BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF FLORIDA

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 REDACTED

REBUTTAL TESTIMONY OF WILLIAM R. EASTON

ON BEHALF OF

QWEST COMMUNICATIONS COMPANY, LLC

Filed: August 9, 2012

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, CURRENT TITLE, EMPLOYER AND**
3 **BUSINESS ADDRESS.**

4 A. My name is William Easton. I am a Wholesale Staff Director at CenturyLink Inc., the
5 corporate parent of Qwest Communications Company, LLC. ("QCC"). My business
6 address is 1600 7th Avenue, Seattle, Washington.

7 **Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT**
8 **TESTIMONY IN THIS DOCKET?**

9 A. Yes. I submitted Direct Testimony on behalf of Qwest Communications Company, LLC
10 ("QCC") on June 14, 2012.

11 **II. PURPOSE OF TESTIMONY**

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to respond to issues raised in the Direct Testimony of
14 Joint CLEC witness Don J. Wood and the Direct Testimony of Verizon witness Peter H.
15 Reynolds.

16 **III. WOOD REBUTTAL**

17 **A. MISCHARACTERIZATION OF QCC POSITION**

18 **Q. BEFORE REBUTTING INDIVIDUAL POINTS RAISED BY MR. WOOD, DO**
19 **YOU HAVE AN OVERALL COMMENT ON HIS TESTIMONY?**

20 A. Yes. Rather than confronting the allegations in QCC's complaint head on, Mr. Wood
21 chooses to mischaracterize the issues QCC raises, despite the fact that the language in the
22 complaint and responses to subsequent discovery make it very clear what QCC's
23 position actually is. Having created these straw men, Mr. Wood then proceeds to knock
24 down the positions he himself has created. What is missing in Mr. Wood's testimony is

1 a credible justification for the CLECs' differential pricing of access services provided to
2 QCC. As Dr. Weisman's Direct Testimony makes clear, rate differences that cannot be
3 explained by differences in the cost of providing the services presumptively constitute
4 discriminatory pricing. Also missing in Mr. Wood's testimony are company-specific
5 details explaining or attempting to justify his clients' behavior. Because the Joint
6 CLECs failed to present an explanation in Direct Testimony, QCC is left to rebut the
7 generalized argument posed by Mr. Wood. If the Joint CLECs wait until Rebuttal to
8 raise company-specific defenses, QCC may need to seek permission to file Surrebuttal
9 testimony.

10 **Q. IS MR. WOOD CORRECT WHEN HE STATES ON PAGE 3 OF HIS**
11 **TESTIMONY THAT QCC IS SEEKING THE PAYMENT OF DAMAGES?**

12 A. No. Although Mr. Wood repeatedly refers to the relief that QCC is seeking as
13 "damages" (a claim CLECS made in dispositive motions, and QCC has repeatedly and
14 successfully refuted), QCC is not seeking civil damages. As I stated in my Direct
15 Testimony, what QCC is seeking is a refund of the amounts it overpaid the respondent
16 CLECs relative to the discounted amounts it would have paid had the CLECs extended
17 the same discount to QCC as they did to IXCs AT&T, Sprint and MCI.

18 **Q. MR. WOOD ARGUES THAT QCC IS EFFECTIVELY ASKING THE**
19 **COMMISSION TO TREAT CLECS' SWITCHED ACCESS AS A REGULATED**
20 **SERVICE AND TO DETERMINE THE RATE THAT QCC SHOULD HAVE**
21 **BEEN CHARGED FOR THE SERVICE. IS THIS REALLY WHAT QCC IS**
22 **SEEKING?**

23 A. No. QCC is asking the Commission to enforce antidiscrimination statutes and to
24 determine the amount of refunds QCC is due. These requests clearly fall within the

1 authority of the Commission as the Commission itself found in its March 2, 2011 Final
2 Order Denying Movants' Motion to Dismiss. In its analysis the Commission found:

3 We have the authority to investigate the allegations in this Complaint,
4 to prevent anticompetitive behavior and unlawful discrimination amongst
5 telecommunications providers pursuant to Section 364.01(g), F.S. We also
6 have the ability to review whether Qwest has suffered competitive harm as
7 a result of the Movants' actions, pursuant to provisions of Chapter 364,
8 F.S., and to determine the amount of any refunds, overcharges and
9 applicable interest, if any, Qwest might be due. We retain broad discretion
10 to take remedial actions, such as ordering refunds of overcharges should it
11 be determined necessary and appropriate in keeping with statutory
12 obligations.

13 **Q. AT PAGE 10 OF HIS TESTIMONY MR. WOOD ARGUES THAT BY PAYING**
14 **THE CLECS PRICE LIST RATES, "QWEST PAID WHAT IT SHOULD HAVE,**
15 **AND GOT WHAT IT PAID FOR." PLEASE COMMENT.**

16 A. Mr. Wood's argument entirely misses the point of QCC's complaint. The point of QCC's
17 complaint is that while QCC paid the price list rates, other IXCs got preferential
18 treatment, in violation of the state's non-discrimination statute. The result was that QCC
19 was charged excessive and discriminatory rates.

20 **Q. MR. WOOD SPENDS MUCH TIME DISCUSSING THE FACT THAT THE FCC**
21 **RECOGNIZES THAT SWITCHED ACCESS RATES CAN BE NEGOTIATED**
22 **AND THAT THESE NEGOTIATED RATES CAN DIFFER FROM TARIFFED**
23 **RATES (WOOD DIRECT TESTIMONY AT PAGES 11-13). HAS QCC EVER**
24 **CLAIMED THAT CLECS ARE NOT FREE TO NEGOTIATE OFF-PRICE LIST**
25 **SWITCHED ACCESS RATES?**

1 A. No. QCC's complaint is not based on the fact that the respondent CLECs negotiated off-
2 price list rates. In fact, paragraph 5 of QCC's complaint expressly acknowledges that a
3 "carrier may, in appropriate circumstances, enter into separate contracts with switched
4 access customers which deviate from its tariffs or price lists..." It was the CLECs'
5 subsequent behavior in not making the negotiated rates available to other similarly-
6 situated IXCs which created the discrimination that is the basis for QCC's complaint.

7 **Q. MR. WOOD DISCUSSES THE FACT THAT FLORIDA COMMISSION HAS A**
8 **"LESSER DEGREE OF REGULATORY OVERSIGHT" OVER CLECS THAN**
9 **ILECS AND ARGUES THAT THE QCC COMPLAINT IS SOMEHOW**
10 **SEEKING TO HAVE THE COMMISSION ACT IN A MANNER**
11 **INCONSISTENT WITH THE CLEC REGULATORY REGIME (WOOD**
12 **DIRECT TESTIMONY AT PAGES 14-17). IS THAT WHAT QCC IS SEEKING**
13 **FROM THE COMMISSION?**

14 A. No. As I just discussed, QCC is simply asking the Commission to enforce Florida
15 antidiscrimination statutes and to determine the amount of refunds QCC is due, actions
16 which the Commission has held it has the authority to do.

17 **Q. DO YOU AGREE WITH MR. WOOD'S CONTENTION ON PAGE 22 OF HIS**
18 **TESTIMONY THAT QCC APPEARS TO ARGUE THAT A RATE IS**
19 **DISCRIMINATORY SIMPLY BECAUSE IT IS DIFFERENT?**

20 A. No. As Dr. Weisman discusses in his testimony, it is not the fact that a rate is different
21 that makes it discriminatory. It is the fact that there is no legitimate basis for the
22 difference in rates to similarly situated customers of the identical service. In fact, several
23 of the CLECs' price lists specifically allow for individual case basis pricing but also
24 require that such contract offerings be made available to similarly situated customers.

1 While Mr. Wood claims that QCC ignores the "under like circumstances" clause in the
2 price list, he fails to demonstrate that QCC is not similarly situated to the IXCs receiving
3 preferential treatment.

4 **Q. MR. WOOD STATES THAT IT IS QCC'S POSITION THAT IT SHOULD BE**
5 **ABLE TO AVAIL ITSELF OF ONLY THE OFF-PRICE LIST AGREEMENT**
6 **ELEMENTS THAT WOULD BENEFIT QCC WITHOUT ACCEPTING THE**
7 **ELEMENTS THAT WOULD IMPOSE BURDENS, OR WOULD BENEFIT THE**
8 **CLEC (WOOD DIRECT TESTIMONY AT PAGE 25). PLEASE COMMENT.**

9 A. Nowhere in its complaint, in discovery or in testimony does QCC take the position that it
10 should be able to avail itself of only the elements of the off-price list agreements that
11 would benefit QCC. Nor did QCC ever take the position that "denying it the ability to
12 'pick and choose' in this way amounts to an 'undue or unreasonable preference' offered
13 to another IXC and an 'undue or unreasonable prejudice' against Qwest," as Mr. Wood
14 alleges on page 26 of his testimony. Having said this, I do not agree that every term in
15 the off-price list agreement is relevant to determining if the parties are similarly situated.
16 If the contracting parties included terms or conditions having nothing to do with
17 switched access or which have no effect on the CLEC's cost of providing switched
18 access to the IXC, those terms are less relevant or entirely irrelevant to determining
19 whether the parties are similarly situated.

