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October 23, 2012

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COMMISSION CLERK

**VIA HAND DELIVERY**

Ms. Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

REDACTED

**Re: Docket No. 090538-TP - Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BULLSEYE TELECOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., NAVIGATOR TELECOMMUNICATIONS, LLC, AND JOHN DOES 1 THROUGH 50, for unlawful discrimination**

Dear Ms. Cole:

Enclosed is Qwest Communications Company, LLC, d/b/a CenturyLink QCC's Testimony Errata Sheet Reflecting Dismissals as well as the revised Testimony of William Easton, Dennis Weisman and Derek Canfield which contains pages that have been stricken and were admitted during today's hearing.

Copies are being served upon the parties in this docket pursuant to the attached certificate of service.

Sincerely,

Susan S. Masterton

Enclosures

- COM \_\_\_\_\_
- AFD \_\_\_\_\_
- APA \_\_\_\_\_
- ECO \_\_\_\_\_
- ENG \_\_\_\_\_
- GCL   |
- IDM \_\_\_\_\_
- TCL \_\_\_\_\_
- CLK   |

SUSAN S. MASTERTON  
Senior Corporate Counsel  
315 S. Calhoun St., Suite 500  
Tallahassee, FL 32031

Tel: (850) 599-1560  
Fax: (850) 224-0794

DOCUMENT NUMBER 090538-TP

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susan.masterton@centurylink.com

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**CERTIFICATE OF SERVICE  
DOCKET NO. 090538-TP**

I hereby certify that a true and correct copy of the foregoing has been served upon the following by \*Hand Delivery and/or U.S. Mail this 23<sup>rd</sup> day of October, 2012.

<p>*Florida Public Service Commission Theresa Tan Office of General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 <a href="mailto:ltan@psc.state.fl.us">ltan@psc.state.fl.us</a></p>	<p>Division of Regulatory Analysis Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 <a href="mailto:JEMiller@psc.state.fl.us">JEMiller@psc.state.fl.us</a></p>
<p>Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 <a href="mailto:lhaag@ernestgroup.com">lhaag@ernestgroup.com</a></p>	<p>Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 <a href="mailto:asolar@flatel.net">asolar@flatel.net</a></p>
<p>BullsEye Telecom, Inc. David Bailey 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 <a href="mailto:dbailey@bullseyetelecom.com">dbailey@bullseyetelecom.com</a></p>	<p>*Gunster, Yoakley &amp; Stewart, P.A. Matthew J. Feil 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 <a href="mailto:mfeil@gunster.com">mfeil@gunster.com</a> † <i>Confidential Documents provided in accordance with signed Protective Agreement</i></p>
<p>Navigator Telecommunications, LLC David Stotelmyer 8525 Riverwood Park Drive North Little Rock, AR 72113</p>	<p>*Klein Law Group Andrew M. Klein/Allen C. Zoracki 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 <a href="mailto:AKlein@kleinlawPLLC.com">AKlein@kleinlawPLLC.com</a> <a href="mailto:azoracki@kleinlawpllc.com">azoracki@kleinlawpllc.com</a> † <i>Confidential Documents provided in accordance with signed Protective Agreement</i></p>
	<p>TW Telecom of Florida L.P. Carolyn Ridley 2078 Quail Run Drive Bowling Green, KY 42104 <a href="mailto:Carolyn.Ridley@twtelecom.com">Carolyn.Ridley@twtelecom.com</a></p>

*ps*   
Susan S. Masterton

QCC TESTIMONY ERRATA SHEET REFLECTING DISMISSALS

<b>Witness</b>	<b>Testimony</b>	<b>Pages To Be Stricken</b>
<b>Easton</b>	<b>Direct</b>	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, <i>except for FN 15</i>
		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
<b>Easton</b>	<b>Rebuttal</b>	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]")
<b>Canfield</b>	<b>Direct</b>	Table of Contents references to Broadwing, Budget, Deltacom, MCImetro, PAETEC, US LEC and Windstream Nuvox
		Page 9, line 2 - Page 15, line 21, <i>except for FN 4</i>
		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)
<b>Weisman</b>	<b>Direct</b>	Page 19, line 18 - Page 22, line 5
		Page 22, lines 12 (beginning with "For example")-14, fns 27-29
<b>Weisman</b>	<b>Rebuttal</b>	Table of Contents references to Mr. Reynolds
		Page 20, line 6 - Page 26, line 13, fns 49-50

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); 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

REDACTED

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DIRECT TESTIMONY OF DENNIS L. WEISMAN

ON BEHALF OF

QWEST COMMUNICATIONS COMPANY, LLC

Filed: June 14, 2012

COM 5  
APA \_\_\_\_\_  
ECR \_\_\_\_\_  
GCI 8  
RAD 1  
SRC \_\_\_\_\_  
ADM \_\_\_\_\_  
OPC \_\_\_\_\_  
CLK \_\_\_\_\_  
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1 I. IDENTIFICATION OF WITNESS

2 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT  
3 POSITION.

4 A. My name is Dennis L. Weisman. I am employed by Kansas State University as a  
5 Professor of Economics. My business address is Department of Economics, Waters Hall,  
6 Kansas State University, Manhattan, Kansas 66506-4001.

7 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND  
8 PROFESSIONAL EXPERIENCE.

9 A. I received a B.A. in economics and mathematics from the University of Colorado; an  
10 M.A. in economics from the University of Colorado; and a Ph.D. in economics from the  
11 University of Florida with a specialization in industrial organization and economic  
12 regulation. I have testified in numerous regulatory proceedings to the economic and  
13 social impacts of regulatory policies and have served as an advisor to telecommunications  
14 firms, electric power companies and regulatory commissions on economic pricing  
15 principles, the design of incentive regulation plans and competition policies. My primary  
16 research interests are in strategic behavior and government regulation. I have authored or  
17 co-authored more than 100 articles, books and book chapters. My research has appeared  
18 in the *Antitrust Bulletin*, *Economics Letters*, the *Journal of Regulatory Economics*, the  
19 *Yale Journal on Regulation*, the *Journal of Policy Analysis and Management*, and the  
20 *Federal Communications Law Journal*. My research has also been cited by the U.S.  
21 Supreme Court in *Verizon v. FCC*,<sup>1</sup> both majority and dissenting opinions. I am the co-  
22 author of DESIGNING INCENTIVE REGULATION FOR THE

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<sup>1</sup> *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

1 TELECOMMUNICATIONS INDUSTRY, published by the MIT Press and the AEI  
2 Press in 1996, and THE TELECOMMUNICATIONS ACT OF 1996: THE "COSTS" OF  
3 MANAGED COMPETITION, published by Kluwer in 2000. I am also the author of  
4 PRINCIPLES OF REGULATION AND COMPETITION POLICY FOR THE  
5 TELECOMMUNICATIONS INDUSTRY - A GUIDE FOR POLICYMAKERS,  
6 published by The Center for Applied Economics at the University of Kansas School of  
7 Business in 2006. I currently serve as an editor for the *Review of Network Economic*  
8 and on the editorial boards of the *Journal of Regulatory Economics and Information*  
9 *Economics and Policy*. Finally, I am a member of the Board of Academic Advisors for  
10 The Free State Foundation - a Washington D.C. "think tank" that champions free-market  
11 principles in telecommunications and other high-technology industries.

12 A complete description of my academic and professional background is provided in my  
13 curriculum vitae in Exhibit DLW 1.

14 **Q. HAVE YOU TESTIFIED BEFORE STATE REGULATORY COMMISSIONS?**

15 **A.** Yes. I have presented testimony before commissions in Arkansas, California, Colorado,  
16 Kansas, Missouri, Oklahoma and Texas. I have also submitted testimony or filed  
17 affidavits with the Federal Communications Commission, the Canadian Radio-Television  
18 and Telecommunications Commission, the Alberta Utilities Commission, the Kansas  
19 State Legislature and the United States Court of Appeals for the District of Columbia. As  
20 relevant to this proceeding, I testified before the Colorado Public Utilities Commission in  
21 Docket No. 08F-259T, QCC's parallel complaint proceeding.

22

23

1           **II.    PURPOSE, THEMES AND ORGANIZATION OF TESTIMONY**

2   **Q.    WHAT ISSUE IDENTIFIED IN THE ORDER ESTABLISHING PROCEDURE**  
3   **(ORDER NO. PSC-12-0048-PCO-TP) DOES YOUR TESTIMONY ADDRESS?**

4   **A.    My testimony primarily addresses (in tandem with the testimony of William R. Easton**  
5   **and Derek Canfield) Issue No. 5 on the Tentative List of Issues – “Has the CLEC**  
6   **engaged in unreasonable rate discrimination, as alleged in Qwest’s First Claim for Relief,**  
7   **with regard to its provision of intrastate switched access?”**

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

9   **A.    The primary purpose of my testimony is to demonstrate the potential economic**  
10   **distortions resulting from discriminatory pricing of (essential) switched access services in**  
11   **the state of Florida. A secondary purpose of my testimony is to explain why, in the**  
12   **absence of a credible basis for differential pricing, the default price for switched access**  
13   **services should be a uniform price. In other words, as a general rule, all long-distance**  
14   **carriers should pay the same price for switched access services unless the provider’s cost**  
15   **of providing the service varies between customers.**

16   **Q.    PLEASE PROVIDE AN OVERVIEW OF THE KEY THEMES DEVELOPED IN**  
17   **YOUR TESTIMONY.**

18   **A.    First, economic regulation serves as surrogate for market forces when competition for**  
19   **essential services is infeasible or otherwise non-existent.<sup>2, 3</sup> Second, it is important to**

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<sup>2</sup> Professor Alfred Kahn observes that “the single most widely accepted rule for the governance of the regulated industries is regulate them in such a way as to produce the same results as would be produced by effective competition, if it were feasible.” Alfred E. Kahn, *THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS*, Vol. I, New York: John Wiley and Sons, 1970, p. 17.

<sup>3</sup> Professor James Bonbright observes that “Regulation, then, as I conceive it, is indeed a substitute for competition; and it is even a partly imitative substitute.” James C. Bonbright, *PRINCIPLES OF PUBLIC UTILITY RATES*, New York: Columbia University Press, 1961, p. 107.

1 distinguish between differential pricing and discriminatory pricing.<sup>4</sup> Third, because  
2 switched access is an essential input to the production of downstream, long-distance  
3 services and is not competitively supplied, economic regulation should serve as a  
4 substitute for such market forces. Fourth, in the absence of a credible basis for  
5 differential pricing of switched access, the Commission should enforce a uniform price  
6 for switched access charged to all long-distance carriers. Fifth, the respondents in this  
7 case have not yet advanced any credible basis for engaging in differential pricing of  
8 switched access services. Sixth, the fact that these "off-list" pricing agreements were  
9 kept secret can undermine competition by precluding an equal opportunity for long-  
10 distance carriers to compete.

11 **III. DIFFERENTIAL PRICING VS. DISCRIMINATORY PRICING**

12 **Q. DO YOU USE THE TERMS "DIFFERENTIAL PRICING" AND**  
13 **"DISCRIMINATORY PRICING" INTERCHANGEABLY?**

14 **A.** No.

15 **Q. CAN YOU DESCRIBE THE DISTINCTION BETWEEN DIFFERENTIAL**  
16 **PRICING AND DISCRIMINATORY PRICING?**

17 **A.** Yes. The term "differential pricing" generally refers to any deviation from a uniform  
18 price. For example, this would occur when one long-distance carrier is charged one price  
19 for switched access, while another long-distance carrier is charged a different price. The  
20 term "discriminatory pricing" or price discrimination (as it is commonly used in the  
21 economics literature) refers to price differences that cannot be explained by cost

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<sup>4</sup> *Id.*, p. 371 ("At times, the cases suggest a distinction similar to that drawn by economists, in deeming 'discriminatory' any rate differential not based on a cost differential.").

