB.

4. That the standards for authorizing a Certificate set forth in Minn. Stat. § 237.16, subd. 4 (1982) have been met.

5. That the Commission finds that the broader authority requested in the Company's petition will be better addressed at a later date.

IT IS THEREFORE ORDERED:

ORDER

1. AT&T/MW is granted a Certificate of Public Convenience and Necessity to provide the intrastate, interLATA toll service for telephone users within Minnesota as a successor company to Northwestern Bell on January 1, 1984. The Company shall provide telephone services of the same quality and, initially at the same rate levels that have been authorized for NWB.

2. The granting of this Certificate is contingent upon the filing by NWB and AT&T/MW of a joint petition pursuant to Minn. Stat. § 237.23 (1982) for the Commission's approval of the transfer of assets from NWB to AT&T/MW pursuant to the federally mandated divestiture.

3. AT&T/MW shall operate in conformance with Minn. Stat. Ch. 237 (1982) and all other applicable Minnesota Statutes.

4. AT&T/MW shall operate in conformance with all applicable Rules of the Public Utilities Commission, including Minn. Reg. PSC 170 - 219.

5. Other authority requested in the Company's petition will be addressed at a later date.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Randall D. Young
Executive Secretary

SERVICE DATE: DEC 29 1983

(S E A L)

RDY:RC:sj

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner

In the Matter of Negotiated Contracts for the Provision of Switched Access Services	Docket No. P-422,5798,5340,5826,437, 5643,443,5323,5668,466/C-04-235

AFFIDAVIT OF SERVICE

STATE OF COLORADO)
)ss.
COUNTY OF DENVER)

Janet Keller, being first duly sworn, deposes and says that on the 18th day of August, 2004, she served AT&T's Comments, Motion to Dismiss and Motion for Summary Judgment to the attached service list by U.S. Mail and/or overnight delivery service.

Janet Keller

Subscribed and sworn to before me
this 18th day of August, 2004.

Adam W Walczak
Notary Public

My Commission Expires: 1/22/06

NOTARY PUBLIC
ADAM W. WALCZAK
STATE OF COLORADO

My Commission Expires 1/22/06

SERVICE LIST
Docket No. P-422,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235.

Dr. Burl W. Haar (15)
Executive Secretary
Minnesota Public Utilities Commission
121 East 7th Place, Suite 350
St. Paul, MN 55101-2147

Linda Chavez (4)
Telephone Docketing Coordinator
MN Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Curt Nelson
OAG-RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Julie Anderson
Attorney General's Office
1400 NCL Tower
445 Minnesota Street
St Paul, MN 55101-2131

David Starr
Allegiance Telecom of MN, Inc.
9201 N. Central Expressway
Dallas, TX 75231

Thomas Bade
Arizona Dialtone, Inc.
7170 Oakland Street
Chandler, AZ 85226

Cathy Murray
Eschelon Telecom of MN, Inc.
730 2nd Avenue S, Suite 1200
Minneapolis, MN 55402-2456

Diane Peters
Global Crossing Local Services, Inc.
1080 Pittsford Victor Road
Pittsford, NY 14534

Sandra L. Talley
Focal Communications of MN
200 N LaSalle, Suite 1100
Chicago, IL 60601

Karen L. Johnson
Integra Telecom of MN, Inc.
1200 Minnesota Center
7760 France Avenue
Bloomington, MN 55435

Robin R. McVeigh
McLeodUSA Telecommunications Services, Inc.
6400 C Street W
P.O. Box 3177
Cedar Rapids, IA 52406

Paavo Pyykkonen
NorthStar Access, L.L.C.
P.O. Box 207
Big Lake, MN 55309

Mac McIntyre
Winstar Communications, LLC
1850 M Street NW, Suite 300
Washington, DC 20036

Timothy Zeat
Z-Tel Communications, Inc.
601 S Harbour Island Blvd. Suite 220
Tampa, FL 33602

Lesley J. Lehr
638 Summit Avenue
St. Paul, MN 55105

Pat Chow
MCImetro Access Transmission Services LLC
201 Spear Street, 9th floor
San Francisco, CA 94105

Mike Duke
KMC Telecom III LLC
1755 N. Brown Road, 3rd Floor
Lawrenceville, GA 30043

Teresa Lynch
AT&T
1455 Bussard Court
St. Paul, MN 55112

Paul Rebey
Focal Communications Corp. of MN
200 N. LaSalle, Suite 1100
Chicago, IL 60601

Michael Shortley
Global Crossing
1080 Pittsford Victor Road
Pittsford, NY 14534

Dennis Ahlers
Eschleon Telecom of Minnesota
730 Second Avenue South, Suite 900
Minneapolis, MN 55402

Steven Weigler
AT&T
1875 Lawrence Street, 15th Floor
Denver, CO 80202

Pat Gideon
Intermedia Communications, Inc.
201 Spear Street, Floors 5-10
San Francisco, CA 94105

Sue Travis
Metro Fiber Systems of Minneapolis/St. Paul
707 17th Street, Suite 3600
Denver, CO 80202

Sandra Hofstetter
AT&T
10157 Ivywood Court
Eden Prairie, MN 55347

Gregory Mertz
Gray Plant Moody
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55412

Monica Barone*
Sprint Communications Company
6450 Sprint Parkway
KSOPHN0212-2A203
Overland Park, KS 66251

Dan Lipschultz
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Greg Kopta
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688

Paula Block
AT&T
55 Corporate Drive, Room 32D47
Bridgewater, NJ 08807

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

CONFIDENTIAL Exhibit ____ (RDJ-1)

Comparison of AT&T Purchases to Qwest Purchases with TWTC

Rebuttal Exhibit of Rochelle D. Jones
Filed August 9, 2012

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 81
PARTY TW TELECOM OF FL, L.P. (TWTC) - (REBUTTAL)
DESCRIPTION Rochelle D. Jones RDJ-1) (Rebuttal)
CONFIDENTIAL

REDACTED

	Year	Qwest Total Spend	AT&T Total Spend	Required Spend pursuant to AT&T Contract	Qwest Spend as a percentage of ATT Spend	Qwest Spend as a percentage of ATT Contract Requirement
AT&T Contract and Statute of Limitation Period	2005	[redacted]				
	2006					
	2007					
	2008					
	TOTAL					

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP

Exhibit ____ (RDJ-2)

EDGAR Copy of TWTC/AT&T Agreement

Rebuttal Exhibit of Rochelle D. Jones
Filed August 9, 2012

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 82
PARTY TW TELECOM OF FL, L.P. (TWTC) - (REBUTTAL)
DESCRIPTION Rochelle D. Jones RDJ-1) (Rebuttal)

EX-10.1 2 dex101.htm COMPOSITE CONFORMED COPY OF AGREEMENT

Exhibit 10.1

CONFIDENTIAL TREATMENT REQUESTED

PLACES WHERE INFORMATION HAS BEEN REDACTED HAVE BEEN

MARKED WITH (*******)

AGREEMENT

between

Time Warner Telecom

and

AT&T Corp.

Effective Date: January 1, 2001

[Composite conformed Copy incorporating amendments 1 through 6]

AT&T and Time Warner Telecom Proprietary
Subject To Non-Disclosure Agreement

TABLE OF CONTENTS

SECTION	*PAGE*
PREAMBLE	
PART I: General	
1. Introduction	2
2. Term of Agreement	2
3. Defined Terms	2
4. Areas Served	3
PART II: Services and Prices	
5. Services	4
6. Right to Resell	5
7. Pricing Principles	5
PART III: Network Deployment, Provisioning, Maintenance, and Billing	
8. Network Requirements	5
9. General Infrastructure Requirements	10
10. AT&T Wireless Services (Deleted)	10
11. Verification of Performance Capabilities	10
12. TWTC Activities at Served Premises	10
PART IV: Service Quality	
13. Acceptance Testing	11
14. Service Performance	11
15. Remedies for Service Deficiencies	12
PART V: Additional Terms and Conditions	
16. TWTC Regulatory Approvals	15
17. TWTC Tariffs	15
18. Delegation, Merger, or Assignment	16
19. Subcontracting by TWTC	17
20. Single Point of Contact	17

SECTION		PAGE
21.	Termination of Agreement	18
22.	Continuity of Service	19
23.	No Consequential Damages	19
24.	Indemnification	19
25.	Nonexclusive Remedies	20
26.	Compliance with Applicable Laws and Standards	20
27.	No Third Party Beneficiaries	21
28.	Force Majeure	21
29.	AT&T Payment	21
30.	Revenue Commitment	22
31.	*Alternative Dispute Resolution*	26
32.	Confidentiality and Proprietary Information	27
33.	Publicity and Advertising	29
34.	Governing Law	29
35.	No Waiver	30
36.	Unenforceable Provisions	30
37.	Notices	30
38.	Titles	32
39.	Amendments	32
40.	Not a Joint Venture	32
41.	Successors and Assigns	32
42.	Survival	32
43.	Referenced Documents	32
44.	Incorporated Documents	33
45.	Entire Agreement	33
46.	Representations and Warranties	33
47.	Settlement Terms and Release	33

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

LIST OF APPENDIXES

DESIGNATION	*TITLE*
A	Index of Defined Terms
B	Model MSA Schedule
C-1	Service Description: Dedicated Service
C-2	Service Description: Switched Access Service
D	Pricing Principles for Dedicated Services
E	Pricing Principles for Switched Access Service
F	Billing and Payment
G	TWTC Activities at Served Premises

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

AGREEMENT

This Agreement ("Agreement") is entered into as of January 1, 2001 ("Effective Date"), by and between Time Warner Telecom General Partnership, a Delaware partnership, having an office at 10475 Park Meadows Drive, Littleton, Colorado 80124 ("TWTC"), and AT&T Corp., a New York corporation, having an office at 295 North Maple Avenue, Basking Ridge, New Jersey 07920, on behalf of itself and each of its subsidiaries ("AT&T") (each of which sometimes is referred to as the "Party" and both of which collectively are referred to as the "Parties").

Whereas, TWTC is in the business of providing telecommunications services in certain metropolitan statistical areas within the United States; and

Whereas, the Parties entered into an Agreement effective as of September 15, 1995 (as amended by that certain Amendment One to Agreement effective as of June 1, 1997, the "Prior Agreement") for the purchase of telecommunications services, including services similar to the Services that are the subject of the instant Agreement; and

Whereas, the Parties had disputes (the "Disputes") under the Prior Agreement; and

Whereas, the Parties wish to fully and finally settle all Disputes under the Prior Agreement and to continue their relationship under the terms and conditions contained herein;

Now, therefore, in consideration of the foregoing premises and the mutual covenants of this Agreement, the sufficiency and receipt of which are hereby acknowledged, TWTC and AT&T agree as follows:

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

PART I: GENERAL

1. Introduction

This Agreement sets forth the terms, conditions, and pricing principles under which TWTC agrees to offer, and AT&T agrees to purchase, certain telecommunications services ordered by AT&T in the Selected MSAs.

2. Term of Agreement

2.A When this Sixth Amendment is executed by authorized representatives of TWTC and AT&T, this Agreement will be effective as of the Effective Date (*e.g.,* January 1, 2001), and will remain in effect for a term of eight (8) years from the Effective Date (*"Term"*), unless terminated at an earlier date or unless renewed or extended, as provided in this Agreement.

2.B No later than six (6) months prior to the end of the Term, the Parties agree to commence negotiations diligently and in good faith to renew this Agreement under mutually acceptable terms, conditions and pricing. In the event the Parties fail to agree upon renewal terms and the Term of this Agreement expires, the Agreement will continue in effect on a month-to-month basis until such time as the Parties reach agreement or either Party terminates for convenience upon not less than thirty (30) days' written notice, at which time the appropriate Transition Period set out in Section 21.B shall commence. Pricing during any month-to-month term shall be at the then current rates under this Agreement. Pricing during any Transition Period shall be in accordance with Section 21.B. During any month-to-month or Transition Period, AT&T shall not be subject to any revenue commitment of any kind.

2.C Notwithstanding Section 2.A and Section 2.B, if AT&T's Eligible Services (as defined in Section 30.B) meet or exceed the Total Cumulative Revenue Commitment (as defined in Section 30.A) at any time prior to the end of the Term, the Total Cumulative Revenue Commitment will automatically terminate. Upon termination of the Total Cumulative Revenue Commitment, subject to Section 2.B, the Agreement will continue in effect on a month-to-month basis.

3. Defined Terms

3.A For purposes of this Agreement, words and phrases spelled with initial capital letters (other than proper names and beginning of sentences) shall have the defined meanings set forth in the applicable provisions of this Agreement.

3.B For convenience of the reader, an index specifying the location of the definition of defined terms in this Agreement is contained in Appendix A. Appendix A may not contain a complete list of all defined terms herein.

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

4. Areas Served

4.A The United States Census Bureau divides the United States into certain metropolitan statistical areas. For purposes of this Agreement and unless otherwise agreed by the parties, "MSAs" will refer to such metropolitan statistical areas as drawn or described by the Census Bureau on the Effective Date of this Agreement. TWTC shall offer Services to AT&T under the terms, conditions and pricing principles of this Agreement in every MSA in which TWTC offers services of the types that are the subject of this Agreement. The parties shall execute an "MSA Schedule" substantially in the form of Appendix B to evidence each of the MSAs in which TWTC shall offer Services and provide details specific to that MSA. Each MSA identified in an MSA Schedule shall be deemed a "Selected MSA."

4.B Notwithstanding Section 4.A of this Agreement, it is agreed that TWTC is currently offering services to AT&T in the following Selected MSAs: Austin, Texas; Charlotte, North Carolina; Cincinnati, Ohio; Columbus, Ohio; Greensboro, North Carolina; Honolulu, Hawaii; Houston, Texas; Indianapolis, Indiana; Memphis, Tennessee; Milwaukee, Wisconsin; New York City, New York; Orlando, Florida; Raleigh-Durham, North Carolina; Rochester, New York; and San Diego, California (collectively, the "Current Selected MSAs"). In addition, simultaneously with the execution of this Agreement, AT&T and TWTC shall execute MSA Schedules for each of the following MSAs: Albany, New York; Binghamton, New York; Dallas, Texas; Fayetteville, North Carolina; Jersey City, New Jersey; San Antonio, Texas; Tampa, Florida; Los Angeles/Orange County, California; Dayton, Ohio; Chicago, Illinois; Minneapolis, Minnesota; Columbia, South Carolina; Atlanta, Georgia; and Denver, Colorado.

4.C If the Parties agree that TWTC will offer Services in any Selected MSA through an Affiliate or other entity, such Affiliate or entity "Local Entity," as defined below in this Section 4.C, will also sign the MSA Schedule for such Selected MSA and will agree to abide by the terms of this Agreement. With respect to each Selected MSA, the applicable Local Entity shall be jointly and severally liable with TWTC for the performance of all obligations and duties to AT&T under this Agreement and the respective MSA Schedule. To the extent that a Local Entity is currently providing AT&T with Services in a Current Selected MSA, such Local Entity shall continue to provide services to AT&T and the applicable Local Entity shall be jointly and severally liable with TWTC for the performance of all obligations and duties to AT&T under this Agreement in the applicable Selected MSA. Definition of Local Entity/ies: TWTC owns limited partnerships or other entities that own and/or operate telecommunications facilities in various metropolitan areas. Each of these "Local Entities" is a partnership, corporation, or other entity for which TWTC or TWTC's wholly-owned subsidiary is the general partner, or is under common control by TWTC and its wholly-owned subsidiary, and each Local Entity is authorized to provide the Services in a particular geographic area.