20 Later in the testimony I will discuss the supposed IXC "burdens" and CLEC "benefits"
21 that Mr. Wood alludes to, however, the fact remains that QCC was not offered the terms
22 and conditions of the off-price list agreements, a fact acknowledged by most of the
23 CLECs in discovery responses. Again, rate differences that cannot be explained by
24 differences in the cost of providing the services presumptively constitute discriminatory

1 pricing.

2 **B. QCC'S PROPOSED REMEDY**

3 **Q. DO YOU AGREE WITH MR. WOOD'S DISCUSSION ON PAGE 30 OF HIS**
4 **TESTIMONY THAT SINCE QCC'S THEORY IS THAT SOME IXCS PAID TOO**
5 **LITTLE FOR SWITCHED ACCESS SERVICE, THE MOST APPROPRIATE**
6 **REMEDY WOULD BE TO FORCE THE FAVORED IXCS TO PAY THE PRICE**
7 **LIST RATES?**

8 A. No. Mr. Wood's proposed remedy is based on another misstatement of QCC's position.
9 QCC's position is that QCC was *overcharged* relative to the IXCs with off-price list
10 agreements. QCC's proposed remedy is designed to address these overcharges.
11 Requiring the favored IXCs to go back and pay the price list rates to the CLECs would
12 serve only to reward the CLECs for their discriminatory behavior, which is clearly not
13 desirable from a public policy perspective. In addition, as Dr. Weisman's Rebuttal
14 Testimony makes clear, because the named CLECs conferred an artificial competitive
15 advantage on QCC's rivals, they in all likelihood distorted the marketplace for switched
16 long-distance services in a manner that is not remedied, in full, by simply requiring that
17 the preferred IXCs return their discounts years later. This Commission has already
18 acknowledged that refunds are a potentially appropriate remedy for the type of unlawful
19 conduct QCC brings to light in this case. In QCC's companion case in Colorado, the
20 Colorado Commission has ordered the CLECs to pay QCC refunds equal to 100% of the
21 overcharge, plus interest.[1]

22

[1] *Order Addressing Exceptions and Motion to Reopen the Record.* Public Utilities Commission of the State of Colorado. Decision No. C11-1216. October 17, 2011.

1 **Q. MR. WOOD FURTHER DISCUSSES QCC'S PROPOSED REMEDY AND**
2 **ARGUES THAT QCC'S PROPOSED REMEDY IS ASKING THE COMMISSION**
3 **TO ORDER THE CLECS TO ENGAGE IN AN ADDITIONAL VIOLATION OF**
4 **THE ANTI-DISCRIMINATION STATUTE (WOOD DIRECT TESTIMONY AT**
5 **PAGE 43). DO YOU AGREE?**

6 A. No. Mr. Wood again incorrectly assumes that the basis for QCC's discrimination claim
7 is that the CLECs departed from their price list rates. As discussed above, this
8 mischaracterizes QCC's position. The fact that QCC was not offered the same rates as
9 the preferred IXCs, not the departure from price list rates, is the basis of QCC's claim.
10 QCC's proposed remedy addresses this claim by providing QCC the same rates as the
11 preferred IXCs. QCC is not asking the Commission to order the CLECs to engage in
12 discrimination, but instead, to remedy discrimination that has already occurred.

13 **Q. MR. WOOD CRITICIZES QCC'S PROPOSED REMEDY, NOTING THAT QCC**
14 **IS ONLY ASKING THAT IT, AND NOT OTHER IXCS, BE OFFERED THE**
15 **PREFERRED IXC RATES (WOOD DIRECT TESTIMONY AT PAGE 30).**
16 **PLEASE COMMENT.**

17 A. As a victim of rate discrimination, QCC has the right to seek remedies on its own behalf.
18 Other IXCs who feel they may have been similarly discriminated against certainly have
19 every right to file a complaint with this Commission. This Commission also has the
20 option of extending the remedy to other IXC victims.

21 **Q. IS MR. WOOD CORRECT WHEN HE ARGUES AT PAGE 47 OF HIS**
22 **TESTIMONY THAT QCC IS ASKING THE COMMISSION TO SET A RATE**
23 **FOR SWITCHED ACCESS SERVICES?**

24 A. No. QCC is not asking this Commission to set any rates for switched access. As stated

1 previously, QCC is simply requesting that the Commission order the respondent CLECs
2 to offer QCC the same rates that the CLECs provided to the preferred IXCs. On a going
3 forward basis, QCC is simply asking the Commission to ensure that QCC is no longer a
4 victim of the CLECs' anti-competitive and discriminatory rate treatment if the
5 Commission deems that it still retains the authority to prevent such behavior after July 1,
6 2011.

7 **Q. MR. WOOD STATES THAT QCC DOES NOT EXPLAIN WHAT IT INTENDS**
8 **THE TERM "REPARATIONS" TO MEAN (WOOD DIRECT TESTIMONY AT**
9 **PAGE 43). PLEASE COMMENT.**

10 A. QCC intends "reparations" to mean refunds of the amount of overcharges by CLECs to
11 QCC, along with applicable interest. While the complaint did not go into a great deal of
12 discussion of the term, it is certainly very clear from QCC's response to the CLECs'
13 dispositive motion, the discovery responses provided to Mr. Wood's clients and QCC's
14 Direct Testimony how QCC intends to calculate the reparations. (See QCC response to
15 TWT interrogatory No.5). QCC's data request response (which Mr. Wood's clients had
16 prior to the filing of Direct Testimony) explains QCC's calculation methodology:

17 In brief summary, QCC's methodology for calculation the principal
18 amount of TWT's overcharge will be to compare the amounts QCC paid
19 TWT for intrastate switched access in Florida to the amount it would
20 have paid TWT for the identical services had QCC received the rate
21 treatment enjoyed by those IXCs favored through TWT's secret
22 switched access agreements.

23 QCC also provided preliminary calculations (computed for internal purposes at an early
24 stage of the proceeding) for each company that asked for such in discovery. Although

1 Mr. Wood claims not to know what QCC means by reparations, he acknowledges, at
2 page 45 of his testimony, seeing these data request responses. It is unclear how Mr.
3 Wood can be confused about how QCC has calculated the overcharge.

4 **Q. MR. WOOD ALSO CLAIMS THAT QCC'S REPARATION CALCULATION**
5 **HAS NO EMPIRICAL MEANING (WOOD DIRECT TESTIMONY AT PAGE**
6 **46). PLEASE COMMENT.**

7 A. Mr. Wood's claim that the calculation has no empirical meaning is based solely on his
8 continued mischaracterization of QCC's position. QCC's position is that the CLECs
9 unreasonably discriminated against QCC by offering preferred IXCs lower switched
10 access rates than were offered to QCC for the identical services without justification. In
11 order to remedy this, QCC is asking that the CLECs be required to refund the difference
12 (plus interest) between what was paid by QCC and what QCC would have paid if it had
13 been offered the same rates as the preferred IXCs. QCC's remedy, besides being
14 conceptually very simple, is a fair and equitable way to remedy the discriminatory
15 treatment by the CLECs.

16 **Q. MR. WOOD DISCUSSES WHAT HE BELIEVES ARE PRACTICAL REASONS**
17 **TO LIMIT THE PERIOD FOR QCC'S CLAIMS, CITING CONCERNS THAT**
18 **THE NECESSARY RECORDS MAY NOT EXIST TO CALCULATE THE**
19 **RELIEF SOUGHT BY QCC (WOOD DIRECT TESTIMONY AT PAGES 54-56).**
20 **IS MR. WOOD CORRECT?**

21 A. No. Mr. Canfield has calculated the amounts overcharged by the CLECs using billing
22 records based on the CLECs' own bills to QCC. Thus, it is not necessary for the CLECs
23 to have retained all of their past billing information. During the course of this
24 proceeding the CLECs will have ample opportunity to review and challenge Mr.

1 Canfields' calculations. In reading Mr. Wood's concerns about record retention
2 guidelines and industry consolidation it is important not to lose sight of the fact that the
3 only reason QCC is seeking to go back as far in time as it does is because the CLECs
4 secretly engaged in rate discrimination for that entire period of time. While it may seem
5 impractical to Mr. Wood to review billing records dating back to the early 2000s, I
6 assure you that it was more "impractical" for QCC to be massively overcharged by
7 comparison to its IXC competitors for the identical, bottleneck input service. The
8 CLECs' attempt to evade responsibility on the basis that they perpetrated unlawful
9 contracts over a long period of time defies logic and is at odds with sound public policy.