1 differences.<sup>5</sup> This would occur, for example, if long-distance carriers were charged  
2 different rates when the costs of serving them are the same, or charged the same rate  
3 when the costs of serving them are different. Hence, discriminatory pricing is a subset of  
4 differential pricing.<sup>6</sup>

5 **IV. ECONOMIC DISTORTIONS AND INPUT PRICE DISCRIMINATION**

6 **Q. HAS THE FEDERAL COMMUNICATIONS COMMISSION (FCC)**  
7 **DETERMINED THAT CLEC-PROVIDED SWITCHED ACCESS IS NOT A**  
8 **COMPETITIVE SERVICE?**

9 **A.** Yes. The FCC has determined that switched access is a bottleneck service that is not  
10 competitively supplied.<sup>7</sup> For example, when it established the regulatory regime to set  
11 the carrier access rates for competitive local exchange carriers (CLECs), the FCC  
12 observed:

13 Sprint and AT&T persuasively characterize both the terminating and the  
14 originating access markets as consisting of a series of bottleneck  
15 monopolies over access to each individual end user. Thus, once an end  
16 user decides to take service from a particular LEC, that LEC controls an  
17 essential component of the system that provides interexchange calls, and it

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<sup>5</sup> See, for example, George J. Stigler, *THE THEORY OF PRICE*, New York: Macmillan Publishing, 1966, p. 209. (Here, price discrimination is defined as "the sale of two or more similar goods at prices which are in different ratios to marginal cost.")

<sup>6</sup> The regulation and economics literature are not always consistent in their usage of these terms. For example, the regulation literature sometimes refers to any departure from uniform pricing as discriminatory pricing. See, for example, Bonbright *supra* note 3, chapter XIX.

<sup>7</sup> *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), at ¶ 30. See also ¶¶ 28-29, 31-34.

1 becomes the bottleneck for IXCs wishing to complete calls to, or carry  
2 calls from, that end user.<sup>8</sup> (footnote omitted).

3 The significance of this fact in this particular context is that all providers of switched  
4 long-distance services require switched access as an input to production and have no  
5 economically viable alternative to purchasing these inputs from the LECs, be they  
6 incumbent LECs or competitive LECs.<sup>9</sup>

7 **Q. HAS THE FCC HAD THE OPPORTUNITY MORE RECENTLY TO REAFFIRM**  
8 **ITS POSITION THAT SWITCHED ACCESS CONSTITUTES A BOTTLENECK**  
9 **INPUT?**

10 **A. Yes.** In a recent *Amicus Brief*, the FCC reaffirmed its previous findings in observing that  
11 CLECs have the ability in the market for switched access services to impose “excessive  
12 access charges on IXCs.”

13 This anticompetitive practice was possible because the market for these  
14 services did not allow competition to discipline rates and CLECs thus  
15 enjoyed a monopoly over access charges: in order to originate and  
16 terminate long distance traffic, the IXC has no choice but to use the local  
17 network of the LEC serving the end-user customer.<sup>10</sup>

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<sup>8</sup> 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 ¶ 30.

<sup>9</sup> See, for example, Jonathan E. Nuechterlein and Philip J. Weiser, *DIGITAL CROSSROADS: AMERICAN TELECOMMUNICATIONS POLICY IN THE INTERNET AGE*, Cambridge MA: The MIT Press, 2005, Chapters 2 and 9.

<sup>10</sup> 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, page 6.

1 The FCC further observed that the unique leverage that the CLECs enjoy in the market  
2 for switched access services may allow the CLECs to "distort the long distance  
3 market."<sup>11</sup>

4 **Q. DOES THE "BOTTLENECK" NATURE OF SWITCH ACCESS DEPEND ON**  
5 **WHETHER THE PROVIDER OF SWITCHED ACCESS IS AN INCUMBENT**  
6 **LEC OR A COMPETITIVE LEC?**

7 A. No. In fact, the above quotation from the FCC order is explicitly concerned with CLECs  
8 rather than ILECs. The "bottleneck" characteristic of switched access derives from the  
9 end-user's decision to subscribe to a particular local service provider. The absence of a  
10 competitive choice for the long-distance carrier is not a function of whether that local  
11 service provider is an ILEC or a CLEC, nor is it a function of the size of the LEC.

12 **Q. IN YOUR VIEW, DOES THE COMMISSION HAVE A PROSPECTIVE ROLE IN**  
13 **CURTAILING DISCRIMINATORY PRICING OF SWITCHED ACCESS UNDER**  
14 **THE RECENTLY PASSED FLORIDA DEREGULATION STATUTE?**

15 A. Yes. Competition, fueled by new technologies and accommodating legislation, has  
16 thoroughly transformed the telecommunication marketplace in North America over the  
17 last decade and this has resulted in a *paradigmatic shift* in regulatory policy.<sup>12</sup> The

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<sup>11</sup> Id.

<sup>12</sup> As Thomas Kuhn observed in his classic treatise:

Political revolutions are inaugurated by a growing sense, often restricted to a segment of the political community, that existing institutions have ceased adequately to meet the problems posed by an environment that they have in part created. ... Their success therefore necessitates the relinquishment of one set of institutions in favor of another . . .

Thomas Kuhn, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS*, Chicago: University of Chicago Press, 1962, pp. 92-93.



1 Florida Legislature voted last year, wisely in my view,<sup>13</sup> to reverse long-standing public  
2 policy as it relates to the interplay between regulation and competition in Florida's  
3 telecommunications markets. In essence, a default reliance on competition to provide the  
4 requisite market discipline has replaced a default reliance on economic regulation to  
5 provide the requisite market discipline. What this means is that telecommunications  
6 markets in Florida are now presumptively competitive with no need for regulatory  
7 oversight rather than presumptively non-competitive with need for regulatory oversight.  
8 These observations notwithstanding, the fact that economic regulation is now the  
9 exception rather than the rule does not imply that regulation is unwarranted in all cases  
10 and this is especially true when the failure to exercise the requisite regulatory oversight  
11 can lead to economic distortions and anticompetitive outcomes. For all of the reasons  
12 discussed herein, regulatory oversight to ensure non-discriminatory pricing of switched  
13 access is just such an exception.

14 **Q. IS IT SIGNIFICANT THAT SWITCHED ACCESS IS NOT COMPETITIVELY**  
15 **PROVISIONED?**

16 **A.** Yes. It is accepted doctrine that sound competition (regulatory) policy should serve to  
17 protect the integrity of the competitive process rather than serve to favor or disfavor  
18 individual competitors. In order for competition in downstream markets (in the present  
19 case, the long-distance market that uses switched access as a critical input) to be  
20 economic in the sense that it promotes competition on the merits,<sup>14</sup> all similarly situated,

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<sup>13</sup> 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.

<sup>14</sup> The term "competition on the merits" refers to the basic idea that the returns that a firm enjoys should reflect its superior efficiency and business acumen in the marketplace *vis-à-vis* its relatively less proficient rivals. In *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 430 (2d Cir. 1945), Judge Learned Hand observed that "A single

1 downstream competitors must have access to upstream inputs under comparable terms  
2 and conditions. This is the well-known principle of competitive parity.

3 We have in various forums expounded what we have referred to as the  
4 principles of competitive parity in cases of bottleneck monopoly, the  
5 purpose and effect of which are to ensure that the competition between the  
6 controller of the bottleneck facility—or supplier of the essential input—  
7 and its actual and potential rivals is efficient. That is to say, rules framed  
8 in accordance with those principles should produce a distribution of  
9 responsibility for performing the contested function among the several  
10 rivals on the basis of their respective costs and so minimize the total cost  
11 of supplying the contested service (footnote omitted).<sup>15</sup>

12 **Q. CAN ECONOMIC DISTORTIONS AND ANTICOMPETITIVE OUTCOMES**  
13 **RESULT IF THESE PARITY PRINCIPLES ARE VIOLATED?**

14 **A.** Yes. Should these parity principles be violated, competitors that are less efficient in  
15 producing the downstream components of the service may be unduly favored in a manner  
16 that violates competitive neutrality. Discriminatory pricing that affords selected long-  
17 distance carriers discounts for switched access could sacrifice productive efficiency.<sup>16</sup>

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producer may be the survivor out of a group of active competitors, merely by virtue of his superior skill, foresight and industry." For a more recent discussion of the term "competition on the merits" and its role in differentiating between competitive and exclusionary behavior in antitrust enforcement, see Antitrust Modernization Commission, Report and Recommendations, Washington D.C. 2007.

<sup>15</sup> 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.

<sup>16</sup> Productive (technical) efficiency is concerned with production at the lowest possible cost. A firm is technically efficient if it (i) uses the minimum possible amount of inputs to produce its output; or, equivalently, (ii) produces the maximum possible amount of output from any given quantity of inputs.

1 This is the case because such practices can serve to preclude the least-cost ("most  
2 efficient") provider from being the least-price provider. Price discrimination for  
3 intermediate goods (inputs) is likely to be particularly pernicious in this regard due to the  
4 risk of efficiency distortions in the downstream market.

5 This potential for efficiency distortions explains why sound regulatory principles require  
6 that bottleneck inputs, switched access, for example, be priced uniformly to all similarly-  
7 situated purchasers of these inputs. That is to say, the default pricing of switched access  
8 requires that a uniform price be levied on each provider absent a factual and credible  
9 basis for departing from this uniform pricing standard.

10 **Q. CAN YOU PROVIDE A STYLIZED NUMERICAL EXAMPLE OF HOW THE**  
11 **LEAST-COST PROVIDER CAN BE HAMPERED IN THE MARKETPLACE?**

12 **A.** Yes. Assume that the production of each minute of long-distance telephone service  
13 requires one unit each of switched access, intercity transmission and retailing, the latter  
14 two inputs being self-supplied by the long-distance carrier. Suppose there are two  
15 similarly situated long-distance carriers, Carrier A and Carrier B, with per-unit costs of  
16 intercity transmission of 3 cents and 4 cents, respectively. In addition, both carriers incur  
17 costs of one cent per-minute for retailing. Carrier A pays the price-list rate for switched  
18 access of 4 cents per minute while Carrier B is granted a discount on switched access and  
19 hence pays only 1 cent per minute. The incremental cost per long-distance minute is thus  
20 8 cents for Carrier A and 6 cents for Carrier B. These values are shown in Table 1 below.  
21 The potential distortionary effect arises from the fact that Carrier B can set a price  
22 between 6 cents and 8 cents per minute and yet still (profitably) under-price Carrier A in  
23 the market even though Carrier A is the more efficient provider of long-distance

1 telephone service (i.e., Carrier A has a lower unit cost of provisioning intercity  
2 transmission). The economic harm to Carrier A from discriminatory pricing of switched  
3 access derives from the appropriation of its "margin on the merits." To see this, observe  
4 that Carrier A should realize a cost advantage over Carrier B of 1 cent per minute,  
5 reflecting its superior efficiency in self-supplying intercity transmission (i.e., 4¢ – 3¢).  
6 The discriminatory pricing of switched access, however, confers an artificial cost  
7 advantage on Carrier B over Carrier A of 2 cents per minute (i.e., 8¢ – 6¢).  
8 It is in this sense that discrimination in the pricing of switched access services can lead to  
9 an economic distortion because it precludes the least-cost provider from serving as the  
10 least-price provider.

11 **TABLE 1**

12 **Incremental Cost for Long-Distance Service**

	<i>CARRIER A</i>	<i>CARRIER B</i>
13 SWITCHED ACCESS	4¢	1¢
14 INTERCITY TRANSMISSION	3¢	4¢
15 RETAILING	1¢	1¢
16 TOTAL	8¢	6¢

17  
18  
19 **Q. ARE THESE DISCRIMINATORY DISCOUNTS PROBLEMATIC EVEN WHEN**  
20 **THE CARRIERS ARE EQUALLY EFFICIENT?**

21 **A. Yes.** As a matter of sound regulatory/competition policy, the pricing of a bottleneck  
22 input should not work at cross-purposes with competition on the merits. In this particular  
23 context, this means that the differential pricing of switched access should not provide one  
24

1 or more carriers with an artificial cost advantage.<sup>17</sup> This is precisely why regulatory rules  
2 are structured so that all similarly situated carriers pay a uniform price for critical,  
3 bottleneck inputs.