4.D Unless otherwise provided in this Agreement or in an MSA Schedule, all provisions of this Agreement shall take effect immediately upon the Effective Date. Any terms, conditions or pricing principles that are unique to a Selected MSA shall be set forth in the applicable MSA Schedule.

4.E Buildings within each Selected MSA shall be deemed "On-Net" or "Off-Net" in accordance with this Section 4.E.

4.E.i A building shall be deemed On-Net if: (1) it has been identified as On-Net by TWTC; (2) TWTC has at any time provided a Service to any part of the building under

this Agreement using Type I Facilities; or (3) TWTC has at any time provided to any part of the building a telecommunications service under any other agreement or tariff with AT&T or any other person using Type I Facilities.

4.E.ii Buildings that have not yet become On-Net pursuant to Section 4.E.i shall be deemed "Off-Net."

4.F TWTC shall provide AT&T with complete and accurate list of "On-Net" buildings for each Selected MSA no less frequently than monthly.

PART II: SERVICES AND PRICES

5. Services

5.A With respect to each Selected MSA, TWTC shall offer to AT&T certain telecommunications services as described below ("Services") to any Served Premises in any On-Net building, subject to the applicable terms, conditions and pricing principles of this Agreement. "Served Premises" means any premises to which AT&T orders Service under this Agreement from TWTC. Served Premises may include without limitation an AT&T point of presence or other network location ("AT&T Serving Office"), or another location that is not an AT&T Serving Office ("Secondary Location"). The premises of AT&T's customers ("Customer Premises") are one type of Secondary Location.

5.B Additionally, subject to the requirements set forth in Section 8.D, TWTC may offer to AT&T Services in any Off-Net building(s) in a Selected MSA, under the terms, conditions and pricing principles of this Agreement (including the applicable MSA Schedule) or such other terms, conditions and pricing principles as the parties may agree.

5.C The Services shall include:

5.C.i "*Dedicated Service,*" meaning a service providing a two-point digital channel connecting any location within an Exchange Area to any other location within any Exchange Area in the same Selected MSA. (Such locations may include, but are not limited to, all AT&T Serving Offices and Customer Premises, as well as the premises of any other supplier or user of telecommunications services.) The service characteristics and technical specifications of Dedicated Service are set forth in Appendix C-1. For purposes of this Agreement, "Exchange Area" means the geographic area corresponding to the area served by a local serving office ("LSO") of the applicable incumbent local exchange company ("ILEC").

5.C.ii "*Switched Access Service,*" meaning a service that provides the switched connection and transport of all types of calls, including but not limited to, international, interLATA and intraLATA calls between an AT&T Serving Office and the point of call origination or termination. The service characteristics and technical specifications of Switched Access Service are set forth in Appendix C-2.

6. Right to Resell

AT&T shall have the right to resell or repackage under an AT&T brand name, or under such other name or mark as AT&T may elect, any Service provided to AT&T by TWTC under this Agreement.

7. Pricing Principles

The pricing principles by which TWTC will establish rates and charges for the Services offered to AT&T pursuant to this Agreement are set forth in the following Appendixes:

Appendix D Dedicated Pricing Principles; and

Appendix E Switched Pricing Principles.

PART III: Network Deployment, Ordering, Provisioning, Maintenance, and Billing

8. Network Requirements

8.A In each Selected MSA, TWTC agrees to use commercially reasonable efforts to deploy network Facilities and infrastructure for use by AT&T ("Network") in accordance with this Section 8.A.

8.A.i Except for equipment consented to in writing by AT&T, such consent not to be unreasonably conditioned, withheld or delayed, all equipment within and between each Supplier Node shall incorporate SONET platform technology deployed in fiber-based self-healing rings and/or other technology that provides comparable (or better) service. "Supplier Node" means any location on the TWTC's Network that contains equipment or apparatus operated and controlled by TWTC or a Local Entity. The parties agree to meet no less often than annually to discuss and negotiate in good faith the use by TWTC of new technologies and platforms in TWTC's Network.

8.A.ii TWTC shall collocate in, and interconnect with, each ILEC LSO mutually agreed to by TWTC and AT&T.

8.A.iii Except for tandem switching arrangements consented to by AT&T, TWTC's Network shall not permit traffic of any other telecommunications carrier to be routed through any AT&T Serving Office, nor shall it permit AT&T's traffic to be routed through the serving office of any other telecommunications carrier.

8.A.iv Except for class-5 switching functionality, Digital Access Cross-Connects ("DACS"), dual Central Offices, and any technology consented to in writing by AT&T, such consent not to be unreasonably conditioned, withheld or delayed, TWTC's systems shall contain one hundred percent (100%) redundancy in electronics and distribution ring transmission paths, so that in the event of a failure, Services are

interrupted only for the time required to activate such redundant capacity. For OC-n services, certain cards within the redundant systems will not be one-for-one protected unless AT&T specifications specifically require such protection, and further, unless AT&T pays for such one-for-one protection. Redundant systems shall have sufficient capacity to transport all existing Services provided to AT&T.

8.A.v TWTC's systems shall incorporate automatic restoration for all network elements that the then current, state-of-the-art technology supports.

8.A.vi With respect to each building having a Supplier Node, if the applicable ILEC then provides or has ever provided a dual-entrance facility arrangement to such building, then TWTC will make all commercially reasonable efforts to ensure that its Network also provides a dual-entrance facility arrangement. The building list required under Section 4.F. shall identify all buildings where dual Entrance Facilities are currently available.

8.A.vii The Network shall conform in all material respects to AT&T's inside and outside plant standards as set forth in the then-current version of each of the following AT&T technical references, a copy of which has been provided to TWTC. TWTC shall have no obligation to upgrade its Network to comply with AT&T's most recent inside and outside plant standards so long as its Network was in compliance with the version available at the time of installation:

(a) "TR-NWT-000063, Network Equipment Building System (NEBS), Generic Equipment Requirements";

(b) "AT&T 900-200-210, Lightguide Cable Systems Outside Plant Standards Handbook";

(c) "Redundancy & Diversity Requirements for OC-N (*i.e.*, 48, 12, 3...) Equipment" (AT&T internal memorandum);

(d) "Outside Plant Physical Diversity Criteria" (AT&T internal memorandum); and

(e) "AT&T 803-500-410, Grounding Practices Isolated Ground Planes Engineering and Application Information Criteria for Analog & Digital Switches."

8.B TWTC shall submit to AT&T a Ready-to-Serve Package for each Selected MSA in accordance with a timetable mutually agreed to by TWTC and AT&T. Each Ready-to-Serve Package shall: (i) provide a logical and physical diagram of the design rules of the respective network that shows the interconnection between all network elements between each Supplier Node; (ii) provide the engineering rules for network growth; and (iii) describe how TWTC shall meet each of the Network requirements set forth in Section 8.A. Notwithstanding the foregoing, TWTC shall not be required to submit to AT&T a Ready-to-Serve Package for any Current Selected MSA where it has previously provided AT&T such information.

8.C TWTC shall submit to AT&T an updated nationwide disaster recovery plan acceptable to AT&T ("Disaster Recovery Plan") within sixty (60) days after execution of this Agreement

that covers all Selected MSAs as detailed in Section 4.B, unless otherwise agreed by the parties. At a minimum, the Disaster Recovery Plan will contain the following:

8.C.i Provisions for immediate notification to AT&T of the existence, location and source of any network outage resulting in 5,000 or more blocked call attempts during a period of no greater than 15 minutes within any TWTC class 5 switch.

8.C.ii Development of methods and procedures for: (a) providing AT&T with real-time access to information related to the status of restoration efforts; (b) dispatching mobile equipment, as needed, to the restoration site; (c) providing restoration efforts with equal priority between AT&T's customers and TWTC's customers, including deployment of repair personnel and access to spare parts and components; (d) escalation of maintenance problems; and (e) annual reviews of the Disaster Recovery Plan to test deployment, to ensure that all plans remain current and can be efficiently operationalized, and that identified problems are resolved in a timely manner.

8.D TWTC shall provide Services exclusively by means of Facilities operated and controlled by TWTC ("Type I" Facilities) or a Local Entity. "Facilities" means any equipment, cable, apparatus or other materials required to provide any Services. Notwithstanding the foregoing, with AT&T's consent, TWTC may use Facilities operated and controlled by a third party ("Type II" Facilities) under the following circumstances:

8.D.i to provide a Secondary Channel Termination and Multiplexing for Dedicated Services other than Self-Healing Ring Service; *provided,* that the related Served Premises is within either: (a) an On-Net building for which TWTC has temporarily exhausted its facility capacity; or (b) an Off-Net building for which TWTC has firm plans to make such location an On-Net building; and *provided, further,* that in either case, TWTC shall notify AT&T of such circumstances as soon as reasonably practicable and shall convert such Dedicated Services from Type II Facilities to Type I Facilities as soon as reasonably feasible; or

8.D.ii to provide either a Service Channel for Self-Healing Ring Service or a Secondary Channel Termination and/or Multiplexing for other Dedicated Services; *provided,* that AT&T has consented in writing to such use, the specific Type II Facilities to be used and the third parties operating and controlling them; or

8.D.iii to provide Services to any other Off-Net building, where the parties have agreed to use the terms, conditions and pricing principles set forth in this Agreement (including the applicable MSA Schedule) or other terms, conditions and pricing principles proposed and accepted on an Individual Case Basis in accordance with Section D.6 of Appendix D.

8.E If a mechanical transmission system is available to transmit ASRs or service orders from AT&T to TWTC, this vehicle will be used. If a mechanized system is used, the parties will follow any Ordering and Billing Forum standards for the use of that system. If a mechanized transmission system is not used, AT&T will transmit ASRs or service orders to TWTC via facsimile. Facsimile information will be provided to AT&T from TWTC and updated as needed. The ASR or service order will specify the term selected by AT&T for the Service requested.

While this Agreement is in effect, all ASRs or service orders issued by AT&T will be subject to the terms and conditions of this Agreement.

8.E.i TWTC will provide a Firm Order Confirmation ("FOC") confirming receipt of the order and targeted Service interval dates.

8.E.ii If TWTC is able to provide the Services set forth in the ASR or service order, TWTC will provide a Design Layout Record ("DLR") to AT&T after receipt of a complete and accurate ASR or service order. The DLR will provide any necessary Service intervals, as well as a start of service date.

8.E.iii The standard installation interval for all On-Net Dedicated Transport Services is five (5) business days, except for OC-ns, Individual Case Bases ("ICBs"), or situations in which sufficient capacity does not exist, in which case TWTC will inform AT&T at or before the time it issues the FOC that sufficient capacity does not exist. TWTC may provide Service on an Individual Case Basis within a shorter interval requested by AT&T. In such cases, TWTC will charge an expedite fee as set out in Table 2.

8.E.iv In the event AT&T cancels an order after TWTC has received a sold notification or has provided the FOC in response to an ASR, and prior to AT&T's acceptance of the Service ordered, AT&T will be responsible for, and will pay on demand: (a) all actually incurred non-recurring charges associated with the Order, not to exceed the quoted non-recurring charges or the non-recurring charges as stated in this Agreement, as appropriate; and (b) any AT&T POP augmentation costs associated with OC-n Services that cannot be re-deployed within one hundred and twenty (120) days.

In the event AT&T cancels a request to roll a POP to LSO DS3 Transport Arrangement previously scheduled by AT&T, and prior to AT&T's acceptance of the DS3 Transport Arrangement, AT&T will be responsible for, and will pay on demand: (a) a three hundred dollar ($300) per circuit cancellation charge; and (b) any AT&T POP and/or ILEC LSO augmentation costs incurred by TWTC; *provided, however,* that AT&T shall not be liable for any augmentation costs that exceed the estimated augmentation costs that TWTC shall provide to AT&T no later than one hundred and twenty (120) calendar days before the date scheduled for rolling each DS3 Transport Arrangement. In addition, if TWTC utilizes or re-deploys the augmented facilities within one hundred and twenty (120) calendar days after AT&T cancels a POP to LSO DS3 Transport Arrangement, then TWTC shall provide AT&T with a credit for the costs paid by AT&T associated with the facilities that are utilized or re-deployed.

8.E.v As used in the non-recurring charges for time and materials table in Table 2B (AT&T Dedicated Access Services Rates), and the then current price table maintained by TWTC pursuant to Section D.1.D of the Agreement:

8.E.v.(a) "Technician Dispatch All Cities Except Manhattan" applies to AT&T-initiated maintenance service calls for repair of Service deficiencies to all cities

except Manhattan and includes Technician Travel Time (as defined in this Section 8.E.v.(a)); *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer. "Technician Travel Time" means the travel time technician expends to reach the Served Premises for the repair of Service deficiencies, *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer. Technician Travel Time begins when the technician enters their vehicle to reach the Served Premises and ends when such technician arrives at such Served Premises.

8.E.v.(b) "Technician Dispatch Manhattan" applies to AT&T-initiated maintenance service calls for repair of Service deficiencies to Manhattan and includes Technician Travel Time; *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer.

8.E.v.(c) "Technician Time" includes the repair of Service deficiencies and applies to the initial thirty (30) minutes technician is at the Served Premises; *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer. Technician Time is a required non-recurring charge and is in addition to the Technician Dispatch All Cities Except Manhattan or the Technician Dispatch Manhattan non-recurring charge.

8.E.v.(d) "Technician Time Additional" includes the repair of Service deficiencies and applies to each thirty (30) minute increment of Technician Time Additional upon expiration of Technician Time; *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer. Technician Time Additional begins at the expiration of Technician Time and ends when the Service deficiencies have been corrected and Service restored or when AT&T wishes the technician to stop work, whichever is later.

8.E.v.(e) "Standard Materials Mark-Up Rate" applies to the materials expended in the repair of Service deficiencies; *provided,* that TWTC determines the cause of such Service deficiencies is a failure, malfunction, or inadequacy of AT&T's customers or AT&T's equipment including the inappropriate use of such equipment by AT&T or AT&T's customer, and represents a ******* mark-up over TWTC's actual costs for such materials.

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

9. General Infrastructure Requirements

9.A In each Selected MSA, TWTC agrees to use all commercially reasonable efforts to meet each of the applicable infrastructure requirements, including but not limited to Service provisioning, Service maintenance, and TWTC's provision of billing information to AT&T, that are set forth in the then-current version of the "AT&T-Dedicated Access Infrastructure Requirements" and the "AT&T – Switched Access Infrastructure Requirements" documents that are incorporated by reference into this Agreement, and copies of which have been provided to TWTC. In the event of a conflict between the above referenced documents and Section 8.E. above, Section 8.E. shall govern. Throughout the term of this Agreement, AT&T shall have the right, in its reasonable business judgment, to modify the above referenced documents by giving TWTC no less than thirty (30) days' prior written notice; *provided, however,* that any such unilateral modification by AT&T shall be: (1) reasonable with respect to the then-current AT&T infrastructure requirements; (2) consistent with the standards established by AT&T for all competitive access vendors; and (3) have no material adverse effect on TWTC. TWTC will not be required to incur any material costs to implement changes in AT&T's infrastructure requirements unless TWTC agrees to such changes in writing.