10 **C. CLEC AGREEMENT ANALYSIS**[2]

11 **Q. MR. WOOD PRESENTS HIS ANALYSIS OF THE JOINT CLEC OFF-PRICE**
12 **LIST AGREEMENTS ON PAGES 30-41 OF HIS TESTIMONY AND ARGUES**
13 **THAT QCC WOULD NOT HAVE BEEN ABLE AND WILLING TO ENTER**
14 **INTO THESE SAME AGREEMENTS. PLEASE COMMENT.**

15 A. Mr. Wood lists several general categories of terms and conditions contained in the CLEC
16 off-price list agreements but states that he cannot identify specific terms associated with
17 specific contracts because the contracts are confidential. As a result he asks us to accept,
18 on faith, his unproduced analysis that these contracts contain elements that QCC would
19 have been unwilling or unable to accept. Fortunately the agreements at question were
20 filed as exhibits to my direct testimony and are a part of the record in this proceeding.

[2] Please note that, while Granite Telecommunications, Inc., PAETEC Communication, Inc., US LEC of Florida, LLC. and Windstream Nuvox, Inc. are still technically respondents in this case, QCC has entered into settlements in principle with these companies and is working to finalize settlement agreements. QCC anticipates filing a notice dismissing its complaint against these respondents once the written settlement agreements are final. As a result of these settlements, my rebuttal testimony does not include a discussion of these respondents' agreements, price lists or practices. Should the status of these settlements change as a result of any unforeseen circumstances, QCC reserves the right to supplement its testimony with that information and documentation.

1 As a result, it is possible to see the terms and conditions the off-price list agreements
2 actually contain. I have examined each of the joint CLEC agreements, with specific
3 attention to the categories of terms and conditions Mr. Wood suggests QCC would be
4 unwilling or unable to accept and will discuss each of the categories below.[3]

5 **Q. BEFORE EXAMINING THE AGREEMENTS IN DETAIL, DO YOU AGREE**
6 **WITH MR. WOOD'S ASSERTION THAT QCC HAS TO BE WILLING TO**
7 **ACCEPT EACH AND EVERY TERM IN THESE AGGREEMENTS IN ORDER**
8 **FOR PRICE DISCRIMINATION TO EXIST?**

9 A. No. Dr. Weisman's testimony will discuss this point in more detail, but I do not agree
10 that every term must be identical. If the contracting parties included terms or conditions
11 having nothing to do with switched access or which have no effect on the CLEC's cost of
12 providing switched access to the IXC, those terms are less relevant or entirely irrelevant
13 to the discrimination analysis. Not every distinction serves to render two customers
14 dissimilarly situated. Mr. Wood's reasoning would clearly allow a CLEC wishing to
15 discriminate to add terms and conditions which could only be met by one carrier to allow
16 it to offer discounted service to that carrier. For example, a requirement could be added
17 that the carrier be headquartered in New Jersey, a condition QCC could obviously not
18 meet. Such distinctions are clearly not the appropriate basis to determine if customers
19 are similarly situated. Having said that, the "additional commitments and obligations"
20 contained in the agreements are hardly as strenuous as Mr. Wood would have us believe.

21 **Q. WHAT IS THE FIRST CATEGORY OF AGREEMENTS MR. WOOD CITES?**

22 A. The first category includes agreements that contain volume and revenue commitments.
23 Of the remaining Joint CLEC agreements, only one contains volume and revenue

[3] At the time Mr. Wood filed his testimony there were 22 Joint CLEC agreements. Since that time, as noted in FN 2, a number of the Joint CLECs have reached settlement with QCC and, as a result, there are only 7 agreements related to the remaining Joint CLECs. (Broadwing, DeltaCom, Saturn and TWT).

1 commitments. [REDACTED] More importantly, a volume discount should only
2 be relevant to determining whether two customers are similarly situated in the case where
3 the cost of providing a service decreases as volume increases. There is no evidence in
4 this case that, in the provision of switched access, there is any marginal cost difference
5 between providing a particular IXC one minute of use or providing it 1000 minutes of
6 use. Dr. Weisman addresses this in more detail in his testimony but, put simply, there is
7 no cost savings associated with increased switched access volume sales and, therefore,
8 no basis for offering a volume-based discount for switched access services. Further,
9 because the vast majority of the agreements contain no volume or revenue commitments,
10 this is clearly a red herring. As the Colorado Commission found:

> 11 Further, we find most persuasive QCC's argument that none of the
> 12 unfiled off-tariff agreements ties the discount to the IXC to the purchase
> 13 of specific volumes of switched access service. To the contrary, all of
> 14 the unfiled agreements at issue in the instant proceeding grant the
> 15 discount in unlimited fashion, regardless of how much switched access a
> 16 favored IXC purchases. This alone is fatal to the claim that differences
> 17 in size or traffic volumes justify price differentiation in this case.[4]

18 **Q. WHAT IS MR. WOOD'S SECOND CATEGORY OF AGREEMENTS?**

19 A. Mr. Wood's second category includes agreements based on historic traffic levels and
20 future traffic projections. I did find one agreement [REDACTED] that stated that if the
21 IXC volumes exceeded a certain amount, the specified rates in the agreement applied.
22 However, the agreement was unclear as to what rates applied if the volume levels were
23 not exceeded. As was the case with the first category, from a CLEC's perspective there

[4] *Order Addressing Exceptions and Motion to Reopen the Record.* Public Utilities Commission of the State of Colorado. Decision No. C11-1216. October 17, 2011.

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1 is no cost savings related to a particular IXC maintaining or exceeding a specified
2 volume of traffic and therefore no basis for offering a discount based on specified
3 volumes.

4 **Q. WHAT IS MR. WOOD'S THIRD CATEGORY OF AGREEMENTS?**

5 A. Mr. Wood's third category includes agreements containing payments from CLEC to IXC
6 and from IXC to CLEC. I am unclear as to specifically what terms Mr. Wood's is
7 referring to in this category other than his statement that "the *quid pro quo* goes beyond
8 switched access services and includes other services and payments." Without knowing
9 what the specific terms are, it cannot be determined whether QCC would be willing to
10 agree to them. Regardless, to the extent that they include services beyond switched
11 access services they do not meet the threshold of being switched access cost based
12 distinctions and thus do not provide a basis for determining that QCC is not similarly
13 situated.

14 **Q. PLEASE DISCUSS MR. WOOD'S FOURTH CATEGORY OF AGREEMENTS.**

15 A. Mr. Wood's fourth category includes agreements with provisions concerning "network
16 integration." Mr. Wood cites the specific example of Direct End Office Trunk
17 requirements. Some of the remaining Joint CLEC agreements contain language related
18 to direct end office trunks. In every case, the requirements related to Direct End Office
19 Trunks were very general requirements such as:

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REDACTED

1 These requirements are clearly no more than would be expected from any IXC. As I
2 noted in my Direct Testimony it is in the best interest of any IXC to establish direct
3 trunks where volumes are such that it makes economic sense.

4 **Q. ARE THERE OTHER NETWORK REQUIREMENTS IN THE JOINT CLEC**
5 **AGREEMENTS?**

6 A. Perhaps, although that may be somewhat of an overstatement. There is a general
7 statement in one of the agreements **[BEGIN LAWYERS ONLY CONFIDENTIAL]**
8 **[END LAWYERS ONLY CONFIDENTIAL]** that:

9 **[BEGIN LAWYERS ONLY CONFIDENTIAL]**
10
11
12 **[END LAWYERS**
13 **ONLY CONFIDENTIAL]**

14 This language doesn't really place a specific or unusual burden on either company, and I
15 would expect that QCC would have agreed to such a broad principle had it been made
16 aware of the secret agreements.

17 **Q. WHAT IS MR. WOOD'S FIFTH CATEGORY OF AGREEMENTS?**

18 A. The fifth category concerns "bill and keep" provisions in several of the off-price list
19 agreements. Like Mr. Wood's other contract categories, the use of bill and keep for the
20 exchange of local traffic has nothing to do with the cost of providing switched access
21 service. Bill and keep is not a particularly unique term and condition when it comes to
22 compensation for the exchange of local traffic, with many interconnection agreements
23 specifying bill and keep. While Mr. Wood argues that the volumes of local traffic
24 generated by QCC's CLEC would have to match the local traffic of the preferred IXC in

REDACTED

1 order to be similarly situated, there is nothing in any of the agreements with bill and keep
2 provisions that requires traffic be in balance.