4 **Q. YOU STATED EARLIER THAT YOU TESTIFIED IN QCC'S PARALLEL**  
5 **COLORADO PUC COMPLAINT CASE. DID THE COLORADO COMMISSION**  
6 **MAKE ANY FINDINGS REGARDING THE BOTTLENECK NATURE OF**  
7 **SWITCHED ACCESS?**

8 **A. Yes. After considering QCC's testimony and briefing, as well as that of the respondent**  
9 **CLECs, the Colorado Commission agreed with QCC that switched access is a bottleneck**  
10 **service.<sup>18</sup> At paragraph 73 of its 2011 Order Addressing Exceptions and Motion to**  
11 **Reopen the Record, the Colorado PUC held as follows.**

12 73. We also agree with the ALJ that LEC facilities are a monopoly  
13 bottleneck since there are no alternatives for an IXC to reach a given end  
14 user customer for a long distance call but through the switch of the LEC  
15 that provides the local service to that end user. Indeed, as the ALJ and Dr.  
16 Weisman pointed out, the Federal Communications Commission (FCC)  
17 previously found and determined that switched access is a bottleneck  
18 monopoly service that is not competitively supplied. This is because, once  
19 a given end user decides to take service from a particular LEC, that LEC  
20 controls an essential component of the system that provides interexchange  
21 calls and it becomes the bottleneck for IXCs wishing to complete calls to, or

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<sup>17</sup> Note that when the two carriers are equally efficient, the artificial cost advantage conferred upon the "preferred carrier" (Carrier B) is precisely equal to the switched access discount of 3¢ per minute.

<sup>18</sup> *QCC v. MCImetro, et al*, Docket No. 08F-259T, Decision No. C11-1216 (mailed Nov. 15, 2011) at ¶¶57-61, 72-73.

1 carry calls from, that end user. [footnote omitted] We also agree with Dr.  
2 Weisman that the FCC has not subsequently overturned or modified its  
3 2001 order finding switched access is a bottleneck monopoly service. \* \* \*

4 **Q. DO THE RESPONDENT CLECS IN THIS PROCEEDING DENY THAT**  
5 **INTRASTATE SWITCHED ACCESS IS A BOTTLENECK SERVICE?**

6 **A.** The position of the Respondent CLECs is not altogether clear at this juncture, but at least  
7 some of them appear to deny that switched access is a bottleneck service. For example,  
8 in discovery QCC sought the CLECs' position on whether an IXC has the ability to  
9 choose which local exchange carrier will provide its originating and terminating intrastate  
10 switched access. A number of CLECs take the position that IXCs do have that ability.  
11 For instance, Broadwing responded that an

12 "IXC makes a business decision on whether and how it will enter markets  
13 based on a number of factors including, but not limited to, access costs.  
14 An IXC also makes a business decision on whether to serve and where it  
15 will serve as a stand-alone IXC or as both an IXC and a CLEC, and in  
16 which markets. An IXC also makes a business decision on whether,  
17 where and how it will explore ways to reduce switched access costs, such  
18 as by use of special access or other arrangements. And, ultimately, the end  
19 user customer chooses the carrier(s) from whom the end user obtains  
20 service."

21 **Q. DO YOU AGREE WITH BROADWING?**

22 **A.** No, I do not. In the end, Broadwing undermines its own argument by acknowledging that  
23 it is the *end user* who makes the decision as to which LEC will provide it service, the

1 destination of the call and consequently which LEC the IXC must obtain switched access  
2 from. While I acknowledge that there are differences between originating and  
3 terminating switched access, concerns related to the switched access bottleneck are  
4 present in both cases because it is the end user (and not the IXC) that ultimately decides  
5 on the LEC that supplies switched access to the IXC. While an IXC may choose to build  
6 special access facilities to an individual end user, this is only cost-effective when volume  
7 is sufficient to justify the expenditures on such facilities.

8 **Q. SOME CLECS SEEM TO SUGGEST THAT QCC CAN AVOID A PARTICULAR**  
9 **CLEC'S SWITCHED ACCESS BY PURCHASING ALTERNATIVE**  
10 **TERMINATION SERVICES FROM THIRD PARTIES.<sup>19</sup> DO YOU AGREE?**

11 **A.** No. Unless a special access arrangement is being used to reach the end-user, switched  
12 access charges are being paid, either by the IXC, or in situations where the IXC hands the  
13 call off to an underlying carrier for termination, by the underlying third-party carrier.  
14 The use of a third-party carrier merely changes the party that pays the terminating CLEC  
15 switched access, but in no way avoids the payment of switched access.

16 **V. JUSTIFIABLE DEPARTURES FROM A UNIFORM PRICE**

17 **Q. IN THEORY, CAN DEPARTURES FROM A UNIFORM PRICE FOR**  
18 **SWITCHED ACCESS SERVICES BE JUSTIFIED?**

19 **A.** Yes. As a theoretical matter, sound bases could exist for departing from uniform pricing  
20 for switched access services. For example, such departures from uniform pricing may be  
21 justified where the provider establishes that the relevant economic cost of provisioning  
22 these inputs (i.e., switched access services) varies between customers (i.e., long-distance

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<sup>19</sup> See, e.g., Broadwing's response to QCC Interrogatory No. 3, a copy of which is attached to Mr. Easton's direct testimony as Exhibit WRE 6A.

1 providers) in a manner that would potentially justify differences in the price of these  
2 inputs. I am not aware of any of the respondent CLECs in this docket having  
3 demonstrated (or even endeavored to determine the existence of) any such cost  
4 differentials.

5 QCC inquired of each respondent CLEC in discovery whether it performed cost or  
6 demand studies in connection with establishing the intrastate switched access rates set  
7 forth in the agreement(s). To my knowledge, not a single CLEC responded that it had  
8 performed such a study.<sup>20</sup> The CLECs' failure to perform such studies suggests two  
9 conclusions. First, the CLECs have no credible basis to assert that cost differentials exist  
10 that may now be relied upon, retrospectively, as justification for the discounted pricing.  
11 Second, cost differences were not, contemporaneously, the CLECs' rationale for offering  
12 AT&T and Sprint the discounted rates for switched access. In the absence of economic  
13 studies that credibly demonstrate that such differences in price are attributable to  
14 corresponding differences in cost, sound regulatory policy would typically establish a  
15 default of a uniform price so as to preserve competitive neutrality and reduce the  
16 likelihood of the aforementioned efficiency distortions and anticompetitive outcomes in  
17 the downstream market.

18 **Q. HYPOTHETICALLY SPEAKING, IF THE CLECS HAD PERFORMED COST**  
19 **STUDIES FOR SWITCHED ACCESS, DO YOU BELIEVE IT IS LIKELY THAT**  
20 **THEY COULD HAVE JUSTIFIED THE MAGNITUDE OF THE PRICE**  
21 **DIFFERENCES AT ISSUE HERE?**

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<sup>20</sup> See the CLECs' response to QCC Interrogatory Nos. 2(l) and 2(m). See, e.g., Direct Testimony of William R. Easton, Exhibits 6B (Broadwing), 34A (PAETEC) and 40 (US LEC).



1 A. No. I believe it would be unlikely that such a pronounced cost difference could exist  
2 given that the service is essentially identical across carriers. In fact, I would go so far as  
3 to say that that the credibility of any cost study that seemingly justified such a large  
4 difference in price under these conditions would likely be called into question.

5 **Q. HAVE THE CLECS PUT FORTH ANY OTHER EXPLANATION FOR WHY**  
6 **THEY AGREED TO THE DISCOUNTED SWITCHED ACCESS AGREEMENTS**  
7 **FOR THE SELECTED IXCS?**

8 A. Yes. In discovery, QCC asked each of the respondent CLECs to identify and explain  
9 their reasons for offering the preferential rates to the IXCs with which they entered into  
10 switched access agreements. Many of the CLECs responded that they entered into the  
11 agreement to resolve billing disputes with AT&T, which several CLECs described as  
12 having "forced" the CLECs into the agreement.<sup>21</sup> The CLECs further explained that  
13 because AT&T refused to pay the published rates for switched access, entering into the  
14 agreements (inclusive of the corresponding discounts) was the only cost-effective means  
15 by which to induce AT&T to pay the CLECs for switched access.

16 **Q. DOES THIS EXPLANATION PROVIDE A VALID ECONOMIC BASIS FOR**  
17 **DISCRIMINATING BETWEEN QCC AND THE IXCS THAT BENEFITED**  
18 **FROM THE SWITCHED ACCESS AGREEMENTS?**

19 A. No. I have no doubt that the CLECs made what they perceived to be a rational  
20 (economic) business decision to grant these discounts rather than run the risk of not being  
21 paid for their services or incurring the cost of litigating the matter.

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<sup>21</sup> See, e.g., Direct Testimony of William Easton, Exhibits WRE 12, WRE 24A and WRE 24B.

1 As a matter of economics, I do not believe that "unwillingness to pay" on the part of  
2 AT&T constitutes a legitimate basis for distinguishing between customers – particularly  
3 for a bottleneck input such as switched access. From a policy perspective, I would think  
4 that the Commission would not look favorably upon the unilateral decision by the CLECs  
5 to redress their grievances in this manner, particularly when the effect of doing so is to  
6 flout state law that explicitly required them to avoid unreasonable rate discrimination. To  
7 the extent CLECs seek to blame the IXCs for their predicament, it would seem that  
8 Commission or other appropriate legal proceedings rather than secret "off-price list"  
9 agreements would have been the appropriate avenue through which to redress their  
10 grievances with the selected IXCs.

11 **Q. DO YOU BELIEVE THE EXPLANATION PROFFERED BY THE CLECS TO**  
12 **RATIONALIZE THE PREFERENTIAL TREATMENT FOR CERTAIN IXCS IS**  
13 **RELEVANT TO THE COMMISSION'S EVALUATION OF THESE**  
14 **AGREEMENTS?**

15 **A. Yes. The CLECs' explanation – that they were essentially forced into entering into these**  
16 **agreements to avoid costly and protracted dispute resolution processes and to induce**  
17 **AT&T to pay for switched access – is important in assessing any other "justifications"**  
18 **the CLECs may later put forth to explain the differential treatment of QCC vis-à-vis the**  
19 **avored IXCs. It is conceivable that the CLECs will set forth various arguments to**  
20 **identify supposed differences between QCC and the favored IXCs. Should this occur, the**  
21 **Commission will be in a better position to determine whether the CLECs (1) have**  
22 **identified legitimate differences between the favored IXCs and QCC; or (2) are merely**

1 grasping for any distinction that may provide an *ex post* justification for the agreements  
2 they entered into with the favored IXC.

3 **Q. DOES TW TELECOM ALLEGE THAT AT&T'S PURCHASE OF OTHER**  
4 **SERVICES JUSTIFIED ITS DISPARATE SWITCHED ACCESS RATE**  
5 **TREATMENT IN FLORIDA?**

6 **A.** Yes. tw telecom ("TWT") states that its agreement with AT&T discounted intrastate  
7 switched access "in conjunction with a total revenue commitment set forth" in that  
8 agreement. TWT states that "the provisions regarding switched access were dependent  
9 upon all of the other provisions of the AT&T/TWTC Agreement, which also  
10 encompassed purchases of other, non-intrastate service, most notably a revenue  
11 commitment on a "take or pay" basis that required AT&T to pay the difference between  
12 the applicable commitment in any contract year and its actual purchases of eligible  
13 services under the AT&T/TWTC Agreement."<sup>22</sup> TWT continues that QCC and AT&T  
14 were not "similarly situated" in terms of its ability to make a revenue commitment at  
15 similar levels (as AT&T).<sup>23</sup>

16 Similarly, PAETEC's 2008 switched access agreement with AT&T conditions AT&T's  
17 receipt of the fixed dollar credits shown in Schedule A of that agreement on AT&T's  
18 purchase of "other services."<sup>24</sup>

19 **Q. DO YOU AGREE WITH TWT THAT QCC AND AT&T WERE NOT**  
20 **SIMILARLY SITUATED IN TERMS OF THOSE CLECS' PROVISION OF**  
21 **INTRASTATE SWITCHED ACCESS IN FLORIDA?**

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<sup>22</sup> See Mr. Easton's Exhibit WRE 37 (TWT's response to QCC Interrogatory No. 2(b)).

<sup>23</sup> Id. (TWT's response to QCC Interrogatory No. 2(i)).

<sup>24</sup> See Mr. Easton's Exhibit WRE 33B.

1 A. No. In fact, I strongly disagree with TWT's position. Setting aside the legal question  
2 (which I will leave for counsel to brief) of whether it is justifiable to condition a discount  
3 off of bottleneck switched access services on the purchase of unrelated, competitive  
4 services, TWT has not demonstrated a credible economic basis for favoring AT&T in its  
5 pricing of intrastate switched access in Florida.