9.B Billing and payment of TWTC's charges for Services provided under this Agreement shall be in accordance with the specifications and procedures set forth in Appendix F and the then-current version of the Infrastructure Requirements documents identified in Section 9.A.

10. Intentionally deleted.

11. Verification of Performance Capabilities

At the time TWTC is ready to offer Dedicated Services and Switched Access Service respectively, in a Selected MSA in accordance with the network and infrastructure requirements set forth in Sections 8 and 9, TWTC will afford AT&T the opportunity to initially evaluate TWTC's network and service capabilities. Each party shall be responsible for its own costs and expenses associated with such evaluation. Notwithstanding the foregoing, TWTC has provided and may continue to provide Services to AT&T in the Current Selected MSAs without an initial evaluation by AT&T. TWTC shall also afford AT&T the opportunity to conduct subsequent evaluations of TWTC's network and service capabilities at all times during the term of this Agreement, upon at least 30-days' written notice. Evaluation of TWTC's network and service capabilities may include, without limitation, physical evaluations and visual inspections of TWTC's network; assessments of TWTC's provisioning, maintenance, and billing processes and systems; and tests of TWTC's overall service delivery capabilities. AT&T may only request such subsequent evaluation once in any given consecutive twelve (12) month period, except if TWTC's network in that Selected MSA has experienced two or more failures, as defined in section 15.B, below, within a consecutive four (4) month period.

12. TWTC Activities at Served Premises

12.A TWTC, at its own expense, will be solely responsible for obtaining from building owners, governmental authorities, ILECs, and any other persons or entities, all rights and privileges (including, but not limited to, space and power) that are necessary for TWTC to provide the Services under this Agreement.

12.B Where AT&T's Serving Office is part of a condominium or three-dimensional conveyance arrangement under which contiguous real property is owned by one or more third parties, or if AT&T's Serving Office is in space leased from a third party, AT&T will work cooperatively with TWTC to seek from the third party owner, lessor, or other lessees any appropriate easements, rights of way, licenses, or other rights of access needed for TWTC's access through such third party's real property.

12.C In AT&T Serving Offices, AT&T shall provide space, power, and the installation of cable in accordance with the then current Common Interface Arrangement ("CIA") or its equivalent document between the parties. In each Customer Premises to which AT&T has ordered TWTC Services, AT&T shall provide (or cause to be provided) space and power for TWTC equipment and cable used to provide AT&T-designated brand services using Type I Facilities, but only to the extent permitted by applicable AT&T tariffs and AT&T customer contracts. Any delay or failure by AT&T to provide or cause to be provided space and power in accordance with this section shall irrefutably excuse TWTC's delay or failure to provide Services, and the charges for such services shall not count towards or waive AT&T's revenue commitment set out in Section 30, below.

12.D TWTC's opportunity to enter and use space in the AT&T Serving Offices and in Customer Premises pursuant to Section 12.C is a nonexclusive privilege. This Agreement does not create or vest in TWTC (or in any other person or entity) any leasehold estate, easement, ownership interest, or other property right or interest of any nature in any part of the AT&T Serving Offices or Customer Premises.

12.E Terms and conditions applicable to TWTC's activities in and around Served Premises (including, but not limited to, installation, maintenance, and operation of TWTC Facilities) are set forth in Appendix G.

12.F Notwithstanding the provisions of Section 12.A, unless otherwise directed by AT&T, TWTC shall not approach any AT&T customers regarding the provision of any Services by TWTC to such customers that currently are provided by AT&T to such customers. TWTC may approach any AT&T customers regarding the provision of other services not currently being provided by AT&T.

PART IV: SERVICE QUALITY

13. Acceptance Testing

Prior to delivery of each Service, TWTC shall conduct acceptance tests and afford AT&T the results. If AT&T fails to reject delivery within five (5) days, Services shall be deemed accepted. Billing for services will commence in accordance with Section F.3.B.ii, below.

14. Service Performance

14.A In providing Services and performing related functions, TWTC shall meet or exceed AT&T's Direct Measures of Quality ("DMOQs") as designated by AT&T, provided, however that

AT&T shall have no remedy hereunder for TWTC's failure to meet DMOQs except as set forth in Section 15.D.ii, below. The document that contains the initial set of DMOQs is referred to herein as the "CAP Performance and Quality Requirements" document, a copy of which has been provided to TWTC, and which is incorporated by reference into this Agreement.

14.B TWTC shall self-report its performance with respect to each DMOQ and its overall service performance in accordance with the CAP Performance and Quality Requirements except during such limited times as mutually agreed upon between the parties for business reasons, in which case TWTC shall provide such reports as soon thereafter as is reasonably possible. If TWTC fails to self report such performance in accordance with the CAP Performance and Quality Requirements, then TWTC's performance will be rebuttably presumed to be less than satisfactory.

14.C TWTC's service performance shall be evaluated in accordance with the method set forth in the CAP Performance and Quality Requirements.

14.D Throughout the term of this Agreement AT&T shall have the right to modify the DMOQs contained in the CAP Performance and Quality Requirements document by giving TWTC no less than thirty (30) days prior written notice; *and provided*, that any such modification by AT&T shall be: (i) reasonable with respect to the then-current AT&T performance requirements; and (ii) consistent with the standards established by AT&T for all competitive access vendors.

15. Remedies for Service Deficiencies

15.A TWTC will apply a delayed installation credit for any Service that is not provided by the Confirmed Due Date. The Confirmed Due Date will be the date specified on TWTC's Firm Order Confirmation (FOC) form, or other mutually acceptable form of order acceptance.

15A.i The amount of the delayed installation credit will be as follows: *******.

15.A.ii Except as provided in Section 15.A.v, a delayed installation credit will not be applied under the following circumstances:

(a) installation is delayed at AT&T's request; or

(b) installation is delayed at the premises where installation is scheduled to be made (1) at the request of AT&T's customer, (2) because AT&T's customer has not given TWTC necessary access to the premises where installation is to be made, or (3) because AT&T's customer is not ready to accept the Service until after the confirmed due date.

15.A.iii The reasons stated in Section 15.A.ii (b) shall not be deemed the cause of an installation delay unless TWTC has:

(a) made reasonable efforts to consult with the appropriate AT&T work center (or such other contact specified by AT&T) by telephone from the premises where installation is scheduled to be made (or from a location near such premises); and

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

(b) taken such further actions in an attempt to make installation as AT&T may direct in the course of such consultation.

15.A.iv If TWTC's reasonable efforts to consult with AT&T as required under Section 15.A.iii (a) are unsuccessful, TWTC shall notify AT&T of the reason for the delay as soon as reasonably possible.

15.A.v Notwithstanding the provisions of Section 15.A.ii, a delayed installation credit will be applied if TWTC fails to comply with any of the requirements of Sections 15.A.iii or 15.A.iv of this Section.

15.A.vi The above remedies shall be AT&T's exclusive remedies in the event of a delayed installation.

15.B A credit allowance will be given for any period of Service Outage as specified below. Credit allowances will be expressly indicated and deducted from AT&T's next invoice. A Service Outage begins for purposes of this Section 15.B when AT&T reports the Service malfunction to TWTC or TWTC becomes aware of the malfunction, which ever is earlier, except as set forth below. A Service Outage ends when the affected circuit is fully operational and accepted by AT&T, unless AT&T unreasonably withholds acceptance, in which case the Service Outage will end when the affected circuit is fully operational.

15.B.i In the event of a single facility failure (e.g., cable cut, hardware, access node) or other Service Outage for On-Net circuits provided via a SONET ring or comparable technology with diverse paths and dual building entrance at all terminating locations, and continuing for more than fifteen (15) minutes, *******. Such Service Outage credit shall be payable when either AT&T reports the outage to TWTC or when TWTC is made aware of the outage, whichever is earlier, and the location or source of the service outage is determined to be on the TWTC network.

15.B.ii TWTC's "Self-Healing Ring Access Service" (as defined in Section C-1.7) and "Switched Access Transport" (as defined in Section C-2.1.B.i) will automatically restore themselves within fifteen (15) seconds. In the event of a single facility failure (e.g., cable cut, access node, or hardware) or other Service Outage for On-Net dedicated circuits that are provided via a dedicated SONET ring or comparable technology with diverse paths and dual building entrance at all terminating locations and continuing for more than fifteen (15) seconds, *******. Such Service Outage credit shall be payable when either AT&T reports the outage to TWTC or when the TWTC is made aware of the outage, whichever is earlier, and the location or source of the Service Outage is determined to be on the TWTC network.

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

15.B.iii DS-1, DS-3 and OC-n Dedicated Services, not subject to 15.B.i and 15.B.ii, above, provisioned entirely on TWTC's network will be credited *******, then the credit is 1/144 of the monthly recurring charge per a 3-hour outage. These credits will only be received if: (a) both ends of such circuits are on TWTC's network; and (b) the cause of such service outage is determined to be in TWTC's network. No credits granted in any given month will exceed one month's charges for the affected Service.

15.B.iv Out-of-service credits do not apply to Service Outages: (a) caused by AT&T or an AT&T customer; (b) due to failure of power or equipment provided by AT&T or other third parties; (c) during any period in which TWTC is not given access to the Served Premises; (d) which constitute Planned Service Outages ("Planned Service Outage" means a complete loss of transmit or receive capability occurring on TWTC's network, caused by mutually agreed upon scheduled maintenance or planned enhancements or upgrades to either party's network); and (e) due to any Force Majeure Event (as defined in Section 28).

15.B.v The above remedies shall be AT&T's exclusive remedies in the event of a Service Outage, other than in the event of Chronic Trouble Service, as set forth in Section 15.C.

15.C A "Chronic Trouble Service" is a particular Service for which two (2) or more trouble tickets have been opened within a consecutive 30-day period for the same circuit and the cause of each such trouble is determined to be in TWTC's Network and is not caused by a circumstance described in Section 15.B.iv (a) – (e), above. Whenever AT&T reports to TWTC that a Service is a Chronic Trouble Service, TWTC will immediately perform a detailed investigation and report the findings to AT&T.

15.C.i In the event that another trouble ticket is opened on such Chronic Trouble Service within a 30-day period after clearing the most recent trouble, *******

(a) *******; and

(b) *******.

15.D. If TWTC's service performance is determined to be less than satisfactory pursuant to Section 14, then within ten (10) days of TWTC's knowledge of or receipt of such determination TWTC shall provide to AT&T a written service performance improvement plan that specifies the actions TWTC will take to correct the deficiencies that resulted in the less-than-satisfactory evaluation.

15.D.i If TWTC and AT&T have complied with section 15.D, above and TWTC's service performance continues to be less than satisfactory pursuant to Section 14, then AT&T's sole remedies for such failure are as follows:

(a) If TWTC's service performance for the parameters contained in the DMOQ entitled "Customer Desired Due Date" as of the date of execution of this Agreement is less than satisfactory in a Selected MSA ******* and discontinue

any Service within such Selected MSA without liability, and the amounts that AT&T would have paid TWTC for the cancelled and disconnected Services will be counted as Eligible Services in accordance with Sections 30.B and D of this Agreement;

(b) If, on a per circuit basis, TWTC fails to meet the service performance parameters contained in the DMOQ entitled "Mean Time to Repair" as of the date of execution of this Agreement *******, and the amounts that AT&T would have paid TWTC for the cancelled and disconnected Service will be counted as Eligible Services in accordance with Sections 30.B and D of this Agreement;

(c) If TWTC's service performance for the parameters contained in the DMOQ entitled "Failure Frequency (including new installations and all others)" as of the date of execution of this Agreement is less than satisfactory in a Selected *******, and the amounts that AT&T would have paid TWTC for the cancelled and disconnected Services will be counted as Eligible Services in accordance with Sections 30.B and D of this Agreement; and/or

(d) If TWTC's service performance for the parameters contained in the DMOQ entitled "Self-Reporting Requirements" as of the date of execution of this Agreement is less than satisfactory in a Selected MSA *******, and the amounts that AT&T would have paid TWTC for the cancelled and disconnected Services will be counted as Eligible Services in accordance with Sections 30.B and D of this Agreement.

PART V: ADDITIONAL TERMS AND CONDITIONS

16. TWTC Regulatory Approvals

TWTC, at its own expense, shall obtain all regulatory certifications, authorizations, and permits needed to offer the Services described in this Agreement. TWTC will be solely responsible for determining which regulatory approvals are required to satisfy applicable law and regulation. In addition to all other rights and remedies for breach of Section 16, AT&T shall also be entitled to the rights and remedies set forth in Section 30.D.iii.

17. TWTC Tariffs

If a tariff revision is required by law that materially adversely alters the terms and conditions or pricing of this Agreement, any MSA Schedule or any Service provided hereunder, then either party may choose to terminate this Agreement, the affected MSA Schedule or the affected Service, as applicable, upon no less than sixty (60) days' prior written notice.

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

18. Delegation, Merger or Assignment

18.A TWTC shall not assign or delegate this Agreement (or any rights, payments, privileges, duties, or obligations under this Agreement) without the prior written consent of AT&T, which shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, TWTC may assign this Agreement to any parent, affiliate, subsidiary, successor-in-interest or as a result of a merger, acquisition or sale of all or substantially all its assets, or the sale of all or substantially all the assets it owns within a Selected MSA, without AT&T's consent, in accordance with this Section 18 of this Agreement.

18.A.i In the event of an assignment by TWTC that does not require AT&T's consent pursuant to Section 18.A, within five (5) business days of the closing of the merger, acquisition or sale that caused this Agreement to be assigned, TWTC shall provide AT&T with written notice identifying (a) the entity to which this Agreement has been assigned (the "Assignee") and (b) the date on which the assignment became effective (the "Assignment Effective Date"). AT&T shall then have the following options, in its sole discretion:

18.A.i(a) Within thirty (30) days of receipt of notice from TWTC pursuant to Section 18.A.i, AT&T may notify the Assignee that it has elected to negotiate with the Assignee additional or modified terms and conditions that AT&T, in its sole discretion, requires to continue its Total Cumulative Revenue Commitment hereunder. AT&T and Assignee shall then have one hundred and twenty (120) days to negotiate in good faith, or such additional time as AT&T and the Assignee may mutually agree upon. If at the end of such negotiation period AT&T and Assignee have not reached agreement to continue AT&T's Total Cumulative Revenue Commitment, then within five (5) business days of the conclusion of such negotiation period, AT&T shall exercise one of the options set forth in Section 18.A.i(b) or 18.A.i(c) of this Agreement; or

18.A.i(b) Intentionally deleted.

18.A.i(c) *******

18.A.ii For purposes of this Agreement, "Affiliate" means an entity which (directly or indirectly) controls, is controlled by, or is under common control with either AT&T or TWTC, where "control" means (a) the direct or indirect ownership of more than forty percent (40%) of the equity ***or*** (b) management control, including without limitation, the power to elect or appoint a majority of the board of directors of a corporation or the managing general partner of a partnership, or control through a management agreement or other similar contractual arrangement.

18.B In the event of a merger, acquisition or sale by TWTC under Section 18.A, above, with an entity from which AT&T purchases any products or services, the amount purchased by AT&T in the previous twelve (12) months from such entity shall be used to establish AT&T's annual base purchases from such entity (*"Base Purchases"*). To the extent that AT&T's

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

purchases from such an entity in any contract year are equal to or less than AT&T's Base Purchases, such purchases shall not qualify as Eligible Services for the purposes of determining AT&T's compliance with the applicable Annual Revenue Commitment, as defined in Section 30.A, below. However, to the extent that AT&T's purchases from such an entity in any contract year exceed AT&T's Base Purchases, all purchases that exceed AT&T's Base Purchases shall qualify as Eligible Services for the purposes of determining AT&T's compliance with the applicable Annual Revenue Commitment, as defined in Section 30.A, below.