3 **Q. WHAT IS MR. WOOD'S SIXTH AND SEVENTH CATEGORIES OF**
4 **AGREEMENTS?**

5 A. The sixth and seventh categories concern agreements by the IXCs to settle outstanding
6 disputes and make some payment as part of the settlement. These two categories, like
7 the previous categories, have nothing to do with the cost of providing switched access.
8 Mr. Wood argues that, to be similarly situated, QCC would need to be in a position to
9 provide comparable value to the CLEC. Yet Mr. Wood obscures or overlooks the reason
10 why the contracting IXCs agreed to make payments. As QCC understands it, the
11 preferred IXCs had withheld payment to the CLECs due their belief that the CLECs'
12 switched access rates were excessively high. Thus, in the agreements, the IXCs were
13 presumably repaying only a portion of the withheld amounts. In contrast, QCC had paid
14 100% of the CLECs' invoices, notwithstanding the high rates being charged. . In other
15 words, QCC would have needed to refuse to pay the CLECs price list rates (just as the
16 preferred IXCs had) to be similarly situated. Mr. Wood's argument defies all logic and
17 reason, and cannot be squared with sound public policy.

18 **Q. ARE THERE OTHER REASONS TO BELIEVE THE CONTRACTS ARE JUST**
19 **A VEHICLE TO OFFER THE PREFERRED IXCS LOWER SWITCHED**
20 **ACCESS RATES AND NOT THE TRADE OFF OF COMMITMENTS AND**
21 **OBLIGATIONS THAT MR. WOOD CLAIMS?**

22 A. Yes. These last two categories perhaps best illustrate the flaw in Mr. Wood's reasoning
23 that it was only by meeting the other requirements (no matter how tenuous) in the
24 agreement that the favored IXCs were able to avail themselves of the lower switched

1 access rates. According to Mr. Wood, the preferred IXCs were able to artificially create
2 value to the CLECs by withholding payment and, as a result, were rewarded with lower
3 switched access rates. This argument ultimately leads to the conclusion that the reason
4 QCC is not similarly situated is because it paid its switched access bills, unlike the
5 preferred IXCs. This makes no sense from an economics perspective and, from a public
6 policy perspective, penalizes IXCs, like QCC, which pay their bills while rewarding
7 those who don't.

8 **Q. DO YOU HAVE A FINAL COMMENT ON MR. WOOD'S POSITION THAT**
9 **THE FAVORABLE RATE TREATMENT IS INEXTRICABLY LINKED TO**
10 **ADDITIONAL COMMITMENTS AND OBLIGATIONS UNDERTAKEN BY**
11 **THE IXC?**

12 A. Yes. Mr. Wood's position is undermined by the fact that several of the agreements grant
13 the preferred IXC **[BEGIN LAWYERS ONLY CONFIDENTIAL]**
14
15
16 **[END LAWYERS ONLY CONFIDENTIAL]** While
17 Mr. Wood would have the Commission believe that each agreement was carefully
18 negotiated and crafted to include a delicately balanced exchange of benefits, this
19 suggestion is undermined by the provision. That provision makes
20 clear that there is no real linkage between the switched access rate benefitting the
21 preferred IXC (e.g. AT&T) and the other specific terms of that agreement.
22
23

REDACTED

1 **D. QCC CLEC AGREEMENTS**

2 **Q. MR. WOOD ARGUES THAT QCC HAS ENTERED INTO OFF-PRICE LIST**
3 **AGREEMENTS MUCH LIKE THE AGREEMENTS THAT ARE THE SUBJECT**
4 **OF THIS PROCEEDING (WOOD DIRECT TESTIMONY AT PAGES 56-59).**
5 **PLEASE DESCRIBE THE AGREEMENTS MR. WOOD REFERS TO.**

6 A. **[BEGIN LAWYERS ONLY CONFIDENTIAL]**
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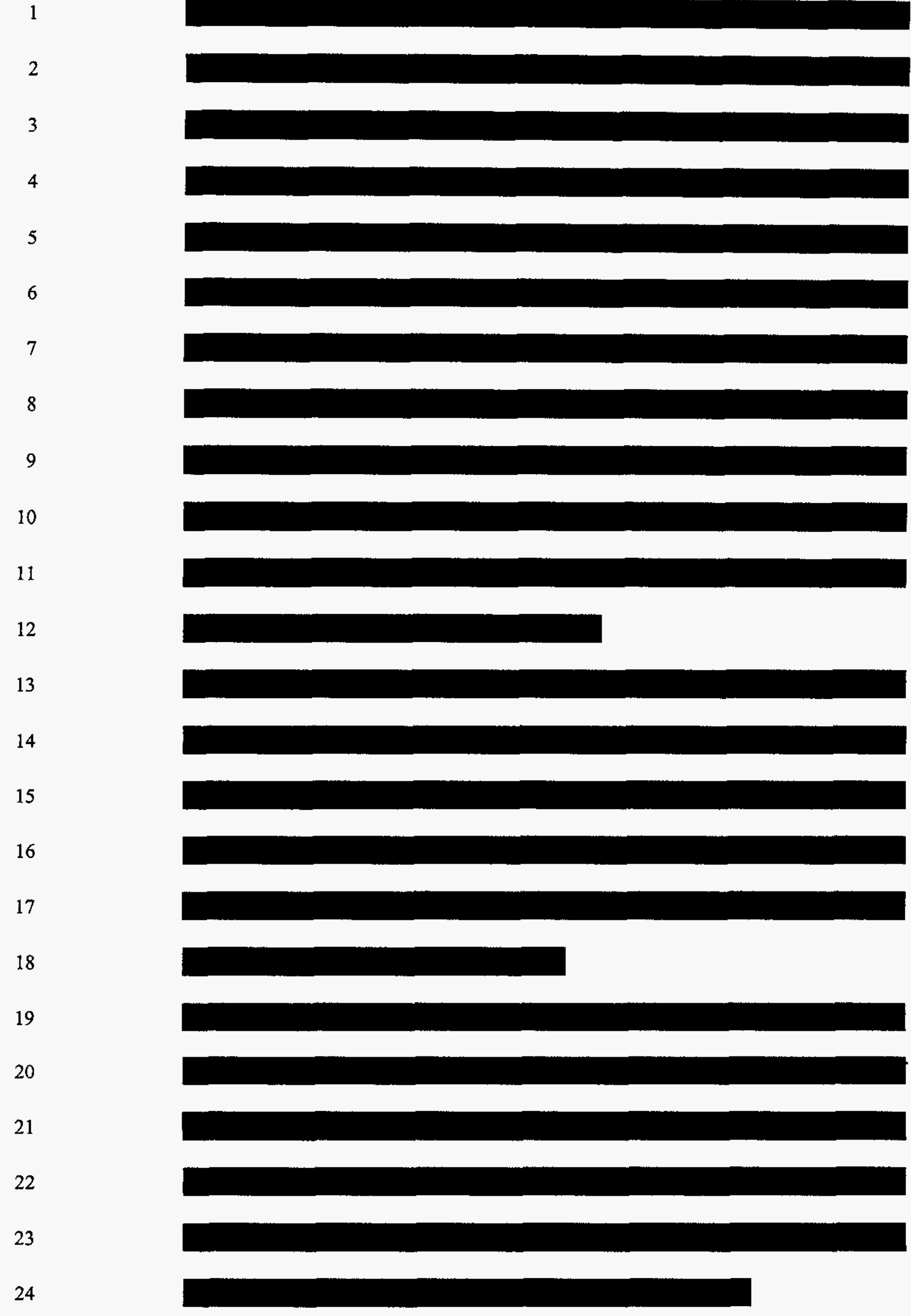