6 To the best of my knowledge, TWT has not demonstrated, nor has any economic study of  
7 which I am aware demonstrated, that the cost of providing switched access varies with  
8 the amount of unrelated services (including, I assume, dedicated or special access  
9 services) purchased by an IXC. The absence of such proof does not surprise me. While I  
10 am not a network engineer, it is my understanding that the two types of services  
11 (switched access and special access) are virtually unrelated, except to the extent that an  
12 IXC with large volumes of traffic to a particular calling area or location may find it  
13 economically advantageous to purchase special (dedicated) access as an alternative to  
14 switched access. To my knowledge, a LEC's per-minute cost of providing tandem-routed  
15 switched access is invariant irrespective of which IXC customer is using the service, how  
16 many minutes of use that IXC (or any IXC) uses in a particular month or what and how  
17 many other unrelated services an IXC happens to purchase from the LEC.

18 Q. ~~HAS MCI RAISED ANY UNIQUE THEORY CONCERNING ITS SECRET~~  
19 ~~AGREEMENT WITH AT&T?~~

20 A. ~~Based on MCI's testimony and briefing in the parallel Colorado proceeding and its~~  
21 ~~responses to discovery in this case, I understand that MCI takes the following position:~~  
22 ~~MCI argues that it entered into a "reciprocal" discount arrangement with AT&T, and that~~

1 ~~QCC was therefore not "similarly situated" to AT&T because QCC did not offer~~  
2 ~~intrastate switched access at the time.<sup>25</sup>~~

3 Q. ~~DO YOU AGREE THAT THE BILATERAL, "RECIPROCAL" NATURE OF~~  
4 ~~THE AGREEMENTS BETWEEN MCI AND AT&T PROVIDED A CREDIBLE~~  
5 ~~BASIS FOR THE DISCRIMINATORY RATE TREATMENT CONTAINED IN~~  
6 ~~THE OFF PRICE LIST AGREEMENT?~~

7 A. ~~No. According to MCI, MCI and AT&T granted one another discounts from standard~~  
8 ~~tariff switched access rates. And, according to MCI, because QCC could not satisfy the~~  
9 ~~precondition of reciprocity, QCC was not and could not be "similarly situated." MCI's~~  
10 ~~sylogism presupposes three critical facts: (i) that the arrangement with AT&T was truly~~  
11 ~~"reciprocal" in any balanced sense; (ii) that reciprocity alone is a sufficient basis for~~  
12 ~~discrimination; and (iii) that had QCC been offered the same arrangement, it would not~~  
13 ~~have had cause to reevaluate the economic viability of offering intrastate switched access.~~

14 ~~As Mr. Easton describes in his direct testimony, the arrangement may not have truly been~~  
15 ~~"reciprocal" and [BEGIN LAWYERS ONLY CONFIDENTIAL] [REDACTED]~~  
16 ~~[REDACTED]~~  
17 ~~[REDACTED]~~  
18 ~~[REDACTED]~~  
19 ~~[REDACTED] [END LAWYERS~~  
20 ~~ONLY CONFIDENTIAL]~~

21 ~~Even accepting for the sake of argument that MCI's factual premise is true, this alone~~  
22 ~~would not be sufficient to substantiate its case that discrimination was appropriate. MCI~~

<sup>25</sup> See Mr. Easton's Exhibit WRE 27 (MCI's response to QCC Interrogatory No. 2(i)).

1 ~~has not demonstrated, for example, that it contemporaneously determined that the cost of~~  
2 ~~supplying switched access to AT&T was lower, let alone significantly lower, than the~~  
3 ~~cost of supplying the same service to QCC and other IXCs.<sup>26</sup> Under these conditions, as~~  
4 ~~well as the conditions described by Mr. Easton, the obvious concern would be that~~  
5 ~~"reciprocity" is simply a means by which to grant a secret net discount to AT&T. In any~~  
6 ~~event, MCI's reliance on "reciprocity" as a qualifying condition for the discount seems~~  
7 ~~unfounded as a matter of economic theory.~~

8 **Q. HAVE OTHER REGULATORY COMMISSIONS FOUND THAT THESE TYPES**  
9 **OF RECIPROCAL AGREEMENTS ARE ANTICOMPETITIVE?**

10 **A. Yes. The Minnesota Public Utilities Commission investigated the companion AT&T (as**  
11 **CLEC) - MCI (as IXC) off-tariff agreement. In the following passage, the Minnesota**  
12 **Commission describes how the twin agreements undermine the competitive process to**  
13 **the detriment of consumers.**

14 ~~Ideally a competitive market would reward the most efficient firms. All~~  
15 ~~[sic] else being equal, the most efficient firms would be able to offer lower~~  
16 ~~prices - attracting customers away from competitors - and the promise of~~  
17 ~~higher returns = attracting investors away from competitors. Here AT&T~~  
18 ~~and MCI provided secret subsidies to each other's long distance~~  
19 ~~operations, and not to other long distance carriers. As a result, these~~  
20 ~~carriers were able to obtain a cost advantage over all other long distance~~  
21 ~~carriers and report higher profits than if they had not received the~~

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<sup>26</sup> See Mr. Easton's Exhibit WRE 27 (MCI response to QCC Interrogatory No. 2(l)).

1           ~~subsidies. This conduct distorts the market, harms competition, and~~  
2           ~~ultimately harms consumers.~~<sup>27</sup>

3           ~~The concern on the part of the Minnesota Commission is that the actions of AT&T and~~  
4           ~~MCI served to undermine the integrity of the competitive process to the detriment of~~  
5           ~~consumers.~~<sup>28</sup>

6   **Q. HAVE THE CLECS PRESENTED CREDIBLE EVIDENCE TO SUBSTANTIATE**  
7   **THE CLAIM THAT DIFFERENCES IN THE VOLUME OF SWITCHED**  
8   **ACCESS SERVICES PROVIDED BY THE CLEC TO QCC, AT&T AND SPRINT**  
9   **JUSTIFY DISPARATE RATE TREATMENT?**

10   **A. No. A number of CLECs generally allege that QCC was not similarly situated to the**  
11   **IXCs favored by the secret switched access agreements because those IXCs obtained**  
12   **more switched access during the relevant period. For example, in response to discovery,**  
13   **both Broadwing and DeltaCom alleged that volume differences sufficiently distinguish**  
14   **QCC and the preferred IXCs to have permitted their price differentiation.**<sup>29</sup>

15           While volume differences can provide a credible basis for price differentiation, they do  
16           not in the context of intrastate switched access. First, it is my understanding that none of  
17           the agreements at issue in this case contain volume requirements. In other words, the

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<sup>27</sup> 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, 5708, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235, Minnesota Public Utilities Commission, 2007 Minn. PUC LEADS 146 October 26, 2007, Issued, page 10.

<sup>28</sup> *Id.*, page 10.

<sup>29</sup> See Mr. Easton's Exhibit WRE-6A (Broadwing's response to QCC Interrogatory No. 2(i)) ("Broadwing believes that in Florida, Qwest pays Broadwing's tariffed/listed rate, which is the same rate paid by carriers that do not have the same collection of services, architectural arrangements, call volumes and types, and where applicable, the ability to provide reciprocal services, as the entities entering into the [subject] agreements. Further, certain agreements were entered into in settlement of unique disputes between the parties."). See also Mr. Easton's Exhibit WRE-15 (DeltaCom's response to QCC Interrogatory Nos. 2(b) and 2(i)).

1 preferred IXC received the stated discount regardless of whether it purchased 10 minutes  
2 or 10,000,000 minutes of switched access from the CLEC. Clearly, it was not volume  
3 levels that motivated the CLECs to enter into these secret agreements.

4 Further, and more importantly, the CLECs have not demonstrated (nor am I aware of any  
5 study demonstrating) that a CLEC's cost of providing intrastate switched access in  
6 Florida varies depending upon the volume of minutes provided to any particular IXC. As  
7 such, "volume" is an irrelevant factor. In the parallel Colorado proceeding, the  
8 Commission rejected the identical argument posed by the CLECs. In Decision No. C11-  
9 1216, the Commission stated.

10 75. We agree with the ALJ that QCC effectively rebutted any  
11 claim that differences in size or traffic volumes justified price  
12 differentiation, in this particular case. This is because the cost of  
13 providing switched access does not depend on the traffic volume, or which  
14 IXC is utilizing that service. Further, the functionality, service elements,  
15 and the facilities over which the respondent CLECs provided switched  
16 access were identical in this case, regardless of whether a CLEC serviced  
17 QCC or one of the other IXCs. It is true the costs of providing some  
18 services can vary by volume, especially if dedicated facilities are  
19 involved; however, these circumstances are not present here. Further, we  
20 find persuasive QCC's argument that none of the unfiled off-tariff  
21 agreements ties the discount to the IXC to the purchase of specific  
22 volumes of switched access service. To the contrary, all of the unfiled  
23 agreements at issue in the instant proceeding grant the discount in



1 unlimited fashion, regardless of how much switched access a favored IXC  
2 purchases. This alone is fatal to the claim that differences in size or traffic  
3 volumes justifies price discrimination in this case. \* \* \*

4 VI. CONCLUSION AND RECOMMENDATIONS

5 Q. DO YOU HAVE ANY CONCLUSIONS AND RECOMMENDATIONS FOR THE  
6 COMMISSION'S CONSIDERATION?

7 A. Yes. Throughout my professional career, in both my published works and expert  
8 testimony, I have argued consistently and unwaveringly for the need for regulation to  
9 defer to market forces when the latter could provide the requisite competitive discipline.<sup>30</sup>

10 In the special case of switched access services, those market forces are clearly not  
11 present, even when those services are provided by CLECs. As a result, the Commission  
12 must intervene to provide the necessary oversight and serve as the surrogate for such  
13 market forces in the provision of switched access services to ensure the development of  
14 fair and effective competition and prevent anticompetitive behavior.

15 From an economic perspective, credible bases for differential pricing—cost differences,  
16 for example—may exist, at least in theory. To date, however, no credible basis for  
17 differential pricing has yet been advanced by the opposing parties in this case. Absent a  
18 credible basis for differential pricing for switched access services, I would respectfully  
19 recommend that the Commission find that any such differential pricing is inconsistent  
20 with the principles of competitive neutrality. That is to say, absent a credible basis (both  
21 economic and legal) for differential pricing of switched access services, the Commission

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<sup>30</sup> Dennis L. Weisman, "A 'Principled' Approach to the Design of Telecommunications Policy." *Journal of Competition Law & Economics*, Vol. 6(4), December 2010, pp. 927-956; and 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.

1           should determine that the default price should have been and continue to be a uniform  
2           price—each long-distance carrier pays the same price for switched access services.

3           **Q.     DOES THAT CONCLUDE YOUR TESTIMONY?**

4    **A.     Yes, it does.**

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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 Services, 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

REDACTED

REBUTTAL TESTIMONY OF DENNIS L. WEISMAN

ON BEHALF OF

QWEST COMMUNICATIONS COMPANY, LLC

Filed: August 9, 2012

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**I. IDENTIFICATION OF WITNESS**

**Q. PLEASE STATE YOUR NAME, CURRENT POSITION AND BUSINESS ADDRESS.**

A. My name is Dennis L. Weisman. I am employed by Kansas State University as a Professor of Economics. My business address is Department of Economics, Waters Hall, Kansas State University, Manhattan, Kansas 66506-4001.

**Q. ARE YOU THE SAME DENNIS L. WEISMAN THAT FILED DIRECT TESTIMONY IN THIS CASE?**

A. Yes.

**II. PURPOSE AND SUMMARY OF MAIN POINTS**

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

A. The purpose of my rebuttal testimony is to respond to the direct testimony of Mr. Wood and Mr. Reynolds (hereafter, "opposing witnesses"). In crafting these responses, I rely upon sound economic and public policy principles that are firmly grounded in the economics and regulation literature.

**Q. PLEASE SUMMARIZE THE MAIN POINTS DEVELOPED IN YOUR REBUTTAL TESTIMONY.**

A. The main points developed in my rebuttal testimony are as follows.

- There is an important distinction between rate differences and rate discrimination. The latter is defined as rate differences that cannot be explained by cost differences.

- Preventing unreasonable rate discrimination is not synonymous with rate regulation. The Commission should intervene in wholesale telecommunications markets to prevent unreasonable rate discrimination when the failure to do so could result in market distortions and anticompetitive outcomes.

1           ▪ Two interexchange carriers (IXCs) that are “different” in certain respects are  
2 presumptively similarly situated if there is no difference in the cost of supplying  
3 switched access to them.

4           ▪ Distinctions between IXCs, including revenue commitments and reciprocal  
5 serving arrangements, that do not result in differences in the cost of supplying switched  
6 access are “distinctions without a difference.”