18.C Without diminishing its own rights and obligations under the Agreement, AT&T may assign this Agreement or any benefits, rights, payments, privileges, duties, or obligations under this Agreement to any Affiliate without the prior written consent of TWTC, so long as (i) all billed accounts that have not been disputed in accordance with Section F.4.B under this Agreement are current at the time of assignment; (ii) AT&T provides TWTC with no less than sixty (60) days prior written notice; (iii) Affiliate Assignee agrees in writing to assume all obligations under the Agreement; and (iv) AT&T shall remain responsible for the obligations (including, but not limited to, payments) of its Affiliate Assignee. AT&T may assign this Agreement to a third party with the prior written consent of TWTC.

19. Subcontracting by TWTC

19.A TWTC shall provide AT&T with a list of subcontractors TWTC uses in the Selected MSA. If AT&T does not provide TWTC with a written objection to any subcontractor on such list, and an explanation for such rejection, within thirty (30) days, AT&T will be deemed to have approved the list, and TWTC may use any subcontractor on the list to subcontract any of its duties and obligations under this Agreement (including, without limitation, any work associated with network deployment, service delivery, and quality control) within or around any Served Premises without obtaining AT&T's prior written consent to any specific subcontractors.

19.B AT&T's consent to any subcontracting by TWTC shall be conditioned upon: (1) TWTC's commitment to remain responsible for the performance of all obligations under this Agreement; (2) the subcontractor's agreement to be bound by all relevant terms and conditions of this Agreement; and (3) the subcontractor's execution of a nondisclosure agreement reasonably satisfactory to AT&T.

19.C TWTC is responsible for payment to subcontractors for all subcontracted work associated with Services provided under this Agreement unless explicitly agreed to in writing by AT&T.

20. Single Point of Contact

TWTC will make available to AT&T a single point of contact with respect to each major function performed by or on behalf of TWTC, including without limitation contracting, contract administration, price adjustment, order processing, service delivery, service maintenance, quality control, and billing for the purpose of maintaining and improving the performance by TWTC under this Agreement. In addition TWTC will make available to AT&T a senior

manager who is authorized to, and responsible for, expediting corrective action in the event of any problems in the performance of the Agreement.

21. Termination of Agreement

21.A Either party may elect to terminate this Agreement or any MSA Schedule (as applicable) upon the other party's failure to cure a material breach hereunder or thereunder within sixty (60) days after written notice thereof; *provided, however,* that if TWTC terminates in good faith for AT&T's breach, such termination shall not affect AT&T's revenue commitment requirements under Section 30, below, and if AT&T terminates in good faith for TWTC's breach, AT&T shall be relieved of all obligations hereunder, including any remaining revenue commitments, as of the date of termination.

21.A.i AT&T may elect to terminate (1) this Agreement *******. "Parent Entity" means any entity which controls TWTC or such Local Entity (as the case may be), directly or indirectly, through an ability to direct management policies or ownership of more that ten percent (10%) of TWTC's or such Local Entity's equity. An entity shall be deemed to have become "Financially Uncertain" if such entity:

(a) *******

(b) *******; or

(c) *******; or

(d) *******.

21.A.ii If AT&T requests in writing that TWTC confirm if one or more of the foregoing events has occurred, TWTC must respond in writing within five (5) business days.

21.B Upon expiration or termination of this Agreement or any MSA Schedule (as applicable) for any reason, a "Transition Period" will commence with respect thereto, in accordance with the following terms. The Transition Period shall be one (1) year in the event of a TWTC breach, in which case the applicable rates set forth in this Agreement shall apply throughout the Transition Period. The Transition Period shall be nine (9) months in the event of the expiration of this Agreement, in accordance with Section 2, above, in which case the then-current contract rates shall apply for nine (9) months ("Expiration Transition Period"). If AT&T Services remain in place after the Expiration Transition Period, the lesser of (a) the then-current contract rates ******* (b) TWTC's then-current prevailing rates shall apply. The Transition Period shall be six (6) months in the event of an AT&T breach ("AT&T Breach Transition Period"), in which case the applicable ILEC month-to-month tariffed rates or TWTC tariffed rates, if available, apply from the date of breach, which ever is lower. If AT&T has not transitioned at the end of such six (6) month period TWTC shall have the option of disconnecting all Services. In the event of TWTC's breach of this Agreement or after expiration of this Agreement, all other terms and conditions of this Agreement remain in effect during any Transition Period, provided, however, that in such event AT&T shall not be subject to any revenue commitment of any kind during any such Transition Period.

21.B.i No later than three (3) months prior to the end of any Transition Period, the Parties agree to commence negotiations diligently and in good faith to establish mutually acceptable terms, conditions, and pricing for those Services that AT&T, in its sole discretion, may purchase from TWTC upon expiration or termination of the Transition Period. Notwithstanding the foregoing, Section 23 (No Consequential Damages) and Section 24 (Indemnification) of the Agreement will remain in effect should AT&T purchase Services from TWTC after expiration or termination of the Transition Period.

22. Continuity of Service

22.A TWTC acknowledges that remedies at law may be inadequate to compensate AT&T for discontinuation of Services in violation of this Agreement. AT&T shall have the right to seek injunctive relief and other equitable remedies in any court of competent jurisdiction (in addition to remedies at law through the Alternative Dispute Resolution Process set forth in Section 31 of this Agreement) to require TWTC to continue providing Services in the applicable Selected MSA throughout the term of this Agreement, and throughout any Transition Period.

22.B If for any reason AT&T elects to transition certain Services to another supplier, TWTC shall cooperate with AT&T in good faith to effect such a transition in an orderly manner.

23. No Consequential Damages

23.A NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY, INCLUDING WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTY KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS) FROM ANY SUCH CLAIM.

23.B The Parties agree that each Party's reasonable and documented costs, damages specifically allowable hereunder, and expenses incurred by it as a result of any claim for which it should be indemnified by the other party under Section 24, below, shall be considered direct damages for purposes of this Section 23.

23.C The Parties agree that AT&T's Total Cumulative Revenue Commitment set forth in Section 30.A and in Table 1.A, below, shall be considered direct damages for purposes of this section.

24. Indemnification

24.A Each Party ("Indemnitor") shall indemnify, defend and hold harmless the other Party ("Indemnitee") from and against all losses, costs (including reasonable attorneys' fees),

damages, and liabilities brought by third parties against Indemnitee for personal injury or damage to real or personal property ("Claims") to the extent arising out of the acts or omissions of the Indemnitor; provided, however, that Indemnitee promptly informs Indemnitor of such Claims and tenders to Indemnitor the complete defense of such Claims and provides Indemnitor with all reasonable cooperation in defending such Claims.

24.B TWTC shall indemnify, defend and hold harmless AT&T from and against all losses, costs (including reasonable attorneys' fees), damages and liabilities, up to the limitation in each case of liability contained in AT&T's FCC Tariff No. 11, *******.

24.C Each Party ("Indemnitor") agrees to release, indemnify, defend by counsel reasonably acceptable to the other Party ("Indemnitee"), and hold harmless Indemnitee against all losses, costs (including reasonable attorneys' fees), damages, and liabilities to the extent arising from claims by any person alleging that the operation or installation of Indemnitor's Facilities or equipment (other than Facilities or equipment purchased by Indemnitor from Indemnitee) infringes any United States patent, trademark, or copyright, provided that Indemnitee provides Indemnitor with prompt notice of such claims, tenders complete control of the defense of such claims to Indemnitor and provides Indemnitor with all reasonable cooperation in the defense of such claims. If any Facilities or equipment installed or operated in connection with this Agreement are found to be so infringing, or if Indemnitor has reason to believe that Facilities are likely to be found infringing, Indemnitor will:

24.C.i procure the necessary rights to permit continued use of the Facilities or equipment by Indemnitee under this Agreement; or

24.C.ii modify the Facilities or equipment to render them functionally equivalent and non-infringing; or

24.C.iii if the steps described in (i) and (ii) above cannot be accomplished at a reasonable expense, or within a time period reasonably acceptable to Indemnitee, remove the Facilities or equipment.

24.C.iv This indemnification shall not apply if such claim would not have arisen but for the combination with or connection to Facilities or equipment by Indemnitee of Indemnitor's Facilities or equipment not specifically authorized by Indemnitor.

25. Nonexclusive Remedies

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

26. Compliance with Applicable Laws and Standards

26.A Each Party agrees to comply, and to cause its Personnel to comply, with all applicable requirements of law and all applicable standards pertaining to their activities in connection with this Agreement.

26.B Each Party shall furnish certificates of compliance where required by law or requested by the other Party.

26.C Each Party shall notify the other Party immediately if any permit, license, certificate, approval or identification number required for it to perform work under this Agreement is revoked, modified, expired, suspended or not renewed.

26.D Each Party shall notify the other Party immediately if any notice of violation, summons, order or complaint has been issued by any governmental authority to it or to any disposal or storage facility utilized by it in connection with work that may be performed by it under this Agreement, if the alleged violation, summons, order or complaint can be reasonably expected to interfere with work performed by it under this Agreement.

27. No Third Party Beneficiaries

This Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

28. Force Majeure

Except as otherwise expressly provided in this Agreement and subject to the restoration requirements set forth in TWTC's Disaster Recovery Plan, neither party shall be liable to the other party under this Agreement for any delay or failure of performance resulting from any cause beyond such party's reasonable control and without its fault or negligence, including without limitation, unusually severe weather conditions; earthquakes; floods; nuclear accidents; acts of God; epidemics; war, terrorist acts, riots, insurrections, and civil disturbances; government regulations; acts of civil or military authorities, or the public enemy; and fuel or energy shortages (collectively "Force Majeure"); *provided, however*, that AT&T shall be entitled to the rights and remedies set forth in Section 30.D.v of this Agreement. The parties agree that no labor dispute concerning the personnel and subcontractors of either party will be considered a Force Majeure Event.

29. AT&T Payment

29. A Within thirty (30) days of the execution of this Agreement by TWTC, AT&T shall pay TWTC, by wire transfer, the sum of ******* (the "Payment"). In addition, AT&T shall provide TWTC with a credit in the amount of ******* (the "Credit,") against TWTC's purchase of services from AT&T. AT&T also agrees that, within thirty (30) days of the execution of the instant Agreement, it will pay TWTC for Switched Access Services for the period from April 1, 2000 until the Effective Date of this Agreement at the rates set forth in that column entitled "TWTC Less 20%" set forth in Table 3 to Appendix E, less any payments for such period made by AT&T and received by TWTC.

29.B Intentionally deleted.

29.C *******.

30. Revenue Commitment

30.A AT&T commits to pay TWTC a total cumulative revenue commitment equal to the sum of the annual revenue commitments (*"Annual Revenue Commitments"*) as set forth in Section 30.A, Table 1.A (entitled "Total Cumulative Revenue Commitment"), below, over the Term (*"Total Cumulative Revenue Commitment"*) under the terms and conditions set forth in this Section 30 of the Agreement.

30.A.i The Total Cumulative Revenue Commitment shall be on a "take or pay" basis, under which AT&T, for each year of the Term, shall pay in accordance with this Section 30 the greater of the amounts due for Eligible Services (as defined in Section 30.B) or the Annual Revenue Commitment amounts to which AT&T hereby commits to pay TWTC in each respective Term year as set forth in Table 1.A, below, and this Section 30. Additional pricing terms and conditions are set forth in Appendix D (Pricing Principles for Dedicated Services) and Appendix E (Pricing Principles for Switched Access Service), below.

30.A.ii AT&T's compliance or non-compliance with the Annual Revenue Commitment shall be measured by inclusion of all Eligible Services billed through December 31st of each year of the Term, and shall be determined, and notice of any non-compliance delivered in accordance with Section 37 (Notices) of any Annual Deficiency (as defined in Section 30.A.iii), by no later than January 31st of each following year; *provided*, that AT&T receives all applicable bills by January 10th of each such following year. If the total revenue from AT&T's purchase of Eligible Services from January 1st to December 31st of the then current year meet or exceeds the Annual Revenue Commitment at the end of such year, then AT&T shall be considered in compliance with its Annual Revenue Commitment as of the end of such year. AT&T may exceed its Annual Revenue Commitment in any given Term year. In such event, TWTC shall apply the amount that exceeds the Annual Revenue Commitment for such Term year to the Annual Revenue Commitment for the following Term year, and apply the same amount to the Total Cumulative Revenue Commitment.

30.A.iii Subject to Section 30.A.ii, if AT&T's purchases of Eligible Services in any year are less than the Annual Revenue Commitment for such year, such deficiency shall be defined as the *"Annual Deficiency."* In the event of an Annual Deficiency, AT&T must pay the Annual Deficiency in immediately available funds within thirty (30) days from the date of determination of non-compliance. If AT&T is required to pay an Annual Deficiency and TWTC does not receive payment of the Annual Deficiency within said thirty (30) days, interest at the rate of twelve percent (12%) per annum is due TWTC and owing from the Annual Deficiency date due until the date the Annual Deficiency is received by TWTC. Any Annual Deficiency payments issued by AT&T shall apply toward the Annual Revenue Commitment in the Term year in which the Annual Deficiency occurred and apply toward the Total Cumulative Revenue Commitment, and not apply toward the Annual Revenue Commitment in the Term year in which the Annual Deficiency payment is made.

30.A.iv AT&T may exceed its Annual Revenue Commitment in any Term year. In such event, to the extent that AT&T has paid any Annual Deficiencies directly to

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

TWTC in previous Term years, excluding any AT&T True-Up Amounts, then at such time prior to the end of any Term year as AT&T meets or exceeds its Annual Revenue Commitment for that Term year, then AT&T, at its sole discretion, shall (i) receive credits applied towards Services purchased thereafter for the remainder of such Term year in an amount not to exceed the amount of any previously paid Annual Deficiencies; *provided*, that after such Annual Deficiency credits are applied, any remaining Annual Revenue Commitment amount that exceeds the Annual Revenue Commitment for such Term year will be applied to the Annual Revenue Commitment for the following Term year, and the same amount will be applied to the Total Cumulative Revenue Commitment, or (ii) have TWTC apply the entire amount that exceeds the Annual Revenue Commitment for such Term year to the Annual Revenue Commitment for the following Term year, and apply the same amount to the Total Cumulative Revenue Commitment.

Table 1.A
Annual Revenue Commitments and Total Cumulative Revenue Commitment

Term Year(s)	1/1/05 to 12/31/05 (Year 5)	1/1/06 to 12/31/06 (Year 6)	1/1/07 to 12/31/07 (Year 7)	1/1/08 to 12/31/08 (Year 8)
Annual Revenue Commitments	*******	*******	*******	*******
Total Cumulative Revenue Commitment	******** (See also Section 29.C of the Sixth Amendment)	******* (See also Section 29.C of the Sixth Amendment)	******* (See also Section 29.C of the Sixth Amendment)	******* (See also Section 29.C of the Sixth Amendment)

30.B For the purpose of this Agreement, "Eligible Services" shall include all purchases of telecommunications services by AT&T and any of its subsidiaries, other than AWS, from TWTC or any Local Entity, including without limitation: (i) all purchases of Services by AT&T pursuant to this Agreement; (ii) all purchases of telecommunications services by AT&T's government markets group; and (iii) all other purchases by AT&T of telecommunications services under any other agreement or TWTC's tariffs.