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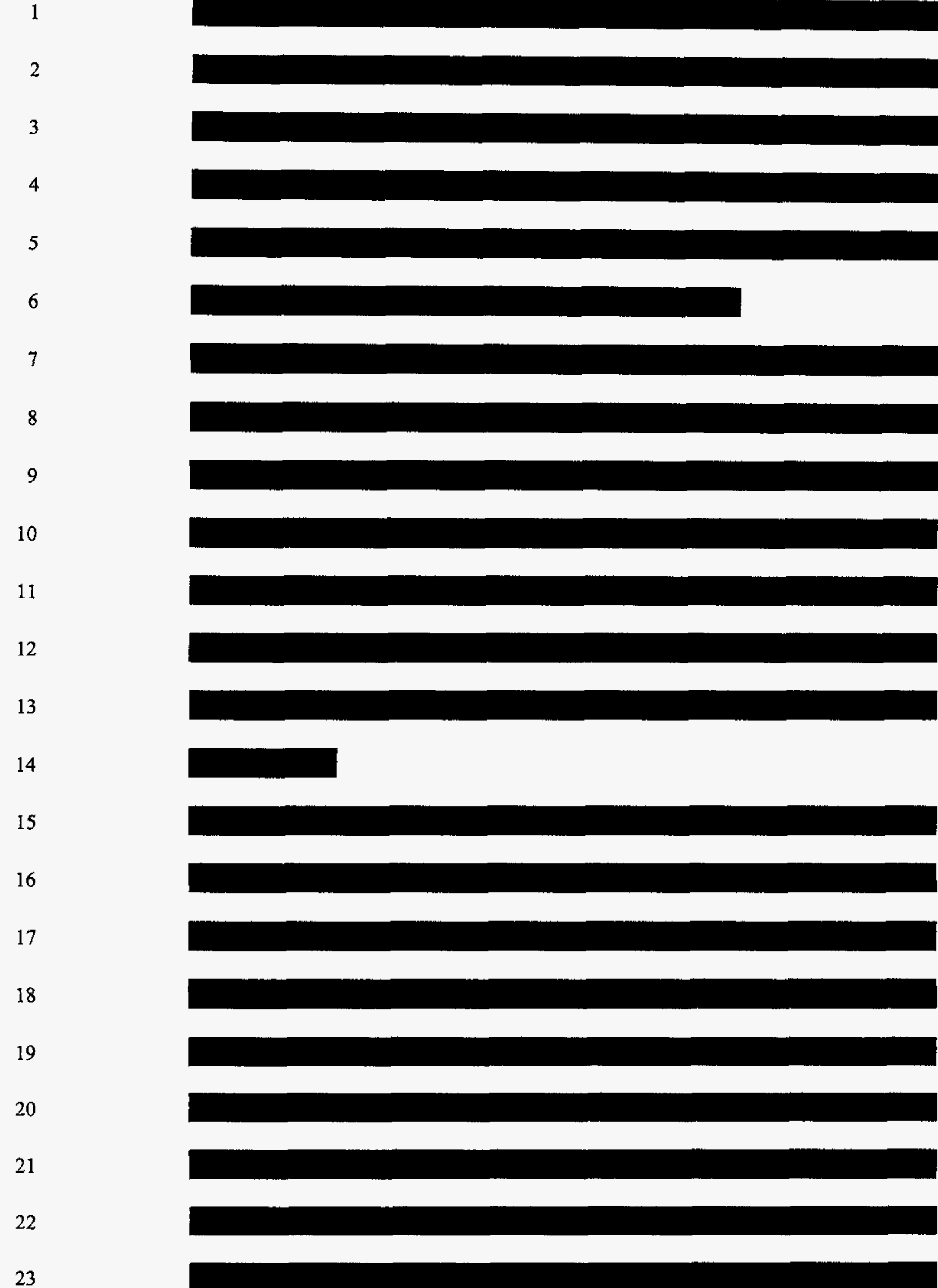

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3 **Q. WERE THE CPLA AGREEMENTS CONCEPTUALLY DIFFERENT THAN THE**
4 **AGREEMENTS THE CLECS HAD WITH THE PREFERRED IXCS?**

5 A. Yes. First, the CPLA agreement (which related to QCC's provision of unregulated
6 wholesale long distance services) and the secret CLEC agreements (which related to the
7 CLEC's provision of regulated intrastate switched access services) are entirely different
8 types of agreements. Also, the intent, and result, of the CPLA language was not to
9 advantage one wholesale customer over another, but to accommodate a CLEC's
10 supposed inability to bill for switched access. Unlike the secret switched access
11 agreements at issue in this case, the CPLA arrangement was designed to have neutral
12 economic effect on the contracting parties. It was intended to offset lower wholesale
13 long distance charges against switched access charges that were owed but allegedly
14 couldn't be assessed. To the contrary, the secret switched access agreements were
15 intended to benefit the IXC without any corresponding offset (aside from ensuring
16 collectibles for the CLEC) benefiting the CLEC.

17 **Q. WAS CPLA TAKEN INTO ACCOUNT IN MR. CANFIELD'S**
18 **CALCULATIONS?**

19 A. Yes. If a respondent CLEC actually waived some or all of its intrastate Florida switched
20 access charges, the minutes and charges associated with such waiver would not be
21 included in Mr. Canfield's calculations, as the calculations are based on actual billing
22 records.

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1 **E. OTHER ISSUES**

2 **Q. MR. WOOD ARGUES THAT QCC, UNLIKE SOME OTHER IXCS, DID NOT**
3 **NEGOTIATE SIMILAR AGREEMENTS WITH FLORIDA CLECS, IMPLYING**
4 **THAT IT WAS QCC'S FAULT THAT IT WAS DISCRIMINATED AGAINST**
5 **(WOOD DIRECT TESTIMONY AT PAGE 6). PLEASE COMMENT.**

6 A. This argument flips the non-discrimination obligation under Florida law on its head by
7 attempting to place the burden of avoiding rate discrimination on the customer (QCC)
8 rather than on the company that owns the non-discrimination obligation. While the
9 CLECs may claim that QCC was free to negotiate for better access rates at any time, this
10 argument is misleading and pre-supposes that the CLECs would have agreed to provide
11 the QCC the lower rates. QCC has the right to conduct its business with the
12 understanding that other carriers, including its suppliers, are acting in compliance with
13 the law and are not giving preferential treatment to QCC's competitors. QCC had no
14 reason to expect that off-tariff rates were actually available or that such requests would
15 be honored. Buyers of switched access can reasonably expect they are being charged the
16 best available rates based on public filings. Due to the secret nature of the off-price list
17 agreements, QCC had no way of knowing which CLEC was providing off-price list rates
18 in Florida. This is especially true in light of the fact that several of the Respondent
19 CLECs have price list provisions that expressly guarantee non-discriminatory treatment
20 to all customers in the event the CLEC offers service via an off-tariff contract.[5] Placing
21 the burden on the Respondent CLECs to prevent discrimination, as Florida law clearly
22 does, is wise policy. Otherwise, QCC and other IXCs would have to constantly
23 communicate with over 700 CLECs nationwide to determine if off-tariff rates are

[5] This is true of Respondents: Budget Prepay, Inc., BullsEye Telecom, Inc., Navigator Telecommunications, LLC and TW Telecom of Florida, L.P.

1 available or if they had already offered such arrangements to others. Secondly, it would
2 require the CLECs to respond openly and honestly. And, if the overture for an off-tariff
3 agreement were rejected, there would be no recourse. Finally, the undisputed facts in
4 this case belie the disingenuous argument that QCC could simply have requested lower
5 access rates at any time. As described in the Direct Testimony of Lisa Hensley Eckert,
6 QCC did make significant attempts to query CLECs about the existence of off-tariff
7 access agreements and the possibility of obtaining lower switched access rates. These
8 requests were generally ignored.[6]

9 **Q. DO YOU AGREE WITH MR. WOOD'S FOOTNOTE ON PAGE 8 OF HIS**
10 **TESTIMONY THAT ASSERTS THAT IXCS ARE NOT REQUIRED TO USE**
11 **THE NETWORK FACILITIES OF UNAFFILIATED LECS TO COMPLETE**
12 **CALLS?**

13 A. No. As I noted in my Direct Testimony, switched access has long been considered a
14 bottleneck service. First and foremost, there is no other way for an IXC to reach an end
15 user local customer for long distance call but through the switch of the local carrier who
16 provides local services to the end user.[7] Both the FCC and state commissions have
17 repeatedly acknowledged that LECs, CLECs and ILECs alike, have monopoly power
18 over the bottleneck access to the end user.

19 **Q. MR. WOOD DISCUSSES HIS INTERPRETATION OF THE FLORIDA**
20 **STATUTES THAT QCC RELIES ON IN ITS COMPLAINT (WOOD DIRECT**
21 **TESTIMONY AT PAGES 17-30). PLEASE COMMENT.**

22 A. I am not a lawyer, nor it should be noted is Mr. Wood. I will leave it to QCC's lawyers
23 to brief the issues related to the legal interpretation of the statutes.

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[6] Direct Testimony of Lisa Hensley Eckert at pages 8-9.
[7] This excludes special access, which I discuss in my Direct Testimony and which is not relevant here.

1 **IV. VERIZON TESTIMONY**

2 **Q. WHICH ISSUES RAISED IN MR. REYNOLDS' TESTIMONY WILL YOU BE**
3 **ADDRESSING?**

4 A. I will address Mr. Reynolds' testimony regarding QCC's obligation to object to the
5 global MCI-AT&T bankruptcy settlement agreement[8] that, in part, included the off-price
6 list intrastate switched access services agreement at issue in this case, and his argument
7 that, by not objecting to that settlement agreement in bankruptcy court, QCC somehow
8 waived its rights with respect to the issues raised in this case. I also address Mr.
9 Reynolds' argument that the MCI-AT&T intrastate switched access agreement was
10 "reciprocal" and, therefore, it didn't really matter that the intrastate switched access rates
11 charged by MCI under that agreement did not comply with its tariffs and were never
12 made available to other IXCs.