7           ▪ Switched access is a bottleneck input because the IXCs cannot generally  
8 choose the CLEC from which they must purchase switched access.<sup>1</sup> The implication is  
9 that the IXC is captive to the CLEC that has been chosen by the end-user customer and  
10 is therefore not able to avoid unreasonable rate discrimination.

11          ▪ Simply forcing the favored IXCs to disgorge their undercharges or discounts  
12 for switched access would not be an adequate remedy. The Commission should craft a  
13 remedy that restores competitive parity, both prospectively and retrospectively.

14           **III. POINT-BY-POINT REBUTTAL OF OPPOSING WITNESSES**

15                   **A. Mr. Wood**

16 **Q. DOES MR. WOOD CLAIM THAT QCC SEEKS TO HAVE THE**  
17 **COMMISSION REGULATE CLEC-PROVIDED SWITCHED ACCESS?**

18 **A. Yes. Mr. Wood states that “As I understand the Complaint, Qwest is effectively asking**  
19 **the Commission to treat CLEC-provided switched access as a regulated service and to**  
20 **determine a rate (or set of rates) for switched access that should have been charged to**  
21 **Qwest ...”<sup>2</sup>**

<sup>1</sup> As I previously observed, “While I acknowledge that there are differences between originating and terminating switched access, concerns related to the switched access bottleneck are present in both cases because it is the end user (and not the IXC) that ultimately decides on the LEC that supplies switched access to the IXC.” Weisman Direct Testimony, p. 14.

<sup>2</sup> Wood Direct Testimony, pp. 3-4.

1 Q. HAS MR. WOOD ACCURATELY CHARACTERIZED QCC'S POSITION  
2 THAT THE COMMISSION SHOULD REGULATE CLEC-PROVIDED  
3 SWITCHED ACCESS?

4 A. No. QCC fully recognizes that the rates for CLEC-provided switched access have not  
5 been set by this Commission. There is an important distinction, however, between  
6 setting and approving these rates, which the Commission does not do, and preventing  
7 unreasonable rate discrimination and anticompetitive conduct, which I understand the  
8 Commission is empowered and mandated to do. For example, the issue is not whether  
9 the price list rate that QCC is charged for switched access is 1 cent or 6 cents per  
10 minute. Rather, the issue is QCC being charged a rate of 6 cents per minute when  
11 other similarly-situated IXCs are being charged a rate of 1 cent per minute. Hence, the  
12 concern is unreasonable rate discrimination rather than rate regulation *per se*.

13 Q. DOES MR. WOOD CLAIM THAT QCC'S POSITION IS THAT RATE  
14 DIFFERENCES ARE SYNONYMOUS WITH RATE DISCRIMINATION?

15 A. Yes. To be precise, Mr. Wood states that "Qwest appears to argue for 'per se'  
16 discrimination – an idea that a rate is discriminatory simply because it is different."<sup>3</sup>

17 Q. HAS MR. WOOD ACCURATELY CHARACTERIZED QWEST'S POSITION?

18 A. No. As I stated in my direct testimony, there is an important distinction between rate  
19 differences and rate discrimination.<sup>4</sup> Rate differences that merely reflect cost  
20 differences do not constitute rate discrimination. Rate discrimination refers to price  
21 differences that cannot be explained by cost differences. In terms of this proceeding,  
22 the CLECs claim that QCC is not similarly situated to the IXCs that received more  
23 favorable rate treatment. The issue, however, is not whether QCC is different from the

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<sup>3</sup> Id., p. 22.

<sup>4</sup> Weisman Direct Testimony, Section III.

1       IXCs that received more favorable rate treatment, but rather whether the differences  
2       between the IXCs (as no two firms will ever be precisely identical in every sense), such  
3       as they are, lead to differences in costs for the CLECs that fully explain the differences  
4       in rates. In the absence of such a credible demonstration of cost differences, these rate  
5       differences presumptively amount to unreasonable rate discrimination.

6       **Q. DOES MR WOOD CONTEND THAT COST DIFFERENCES FOR SWITCHED**  
7       **ACCESS FULLY EXPLAIN THE RATE DIFFERENCES FOR SWITCHED**  
8       **ACCESS?**

9       **A.** No. Mr. Wood claims that "Qwest ignores the fact that this industry is filled with rates  
10       that would meet its definition of discriminatory."<sup>5</sup> He cites two specific examples in  
11       support of his argument. His first example is differential pricing for residence and  
12       business local exchange services. Mr. Wood's second example is the initial pricing  
13       structure for ILEC switched access services that provided for different switched access  
14       rates for dominant and non-dominant IXCs.

15       **Q. DO YOU BELIEVE THESE TWO EXAMPLES ARE APT IN ATTEMPTING**  
16       **TO JUSTIFY DISCRIMINATORY PRICING OF SWITCHED ACCESS?**

17       **A.** No. The first and most important observation to make is that in putting forth these  
18       examples Mr. Wood is effectively confirming that the differential rate structure for  
19       CLEC-provided switched access constitutes rate discrimination rather than mere rate  
20       differences that are explained by cost differences.

21       Mr. Wood's first example, that of different rates for business and residential customers,  
22       is inapt on two grounds. First, it is an example of *retail* price discrimination rather

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<sup>5</sup> Wood Direct Testimony, pp. 22-23.



1 than *wholesale* or *input* price discrimination.<sup>6</sup> Second, the “value-of-service” pricing  
2 structure that explains this price discrimination arose in the pre-competitive era and  
3 hence was the product of regulatory fiat.<sup>7</sup> These types of discriminatory pricing  
4 structures are unlikely to be sustainable under increasingly competitive market  
5 conditions.

6 Mr. Wood’s second example, that of charging different switched access rates for  
7 dominant and non-dominant IXCs, is also inapt on two grounds. First, when  
8 competition was first introduced in the long-distance marketplace, it was technically  
9 infeasible for the local exchange carriers to provide non-dominant IXCs with the same  
10 quality of switched access as that provided the dominant IXC, AT&T.<sup>8</sup> Hence, the rate  
11 differential was designed, in part, to compensate the non-dominant IXCs for this  
12 inferior quality of switched access. Second, the FCC was concerned that the  
13 continuation of this discriminatory rate structure for switched access would lead to  
14 economic distortions and anticompetitive outcomes.<sup>9</sup> The following passage from an  
15 article authored by FCC officials is instructive in understanding the specific nature of  
16 the problem.

<sup>6</sup> As I previously observed, “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.” Weisman Direct Testimony, p. 10.

<sup>7</sup> Peter Temin, *THE FALL OF THE BELL SYSTEM*. New York: Cambridge University Press, 1987, pp. 33-34. See also Alfred E. Kahn and William B. Shew, “Current Issues in Telecommunications Regulation: Pricing,” *Yale Journal on Regulation*, Vol. 4, 1997, pp. 194-199.

<sup>8</sup> The Bell System was designed and engineered as an integrated network serving one long-distance provider, AT&T Long Lines. Hence, when competition first surfaced in the long-distance market, a patchwork of network connections was required to provide other common carriers with access to end-user customers. Indeed, as the FCC observed, “Because in the short run the superior quality access received by AT & T could be provided to only one carrier, we imposed a charge upon AT & T and its interexchange partners that would reflect an estimate of premium value, called the premium access charge.” 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, ¶ 26. See also Gerald W. Brock, *TELECOMMUNICATIONS POLICY FOR THE INFORMATION AGE*, Harvard University Press: Cambridge MA, 1994, pp. 139-141.

<sup>9</sup> 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, ¶¶ 57-62.

1 It can be argued, for instance, that some of the Commission's regulatory  
2 actions in the interexchange market that were designed to promote  
3 competition during transition, such as highly discounted access pricing  
4 for OCCs [Other Common Carriers] and restrictions on competitive  
5 pricing responses by AT&T, in fact have encouraged entry by  
6 uneconomic providers and uneconomic construction of excess capacity.  
7 If this is true, the gradualist approach to deregulation of interexchange  
8 markets will have resulted in substantial, unnecessary costs for society  
9 that never would have been incurred in a truly competitive marketplace.  
10 Moreover, this approach will have directly increased consumer costs by  
11 requiring regulated firms to charge higher prices to protect competitors  
12 during the transition.<sup>10</sup>

13 The bottom line is that the rate discrimination that Mr. Wood dismisses as standard  
14 industry practice represents the very type of unreasonable rate discrimination that this  
15 Commission's policies should seek to prevent.

16 **Q. DOES MR. WOOD CONTEND THAT THE 1996 TELECOMMUNICATIONS**  
17 **ACT EXPLICITLY PROVIDES FOR THE TYPE OF RATE**  
18 **DISCRIMINATION AT ISSUE IN THIS PROCEEDING?**

19 **A. Yes.** In support of his contention, Mr. Wood states that "The 1996 Federal  
20 Telecommunications Act explicitly created different and discriminatory pricing for the  
21 exchange of local versus interexchange traffic among carriers, even when the services  
22 were technically equivalent."<sup>11</sup>

<sup>10</sup> 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, pp. 193-194. [At the time this article was written, the authors were, respectively Chairman, Chief, Common Carrier Bureau, and Special Counsel, Common Carrier Bureau, Federal Communications Commission.]

<sup>11</sup> Wood Direct Testimony, p. 23.

1 Q. DOES MR. WOOD'S INVOCATION OF THE 1996  
2 TELECOMMUNICATIONS ACT RATIONALIZE THE RATE  
3 DISCRIMINATION AT ISSUE IN THIS PROCEEDING?

4 A. No. Mr. Wood cites an example in which different types of telecommunications traffic  
5 are subject to different rate treatment when the costs of providing the various services  
6 in question are presumptively the same. However, this proceeding is concerned with  
7 different LXC's being subject to disparate rate treatment when the costs of providing  
8 switched access are presumptively the same. Hence, in Mr. Wood's example there is  
9 discrimination across different traffic types, but not across different carriers. In  
10 contrast, the issue in this proceeding involves discrimination across carriers that  
11 provide the same type of traffic, presumptively unreasonable discrimination, and  
12 therefore gives rise to market distortions and anticompetitive outcomes. Hence, once  
13 again Mr. Wood's example is inapt for the purposes of the Commission's evaluation of  
14 the issues in this proceeding.

15 Q. DOES MR. WOOD ATTEMPT TO EXPLAIN THE RATE DIFFERENCES  
16 BETWEEN QCC AND THE FAVORED CARRIERS?

17 A. Yes. Mr. Wood's argument is essentially that QCC is not similarly situated to the  
18 LXC's that were charged lower rates for switched access.<sup>12</sup> He further points out that  
19 "§ 364.10(1) prohibits only 'undue or unreasonable preference' and undue or  
20 unreasonable prejudice."<sup>13</sup> He therefore implies that the rate discrimination at issue in  
21 this proceeding does not constitute *unreasonable* or *undue* rate discrimination.

22 Q. DO YOU CONCUR WITH MR WOOD'S REASONING?

23 A. No. I am not an attorney, so I will defer to counsel to brief the legal interpretation of  
24 this particular passage from the statute and limit my discussion and analysis to the

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<sup>12</sup> Id., pp. 23-26.

<sup>13</sup> Id., p. 25.

1 relevant economic issues. It is my understanding that the Commission has a duty to  
2 intervene in Florida's telecommunication markets when the failure to do so can lead to  
3 market distortions and anticompetitive outcomes. Mr. Wood's counsel to the  
4 Commission is two-fold. First, he opines that rate discrimination is standard practice in  
5 the telecommunications industry and hence there is no sound rationale for the  
6 Commission to intervene in the switched access market. Second, because Mr. Wood  
7 believes QCC is not like the other EXCs that received favorable rate treatment, any  
8 such rate discrimination fails to constitute undue preference or prejudice.

9 **Q. HOW DO YOU RESPOND TO MR WOOD'S FIRST ARGUMENT THAT**  
10 **RATE DISCRIMINATION IS STANDARD PRACTICE IN THE**  
11 **TELECOMMUNICATIONS INDUSTRY?**

12 **A.** Mr. Wood appears to ignore the critical distinction between retail rate discrimination  
13 and wholesale (input) rate discrimination, particularly as it relates to a bottleneck  
14 service such as switched access. Furthermore, the fact that rate discrimination is  
15 common in the telecommunications industry does not imply that such practices do not  
16 give rise to market distortions and anticompetitive outcomes under certain conditions.  
17 As I explained at length in my direct testimony, switched access is one of those  
18 exceptions that requires regulatory intervention to prevent unreasonable rate  
19 discrimination.<sup>14</sup> Contrary to Mr. Wood's suggestions, the conduct of other providers  
20 in other contexts does not immunize Mr. Wood's clients from their duty to avoid undue  
21 rate discrimination. Neither does it offset or mitigate the anticompetitive effects on  
22 QCC of the CLECs' discriminatory switched access pricing.