30.C *******

30.C.i AT&T shall have the right, but not the obligation, to specify no more than ******* buildings per contract year (unless the parties mutually agree otherwise) that TWTC shall be required to include in its Building Growth Level ("Specified Buildings"), *provided that*;

(a) each Specified Building shall be no more than one (1) mile from TWTC's then existing fiber network; and

(b) no more than twenty percent (20%) of the Specified Buildings can be in the zero mileage rate band for Dedicated Services as set forth in Table 2, below; and

(c) a list of Specified Buildings is provided to TWTC quarterly, but AT&T has the right to designate a building as a Specified Building on an individual basis between quarterly lists on an ad hoc basis; *provided however,* that the total number of buildings AT&T may designate per year shall not exceed 50 buildings, unless the parties mutually agree otherwise; and

(d) TWTC shall use the same efforts it uses to complete build-out to a Specified Building in the contract year in which AT&T designates a Specified Building as it uses to complete build-outs to buildings that AT&T has not designated, and if TWTC does not complete build-out to a Specified Building within the same contract year in which AT&T designates a Specified Building as such, such building shall not be counted towards TWTC's Building Growth Level for such contract year; *provided, however,* that if AT&T specifies any Specified Building(s) within one hundred twenty (120) days of the end of any contract year and TWTC does not reject such Specified Building(s) in accordance with Section 30.C.i(e), below, then such building(s) shall count towards TWTC's Building Growth Level for such contract year regardless of whether TWTC is able to complete the build-out within such contract year, so long as TWTC uses the same efforts to complete the build-out as it uses to complete build-outs to buildings that AT&T has not designated; and

(e) TWTC has the right to reject each year up to twenty percent (20%) of the Specified Buildings on the lists for any or no reason without any penalty with regard to its Building Growth Level and without a countermanding increase in the number of buildings AT&T is permitted to designate; and

(f) for multi-tenant Specified Buildings, AT&T guarantees it will purchase at least fifteen (15) T-1 equivalents, for a minimum period of twenty four (24) months from date of the installation of Services that AT&T orders, or twenty four (24) months from the date of the completion of installation of TWTC Facilities in the building; this guarantee shall be on a "take or pay" basis, and is not dependent upon the actual ordering by AT&T of any such Services; such revenue, when paid by AT&T, shall be included as Eligible Services applicable to AT&T's Total Annual and Total Cumulative Revenue Commitments, regardless of whether AT&T actually orders any Services into any such buildings; and

(g) for single-tenant Specified Buildings, TWTC first shall develop the minimum monthly revenue requirement on an Individual Case Basis, as set forth in Section D.6, below, and shall provide AT&T with such minimum monthly revenue requirement for such building(s). AT&T then shall have the right to remove such building from the Specified Building list, which removal shall not reduce the total number of Specified Buildings AT&T may designate in accordance with this Section 30.C.i. In the event AT&T does not remove such single tenant Specified Building from the Specified Building list, and if AT&T then fails to submit or if AT&T cancels an order for Services in such single tenant Specified Building for any reason (other than TWTC's delay in installation as set forth in Section 15.A, above) that otherwise would have met the minimum monthly revenue requirement for such single tenant building, then AT&T shall pay TWTC for at least fifteen (15) T-1 equivalents, for a minimum period of

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

twenty four (24) months from the date of the completion of installation of TWTC Facilities in the building; this guarantee shall be on a "take or pay" basis, and is not dependent upon the actual ordering by AT&T of any such Services; such revenue, when paid by AT&T, shall be included as Eligible Services applicable to AT&T's Total Annual and Total Cumulative Revenue Commitments, regardless of whether AT&T actually orders any Services into any such buildings.

30.C.ii TWTC shall provide AT&T with an accurate and complete initial list of On-Net Buildings as of the Effective Date of this Agreement and provide accurate and complete monthly updates thereafter in accordance with Section 4 of this Agreement.

30.D Interruptions of Service for reasons other than those contained in Section 15.B.iv should not have the effect of impeding AT&T's ability to meet its Total Annual Revenue Commitment through the purchase of Services. Accordingly, in addition to all other rights and remedies that AT&T has pursuant to this Agreement:

30.D.i If AT&T elects to cancel any pending Service requests or cancel any Services pursuant to Section 15.D of this Agreement, the amount that AT&T would have paid TWTC for such Services shall be included in determining the amount of Eligible Services AT&T has purchased;

30.D.ii If AT&T elects to disconnect a Service as a result of a Chronic Trouble Service pursuant to Section 15.C of this Agreement, the amount that AT&T would have paid TWTC for such Service shall be included in determining the amount of Eligible Services that AT&T has purchased;

30.D.iii If TWTC's ability to provide Services in any Selected MSA(s) is suspended for failing to maintain regulatory approvals as defined in Section 16 of this Agreement, the amount of annualized purchases that AT&T would have paid TWTC, determined based upon the average of the six (6) most recent months of purchases in the applicable MSA, shall be included in determining the amount of Eligible Services that AT&T has purchased;

30.D.iv If AT&T elects to terminate any MSA Schedule(s) pursuant to Section 21.A, the amount of annualized purchases that AT&T would have paid TWTC, determined based upon the average of the twelve (12) most recent months of purchases in the applicable MSA, shall be included in determining the amount of Eligible Services that AT&T has purchased; and

30.D.v If any Service is interrupted due to TWTC invoking a Force Majeure event as defined in Section 28, above, while AT&T is not obligated to pay for any Service that is interrupted for such a Force Majeure event, the amount that AT&T would have paid TWTC for each Service interrupted by a Force Majeure for as long as the Service was interrupted shall be included in determining the amount of Eligible Services that AT&T has purchased. If any Service is interrupted due to AT&T invoking a Force Majeure event as defined in Section 28, above, AT&T is not obligated to pay for any Service that is interrupted for such a Force Majeure event, but the amount that AT&T would have

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

paid TWTC for each Service interrupted by a Force Majeure for as long as the Service is interrupted shall not be included in determining the amount of Eligible Services that AT&T has purchased.

30.E Any credits to the Total Annual Revenue Commitment set forth in this Section 30, or any reductions thereto shall be applicable only if and only to the extent AT&T does not unreasonably condition, delay or withhold its consent, agreement or approval to any matter contained in this Agreement for which such consent, agreement or approval is required, including, without limitation, those set out in Sections 8.B and 12.C, above.

31. Alternative Dispute Resolution

31.A The Parties agree that resolving disputes as promptly and efficiently as possible will best serve their respective interests. If the Parties cannot resolve a dispute regarding any matter under or relating to this Agreement through negotiation, the dispute shall be referred to an Inter-Company Review Board consisting of one representative from AT&T at the Division or above level and one representative from TWTC at the Vice-President or above level ("Internal Resolution Process"). Either Party may designate a representative at a lower level, *provided* that such representative has been granted the decision-making authority of the higher level manager for purposes of such dispute resolution. Each Party, through its representatives, shall negotiate diligently and in good faith for a period of sixty (60) days to resolve the dispute. If the Internal Resolution Process does not result in a resolution of the dispute, the Parties will proceed to arbitration in accordance with Section 31.B, below.

31.B All disputes which cannot be amicably resolved by such Inter-Company Review Board within such sixty (60) day time period shall be settled exclusively by binding arbitration in accordance with *******. The arbitrator shall be bound by and shall strictly enforce the terms of the Agreement and may not limit, expand, or otherwise modify the terms of this Agreement. The arbitrator shall not have the power to award punitive damages or any damages that are excluded under Section 23, and each Party irrevocably waives any claim thereto. The arbitrator shall render a written decision within six (6) months after being selected, which decision shall be final and binding upon the Parties and may be enforced by either Party in any court of competent jurisdiction. Each Party will bear its own expenses in connection with the arbitration, and will share equally the fees and expenses of the arbitration and arbitrator, unless the award otherwise provides.

31.C This Section 31 shall not be construed to prohibit either Party from seeking preliminary or permanent injunctive relief in any court of competent jurisdiction; however, the arbitrator hearing the dispute to which the injunction pertains will have the power to modify or dissolve any such injunction, or to order additional injunctive relief, in connection with the final arbitration award. If court proceedings to stay litigation or compel arbitration under this Section 31 are necessary, the Party who unsuccessfully opposes such proceedings shall pay all associated costs, expenses, and attorneys' fees that the other Party reasonably incurs in connection with such court proceedings.

31.D The Parties, their representatives, other participants and arbitrator shall hold the existence, content, and result of any mediation and arbitration in confidence except to the

extent necessary to enforce a final settlement agreement or to obtain and secure enforcement of or a judgment on an arbitration decision and award.

31.E The United States Arbitration Act, 9 U.S.C. Sections 1-14, governs the interpretation and enforcement of this Section 31.

31.F If, for any reason, the Federal Communications Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any TWTC tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding, then (1) to the extent required by law, the agency ruling shall be binding upon the Parties for the limited purposes of regulation within the jurisdiction and authority of such agency and (2) for all other purposes not expressly precluded by such agency ruling, the arbitration ruling shall be binding upon the Parties.

32. Confidentiality and Proprietary Information

32.A In connection with this Agreement, either Party may furnish to the other Party certain information that is marked or otherwise specifically identified as proprietary or confidential ("Information"). This Information may include, among other things, documentation, data, drawings, specifications, plans, and other technical or business information and the pricing offered by TWTC hereunder to AT&T. For purposes of this Section 32, the Party that discloses Information is referred to as the "Disclosing Party", and the Party that receives Information is referred to as the "Receiving Party."

32.B When Information is furnished in tangible form, the Disclosing Party shall mark it as proprietary or confidential. When Information is provided orally, the Disclosing Party shall, at the time of disclosure or promptly thereafter, identify the Information as being proprietary or confidential.

32.C With respect to Information disclosed under this Agreement, the Receiving Party and its employees shall:

32.C.i hold the Information in confidence for a period of five (5) years from date of disclosure, exercising a degree of care not less than the care used by the Receiving Party to protect its own proprietary or confidential information that it does not wish to disclose;

32.C.ii restrict disclosure of the Information solely to those of its employees or, with the Disclosing Party's prior written consent (which shall not be unreasonably withheld), contract employees, who have a need to know in connection with the Receiving Party's performance of this Agreement, and not disclose the Information to any other person or entity without the prior written consent of the Disclosing Party;

32.C.iii advise those employees of their obligations with respect to the Information; and

32.C.iv use the Information only in connection with the performance of this Agreement, except as the Disclosing Party may otherwise agree in writing.

32.D Information shall be deemed the property of the Disclosing Party. Upon request of the Disclosing Party, the Receiving Party shall return all Information received in tangible form, or shall destroy it and provide written certification of destruction to the Disclosing Party. If the Receiving Party loses or makes an unauthorized disclosure of Information, it shall notify the Disclosing Party and use reasonable efforts to retrieve the Information.

32.E The Receiving Party shall have no obligation to preserve the proprietary nature of Information that:

32.E.i was previously known to the Receiving Party free of any obligation to keep it confidential; or

32.E.ii is or becomes publicly available by means other than unauthorized disclosure hereunder; or

32.E.iii is developed by or on behalf of the Receiving Party independently of any Information furnished under this Agreement; or

32.E.iv is received from a third party without a confidentiality obligation, and Receiving Party has no reason to know or suspect that it is being disclosed in violation of a confidentiality obligation.

32.F The existence and contents of this Agreement and any MSA Schedules shall be kept in confidence by both parties in accordance with Section 32.C as though they were Information, subject, however to Section 32.H.

32.G Except with AT&T's prior written consent, TWTC shall not disclose any information pertaining to the identities, locations, and requirements of AT&T's customers to (1) TWTC's Affiliates, except for the Local Entity serving such customers; (2) any third party (even if under contract to TWTC); (3) to any personnel of TWTC responsible for publicity or for end user sales or marketing; (4) any TWTC sales personnel not exclusive to AT&T other than the TWTC AT&T Account Team; (5) any TWTC service development or product development personnel; or (6) any TWTC personnel who do not have a need to know to provide Services to AT&T under this Agreement.

32.H Except with TWTC's prior written consent, AT&T shall not disclose any information it requires TWTC to provide under this Agreement, including without limitation, information on TWTC's pricing, discounts, network and future MSA expansions (1) to AT&T Affiliates; (2) to any third party (even if under contract to AT&T); (3) to any personnel of AT&T responsible for publicity or for end user sales or marketing of the same kind of services as will be provided hereunder; (4) any AT&T sales personnel not exclusive to TWTC other than the AT&T TWTC Account Team; (5) any AT&T service development or product development personnel; or (6) any AT&T personnel who do not have a need to know in order for AT&T to perform its obligations under this Agreement.

32.I If the Receiving Party is required to disclose the Disclosing Party's Information by an order or a lawful process of a court or governmental body, the Receiving Party shall promptly notify the Disclosing Party, and shall cooperate with the Disclosing Party in seeking reasonable protective arrangements before the Information is produced.

32.J Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 32 by the Receiving Party or its representatives and that the Disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 32. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 32, but shall be in addition to all other remedies available at law or in equity.

32.K With respect to any Information furnished pursuant to this Agreement, the terms of any prior Nondisclosure Agreement (s) executed by TWTC and AT&T is (are) superseded by the terms of this Section 32. Any Information furnished under such prior Nondisclosure Agreement(s) and entitled to protection under it (them) shall be treated as Information in accordance with this Section 32.

32.L Receiving Party shall indemnify Disclosing Party and hold Disclosing Party harmless from and against Disclosing Party's lost revenues, lost profits, or any other harm to Disclosing Party's business proximately caused by wrongful disclosure or use of proprietary information by Receiving Party (or its employees, agents, delegates, or contractors) in violation of the confidentiality provisions of this Agreement.

33. Publicity and Advertising

33.A Neither Party shall publish or use any advertising, sales promotions, or other publicity materials that use the other Party's logo, trademarks, or service marks without the prior written approval of the other Party.

33.B Each Party shall have the right to review and approve any publicity materials, press releases, or other public statements by the other that refer to such Party or that describe any aspect of this Agreement. Each Party agrees not to issue any such publicity materials, press releases, or public statements without the prior written approval of the other Party.

33.C Nothing in this Agreement establishes a license for either Party to use any of the other party's brands, marks, or logos without prior written approval of the other Party.

34. Governing Law

New York law (excluding its choice of law rules and laws concerning arbitration) governs all substantive matters pertaining to the interpretation and enforcement of the terms of this Agreement.

35. No Waiver

Failure of either Party to enforce any right or remedy available to it under this Agreement shall not be construed as a waiver of the right or remedy with respect to any other breach or failure by the other Party.

36. Unenforceable Provisions

No provision of this Agreement shall be interpreted to require any unlawful action by either Party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, in the event such section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

37. Notices

All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers must be in writing and must be delivered by a method providing for proof of delivery (including express courier and facsimile, or email if receipt is acknowledged by the recipient) and will be deemed delivered when actually received. Any notice or request will be delivered to the following addresses until a different address has been designated by notice to the other.