13 **A. MCI BANKRUPTCY**

14 **Q. MR. REYNOLDS DESCRIBES THE BACKGROUND AND NEGOTIATION OF**
15 **THE MCI-AT&T SWITCHED ACCESS AGREEMENT IN THE CONTEXT OF**
16 **THE WORLDCOM BANKRUPTCY PROCEEDINGS BEGINNING ON PAGE 9**
17 **OF HIS TESTIMONY. IS QCC CHALLENGING THE BANKRUPTCY**
18 **COURT'S APPROVAL OF THE WORLDCOM-AT&T SETTLEMENT?**

19 A. No, not at all. MCI was free to settle its bankruptcy claims with AT&T subject to
20 Bankruptcy Court approval. QCC is not calling into question MCI's ability to enter an
21 off-tariff access agreement. QCC does, however, assert that MCI violated Florida law by
22 failing to take steps to make the terms of the agreement available to other IXCs,

[8] On July 21, 2002 WorldCom, Inc., and most of its domestic subsidiaries, including MCImetro, (collectively, "WorldCom") initiated proceedings under the United States Bankruptcy Code, WorldCom, Inc., United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 02-13533 (AJG), filed on July 21, 2002 ("WorldCom Bankruptcy Case").

1 including QCC, once it was signed and approved by the Bankruptcy Court.

2 **Q. MR. REYNOLDS ALLEGES THAT BY VIRTUE OF BEING A PARTY TO THE**
3 **WORLDCOM BANKRUPTCY CASE, QCC HAD NOTICE OF THE TERMS OF**
4 **THE MCI-AT&T ACCESS AGREEMENT BECAUSE THE AGREEMENT WAS**
5 **FILED WITH THE BANKRUPTCY COURT (REYNOLDS DIRECT**
6 **TESTIMONY AT PAGES 14-16). DO YOU AGREE?**

7 A. No. Mr. Reynolds asserts that QCC had notice of the MCI-AT&T access agreement by
8 virtue of being a party in the WorldCom Bankruptcy Case. This is incorrect. First, the
9 switched access agreement was filed under seal. Regardless of whether WorldCom's
10 bankruptcy counsel served the motion for approval of the WorldCom-AT&T settlement
11 on QCC's bankruptcy counsel, QCC was not aware of the contents of the confidential
12 switched access agreements referenced briefly therein. Furthermore, the Bankruptcy
13 Court's approval of the MCI-AT&T settlement agreement (which happened to include
14 the MCI-AT&T access agreement at issue here) did not excuse MCI from complying
15 with Florida law, although that is a matter left best for counsel to brief. Some context is
16 necessary. As explained in more detail below, the MCI-AT&T access agreement at issue
17 here was a small part of a much larger global MCI-AT&T settlement agreement
18 addressing a myriad of issues and claims. Mr. Reynolds' assertion that, by virtue of the
19 global MCI-AT&T settlement, QCC had notice of the intrastate switched access
20 agreement in dispute here, is flawed as demonstrated, at least in part, by his own
21 exhibits. First and foremost, the global MCI-AT&T settlement agreement was, and is,
22 sealed and confidential. QCC did not have access to the global settlement agreement
23 (nor the "reciprocal" switched access agreements that were adjuncts to the global
24 settlement agreement) at the time it was filed. In making the claim that QCC was or

1 should have been aware of the off-tariff MCI-AT&T intrastate switched access
2 agreement based on the larger confidential global settlement agreement in which it was
3 buried, Mr. Reynolds apparently relies upon one sentence on page 7 in the *motion*
4 *seeking approval* of the global MCI-AT&T settlement agreement which states "The
5 Debtors and AT&T will enter into new 2-year bilateral switched access contracts (the
6 "2004 Contracts") which will become effective as of January 27, 2004."[9] Before I
7 address further the extent to which MCI relies on this one cryptic sentence, I first want to
8 provide some perspective on the WorldCom Bankruptcy Case itself.

9 **Q. PLEASE DESCRIBE THE WORLDCOM BANKRUPTCY PROCEEDING.**

10 A. The WorldCom Bankruptcy Case was an extremely large and complex proceeding. I
11 have reviewed the index to the electronic database used and relied upon by the United
12 States Bankruptcy Court. According to the electronic index, WorldCom was represented
13 by as many as 50 lawyers affiliated with 16 different law firms. The Voluntary Petition
14 itself listed more than 150 affiliated debtors and estimated more than 1000 creditors.
15 The petition identified WorldCom assets of $107 billion and WorldCom debts of $41
16 billion. I cannot tell how many parties actually participated in the case, but, according to
17 the electronic index, more than 40 parties had entered a notice of appearance within three
18 days of the filing of the Voluntary Petition. During the date range July 21, 2002 through
19 December 30, 2004, the docket index runs (as printed) almost 2,000 pages and lists
20 15,055 discrete entries, i.e., pleadings, notices orders or other documents filed with or
21 issued by the Court. During the same date range, there were at least 75 filed motions
22 relating to proposed agreements of settlement and compromise. There are 284 docket
23 entries for the period between February 1, 2004 and February 28, 2004, the month the

[9] See Exhibit PHR-1, page 7.

1 motion seeking approval of the MCI-AT&T global settlement agreement was filed.
2 During that same time period, WorldCom filed 17 separate motions including 5 summary
3 judgment motions. Contemporary media accounts identified the WorldCom bankruptcy
4 case as the largest in United States history at the time it was filed.[10]

5 **Q. IS QCC ARGUING THAT THE COMPLEXITY OF THE WORLDCOM**
6 **BANKRUPTCY CASE IS THE REASON THAT QCC DID NOT HAVE NOTICE**
7 **OF THE DISCRIMINATORY MCI-AT&T ACCESS AGREEMENT INCLUDED**
8 **AS PART OF THE GLOBAL SETTLEMENT AGREEMENT BETWEEN THOSE**
9 **PARTIES?**

10 A. No. But it is important to have an understanding of the size and scope of the bankruptcy
11 proceedings in evaluating the one vague sentence in the single pleading that MCI claims
12 gives rise to QCC's constructive notice of the MCI-AT&T off-tariff access agreement at
13 issue in this case. Even the MCI attorney in a parallel proceeding in California stated:

14 We provided discovery response to Qwest as to -- based on our best
15 recollection why that agreement was not filed with the [California]
16 Commission. The reason, in summary, is that when a company goes
17 into bankruptcy, the bankruptcy lawyers take over. And things get filed
18 with the court, agreements get made. I mean in the WorldCom
19 bankruptcy, I think there were over a thousand creditors lined up at the
20 door. So when this agreement was approved by the bankruptcy court,
21 for whatever reason, the people at Verizon – it wasn't even Verizon

[10] The WorldCom bankruptcy was just one of many large telecom bankruptcies pending at the time. Between 2002 and 2004, there were at least 60 telecom bankruptcies, including cases involving Adelphia, Genuity, Global Crossing, Touch America, Cable & Wireless and Winstar.

1 Business at the time, former MCImetro -- didn't think to forward it to
2 the regulatory people to have it filed with the Commission."[11]
3 QCC did not employ an army of lawyers to review and monitor each and every filing in
4 the WorldCom Bankruptcy Case. QCC and its affiliate Qwest Corporation logically and
5 necessarily focused their resources on settling their own claims with WorldCom/MCI
6 and the other bankrupt telecom companies. QCC did not direct its resources to
7 reviewing, investigating and challenging the myriad of settlements between the debtor
8 carriers and other creditors. QCC cannot be presumed to be aware of the existence (or
9 especially the details) of the AT&T-WorldCom settlement, even if WorldCom's
10 bankruptcy counsel served a motion (among the scores of others) on QCC's bankruptcy
11 counsel.

12 **Q. YOU INDICATED THAT THE MOTION SEEKING APPROVAL OF THE**
13 **GLOBAL MCI-AT&T SETTLEMENT AGREEMENT WAS VAGUE AS TO THE**
14 **EXISTENCE OF AN OFF-TARIFF INTRASTATE ACCESS AGREEMENT.**
15 **CAN YOU PLEASE ELABORATE?**

16 A. Yes. First, as noted above, the settlement agreement itself was not a part of the motion
17 requesting its approval and was filed under seal. MCI filed the global settlement
18 agreement under seal presumably because many of the parties to the case were
19 competitors of MCI (e.g., local telephone companies like Verizon and Qwest
20 Corporation competing for local telecom business and long distance carriers like QCC
21 and AT&T competing for long-distance business) and all of these parties were very
22 protective of their competitive information. Mr. Reynolds on page 11 of his testimony
23 acknowledges that the Settlement Agreement is a confidential document. In fact, even

[11] Transcript from Prehearing Conference in the Qwest Communications, LLC Complaint, Case 08-08-006, San Francisco, California, July 29, 2009. Rudy Reyes for MCImetro (also known as Verizon business), page 49, lines 11-15.