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<sup>14</sup> Weisman Direct Testimony, § IV.

1 Q. CAN YOU ELABORATE AS TO WHY PRICE DISCRIMINATION CAN BE  
2 PROBLEMATIC UNDER CERTAIN CONDITIONS?

3 A. Yes. It is important to differentiate clearly between price discrimination in input  
4 (generally wholesale) markets and price discrimination in output (generally retail)  
5 markets. With respect to retail markets, the economics literature recognizes that price  
6 discrimination can be welfare-enhancing when it leads to an increase in total output in  
7 the market relative to a uniform price.<sup>15</sup> There is a general consensus that price  
8 discrimination is increasingly common in retail markets, that competition may actually  
9 force firms to adopt discriminatory pricing schemes, and that it is presumptively  
10 welfare-enhancing.<sup>16</sup> This proceeding, however, involves rate discrimination in *input*  
11 *markets*, as switched access is a wholesale service provided by one carrier to another  
12 carrier.

13 Q. DO THE SAME ARGUMENTS THAT ARE GENERALLY SUPPORTIVE OF  
14 PRICE DISCRIMINATION IN RETAIL MARKETS CARRY OVER TO THE  
15 CASE OF INPUT MARKETS?

16 A. No. The general policy advisability of allowing price discrimination in retail markets  
17 does not carry over to wholesale or input markets. The welfare implications of input  
18 price discrimination are mixed, but the prevailing view in the literature is that it can  
19 often be welfare diminishing.<sup>17</sup> The problem arises from the fact that the input supplier  
20 has an incentive to charge the relatively efficient provider a higher price for the input  
21 and the relatively inefficient provider a lower price for the input, all things being equal.  
22 The net effect of this price discrimination is to decrease the output of the efficient

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<sup>15</sup> See, for example, Jean Tirole, *INDUSTRIAL ORGANIZATION*, Cambridge MA: The MIT Press, 1988, pp. 137-140.

<sup>16</sup> ANTITRUST MODERNIZATION COMMISSION, *REPORT AND RECOMMENDATIONS*, Washington D.C. 2007, Section 3.

<sup>17</sup> See, for example, 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; and Patrick DeGraba, "Input Market Price Discrimination and the Choice of Technology," *The American Economic Review*, Vol. 80(5), December 1990, pp. 1246-1253.

1 provider, increase the output of the inefficient provider and thereby raise the total  
2 resource costs borne by society in producing any given level of output. These are  
3 basically the same type of market distortions that I discussed in my direct testimony.<sup>18</sup>

4 **Q. DOES THIS OBSERVATION HAVE ANY IMPLICATIONS FOR THE**  
5 **COMMISSION'S POLICY ON INPUT PRICE DISCRIMINATION AS**  
6 **COMPARED TO RETAIL PRICE DISCRIMINATION?**

7 **A. Yes. What this suggests is that, in contrast to retail price discrimination, there can be**  
8 **no reasonable presumption that input price discrimination is welfare-enhancing. This**  
9 **is important for regulatory policy because it suggests that in retail telecommunications**  
10 **markets the presumption should be in favor of permitting price discrimination, but any**  
11 **such presumption should be reversed in the case of input markets.<sup>19</sup> That is to say,**  
12 **input price discrimination (particularly for a service such as switched access) should be**  
13 **deemed presumptively welfare-diminishing absent credible evidence to the contrary.**  
14 **From an economic perspective, regulators and policymakers designing competition**  
15 **policy should strive to prohibit particular business practices when they are welfare-**  
16 **diminishing and should permit business practices when they are welfare-enhancing.**  
17 **The objective would be to set the policy guideline so as to minimize the expected**  
18 **social cost of error. Hence, if input price discrimination is more often welfare-**  
19 **diminishing than welfare-enhancing, it is advisable to establish a default policy that**  
20 **prohibits input price discrimination absent credible information to suggest that**  
21 **departures from this policy are warranted.**

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<sup>18</sup> Weisman Direct Testimony, pp. 8-13.

<sup>19</sup> For a discussion of these types of trade-offs in the telecommunications industry, see Dennis L. Weisman, "A 'Principled' Approach to the Design of Telecommunications Policy." *Journal of Competition Law & Economics*, Vol. 6(4), December 2010, pp. 927-956.

1 Q. DOES MR. WOOD ASSERT THAT SWITCHED ACCESS IS NOT A  
2 MONOPOLY BOTTLENECK?

3 A. Mr. Wood does not directly assert that switched access is not a monopoly bottleneck,  
4 but he does intimate it. He states in a footnote that "IXCs are not required to use the  
5 network facilities of unaffiliated LECs to complete calls, and often do not do so."<sup>20</sup> I  
6 have addressed the matter of switched access being a monopoly bottleneck and  
7 therefore not a competitive service in my direct testimony.<sup>21</sup> I will not repeat all of  
8 those arguments here, but I would make two observations.

9 First, despite the fact that telecommunications markets are becoming increasingly  
10 competitive, a fact recognized by the recently passed Florida legislation, this does not  
11 mean that all sectors of the industry are experiencing the same level of competitive  
12 intensity. It is paradoxical perhaps, but the problem of the switched access monopoly  
13 bottleneck is not one that is remedied by competition, it is in fact one that is created by  
14 competition. To wit, in the pre-competitive era of the former Bell System, there was  
15 essentially a single vertically-integrated provider of local and local-distance  
16 telecommunications and, of course, there is no economic incentive for a firm to  
17 leverage its market power against itself.

18 Second, that the local exchange market is competitive means that *end-user customers*  
19 can choose from a number of different providers for their local exchange telephone  
20 service. Once the end-user customer enters into an agreement with a particular CLEC,  
21 that CLEC enjoys a monopoly bottleneck that can be leveraged to charge differential  
22 switched access rates to IXCs. The CLECs are effectively gatekeepers that control the  
23 rights of passage and the fees for doing so. Furthermore, because the choice of CLEC

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<sup>20</sup> Wood Direct Testimony, p. 8, note 3.

<sup>21</sup> See, in particular, Weisman Direct Testimony, pp. 5-9, 12-14. In addition, unless a special access arrangement is being used to reach the end-user, an option that is cost-effective only when volume is sufficient to justify the expenditures on such facilities, switched access charges are being paid, either by the IXC, or in situations where the IXC hands the call off to an underlying carrier for termination, by the underlying third-party carrier.

1 is made by the *end-user customer*, whereas switched access charges are paid by the  
2 IXC, there is no market mechanism that corrects this condition; it is inherent in the way  
3 the market for long distance calls works. The following passage is instructive on this  
4 point.

5 Because the terminating carrier controls the only line and local switch  
6 connecting the called party to the network, that carrier has strong  
7 incentives to extract as high a payment as possible from the calling  
8 party's carrier. Competition at the retail level has not diminished the  
9 terminating access monopoly of the carrier selected by the called party.

10 As a result ... regulators must ensure that terminating rates are cost-  
11 based, and the need for regulation continues indefinitely.<sup>22</sup>

12 Hence, once the IXC opts to provide long-distance service, it has no choice but to  
13 originate/terminate the long-distance call over the CLEC facilities chosen by the end-  
14 user customer.<sup>23</sup> Commission oversight is required under these conditions to serve as a  
15 surrogate for competition and thereby prevent market distortions and anticompetitive  
16 outcomes.<sup>24</sup>

<sup>22</sup> Glen O. Robinson and Thomas B. Nachbar, *COMMUNICATIONS REGULATION*, St. Paul MN: Thompson-West, 2008, pp. 527-28.

<sup>23</sup> As the FCC has recognized, this problem is further exacerbated by rate averaging requirements. Second, the Commission has interpreted Section 254(g) to require IXCs geographically to average their rates and thereby to spread the cost of both originating and terminating access over all of their end users. Consequently, IXCs have little or no ability to create 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 costs – the end user that chooses the high-priced LEC – has no incentive to minimize costs. (footnote omitted)

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 ¶ 31.

<sup>24</sup> Weisman Direct Testimony, p. 3 and notes 2 and 3.



1 Q. HOW DO YOU RESPOND TO MR WOOD'S SECOND ARGUMENT THAT  
2 QCC IS NOT SIMILAR TO THE OTHER IXCS THAT WERE THE  
3 BENEFICIARIES OF FAVORABLE RATE TREATMENT?

4 A. Mr. Wood reflexively invokes the "not similarly-situated" criterion to justify discounts  
5 to the favored IXCs that were not offered to QCC. The fact that there may be  
6 differences between the favored IXCs and QCC is a necessary, but not a sufficient,  
7 condition for rationalizing the differences in rate treatment. What is more, the  
8 Commission should be aware that distinctions without a difference do not establish that  
9 QCC and the preferred IXCs were not and are not similarly situated in the context of  
10 the CLECs' provision of intrastate switched access in Florida.

11 Q. DID CLECS ALSO RAISE IRRELEVANT DISTINCTIONS IN THE  
12 PARALLEL COLORADO PROCEEDING?

13 A. Yes. In the Colorado proceeding, the CLECs raised a laundry list of alleged  
14 differences between the favored IXCs and QCC in an attempt to establish that QCC  
15 was not similarly situated, and thus was not subjected to unlawful conduct. And yet,  
16 the differences between the IXCs raised by the CLECs were not sufficient to establish  
17 that the IXCs are not similarly situated. Indeed, as the Administrative Law Judge  
18 (ALJ) in the Colorado proceeding observed.

19 Without regard to implementation, the thrust of MCImetro's second  
20 theory is that QCC was not similarly situated to AT&T because QCC  
21 could not undertake the reciprocal arrangement. ... the attempt to  
22 distinguish customers by a combination of access with other tariff and  
23 off-tariff provisions was previously rejected. The substance of access  
24 agreements must prevail over form and access services cannot be  
25 obscured or obviated by inclusion with other terms. Creativity of those

1 contracting for access . . . cannot change the access service provided nor  
2 the unlawful pricing thereof.<sup>25</sup>

3 Illustratively, the agreement between AT&T and MCI applies switched  
4 access service regardless of delivery method. However, if the parties  
5 had negotiated a commercial agreement to limit charges to a unique  
6 negotiated methodology using traditional means plus delivery of a  
7 peppercorn, or perhaps a unique billing requirement (e.g., use of  
8 controlled proprietary applications), they would forever prohibit any  
9 competitor from being similarly situated . . .<sup>26</sup>

10 The key policy message to take away from the Colorado ALJ's decision, of course, is  
11 that CLECs cannot simply point to any differences that may exist between IXCs as a  
12 credible rationale to establish that the IXCs are not similarly situated. Indeed, as the  
13 Colorado Commission observed, if this were not the case "the regulated entities would  
14 be able to obscure their discriminatory conduct simply by executing off-tariff  
15 agreements covering multiple services."<sup>27</sup>

16 **Q. RECOGNIZING THAT NOT EVERY DIFFERENCE BETWEEN CLECS**  
17 **CONSTITUTES A SOUND BASIS TO FIND THAT THEY ARE NOT**  
18 **SIMILARLY SITUATED, DO YOU HAVE A VIEW AS TO WHAT CRITERIA**  
19 **WOULD CONSTITUTE A SOUND RATIONALE THAT JUSTIFIES PRICE**  
20 **DIFFERENCES IN THIS CONTEXT?**

21 **A.** Yes. I believe that any differential rate treatment for switched access should be firmly  
22 grounded in (and fully explained by) the differential costs for the CLECs' serving one  
23 IXC *vis-à-vis* another IXC. Absent such a credible demonstration of cost differences,

<sup>25</sup> *QCC v. MCI Metro, 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"), ¶ 27.

<sup>26</sup> *Id.*, ¶ 28.

<sup>27</sup> *QCC v. MCI Metro, et al*, Docket No. 08F-259T, Decision No. C11-1216 (mailed Nov. 15, 2011) at ¶ 76.

1 the default policy should be that each IXC pays the same uniform rate for switched  
2 access, all things being equal. To do otherwise would likely lead to market distortions  
3 and anticompetitive outcomes.