RECIPIENTS FOR NOTICES

TWTC'S RECIPIENT		AT&T'S RECIPIENT	
Name:	Troy Knuckles	Name:	Robert P. Handal, Jr.
Title:	Vice President National Sales	Title:	Division Manager, CLEC Business Development and Management
Address:	Time Warner Telecom Holdings Inc. 10475 Park Meadows Drive Littleton, Colorado 80124	Address:	AT&T Corp. Room 2A109 One AT&T Way Bedminster, New Jersey 07921
Facsimile number: (303) 566-1011		Facsimile number: (908) 234-8835	
E-mail address: troy.knuckles@twtelecom.com		E-mail address: bhandal@att.com	
with a copy to:		***with a copy to:***	

TWTC'S RECIPIENT		AT&T'S RECIPIENT	
Name:	Tina Davis	Name:	Paula Block
Title:	Vice President & Assistant General Counsel	Title:	Senior Attorney
Address:	Time Warner Telecom, Inc. 10475 Park Meadows Drive Littleton, Colorado 80124	Address:	AT&T Law Division Room 32D47 55 Corporate Drive Bridgewater, New Jersey 08807
Facsimile number: (303) 566-1010		Facsimile number: (908) 658-2349	
E-mail address: tina.davis@twtelecom.com		E-mail address: paulablock@att.com	

38. Titles

Titles to parts, sections, appendixes, tables, schedules, and the like are used merely for convenience and shall not be taken as an interpretation of the contents of those provisions or as an attempt to enlarge, limit, or define terms covered by this Agreement.

39. Amendments

39.A Except as otherwise expressly provided in this Agreement, this Agreement may be modified or amended only by written agreement executed by authorized representatives of both TWTC and AT&T.

39.B To the extent that this Agreement expressly authorizes unilateral modification of certain Appendix material at the discretion of one Party, such Party may effect the modification of the Appendix by giving written notice of such modification to the other Party, and mutual written agreement shall not be required.

40. Not a Joint Venture

This Agreement is intended to establish a relationship of supplier and customer between TWTC and AT&T. The undertakings described in this Agreement shall not be deemed to constitute a joint venture or partnership between TWTC and AT&T.

41. Successors and Assigns

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their permitted successors and assigns. No succession or assignment by either Party shall be permitted (even if by operation of law) except in accordance with the requirements of Section 18.

42. Survival

The obligations of the parties under Sections 22 and 32, and all other obligations which by their nature continue beyond the term of this Agreement, shall survive the expiration or termination of this Agreement (or any part of it).

43. Referenced Documents

Whenever any provision of this Agreement refers to an AT&T Practice or any publication of telecommunications industry administrative or technical standards, or technical references it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical

reference, technical publication, AT&T Practice, or publication of industry standards, *provided* that AT&T has previously provided TWTC with a copy of any such most recent AT&T Practice within any timeframes set forth herein.

44. Incorporated Documents

The annexed Appendixes A through G referred to in this agreement, listed in the List of Appendixes (behind the Table of Contents of this Agreement), are hereby incorporated in and made part of this Agreement.

45. Entire Agreement

This Agreement constitutes the entire agreement between TWTC and AT&T with respect to the subject matter hereof. This Agreement supersedes all other memoranda, proposals, representations, statements, agreements, or understandings, whether written or oral, made concerning such subject matter prior to mutual execution hereof.

46. Representations and Warranties

In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

46.A It has and shall maintain the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;

46.B It has taken all requisite corporate, partnership, or other applicable organizational action to approve the execution, delivery, and performance of this Agreement;

46.C This Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms; and

46.D Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body.

47. Settlement Terms and Release

47.A The Parties entered into an agreement effective as of September 15, 1995 (as amended by that certain Amendment One to Agreement effective as of June 1, 1997, the "Prior Agreement"), for the purchase of telecommunications services, including services similar to the Services that are the subject of the instant Agreement. The Parties had disputes ("Disputes") over the price for certain services under the Prior Agreement and the construction, interpretation and application of certain provisions of the Prior Agreement. The Parties hereby agree to resolve the Disputes under the terms and conditions of this Agreement.

47.B The Parties acknowledge and agree that this Agreement is the result of a compromise and shall not be, nor shall it ever be deemed or construed to be, an admission by any Party of

any liability, wrongdoing, or responsibility on its part or on the part of its predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors or shareholders. The Parties expressly deny any such liability, wrongdoing or responsibility.

47.C In consideration of the payments and credits set forth in Section 29, above, the execution of this Agreement, and each Party's good faith intent, as of the date of execution of this Agreement to perform hereunder, the Parties and their respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors and shareholders hereby mutually waive, relinquish and release each other and each other's respective predecessors, successors, assigns, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, officers, directors and shareholders from any and all claims, debts, demands, actions, causes of action, liabilities or controversies whatsoever, whether at law or in equity, whether in contract, in tort or under statute, arising out of or related to, in whole or in part, the Prior Agreement or the Disputes and any and all claims or lawsuits arising out of or related to the Prior Agreement or the Disputes that could have been brought before any state, local or federal court, or state or federal agency, or in any arbitration proceeding, whether now known or unknown, liquidated or unliquidated, as of the Effective Date of this Agreement.

47.D Upon its execution, this Agreement shall supercede the Prior Agreement, which shall become null and void and of no further force and effect; provided that TWTC shall continue to provide the Services to AT&T that are being provided to AT&T under the Prior Agreement as of the Effective Date of this Agreement, and all such Services shall become immediately subject to the terms and conditions, including without limitation the pricing terms and conditions, of this Agreement.

In witness whereof, the parties have executed this Agreement through their authorized representatives.

TIME WARNER TELECOM GENERAL PARTNERSHIP	**AT&T CORP.**
By: Time Warner Telecom Holdings Inc., its managing general partner	
By: /s/ George Bykowski Signature	By: /s/ Ben La Montagne Signature
George Bykowski Name	Ben La Montagne Name
VP National Sales Title	VP Local Services and Access Mgmt Title
12/26/00 Date	1/3/01 Date

Appendix A

INDEX OF DEFINED TERMS

Defined Term	Section[1]
2001 Rates (Deleted)	D.2.B
2002 Rates (Deleted)	D.2.B
2003 Rates	D.2.B
Additional Service Channels	D.7.A
Affiliate	18.A.ii
Agreement	Preamble
Annual Deficiency	30.A.iv
Applicable EH&S Requirements	G.5.C.i
Assignee	18.A.i
Assignment Effective Date	18.A.i
AT&T	Preamble
AT&T Practice	43
AT&T Serving Office	5.A
AT&T-Dedicated Access Infrastructure Requirements	9.A
AT&T's Affiliates and Personnel	G.16.G
AT&T Switched Access Infrastructure Requirements	9.A
AWS (Deleted)	10
Base Purchases	18.B
Bona Fide Order for Services	30.C
Building Growth Level	30.C
Call Delivery	C-2.1.B.ii
CIA	12.C
CASBR	F.1
Channel Termination	C-1.2.A.i
Chronic Trouble Service	15.C
Claims	24.A

1 Sections beginning with a numeral are located in the Agreement and Sections beginning with a letter are located in the respective Appendix.

Appendix A

Defined Term	Section	
Common Interface Arrangement	12.C	
Confirmed Due Date	15.A	
CPR	31.B	
Credit	29	
Current Rate	D.2.A	
Current Selected MSA	4.B	
Customer Desired Due Date	F.3.B.iii	
Customer Premises	5.A	
Dedicated Services	5.C.i	
Demarc	C-1.1.C	
Design Layout Record	8.E.ii	
Digital Subrate Service	C-1.6.A	
Disaster Recovery Plan	8.C	
Disclosing Party	32.A	
DMOQs	14.A	
DS-0 Service	C-1.5.A	
DS-1 Service	C-1.4.A	
DS-3 Service	C-1.3	
Effective Date	Preamble	
Eligible Services	30.B	
End User Claims	24.A	
Entrance Facilities	D.1.C	
Exchange Area	5.C.i	
Extended Total Annual Revenue Commitment	2.A	(Deleted)
Extended Total Cumulative Revenue Commitment	2.A	(Deleted)
Facilities	8.D	
Financially Uncertain	21.A.i	
Firm Order Commitment	8.E.i	
Force Majeure	28	
ILEC	5.C.i	
Information	32.A	
Internodal Connection	C-1.2.A.ii	

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

Appendix A

Defined Term	Section	
Initial Term	2.A	(Deleted)
Local Entity	4.C	
LSO	5.C.i	
LSO Node	C-1.2.B	
MSA	4.A	
MSA Schedule	4.A	
Multiplexing	C-1.2.A.iii	
Network	8.A	
Network Interface Code	C-1.1.C	
Network Interface Device	C-1.1.C	
New Selected MSA	E.2.B	
Off-Net	4.E.ii	
On-Net	4.E.i	
Parent Entity	21.A.i	
Payment	29	
Planned Service Outage	15.B.iv (d)	
Primary Channel Termination	C-1.2.A.i	
Rate Discount Off Dedicated Services	30.A.ii	(Deleted)
Ready-to-Serve Package	8.B	
Recalculated Growth Revenue Commitment	30.A.v	(Deleted)
Recalculated Total Annual Revenue Commitment	30.A.v	(Deleted)
Receiving Party	32.A	
Referenced Documents	43	
Ring Access Channel	C-1.7.B.iii	
Ring Capacity	C-1.11	
Rollover Option	30.A.v	(Deleted)
Rollover Term	2.A	(Deleted)
SECAB	F.2.A	
Secondary Channel Termination	C-1.2.A.i	
Secondary Location	5.A	
Selected MSA	4.A	
Self-Healing Ring Service	8.D.i	

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

Appendix A

Defined Term	Section
Served Premises	5.A
Service Category	C-1.1.B
Service Channel	C-1.7.B.ii
Service Elements	C-1.2.A
Service Outage	15.B
Services	5.A
Specified Buildings	30.C.i
Supplier Node	8.A.i
Switched Access Service	5.C.ii
Switched Access Transport	C-2.1.B.i
Term Discount	D.2.C
Termination Liability	D.2.D
Annual Revenue Commitment	Table 1.A
Total Cummulative Revenue Commitment	30.A and Table 1.A
Third Party Interest	G.10.A
Transition Period	21.B
TWTC	Preamble
TWTC's Personnel	G.6.A
Type I Facilities	8.D
Type II Facilities	8.D
Waste	G.5.C.ii

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

Appendix G

MODEL

MSA SCHEDULE FOR [MSA NAME]

This MSA Schedule is entered into pursuant to the Agreement, effective as of January 1, 2001 (the "Agreement") among Time Warner Telecom General Partnership, a Delaware limited partnership, having an office at 10475 Park Meadows Drive, Littleton, Colorado 80124 ("TWTC"), [Local Entity's legal name], a Delaware [limited partnership, limited liability company – PICK ONE], having an office at [address] ("Local Entity"), and AT&T Corp., a New York corporation, having an office at 295 North Maple Avenue, Basking Ridge, New Jersey 07920 ("AT&T").

Whereas, TWTC has proposed, and AT&T has agreed, to include [MSA NAME] MSA as a Selected MSA under the Agreement; and

Whereas, Local Entity will provide Services to AT&T in this Selected MSA under the terms and conditions specified in this MSA Schedule;

Now, therefore, in consideration of the foregoing premises and mutual covenants of this MSA Schedule, TWTC, AT&T, and Local Entity agree as follows:

1. Incorporation

When executed by authorized representatives of TWTC, AT&T, and Local Entity, this MSA Schedule will become effective on [ ], and will incorporate the terms and conditions of the Agreement pursuant to Section 4 of the Agreement unless expressly stated otherwise in Attachment 1 to this MSA Schedule.

2. TWTC to Serve as Local Entity's Agent

Local Entity shall appoint TWTC to serve as its agent for all business interfaces to AT&T including without limitation: (1) accepting orders from AT&T; (2) billing and collection; and (3) negotiating and entering into any modifications or amendments to the Agreement. Notwithstanding the foregoing, AT&T may, at its discretion, work directly with Local Entity regarding service delivery issues (*e.g.*, provisioning and maintenance of a Specific Service).

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

Appendix G

In witness whereof, the parties have executed this MSA Schedule through their authorized representatives.

TIME WARNER TELECOM GENERAL PARTNERSHIP	**AT&T CORP.**
By: Time Warner Telecom Holdings Inc., its managing general partner	
By: _____	By: _____
Signature	Signature
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Date	Date

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

Appendix G

[LOCAL ENTITY NAME]

By:_____
Signature

_____
Name

_____
Title

_____
Date

http://www.sec.gov/Archives/edgar/data/1057758/000119312505162491/dex101.htm

EXHIBIT NO. 83

DOCKET NO: 090538-TP

WITNESS:

PARTY: Qwest

DESCRIPTION: Qwest Supplemental Response to BullsEye Telecom, Inc.'s Second Set of Interrogatories (Nos. 10-12, 17-18) and Third Set of Document Requests (Nos. 17 and 22) served 10/22/12 pursuant to the ORDER GRANTING IN PART BULLSEYE TELECOM, INC.'S EMERGENCY MOTION TO COMPEL DISCOVERY FROM QWEST COMMUNICATIONS COMPANY.

DOCUMENTS: Qwest Supplemental Response and selected attachments.

PROFFERED BY: BullsEye Telecom

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 83
PARTY Bullseye Telecom, Inc.
DESCRIPTION William R. Easton - Quest Supplemental Response and Selected Attachments

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against tw telecom of florida, l.p.; BullsEye Telecom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: OCTOBER 22, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND SUPPLEMENTAL RESPONSES TO BULLSEYE TELECOM, INC.'S SECOND SET OF INTERROGATORIES (NOS. 10-12, 17-18) AND THIRD SET OF DOCUMENT REQUESTS (NOS. 17 and 22)

Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") submits its supplemental responses to BullsEye Telecom, Inc. ("BullsEye") Second Set of Interrogatories (Nos. 10-12, 17-18) and Third Set of Document Requests (Nos. 17 and 22) to Qwest Communications Company, LLC d/b/a CenturyLink QCC (collectively "Requests", individually "Request").

All general objections made in previous responses to information requests are incorporated by reference.

INTERROGATORIES

BullsEye Interrogatory No. 10

On page 17 of the QCC Rebuttal Testimony of William R. Easton, Mr. Easton refers to agreements between QCC and CLECs. As to each such agreement, or similar such arrangements or understandings, identify:

a. Each CLEC and any other LEC with whom QCC had such an agreement, arrangement, or understanding;
b. The period during which the agreement, arrangement, or understanding was in effect;
c. The rates, terms and conditions relating to payment, non-payment and/or waiver of access charges, and
d. The total value of such waivers, agreements, arrangements, or understandings.

RESPONSE: QCC objects to this request on the basis that it is overly broad, unduly burdensome and (to the extent it seeks information regarding arrangements with BullsEye) seeks information already in your custody and control. QCC further objects on the basis that this request is not reasonably calculated to lead to the discovery of admissible evidence. This case relates to whether BullsEye violated Florida law with regard to its provision of intrastate switched access in Florida. To the extent BullsEye is seeking detailed information regarding agreements between QCC and other CLECs, such information bears no relation to this matter. Facts and circumstances related to QCC's provision of an unrelated, unregulated service to other parties is wholly irrelevant to whether BullsEye violated Florida law in connection with its provision of intrastate switched access to QCC. Further, the request seeks information beyond Florida.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

a. The LEC associated agreement is identified in the Lawyers Only Confidential chart provided below. This information is provided pursuant to the parties' non-disclosure agreement.

b. The time period associated with each agreement is identified in the Lawyers Only Confidential chart provided below. This information is provided pursuant to the parties' non-disclosure agreement.

c. The rates, terms and conditions relating to payment, non-payment and/or waiver of access charges can be found in the agreements produced in response to Request for Production No. 17.