1 now in this docket MCI continues to assert the confidentiality of its global settlement
2 agreement with AT&T and the "reciprocal" switched access agreements themselves.
3 The point to be made is that the MCI-AT&T settlement agreement, of which QCC
4 allegedly had notice simply by virtue of its status as a party to the WorldCom
5 Bankruptcy Case, was filed confidentially and under seal. QCC did not have access to
6 the MCI-AT&T settlement agreement and never saw it in the context of the WorldCom
7 Bankruptcy Case.

8 **Q. DOES MCI DISPUTE THAT THE MCI-AT&T SETTLEMENT AGREEMENT**
9 **WAS FILED UNDER SEAL?**

10 A. No. Mr. Reynolds acknowledges that the Settlement Agreement itself was not available
11 to QCC. MCI contends however that most of the key provisions of the MCI-AT&T
12 settlement, including the off-tariff intrastate switched access agreement at issue here,
13 were disclosed in the motion seeking approval of the settlement (Reynolds at page 11).

14 **Q. DO YOU AGREE THAT THE KEY PROVISIONS OF THE SETTLEMENT**
15 **AGREEMENT ITSELF WERE DISCLOSED IN THE MOTION?**

16 A. No. The motion itself (Exhibit PHR-1, page 7) simply states the parties are entering into
17 new bilateral switched access contracts. Nothing in the motion would give a reasonable
18 reader any indication that this global settlement agreement included an off-price list
19 intrastate switched access component effective in Florida. Nothing in the motion would
20 put a third party on notice that MCI intended to establish below-price list intrastate rates
21 available only to AT&T and to no other IXCs. In short, the innocuous statement buried
22 in the single-spaced text on page 7 of the motion (1 of 17 filed that month) that the
23 parties were agreeing to "a two year bi-lateral switched access contract" is so general and
24 so vague as to have no reasonable meaning, even had QCC a reason to scrutinize this

1 particular needle in the haystack that was the WorldCom Bankruptcy Case.

2 **Q. ARE THERE ANY OTHER REASONS THAT QCC WOULD NOT HAVE BEEN**
3 **PUT ON NOTICE OF THE OFF-PRICE LIST INTRASTATE ACCESS**
4 **AGREEMENT BY THE LANGUAGE IN THE MOTION REQUESTING**
5 **APPROVAL OF THE GLOBAL MCI-AT&T AGREEMENT?**

6 A. Yes. Mr. Reynolds states on page 12 of his testimony that by entering the agreement the
7 companies' CLEC affiliates agreed to charge the other companies IXC affiliates "a
8 single, uniform rate for switched access service provided anywhere in the country the
9 CLEC offered local exchange service." Mr. Reynolds makes that clarification now.
10 However, no such statement is contained in the motion requesting approval of the global
11 settlement agreement. In fact, a fair reading of the motion to approve the global
12 settlement would lead the reader to assume the settlement was much narrower than that
13 and that the parties were addressing access issues only as related to "UNE-P services."

14 **Q. WHAT IS UNE-P AND WHAT WERE THE DISPUTES ASSOCIATED WITH**
15 **UNE-P?**

16 A. Without providing unnecessary detail, UNE-P was an attempt to re-brand a resale
17 product to create an unbundled network element in order for the CLEC to charge IXCs
18 switched access on "their" network facilities. The FCC ultimately determined that
19 switching need not be provided as a UNE and thus that UNE-P need not be provided as a
20 UNE.[12] UNE-P switched access issues would be a narrow and specialized subset of
21 access issues generally. UNE-P has little or nothing to do with this case, although I do
22 mention it above in the context of **[BEGIN LAWYERS ONLY CONFIDENTIAL]**

[12] On February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act.

1 ▇▇▇▇ [END LAWYERS ONLY CONFIDENTIAL]

2 **Q. WHY WOULD A REASONABLE READING OF THE MOTION TO APPROVE**
3 **THE GLOBAL MCI-AT&T SETTLEMENT LEAD ONE TO ASSUME THE**
4 **SENTENCE MR. REYNOLDS CITES DEALS ONLY WITH UNE-P?**

5 A. Paragraph 8 of the motion states that the parties were seeking "to resolve the foregoing
6 disputes, including the UNE-P dispute, the Virginia Action, the Contempt Motion, the
7 claims arising from the Executory Contracts, and the potential preference action" and
8 then lists 8 sub-paragraphs lettered (a) thru (h) describing the settlement.[13] Buried as the
9 third bullet point in the section addressing UNE-P disputes is the reference to the
10 "bilateral switched access contracts" relied upon by MCI for its notice theory in this case.
11 The structure of the motion could certainly cause a reasonable reader to assume that the
12 disputes settled in the sealed agreement filed with the motion related solely to UNE-P
13 issues.

14 **Q. IS THE FACT THAT QCC DID NOT OBJECT TO THE MCI-AT&T GLOBAL**
15 **SETTLEMENT AGREEMENT IN THE WORLDCOM BANKRUPTCY CASE**
16 **RELEVANT HERE?**

17 A. No. As noted above, QCC had no reason to pay particular attention to the MCI-AT&T
18 global settlement in the context of the WorldCom Bankruptcy Case, and is certainly not
19 asking the Commission to unwind the Bankruptcy Court's approval. More to the point,
20 QCC does not object to the settlement itself; it objects to MCI's subsequent failure to
21 comply with Florida law once the agreement was approved. The fact remains that
22 MCImetro did not comply with its regulatory obligations under Florida law to make the
23 terms available to other IXCs, including QCC. It could have easily done so by lowering

[13] Exhibit PHR-1, Section 8(h).

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1 its price list switched access rates or by offering a similar switched access agreement to
2 other IXCs, including QCC. It did neither. Under these circumstances, the fact that
3 QCC did not object to the MCI-AT&T global settlement (or any part thereof) in the
4 WorldCom Bankruptcy Case is wholly irrelevant.

5 **Q. WHY DOES YOUR TESTIMONY INCLUDE SO MUCH DETAIL ABOUT THIS**
6 **ISSUE AND THE ONE SENTENCE IN THE MOTION SEEKING APPROVAL**
7 **OF THE MCI-AT&T GLOBAL SETTLEMENT AGREEMENT?**

8 A. Because of MCI's extraordinary emphasis on this issue. MCI seems to rest its defense
9 largely on whether QCC was aware of the agreement when it was put before the
10 Bankruptcy Court for approval. For all the reasons I've given, MCI's arguments based
11 on this theory should be rejected.

12 **Q. WAS IT QCC'S RESPONSIBILITY TO SEEK OUT THE REDUCED OFF-**
13 **TARIFF INTRASTATE ACCESS RATES THAT MCI PROVIDED TO AT&T**
14 **UNDER THE MCI-AT&T ACCESS AGREEMENT?**

15 A. No. MCI attempts improperly to put the burden on QCC, the customer, and takes no
16 responsibility for its failure to offer the same more favorable terms and conditions to
17 QCC. On page 37 of his testimony Mr. Reynolds states that QCC never made any
18 inquiries related to the MCI-AT&T switched access agreement and implies that QCC
19 should have done so. This improperly places the burden on QCC as the customer to seek
20 out equal, non-discriminatory treatment. MCI should have applied the lower switched
21 access rates it offered to AT&T to QCC and other IXCs or, at least, offered to do so at
22 the time the off-tariff deal was approved. MCI failed to do that.