4 **Q. HOW DO YOU RESPOND TO MR. WOOD'S CLAIM THAT "QWEST HAD**  
5 **YET TO PROVIDE ANY EVIDENCE THAT IT WAS SIMILARLY SITUATED**  
6 **TO ANY IXC WHOSE CONTRACT TERMS QWEST SEEKS TO CONFER**  
7 **UPON ITSELF"?<sup>28</sup>**

8 **A. Mr. Wood's contention is that the burden for establishing that QCC and the favored**  
9 **IXCs are similarly situated is wholly borne by the customers of the CLECs rather than**  
10 **the CLECs themselves. In light of the above discussion, this implies that QCC bears**  
11 **the burden for establishing that the CLECs' cost to provide switched access to the**  
12 **favored IXCs is lower than the cost to provide switched access to QCC. The question**  
13 **as to which party bears the burden of proof calls for a legal determination and hence**  
14 **lies outside my particular area of expertise. I hasten to point out, however, that it is the**  
15 **CLECs (and not QCC) that control cost information related to *their* provision of**  
16 **switched access services to particular IXCs.<sup>29</sup>**

17 Hence, it would be illogical to assign responsibility for establishing the existence of  
18 cost differentials on the IXC customers consuming the service rather than on the  
19 CLECs producing the service. It is illogical because the burden would be assigned to  
20 the party that is arguably the least well-positioned to credibly inform the record. It  
21 would be akin to requiring an automobile customer to prove that it costs Ford Motor  
22 Company less to produce an automobile for her than it does for someone else. It is

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<sup>28</sup> Wood Direct Testimony, pp. 25-26.

<sup>29</sup> QCC inquired of each respondent CLEC in discovery whether it performed cost or demand studies in connection with establishing the intrastate switched access rates set forth in the agreement(s). To my knowledge, not a single CLEC responded that it had performed such a study. See the CLECs' response to QCC Interrogatory Nos. 2(l) and 2(m). See, e.g. Direct Testimony of William R. Easton, Exhibits 6B (Broadwing), 34A (PAETEC) and 40 (US LEC).

1 quite obvious that Ford Motor Company is better positioned than the customer to  
2 establish the existence of any cost differences or lack thereof.

3 In the parallel Colorado proceeding, the Commission recognized this tension and  
4 resolved it by first evaluating whether QCC had established a *prima facie* case. The  
5 Commission then evaluated whether the CLECs effectively rebutted QCC's *prima*  
6 *facie* showing.<sup>30</sup>

7 **Q. DOES MR. WOOD TAKE ISSUE WITH THE REMEDY THAT QCC**  
8 **PROPOSES FOR THE SWITCHED ACCESS OVERCHARGES?**

9 **A.** Yes. QCC's proposed remedy is that it be charged the same rate for switched access as  
10 the favored IXCs and that it receive a refund equal to the amount of the overcharges,  
11 plus interest. Mr. Wood states that "If public policy is best served by having all IXCs,  
12 regardless of circumstances, pay the published rate (something Qwest has yet to  
13 demonstrate), then the only remedy is to adjust the charges to the other IXCs who paid  
14 a lower rate."<sup>31</sup> In other words, the remedy would be to force the favored IXCs to  
15 disgorge an amount equal to the switched access undercharges or discounts that they  
16 received over the many years that the secret switched access agreements were in effect.  
17 Notably, Mr. Wood's contention that refunds to QCC would only exaggerate  
18 discrimination because they would leave other IXCs continuing to pay the publicly  
19 stated rates was rejected outright by the Colorado Commission.

20 In response, QCC argues that, if the Commission were to accept the  
21 argument that an award of reparations would result in further  
22 discrimination, it would then accept and endorse the current level of  
23 unlawful discrimination. QCC contends this claim, when taken to its

<sup>30</sup> Colorado Remand Order, ¶ 39 ("Qwest made a *prima facie* case that the Respondents' cost to provide service was the same as to all comers requiring access services and no Respondent demonstrated reasonable justification related to the variation in pricing.").

<sup>31</sup> Wood Direct Testimony, p. 30.

1 logical conclusion, means that a customer aggrieved by rate  
2 discrimination is never entitled to be made whole through an award of  
3 reparations, so long as there are any other similarly situated parties.<sup>32</sup>

4 We agree with QCC on this issue and deny the exceptions filed by XO,  
5 Granite, and BullsEye on this ground. We agree that the above  
6 argument presented by the respondent CLECs, when taken to its logical  
7 conclusion, would frustrate the ability of any complainant to enforce the  
8 non-discrimination and reparations statutes in Title 40, as long as any  
9 other similarly situated parties chose not to prosecute a complaint.<sup>33</sup>

10 **Q. ARE THERE OTHER CONCERNS WITH MR. WOOD'S PROPOSAL TO**  
11 **FORCE THE FAVORED IXCS TO DISGORGE THE DISCOUNTS THAT**  
12 **THEY RECEIVED?**

13 **A. Yes.**<sup>34</sup> Should the Commission find that the CLECs engaged in unreasonable rate  
14 discrimination, Mr. Wood's proposal would have the effect of penalizing the favored  
15 IXCs but not penalizing (and possibly even rewarding) the offending CLECs that  
16 violated statutory obligations.<sup>35</sup> What is particularly "novel" about Mr. Wood's  
17 proposal is that it seemingly punishes all of the parties except the offending parties.  
18 This, of course, is problematic if one of the Commission's objectives in crafting an  
19 appropriate remedy is to provide sufficient disincentives for the CLECs to engage in  
20 unreasonable rate discrimination.

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<sup>32</sup> *QCC v. MClmetro, et al*, Docket No. 08F-259T, Decision No. C11-1216 (mailed Nov. 15, 2011) at ¶ 84.

<sup>33</sup> *Id.*, ¶ 85.

<sup>34</sup> Please note that my testimony only addresses the substantive concerns plaguing disgorgement as a remedy. Not being an attorney, I will not address any procedural shortcomings arising from the fact that the CLECs urging disgorgement did not act to include the favored IXCs as parties to this case. I assume that counsel will address this on brief.

<sup>35</sup> To the extent that the favored IXCs reduce long-distance rates to reflect the switched access discounts, the CLECs would, in turn, realize higher demand for switched access services. Hence, the CLECs benefit from the higher demand for switched access resulting from the switched access discounts while having those discounts returned to them as part of Mr. Wood's proposal.

1 Q. WHAT OBJECTIVES SHOULD GUIDE THE COMMISSION'S  
2 DELIBERATIONS IN CRAFTING A SUITABLE REMEDY?

3 A. First, in the absence of credible cost studies that demonstrate that the rate differentials  
4 are fully explained by the cost differentials, each IXC should by default pay the same  
5 uniform rate for switched access. This implies that there should be pricing parity for  
6 switched access. Pricing parity, of course, can be achieved either by decreasing the  
7 rate for QCC or increasing the rate for the favored IXCs.

8 Second, increasing the rate for the favored IXCs achieves parity on a prospective basis,  
9 but it does not retroactively address the competitive impact of the unlawful practice on  
10 QCC. To wit, the favored IXCs were conferred an artificial competitive advantage by  
11 the CLECs that lowered their cost structure in the provision of long-distance  
12 telecommunications *vis-à-vis* QCC. Hence, it is not sufficient in terms of a remedy to  
13 simply (i) require the favored IXCs to disgorge the amount of the undercharges or  
14 discounts; and (ii) correct the switched access rate disparity going forward. This is  
15 necessarily the case because the expected competitive impact on QCC in the retail long  
16 distance market would already have occurred and it is not possible to "un-ring the bell"  
17 so to speak.

18 The above discussion necessarily implies that any remedy should satisfy three  
19 conditions: (1) Ensure parity pricing on a prospective basis to prevent market  
20 distortions and anticompetitive outcomes; (2) retrospectively mitigate to the greatest  
21 extent possible the impact on the party subject to rate discrimination; and (3) provide  
22 sufficient disincentives for the CLECs to selectively employ rate discrimination as a  
23 form of *self-help* in their business dealings with the IXCs – a tactic that is privately  
24 beneficial for the CLECs and yet socially harmful in terms of competitive distortions in  
25 Florida's telecommunications markets. While the CLECs may claim that providing a

1 discount to AT&T and Sprint was not beneficial to them, it must have been beneficial  
2 to them relative to charging all IXCs the same rate because they would not have  
3 rationally engaged in such conduct otherwise.<sup>36</sup> This conduct on the part of the CLECs  
4 ensured collectibles from the preferred IXCs and, by keeping the discounts secret,  
5 enabled them to continue to impose higher rates on other IXCs, including QCC.  
6 Finally, by proposing that the CLECs recover large payments from the favored IXCs,  
7 Mr. Wood has, in effect, devised a "remedy" that would potentially *reward* the party  
8 that violated Florida law. Paradoxically, this is not a remedy for the victim of  
9 discriminatory pricing, but rather a potential *windfall* for the party that perpetrated the  
10 discriminatory pricing scheme.

11 **Q. DO YOU BELIEVE REFUNDS (REPARATIONS) ARE AN APPROPRIATE**  
12 **REMEDY IN THIS CASE?**

13 **A.** Yes. Refunds would provide as much retrospective parity as is possible to assure in  
14 this context. No remedy is perfect, but requiring the CLECs to make QCC whole for  
15 what QCC overpaid over many years is the most sensible remedy. The Colorado ALJ  
16 reached exactly this conclusion. In the recent Remand Order, the ALJ concisely  
17 explained the rationale for refunds. The ALJ held, "[r]eparations are not an attempt to  
18 calculate contract damages. Rather, reparations approximate a remedy of past unjust  
19 discrimination and, consistent with prior Commission policy, avoids a windfall to the  
20 utility from discriminatory conduct violating its own tariff obligations."<sup>37</sup>

21 **Q. DO YOU HAVE A VIEW AS TO HOW PRICING PARITY SHOULD BE**  
22 **ACHIEVED ON A PROSPECTIVE BASIS?**

23 **A.** Yes. As discussed above, pricing parity can be achieved either by decreasing the rate  
24 for QCC or increasing the rate for the favored IXCs. Achieving parity by decreasing

<sup>36</sup> The rationality axiom postulates that economic agents behave in their own self-interest.

<sup>37</sup> Colorado Remand Order, ¶ 37.

1 the rate to QCC *vis-à-vis* increasing the rate to the favored IXCs would increase  
2 economic efficiency because the rates for switched access would be more closely  
3 aligned with the underlying marginal cost of switched access, all other factors being  
4 equal. This, in turn, would be expected to lead to rate reductions across-the-board for  
5 switched, long-distances service in Florida and thereby increase consumer welfare.

6 **B. Mr. Reynolds**

7 **Q. ~~DOES MR. REYNOLDS CONTEND THAT QCC IS NOT SIMILARLY-~~**  
8 **~~SITUATED TO AT&T AND THEREFORE IS NOT ENTITLED TO THE~~**  
9 **~~SAME DISCOUNTS FOR SWITCHED ACCESS?<sup>38</sup>~~**

10 **A. ~~Yes. In similar fashion to Mr. Wood, Mr. Reynolds invokes the not similarly situated~~**  
11 **~~criterion to justify granting AT&T discounts that were not offered to other IXCs. And~~**  
12 **~~yet, it is not sufficient merely to assert that QCC and the other IXCs are not similarly~~**  
13 **~~situated to AT&T without credibly demonstrating that the characteristics that~~**  
14 **~~differentiate AT&T from the other IXCs explain the difference in rate treatment. What~~**  
15 **~~this means is that the similarly situated criterion must be grounded in economic reality.~~**  
16 **~~Mr. Reynolds provides the Commission with a litany of reasons why QCC is somehow~~**  
17 **~~different than AT&T. I am not questioning whether AT&T is different from QCC or~~**  
18 **~~any other IXC because that is not the substantive issue. I am questioning whether the~~**  
19 **~~differences that Mr. Reynolds identifies provide a credible, economic basis for the~~**  
20 **~~differences in rate treatment.~~**

21 **Q. ~~DOES MR. REYNOLDS IDENTIFY SPECIFIC CRITERIA FOR CHARGING~~**  
22 **~~QCC A HIGHER RATE FOR SWITCHED ACCESS THAN AT&T?~~**

23 **A. ~~Yes. In essence, Mr. Reynolds' defense of MCI's rate discrimination is two-fold.~~**  
24 **~~First, QCC is not a vertically integrated provider so it cannot "reciprocate" in~~**

<sup>38</sup> Reynolds Direct Testimony, p. 21.