Respondent: Candace Mowers
Manager Public Policy
1801 California Street
Denver, CO 80202

BullsEye Interrogatory No. 11

In any instance where QCC had an agreement, arrangement or understanding with a LEC under which QCC obtained waivers of or was otherwise not assessed switched access charges, identify on a monthly basis the actual net rate (a) charged to, and (b) paid by, QCC for originating access and terminating access.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 10.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

For contracts containing a waiver of intrastate switched access charges where the LEC applied the waiver consistent with the terms of the agreement, QCC was charged and paid zero for the traffic subject to the waiver.

Respondent: Candace Mowers
Manager Public Policy
1801 California Street
Denver, CO 80202

BullsEye Interrogatory No. 12

In any instance where QCC claims that QCC was charged for switched access by a CLEC despite the existence between QCC and the CLEC containing a waiver of switched access charges, did QCC pay such charges to the CLEC? If so, identify all such amounts.

RESPONSE: See QCC's objections to BullsEye Interrogatory No. 10.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

Yes. However, when QCC later discovered it was being charged inappropriately, QCC made demand on some CLECs for refund. See QCC's supplemental response to BullsEye Interrogatory No. 10. The chart contained in that supplemental response identifies, to the best of QCC's ability to reconstruct such information, the total amount that was billed by each particular LEC for intrastate switched access in Florida during the time the respective agreements were in effect.

Respondent: Candace Mowers
Manager Public Policy
1801 California Street
Denver, CO 80202

BullsEye Interrogatory No. 17

State whether QCC contends or believes that AT&T's off-tariff agreements for switched access service were void, illegal, and/or unenforceable in Florida prior to July 1, 2011.

RESPONSE: QCC objects to this request on the basis that it calls for a legal conclusion.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

No. QCC does not contend, nor has it ever contended in this proceeding, that the AT&T agreements are "void, illegal and/or unenforceable in Florida."

Respondent: QCC Legal

BullsEye Interrogatory No. 18

To the extent QCC does not currently contend or believe that AT&T's off-tariff agreements for switched access service were void, illegal, and/or unenforceable in Florida prior to July 1, 2011, specify the date on which QCC ceased to believe in the accuracy of that assertion and identify the facts upon which QCC currently relies.

RESPONSE: QCC objects to this request on the basis that it calls for a legal conclusion.

Respondent: QCC Legal

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

As stated in its Supplemental Response to the IR No. 17 QCC does not contend, nor has it ever contended in this proceeding that AT&T's agreements are "void, illegal and/or unenforceable in Florida." As a result of the Minnesota district court's dismissal of QCC's complaint against AT&T in August 2007, in part because the court determined it was not the proper forum for actions based on other states' laws and regulations, QCC chose to pursue relief against the CLECs who had entered into discriminatory agreements with AT&T and other IXCs in separate state Commission actions under the applicable laws of each state. None of these state Commission actions, including the Florida action, are based on contentions regarding the validity, illegality or enforceability of the underlying agreements, but instead are based on the CLECs' conduct subsequent to entering into the agreements. The facts upon which QCC relies to support its Complaint in this proceeding are set forth in the direct and rebuttal testimony of its witnesses (Easton, Canfield, Hensley Eckert and Weisman).

Respondent: QCC Legal

DOCUMENT REQUESTS

BullsEye Document Request No. 17

On page 17 of the Rebuttal Testimony of William R. Easton, Mr. Easton refers to agreements between QCC and CLECs. Produce all documents relating to or reflecting the agreements referred to by Mr. Easton.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. This complaint case focuses on whether BullsEye engaged in unlawful rate discrimination with regard to its provision of intrastate switched access to QCC in Florida. The documents sought through this request do not bear any connection to that determination. Without waiver of its objections, QCC responds as follows.

See QCC's response, as amended, to Birch Interrogatory No. 1.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

The provisions of each agreement relating to the waiver of switched access are attached hereto as Bates Nos. 003041-003163. The attached are designated as Lawyers Only Confidential, and are provided pursuant to the parties' non-disclosure agreement.

BullsEye Document Request No. 22

Produce all documents and correspondence of Ms. Lisa Hensley Eckert relating to this proceeding.

RESPONSE: QCC objects to this request on the basis that it is overly broad and unduly burdensome. QCC further objects on the basis that the documents are protected by attorney client privilege and/or work product doctrine. BullsEye's request for "all documents" regarding a case that has been open for 3 years is vastly overbroad and unreasonable.

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC provides this supplemental response consistent with the Order Granting in Part BullsEye Telecom, Inc.'s Emergency Motion to Compel Discovery.

See the attached documents Bates Nos.003164-003557.

RESPECTFULLY SUBMITTED on this 22nd day of October, 2012.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS COMPANY, LLC D/B/A CENTURYLINK QCC

STATE OF COLORADO)
)
COUNTY OF DENVER)

Before me, the undersigned authority, personally appeared Candace Mowers, who being duly sworn deposes and says:

That she occupies the position of Public Policy Manager and is the person who has furnished the supplemental answer to Interrogatory Nos. 10, 11 and 12 of BullsEye Teelcom, Inc.'s Second Set of Interrogatories and further says that said answers are true and correct to the best of her knowledge and belief.

WITNESS my hand and seal this 22nd day of October, 2012.

Candace Mowers
Signature

Marjorie O. Herlth
Marjorie O. Herlth - Notary Public
State of Colorado

My Commission Expires: 9/25/2013



CONFIDENTIAL

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 84
PARTY Bullseye Telecom, Inc.
DESCRIPTION William R. Easton - CONFIDENTIAL
Page 3 of Exhibit No. 83

EXHIBIT NO. 85

DOCKET NO: 090538-TP

WITNESS:

PARTY: Qwest

DESCRIPTION: QCC Objections and Response to Granite Telecommunications, LLC's Second Set of Interrogatories.

DOCUMENTS: Qwest Response to Interrogatories 18, 21 and 22.

PROFFERED BY: BullsEye Telecom

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP **EXHIBIT** 85
PARTY Bullseye Telecom, Inc.
DESCRIPTION Quest Response to Interrogatories 18, 21 & 22

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Dated: June 11, 2012

QWEST COMMUNICATIONS COMPANY, LLC OBJECTIONS AND RESPONSE TO GRANITE TELECOMMUNICATIONS, LLC'S SECOND SET OF INTERROGATORIES (NOS. 10-27), DOCUMENT REQUESTS (NOS. 10-18) AND REQUESTS TO ADMIT (NOS. 12-17)

Qwest Communications Company, LLC ("QCC") by and through its undersigned counsel, submits its objections and responses to Granite Telecommunications, LLC's ("Granite") Second Set of Interrogatories (Nos. 10-27), Document Requests (Nos. 10-18) and Requests to Admit (Nos. 12-17) (collectively "Requests," individually "Request").

All general objections made in previous responses to information requests are incorporated by reference.

Granite Interrogatory No. 18

State whether QCC believes that the alleged harm resulting from AT&T's off-tariff agreements for switched access services cannot be remedied in any other forum aside from the forum of the QCC v. AT&T Lawsuit. To the extent QCC does not currently believe that to be true, specify the date on which QCC ceased to believe in the accuracy of that assertion and identify the facts upon which QCC currently relies.

RESPONSE: QCC objects to this request on the basis that the request calls for a legal conclusion. QCC further objects on the basis that the request is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows.

In this case, QCC is not seeking civil damages, such as compensation for lost profits or market share. Instead, QCC seeks refunds of Granite's overcharges. QCC is asking the Florida Commission to order refunds for Granite's discriminatory overcharges, as the Colorado Commission did when faced with the same Granite secret agreements. As confirmed by the Commission earlier in this proceeding, QCC believes the Commission has authority to order refunds in this case.

Respondent: QCC Legal

Granite Interrogatory No. 21

Did QCC ever make a specific request to negotiate an agreement with Granite concerning the rates to be charged by Granite for intrastate switched access services in Florida? If the answer to the foregoing is anything other than an unqualified "no", answer the following:

a. Describe in detail all actions that QCC took to request such an agreement with Granite for Florida.

b. To the extent QCC asserts that it made any such request to Granite, at the time that QCC asserts that such a request was made:

i. Did QCC affirmatively represent to Granite that QCC was willing to accept all of the rates, terms and conditions of any agreement that Granite had with another IXC? If the answer to the foregoing is anything other than an unqualified "no", explain in detail what QCC represented to Granite and to whom such representations were made.

ii. Did QCC provide any demonstration or explanation as to why QCC believed it was similarly situated to another IXC with which Granite had an agreement? If the answer to the foregoing is anything other than an unqualified "no," please explain in detail what QCC represented to Granite and to whom such representations were made.

RESPONSE: QCC objects to this data request on the basis that it seeks information already in Granite's possession or custody. Without waiver of its objections, QCC responds as follows.

QCC is unaware of having ever requested negotiation of an agreement similar to those entered into between Granite and AT&T and Granite and Sprint. However, as the provider subject to a statutory non-discrimination obligation, Granite had the obligation to provide identical rate treatment to QCC for the identical service given that QCC is similarly situated to the preferred IXCs in the context of this service. As an IXC, QCC is provided switched access by over 700 CLECs nationwide. Even accepting the extremely unfounded assumption that the subset of CLECs which had entered secret, off-price list agreements would have (a) identified the terms of such agreements to QCC, and/or (b) offered QCC the same rate in response to an inquiry, it was not QCC's responsibility to police the conduct of 700+ different CLECs or to commence negotiations in order to obtain non-discriminatory treatment.

Respondents: QCC Legal;

Patrick Welch, QCC Manager Facility Cost
1801 California Street, 6th Floor
Denver, CO 80202

Granite Interrogatory No. 22

Identify the exact date on which QCC first learned of the existence of an agreement between Granite and any IXC concerning the provision of access services.

RESPONSE: QCC first received a copy of the Granite agreement with AT&T on June 22, 2006. It did not, however, receive a copy of the Granite agreement with Sprint at the same time. QCC had became aware that Granite was named as a defendant in an action in Minnesota in December 2005, when we received the "Complaint and Commission Action" in Case No. C-05-1282. However, until receiving a copy of the agreement, QCC was not aware of the terms of the agreement, nor that the agreement extended beyond Minnesota.

Respondent: Lisa Hensley Eckert, Director Public Policy
1801 California Street, 10th Floor
Denver, CO 80202

EXHIBIT NO. 86

DOCKET NO: 090538-TP

WITNESS: EASTON/CANFIELD/WEISMAN

PARTY: QCC

DESCRIPTION: QCC TESTIMONY ERRATA SHEET REFLECTING DISMISSALS

DOCUMENTS: ERRATA SHEET

PROFFERED BY: QCC

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 86
PARTY Qwest Communications Co., LLC (QCC)
DESCRIPTION Easton/Canfield/Weisman - QCC Errata Sheet

QCC TESTIMONY ERRATA SHEET REFLECTING DISMISSALS

Witness	Testimony	Pages To Be Stricken
Easton	**Direct**	Table of Contents references to Broadwing, Budget, Deltacom, Granite, MCImetro, PAETEC, US LEC and Windstream Nuvox
		Page 16, lines 11-17
		Page 20, line 2 - Page 23, line 22, *except for FN 15*
		Page 25, line 11 - Page 26, line 23
		Page 29, line 1 - Page 34, line 19
		Page 36, line 16 - Page 39, line 2
		Page 40, line 20 - Page 44, line 20
		Index to Exhibits references to Broadwing, Budget, Deltacom, Granite, MCImetro, PAETEC, US LEC and Windstream Nuvox
		Exhibit WRE-1A references to Broadwing, Budget, Deltacom, Granite, MCImetro, PAETEC, US LEC and Windstream Nuvox
		Exhibit WRE-1B
Easton	**Rebuttal**	Table of Contents references to Verizon Testimony
		Page 12, lines 20 (beginning with "I did find")-23 (ending with "not exceeded")
		Page 14, lines 4-16
		Page 16, lines 8-23
		Page 23, line 1 - Page 36, line 9
		Page 36, line 21 (beginning with "Mr. Reynolds' arguments") - Page 37, line 2 (ending "[END LAWYERS ONLY CONFIDENTIAL]")
Canfield	**Direct**	Table of Contents references to Broadwing, Budget, Deltacom, MCImetro, PAETEC, US LEC and Windstream Nuvox
		Page 9, line 2 - Page 15, line 21, *except for FN 4*
		Page 18, line 11 - Page 23, line 10
		Page 30, line 9 - Page 38, line 21
		Page 42, line 18 - Page 47, line 24
		Page 51, line 1 - Page 61 line 21
		Page 62, lines 11-13 (Broadwing and Budget), 15 (Deltacom), 17 (Granite and MCI), 19 (PAETEC), 20-22 (US LEC, Windstream Nuvox and Totals)
Weisman	**Direct**	Page 19, line 18 - Page 22, line 5
		Page 22, lines 12 (beginning with "For example")-14, fns 27-29
Weisman	**Rebuttal**	Table of Contents references to Mr. Reynolds
		Page 20, line 6 - Page 26, line 13, fns 49-50

EXHIBIT NO. 87

DOCKET NO: 090538-TP

WITNESS: Hensley Eckert

PARTY: Qwest

DESCRIPTION: Google Search Results

DOCUMENTS: Google Search Results for "Time Warner Telecom Agreement with AT&T"

PROFFERED BY: TW Telecom

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 87
PARTY TW Telecom
DESCRIPTION Lisa Hensley Eckert - Google Search Results for "Time Warner Telecom Agreement with AT&T"

Search

About 221,000 results (0.15 seconds)

Ad related to time warner telecom agreement with AT&T

AT&T® Workforce Mgmt Apps | att.com
www.att.com/WorkforceManagement
GPS Tracking & Wireless Tools. Work Smarter & Get a $50 Credit!

Web
Images
Maps
Videos
News
Shopping
More

Daphne, AL
Change location

Show search tools

[PDF] AT&T Wholesale Agreement - AT&T Clec Online
https://clec.att.com/clec.../670e0457c78e4575ab2566eb6ae5272a.pdf
File Format: PDF/Adobe Acrobat
Feb 13, 2012 – **tw telecom** of alabama llc **Agreement**. Rights of Way (ROW) Amendment – Effective January 21, 2008. Name Change Amendment – Effective ...

Time Warner Telecom, AT&T, SBC Extend Long-Term Service ...
www.att.com/gen/press-room?pid=4800&cdvn=news. .21695
Jun 1, 2005 – (NYSE: T) today announced the extension of a long-term service **agreement** under which **Time Warner Telecom** would provide special access ...

Telecommunication Contracts - Ohio Department of Administrative ...
das.ohio.gov/.../**Telecommunications**Services/**Telecommunication**Co...
AT&T Master Service **Agreement** - 05/20/2012. Service Attachment 6 - Dedicated ... **tw telecom** - Master Service **Agreement** - 09/22/2009. Service Attachment 1 ...

Contract Friday: TW Telecom, Optimum Lightpath, CBeyond ...
www.telecomramblings.com/.../**contract**-friday-tw-telecom-...

by Robert Powell - More by Robert Powell
Oct 29, 2010 – Four Myths of the Container Data... **tw telecom** Rails Against **AT&T's**. ... That said, you don't take this kind of **contract** away from the ILEC without ...