1 **B. RECIPROCITY**

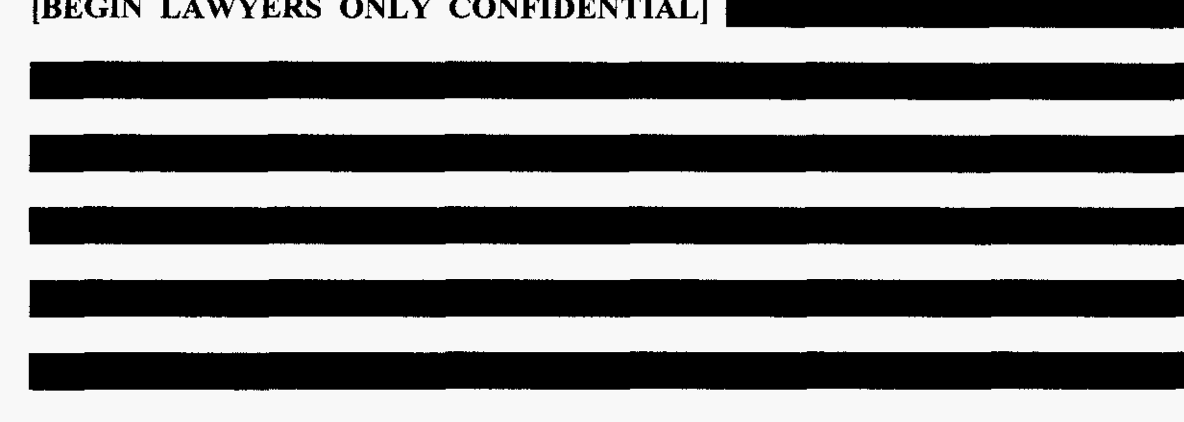
2 **Q. ON PAGE 12 OF HIS TESTIMONY MR. REYNOLDS DESCRIBES THE**
3 **BILATERAL AND "RECIPROCAL" NATURE OF THE AGREEMENT WITH**
4 **AT&T. PLEASE RESPOND.**

5 A. Mr. Reynolds appears to argue that the MCI-AT&T off-tariff agreement was unique and
6 that no IXC other than AT&T could have "qualified" for this arrangement. For example,
7 he states on page 23 of this testimony that QCC could not offer switched access to
8 MCImetro and therefore could not have entered into the agreement MCImetro had with
9 AT&T. There are several problems with this argument. First, there is nothing in the
10 MCI-AT&T agreement itself that supports Mr. Reynolds argument that the parties
11 exchange roughly the same amount of traffic. There is nothing in the agreement that ties
12 either party to a particular number of minutes or a particular volume. Nothing in the
13 agreement requires the parties to have similar sized local business and nothing in the
14 agreement, if other parties were permitted to opt into it, would have imposed the kinds of
15 new conditions that Mr. Reynolds now outlines in his testimony. In other words, all of
16 these justifications for not offering QCC the favorable terms, and setting aside whether
17 they are valid in any event, appear to be *post-hoc* in nature.

18 **Q. WERE THE MCI AND AT&T AGREEMENTS TRULY RECIPROCAL?**

19 A. No. This argument must be exposed for the myth that it is. Turning to the facts, the
20 historical switched access rates of the AT&T and MCI CLECs are revealing.
21 AT&T/TCG has historically kept its switched access rates at very low levels, consistent
22 with its advocacy that state rates should mirror the FCC rules and, therefore, CLEC rates
23 should not exceed Regional Bell Operating Company or "RBOC" benchmark rates. On
24 the other hand, MCI had historically higher switched access rates in a number of states.

1 Therefore, any agreement by AT&T to lower its access rates to a common rate was not
2 much of a compromise. On the other hand, an MCI agreement to lower its access rates
3 to the same rate was far more significant. Thus, from this uneven starting point, the
4 MCI-AT&T agreement was not truly reciprocal in any balanced sense, contrary to
5 Mr. Reynolds' assertion. As I discussed in my Direct Testimony, there is nothing truly
6 reciprocal about the MCI AT&T agreements.
7 **[BEGIN LAWYERS ONLY CONFIDENTIAL]**



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13 **[END LAWYERS ONLY CONFIDENTIAL]**

14 **Q. COULD QCC HAVE ENTERED INTO A "RECIPROCAL" AGREEMENT**
15 **WITH MCI TO PROVIDE SWITCHED ACCESS SERVICES?**

16 A. Certainly. As I noted in my Direct Testimony, although QCC did not provide switched
17 access between the years 2004 and 2007, QCC was certificated to provide local
18 exchange service in nearly every state (including Florida) during that period. The
19 availability of discounted switched access rates would certainly be a relevant factor in
20 any decision regarding the offering of switched access services. Because MCI did not
21 make the AT&T terms available to QCC, QCC was deprived of the opportunity to
22 consider whether to offer switched access (assuming that was even a legitimate
23 prerequisite for the discount afforded by MCI to AT&T) and the potential benefits such
24 an offering may have brought.

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1 **Q. DID THE ADMINISTRATIVE LAW JUDGE ("ALJ") IN THE PARALLEL**
2 **COLORADO PROCEEDING RECENTLY EXAMINE THE SAME**
3 **RECIPROCITY DEFENSE THAT MCI HAS RAISED IN THIS PROCEEDING?**
4 A. Yes. On June 21, 2012, the Colorado ALJ issued a recommended decision, which
5 focused in large part on MCI's reciprocity defense. The ALJ rejected the reciprocity
6 defense and found that MCI had unlawfully discriminated against QCC. In his ruling
7 the ALJ stated the following:

8 27. Without regard to implementation, the thrust of MCImetro's
9 second theory is that QCC was not similarly situated to AT&T because
10 QCC could not undertake the reciprocal arrangement. Aside from
11 failing to filing with the Commission, the attempt to distinguish
12 customers by a combination of access with other tariff and off-tariff
13 contract provisions was previously rejected. The substance of access
14 agreements must prevail over form and access services cannot be
15 obscured or obviated by inclusion with other terms. Creativity of those
16 contracting for access, as segregated consistent with § 40-15-105,
17 C.R.S., cannot change the access service provided nor the unlawful
18 pricing thereof.

19 28. Illustratively, the agreement between MCI and AT&T applies
20 switched access service regardless of delivery method. However, if the
21 parties had negotiated a commercial agreement to limit charges to a
22 unique negotiated methodology using traditional means plus delivery of
23 a peppercorn, or perhaps a unique billing requirement (*e.g.*, use of
24 controlled proprietary applications), they would forever prohibit any

1 competitor from being similarly situated, obviating requirements of
2 Colorado law.
3 33. For MCI to condition pricing or availability of intrastate access
4 service upon reciprocation of service alone would directly contravene
5 the limitations of § 40-15-105(1), C.R.S.[14] An IXC requiring intrastate
6 access service to terminate a call is totally independent of the reciprocal
7 provision of access service. Such an IXC requiring access need not have
8 any ability to provide access services. For MCI to lower the rate for
9 access service only for those able to provide reciprocal service directly
10 contravenes Colorado law.[15]

11 **C. OTHER ISSUES**

12 **Q. ON PAGE 40 OF HIS TESTIMONY MR. REYNOLDS ARGUES THAT QCC DID**
13 **NOT FOLLOW THE DISPUTE PROVISIONS IN MCIMETRO'S PRICE LIST.**
14 **PLEASE COMMENT.**

15 A. Mr. Reynolds' argument appears to be that the appropriate venue for QCC to address
16 MCI's discriminatory pricing was through the price list dispute process. This argument
17 assumes that QCC was aware of the discriminatory pricing. As Ms. Hensley Eckert
18 made clear in her direct testimony, QCC's awareness came about through confidential
19 documents received in Minnesota litigation. As a result, QCC was precluded from using

[14] § 40-15-105(1), C.R.S.: 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. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

[15] *Recommended Decision of Administrative Law Judge G. Harris Adams on Remand.* Public Utilities Commission of the State of Colorado. Decision No. R12-0685. June 21, 2012.

1 the knowledge of the agreements outside of the Minnesota litigation. Clearly if MCI's
2 preference had been to handle this matter through company to company negotiations, as
3 opposed to the current litigation, it was free at any time to offer the more favorable
4 switched access rates to QCC. Further, MCI's argument seems to suggest that a
5 regulated company (here, MCI) can limit this Commission's authority and obligation to
6 enforce Florida statutes and resolve disputes by the unilateral inclusion of a dispute
7 resolution provision in its price list. While I defer to counsel to brief the appropriateness
8 of MCI's suggestion, principles of public policy do not support limiting the
9 Commission's authority as MCI suggests.

10 **V. SUMMARY/CONCLUSION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

12 A. The major thrust of both Mr. Wood's and Mr. Reynolds' testimony is that QCC is not
13 similarly situated to the preferred CLECs. However, both fail to address or identify any
14 cost based distinctions between QCC and the IXCs they favored with the secret switched
15 access agreements. Neither offers any evidence that there was any such cost basis for the
16 rate discrimination. In Mr. Wood's testimony he argues that QCC must be willing and
17 able to accept each and every term in the preferred IXC agreement in order to be
18 "similarly situated" for purposes of a rate discrimination analysis. Yet clearly not every
19 distinction serves to render two customers dissimilarly situated and the agreements
20 "additional commitments and obligations" cited by Mr. Wood appear to be merely an
21 after the fact justification for the discriminatory rate treatment. Mr. Reynolds' arguments
22 that QCC was not similarly situated to MCI are equally unconvincing. Mr. Reynolds'
23 claim that the AT&T agreements with MCI were reciprocal is belied by the fact that the
24 agreements resulted **[BEGIN LAWYERS ONLY CONFIDENTIAL]**

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2 **[END LAWYERS ONLY CONFIDENTIAL]** Ultimately, the testimony of

3 both the Joint CLECs and MCI fail to offer a credible and legal justification for the

4 discriminatory behavior engaged in by the respondent CLECs and must be rejected.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 A. Yes, it does.

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