Articles that mention tw telecom - Carrier Ethernet News
www.carrierethernetnews.com/topic/profile/tw-telecom/
Vertical Systems Group: **AT&T**, Verizon, **tw telecom** Lead Business Ethernet ... **tw telecom** wins WAN **contract** with U.S. Dept. of Health and Human Services ...

tw telecom wins WAN contract with U.S. Dept. of Health and Human...
www.fiercetelecom.com/story/**tw-telecom**...**contract**.../2012-10-05
Oct 5, 2012 – **tw telecom** on Thursday was awarded two contracts with the U.S. ... Securing this **contract** with HHS is another major win for **tw telecom** at a time when ... big three service providers--**AT&T** (NYSE: T), CenturyLink (NYSE: CTL) ...

CenturyLink May Buy TW Telecom - Talks Ongoing For Weeks ...
www.dslreports.com/.../CenturyLink-May-Buy-TW-Telecom-12144...
13 posts - 9 authors - Oct 2
According to a report on the **deal** in **Deal** Reporter, the two companies ... A client of mine uses **TW Telecom**, and we've been relatively happy with them. ... without taking any rural/off loaded phone systems- **AT&T** - so they're ...

tw telecom Rails Against AT&T's Proposal - Light Reading
www.lightreading.com/document.asp?doc_id=225671
Oct 8, 2012 – If the FCC grants **AT&T's** request to lift wholesale requirements, ... **tw telecom** continues to aggressively expand its footprint, growing to ... Yet, I have not found too many companies that have received the requested **contract** yet.

Time Warner Telecom, SBC, AT&T extend srvcs deal - MarketWatch
articles.marketwatch.com/.../30969786_1_time-warner-telecom-sbc- ...
Jun 1, 2005 – SAN FRANCISCO (MarketWatch) – **Time Warner Telecom** (US:twtc), SBC Communications Inc. (CA:sbc) and **AT&T** Corp. (US:t) late ...

[PDF] Time Warner Telecom of Kentucky LLC Att 8 ROW Amendment
162.114.3.165/PSCICA/0000/00929/00929-AM_021208.pdf
File Format: PDF/Adobe Acrobat - Quick View
AMENDMENT/**AT&T**-KENTUCKY. PAGE 1 OF 1. **AT&T**-KENTUCKY/TWTC. Amendment to the **Agreement**. Between. **Time Warner Telecom** of Kentucky LLC and ...

Ad related to time warner telecom agreement with AT&T

Telecom / IT Law Firm
www.lb3law.com/
Rates, Analysis, Negotiation, RFPs, Contracts, Wireless, MPLS, SLA

1 2 3 4 5 6 7 8 9 10 Next

Advanced search Search Help Give us feedback

Google Home Advertising Programs Business Solutions Privacy & Terms
About Google

Ads related to time warner telecom agreement with AT&T

AT&T® Workforce Mgmt Apps | att.com
www.att.com/WorkforceManagement
GPS Tracking & Wireless Tools. Work Smarter & Get a $50 Credit!

Telecom / IT Law Firm | lb3law.com
www.lb3law.com/
Rates, Analysis, Negotiation, RFPs, Contracts, Wireless, MPLS, SLA

[PDF] Navacore, LLC Adoption of **tw telecom** of south carolina llc
dms.psc.sc.gov/.../matters/D87132D6-E61C-BFB0-E107D46A1C866...
File Format: PDF/Adobe Acrobat - Quick View
WHEREAS, Navacore has requested that **AT&T** make available the interconnection **agreement** in its entirety executed between **AT&T** and **tw telecom** of south ...

CenturyLink TW Telecom Acquisition Said In Works - Investors.com
news.investors.com/.../100112-627601-centurylink-tw-telecom-acqui...
Oct 1, 2012 – CenturyLink is reportedly in talks to acquire **TW Telecom**, a move that would extend ... But Oppenheimer analyst Tim Horan isn't sure a **deal** is in the works. ... **AT&T** (T) plans to issue $9.5 billion in preferred stock in its wireless ...

[PDF] 77017 20268 Comprehensive Telecommunications Services ...
www.ogs.state.ny.us/purchase/snt/awardnotes/7701720268Prices.pdf
File Format: PDF/Adobe Acrobat - Quick View
AT&T. 1762 Central Avenue. Albany, New York 12205. FED ID#13-4924710. NYS Vendor ID #1000006563. Sheila Gibson, **Contract** Liaison. (518)-698-7531 ...

TW Telecom–Leading Ethernet Service Provider behind Verizon ...
www.ethernetshopper.com/ethernet-services-provided-by-tw-telecom
TW Telecom takes third place and ruling the market with its fiber-based ... **TW Telecom** Takes Third Place in Ethernet Service Arena – behind Verizon and **AT&T** ... **agreements** in order to make the most of the increasing market demand, "TW ...

AT&T to synergize Time Warner Telecom
connectedplanetonline.com › PRINT ARTICLES
Mar 12, 2007 – **AT&T** to synergize **Time Warner Telecom** ... In mid-2005, TWT signed a **deal with AT&T** and SBC Communications (then pre-merger) that ...

[PDF] tw telecom.pdf - KY Public Service Commission
psc.ky.gov/.../Bellsouth%20Commercial%20Agreements/.../tw%20tel...
File Format: PDF/Adobe Acrobat - Quick View
COMMERCIAL **AGREEMENT**. BETWEEN. **AT&T**-22STATE. AND **tw telecom** of alabama llc **tw telecom** of kentucky llc **tw telecom** of louisiana llc **tw telecom** of ...

AT&T/TWTC AGREEMENT for tw telecom inc. (TWTC)
www.wikinvest.com/.../Time_Warner_Telecom.../Att_Twtc_Agreem...
Aug 9, 2005 – A This **Agreement** will be effective as of the Effective Date (i.e. January 1, 2001), and will remain in effect for a term of ten (10) years from the ...

Light Reading - tw telecom Rails Against AT&T's Proposal
www.lightreading.com/messages.asp?piddl_msgthreadid=240602
Oct 10, 2012 – **tw telecom** Rails Against **AT&T's** Proposal ... So the incumbents say they will sign commercial **agreements** for access lines (commercial ...

[PDF] AMENDMENT TO THE AGREEMENT BETWEEN TW TELECO...
162.114.3.165/PSCICA/0000/00929/00929-AM_072911.pdf
File Format: PDF/Adobe Acrobat - Quick View
071411. AMENDMENT TO THE **AGREEMENT**. BETWEEN. **TW TELECOM** OF KENTUCKY LLC. AND. BELLSOUTH TELECOMMUNICATONS, INC. d/b/a **AT&T** ...

Web
Images
Maps
Videos
News
Shopping
More

Daphne, AL
Change location

Show search tools

Ads

Time Warner Cable® Off
www.timewarnercable.com/
Great Deals for New Customer
Order Today & Showtime Is In

AT&T Internet, TV & Phor
www.attonlineoffers.com/
Phones Under $1 + Deals on U
TV & Internet Bundles. Order N

Time Warner Cable
www.timewarnercablespecial.
$34.95/mo and No **Contract**
Authorized Agent for New Cus

Telecom Contract Servic
www.telytics.com/
Telecom Contract Optimizatic
Reduce Costs Now. 500% RO

Telecom Contract
www.telecom-contracts.net/
Telecommunication **Contract** f
Telecom Contract Analysis

See your ad here »

SBC, Time Warner Telecom, AT&T extend long-term service - OKC....
okc.biz/.../article-5272-sbc-time-warner-telecom-att-extend-long-ter...
Jun 3, 2005 – **Time Warner Telecom**, SBC Communications Inc. and **AT&T** Corp. have announced the extension of a long-term service **agreement** effective ...

Previous 1 2 3 4 5 6 7 8 9 10 Next

Advanced search · Search Help Give us feedback

Google Home Advertising Programs Business Solutions Privacy & Terms
About Google

eg. GOOG, iPhone, Yen, or Gold Search New! Portfolio Login / Sign Up

Vanguard E*TRADE zecco $4.95 Stock Trades optionshouse

Sponsored by covestor Why invest alone? Try covesting for free. 15-day no cost, no obligation trial.

Send us Feedback

Time Warner Telecom (TWTC) 26.15 0.48 (1.80%) Ticker

as of Oct 19, 4:00 PM EDT

SUMMARY BULLS BEARS TOPICS DATA CENTRAL STOCK CHART SEC FILINGS BALANCE INCOME CASH FLOW

TWTC » Topics » AT&T/TWTC AGREEMENT

This excerpt taken from the TWTC 10-Q filed Aug 9, 2005.

AT&T/TWTC AGREEMENT

3.1 Amendments.

Subject to Section 8.6 of this Agreement, the AT&T/TWTC Agreement is hereby amended as follows:

3.1.1 Extension of Term. Section 2.A of the AT&T/TWTC Agreement, as specifically amended pursuant to the Sixth Amendment, is hereby deleted and replaced with the following Section 2.A:

2.A This Agreement will be effective as of the Effective Date (i.e. January 1, 2001), and will remain in effect for a term of ten (10) years from the Effective Date ("*Term*"), unless terminated at an earlier date or unless renewed or extended, as provided in this Agreement.

Restricted Proprietary Information
For use and disclosure only to authorized employees, agents or contractors of SBC, AT&T, TWTC and their respective affiliates. Copies may not be made without the express consent of SBC, AT&T and TWTC.

Active money managers with real stories... And their own $ invested.

Over 160 investment products to select from.

Try it free

at no cost and no obligation

covestor



Bet you've never seen portfolio analytics like these.
Introducing SigFig — from the creators of

Intuit Investor

3.1.2Revenue Commitment.

3.1.2.1Section 30.A.iii of the AT&T/TWTC Agreement, as specifically amended pursuant to the Sixth Amendment, is hereby amended by adding the following language to the end of Section 30.A.iii:

Notwithstanding the foregoing, Term years 9 and 10 shall be treated as a single Term year ending December 31, 2010 (the "***Extension Period***") (or such later date as is required pursuant to the provisions of this Section 30.A.iii below), and any Annual Deficiency for the Extension Period shall only become payable in immediately available funds within thirty (30) days from the date of delivery of the notice of non-compliance for the Extension Period, which shall occur no earlier than the last business day of the calendar month following the month in which the Extension Period ends. Consistent with Section 30.A.iii of the AT&T/TWTC Agreement, no amounts paid during the Extension Period in respect of any Annual Deficiency for any Term year prior to the Extension Period will apply toward the satisfaction of the Annual Revenue Commitment for the Extension Period.

*******.

3.1.2.2Table 1.A entitled "Annual Revenue Commitments and Total Cumulative Revenue Commitment" is hereby deleted and replaced with the following Table 1.A:



Vanguard zecco TRADING Trade Up. Pay Less. E*TRADE Don't invest alone. Covest now. covestor

Wikinvest © 2006, 2007, 2008, 2009, 2010, 2011, 2012. Use of this site is subject to express Terms of Service, Privacy Policy, and Disclaimer. By continuing past this page, you agree to abide by these terms. Any information provided by Wikinvest, including but not limited to company data, competitors, business analysis, market share, sales revenues and other operating metrics, earnings call analysis, conference call transcripts, industry information, or price targets should not be construed as research, trading tips or recommendations, or investment advice and is provided with no warrants as to its accuracy. Stock market data, including US and International equity symbols, stock quotes, share prices, earnings ratios, and other fundamental data is provided by data partners. Stock market quotes delayed at least 15 minutes for NASDAQ, 20 mins for NYSE and AMEX. Market data by Xignite. See data providers for more details. Company names, products, services and branding cited herein may be trademarks or registered trademarks of their respective owners. The use of trademarks or service marks of another is not a representation that the other is affiliated with, sponsors, is sponsored by, endorses, or is endorsed by Wikinvest.

About | Blog | Press | Feedback | Help | Get involved

Mobile | Advertise | Licensing & Partnerships | Blogger Tools | Jobs



Bet you've never seen portfolio analytics like these.
Introducing SigFig — from the creators of
Take Tour

EXHIBIT NO. 88

DOCKET NO: 090538-TP

WITNESS: Don J. Woods

PARTY: tw telecom

DESCRIPTION: tw telecom errata sheet

DOCUMENTS:

PROFFERED BY: [redacted] tw telecom

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 090538-TP EXHIBIT 88
PARTY TW Telecom
DESCRIPTION Don J. Woods
TW Telecom Errata Sheet

88

GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Writer's E-Mail Address: MFeil@gunster.com

October 22, 2012

ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 090538-TP - Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Dear Ms. Cole:

Enclosed is tw telecom of florida, l.p.'s Notice of Filing Errata Sheets, submitted by electronic mail in the above-referenced docket.

If you have any questions, please call me at 850-521-1708.

Sincerely,

Matthew J. Feil

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.	Docket No. 090538-TP Filed: October 22, 2012

TWTC'S NOTICE OF FILING
ERRATA SHEETS

tw telecom of florida, l.p., ("TWTC") hereby files the attached Errata Sheets for the direct and rebuttal testimony for witness Don J. Wood. Mr. Wood was the only of TWTC's three witnesses whose testimony necessitated multiple revisions resulting from the dismissal of several parties. Other TWTC witnesses with corrections to their testimony may make same from the stand.

RESPECTFULLY SUBMITTED this 22nd day of October, 2012.

Matthew Feil
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
850-521-1708
mfeil@gunster.com

DIRECT TESTIMONY OF DON J. WOOD ERRATA

Page	Line(s)	Change
All	Header	delete "Joint CLECs," insert tw telecom of florida, l.p."
2	17-20	delete "STS Telecom, LLC, DeltaCom, Inc., Windstream NuVox, Inc., PAETEC Communications, Inc., US LEC of Flroida, LLC d/b/a/US LEC Business Services, Broadwing Communications, LLC, and Granite Telecommunications, LLC"
3	1-2	delete "Where necessary, I will refer to this group of eight CLECs as "Joint CLECs."
36	9	delete "the following CLECs:"
36	9-10	delete "DeltaCom, Windstream NuVox, PAETEC, US LEC, Broadwing, and Granite."
39	7-19	delete in entirety
40	1-3	delete in entirety
40	15	delete "additional" and insert "addition"
54	3-4	delete "or Broadwing"
54	5-6	delete "or Broadwing"
54	6	delete "DeltaCom"
54	7-11	delete in entirety
59	18-21	delete in entirety

REBUTTAL TESTIMONY OF DON J. WOOD ERRATA

Page	Line(s)	Change
All	Header	delete "Joint CLECs," insert tw telecom of florida, l.p."
22	17	delete "As noted at pp."
22	18-20	delete in entirety
23	1-3	delete in entirety
23	4	delete "for at least some portion of the traffic exchanged with a given CLEC."
49	1	delete "CLECs" and insert "IXCs"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 22nd day of October, 2012.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Alan C. Gold, P.A. 1501 Sunset Drive, 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com	Ernest Communications, Inc. 5275 Triangle Parkway Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com
Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com
Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Navigator Telecommunications, LLC. Michael McAlister General Counsel P.O. Box 13860 North Little Rock, AR 72113-0860 Email: mike@navtel.com
Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us BSalak@psc.state.fl.us	Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com
Ms. Rebecca A. Edmonston Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 rebecca.edmonston@verizon.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com

By: _____
Matthew Feil, Esq.