1 ~~providing discounted switched access to MCI. Second, QCC does not generate the~~  
2 ~~same traffic volumes as AT&T. Both of these arguments are fine and good as far as~~  
3 ~~they go; the problem is that they don't go very far.~~

4 **Q. ~~WHY SHOULD THE COMMISSION BE CONCERNED ABOUT MR.~~**  
5 **~~REYNOLDS'S FIRST CLAIM THAT QCC CANNOT "RECIPROGATE" IN~~**  
6 **~~THE SAME MANNER AS AT&T?~~**

7 **A. ~~Mr. Reynolds states that "QCC would not have been able to provide MCI's IXCs with~~**  
8 **~~the same benefits" as AT&T because it does not provide switched access.<sup>39</sup> The~~**  
9 **~~benefits that Mr. Reynolds is alluding to, of course, are the discounted rates for~~**  
10 **~~switched access that were a component of the arrangement between AT&T and MCI.~~**  
11 **~~And yet, absent credible cost information to establish that these rate differences reflect~~**  
12 **~~the underlying cost differences, this agreement amounts to discrimination against QCC~~**  
13 **~~simply because it is not a vertically integrated provider of local and long distance~~**  
14 **~~telecommunications. As I demonstrated in my direct testimony, the concern with this~~**  
15 **~~sort of discrimination is that it can result in market distortions (and inefficient~~**  
16 **~~foreclosure) by precluding the least cost provider from serving as the least price~~**  
17 **~~provider.<sup>40</sup> In other words, MCI and AT&T may prevail in the long distance market,~~**  
18 **~~not because they are necessarily the most efficient providers, but because they control~~**  
19 **~~the pricing of a bottleneck, monopoly input in the form of switched access.~~**

20 **Q. ~~CAN YOU ELABORATE ON YOUR CONCERNS THAT THESE~~**  
21 **~~ALLEGEDLY RECIPROCAL AGREEMENTS ARE DISTORTIONARY AND~~**  
22 **~~POSSIBLY ANTICOMPETITIVE?~~**

23 **A. ~~Yes. To illustrate with a stylized example, suppose that there are three transport~~**  
24 **~~companies, AT&T, MCI and QCC, that operate on a toll road from Tampa to Miami.~~**

<sup>39</sup> Reynolds Direct Testimony, p. 24.

<sup>40</sup> Weisman Direct Testimony, pp. 9-12.

1 ~~AT&T owns the toll booth in Tampa and MCI owns the toll booth in Miami. Each~~  
2 ~~transport company must pass through these toll booths in order to enter and exit the toll~~  
3 ~~road. The public toll rate is \$4.00, but AT&T and MCI enter into a reciprocal~~  
4 ~~agreement granting each other discounted tolls of only \$1.00. Hence, QCC pays a toll~~  
5 ~~premium of \$3 = \$4 - \$1 on each end of the toll road. The competitive problem arises~~  
6 ~~from the fact that even if QCC is the most efficient transport company, it can be~~  
7 ~~inefficiently foreclosed from the market if its efficiency advantage on the Tampa-~~  
8 ~~Miami (Miami-Tampa) route is less than \$6 = 2 x \$3, the total toll premium it pays~~  
9 ~~relative to its rivals AT&T and MCI.~~

10 **Q. HAVE OTHER REGULATORY COMMISSIONS FOUND THAT**  
11 **RECIPROCAL AGREEMENTS OF THIS TYPE ARE ANTICOMPETITIVE?**

12 **A. Yes.** ~~As discussed in my direct testimony, the Minnesota Public Utilities Commission~~  
13 ~~investigated the companion AT&T (as GLEC) - MCI (as EKC) off-tariff agreement.<sup>41</sup>~~

14 ~~The Minnesota Commission found that "This conduct distorts the market, harms~~  
15 ~~competition, and ultimately harms consumers."<sup>42</sup>~~

16 ~~Further, the Colorado ALJ recently rejected MCI's reciprocity defense, noting that it~~  
17 ~~did not justify MCI's violation of Colorado law.~~

18 ~~MCI heavily relies upon the reciprocal scope and terms of the~~  
19 ~~negotiated 2004 Contracts and the fact that QCC could not undertake~~  
20 ~~those reciprocal obligations because QCC did not (and was not legally~~  
21 ~~able to) provide switched access in Colorado. However, the fact that~~  
22 ~~QCC could not enter into an identical agreement does not determine~~  
23 ~~unlawful discrimination of services provided within the scope of~~

<sup>41</sup> ~~Id., pp. 21-22.~~

<sup>42</sup> ~~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, 5626, 5025, 5643, 443, 5223, 5668, 4661/C-04-235, Minnesota Public Utilities Commission, 2007 Minn. PUC LEXIS 146 October 26, 2007, issued, p. 10.~~

1 ~~agreement, particularly in light of other applicable statutory~~  
2 ~~requirements.<sup>43</sup>~~

3 ~~For MCI to condition pricing or availability of intrastate access service~~  
4 ~~upon reciprocation of service alone would directly contravene the~~  
5 ~~limitations of § 40-15-105(1), C.R.S. An LXC requiring intrastate~~  
6 ~~access service to terminate a call is totally independent of the reciprocal~~  
7 ~~provision of access service. Such an LXC requiring access need not~~  
8 ~~have any ability to provide access services. For MCI to lower the rate~~  
9 ~~for access service only for those able to provide reciprocal service~~  
10 ~~directly contravenes Colorado law.<sup>44</sup>~~

11 ~~MCI unlawfully discriminated in failing to show that QCC was a~~  
12 ~~relevant dissimilar customer class purchasing identical access service.~~  
13 ~~MCI failed to overcome QCC's prima facie showing of unjust~~  
14 ~~discrimination and no lawful price differentiation has been shown.<sup>45</sup>~~

15 **Q. ~~DO YOU HAVE ANY OTHER CONCERNS WITH MCI'S RECIPROCITY~~**  
16 **~~THEORY?~~**

17 **A. ~~Yes. Even if reciprocity was a reasonable justification for input rate discrimination,~~**  
18 **~~my understanding is that it did not meaningfully exist in the MCI-AT&T~~**  
19 **~~arrangement.<sup>46</sup> Accordingly, there is even less justification for Mr. Reynolds'~~**  
20 **~~reciprocity defense.~~**

<sup>43</sup> Colorado Remand Order, ¶ 18.

<sup>44</sup> Colorado Remand Order, ¶ 23.

<sup>45</sup> Colorado Remand Order, ¶ 24.

<sup>46</sup> See Direct Testimony of William Easton, pp. 31-33, Direct Testimony of Derek Canfield, pp. 36-38 and Exhibit DAC-17.

1 Q. ~~SHOULD THE COMMISSION BE CONCERNED ABOUT MR. REYNOLDS'S~~  
2 ~~SECOND CLAIM THAT QCC DOES NOT GENERATE THE SAME TRAFFIC~~  
3 ~~VOLUMES AS AT&T?~~

4 A. ~~Yes. First, [REDACTED]~~  
5 ~~[REDACTED] As such, this post hoc rationalization is not credible.<sup>47</sup>~~  
6 ~~Further, there is no evidence to indicate that the cost to MCI in provisioning switched~~  
7 ~~access to AT&T is lower than the cost to MCI in provisioning switched access to QCC~~  
8 ~~due to differences in traffic volumes. Hence, granting AT&T but not QCC switched~~  
9 ~~access discounts on the basis of traffic volume amounts to discrimination against QCC~~  
10 ~~simply because it is a smaller provider than AT&T. The economic concern is the same~~  
11 ~~as that discussed above, that these practices can serve to preclude the least cost~~  
12 ~~provider from serving as the least price provider and lead to inefficient foreclosure. In~~  
13 ~~the absence of a cost justification, this disparate rate treatment is unjustified from an~~  
14 ~~economic perspective.~~

15 Q. ~~WHAT CONCLUSIONS DO YOU DRAW ABOUT MR. REYNOLDS' CLAIMS~~  
16 ~~THAT QCC IS NOT SIMILARLY SITUATED TO AT&T?~~

17 A. ~~Mr. Reynolds' claims fall victim to the same fallacy as that of Mr. Wood in that he~~  
18 ~~identifies meaningless distinctions to support his contention that QCC is not similarly~~  
19 ~~situated to the favored IXCs. For all of the reasons that I have identified above and in~~  
20 ~~my direct testimony, it is critical that any claims on the part of the CLECs that QCC is~~  
21 ~~not similarly situated to AT&T be grounded in economic reality — that any difference~~  
22 ~~in rates for switched access be explained by differences in costs for switched access.~~

<sup>47</sup> *QCC v. MCI Metro, et al*, Docket No. 08F-259T, Decision No. C11-1216 (mailed Nov. 15, 2011) at ¶ 75. (“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.”)

1 ~~Absent such a credible demonstration of cost differences, I believe the Commission's~~  
2 ~~policy should be that each EXC pays the same uniform rate for switched access.~~

3 **Q. DOES MR. REYNOLDS DEFEND MCI'S PRACTICE OF CHARGING QCC A**  
4 **HIGHER RATE THAN THE FAVORED EXCS?**

5 ~~A. Yes. Mr. Reynolds states that "MCImetro charged QCC the switched access rates in~~  
6 ~~its intrastate price list on file with this Commission."<sup>48</sup> ~~The intimation is that there can~~  
7 ~~be no claim of rate discrimination when QCC is charged access rates that are in~~  
8 ~~compliance with the price list on file with the Commission. This is incorrect as a~~  
9 ~~matter of economics. What matters in a competitive marketplace is relative~~  
10 ~~positioning. It is not possible to confer an advantage on one EXC without~~  
11 ~~simultaneously conferring a disadvantage on another EXC, particularly in the case of a~~  
12 ~~monopoly bottleneck input like switched access. The relevant issue is the absence of~~  
13 ~~pricing parity for switched access between QCC and AT&T. It is immaterial that QCC~~  
14 ~~was charged the rate on file with the Commission when other EXCs were charged a~~  
15 ~~lower rate. What Mr. Reynolds fails to recognize is that it is the practice of selectively~~  
16 ~~departing from the public price list when there is no cost justification for doing so that~~  
17 ~~constitutes rate discrimination. In point of fact, had the CLECs departed from the~~  
18 ~~public price list uniformly for all EXCs (absent any difference in costs) there would be~~  
19 ~~no rate discrimination issue.~~~~

20 **Q. DOES MR. REYNOLDS BELIEVE THAT ANY REMEDIES ARE**  
21 **APPROPRIATE IN THIS CASE?**

22 ~~A. No. Mr. Reynolds supports his claim by arguing that "MCImetro complied with its~~  
23 ~~Florida price list at all times by charging QCC the switched access rates contained~~  
24

<sup>48</sup> Reynolds Direct Testimony, p. 27.

1 ~~therein.<sup>49</sup> He further states that "MCImetro did not unreasonably discriminate against~~  
2 ~~QCC with respect to the rates it charged QCC for switched access in Florida. . .<sup>50</sup>~~

3 **Q. ~~DO YOU CONCUR WITH MR. REYNOLDS' CLAIM THAT NO REMEDIES~~**  
4 **~~ARE CALLED FOR IN THIS CASE?~~**

5 **A. ~~No. The basis for Mr. Reynolds' claim is that there was no rate discrimination because~~**  
6 **~~MCImetro charged QCC the switched access rate contained in its Florida price list.~~**  
7 **~~The concept of rate discrimination does not turn on rate levels, however, but on rate~~**  
8 **~~differences that cannot be explained by cost differences. According to Mr. Reynolds'~~**  
9 **~~logic, MCI could charge AT&T ½ cent per minute for switched access, charge QCC~~**  
10 **~~\$10 per minute for switched access and yet still claim that it was not engaged in~~**  
11 **~~unreasonable discrimination as long as the \$10 per minute rate is contained in the~~**  
12 **~~Florida price list. This is a fallacious argument and should be accorded no weight by~~**  
13 **~~the Commission.~~**

14 **IV. CONCLUSION**

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A. Yes.**  
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<sup>49</sup> Reynolds Direct Testimony, p. 43.  
<sup>50</sup> Id.

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); 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

**REDACTED**

DIRECT TESTIMONY OF WILLIAM R. EASTON

ON BEHALF OF

QWEST COMMUNICATIONS COMPANY, LLC

Filed: June 14, 2012

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**I. IDENTIFICATION OF WITNESS**

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

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

**Q. PLEASE GIVE A BRIEF BACKGROUND OF YOUR EDUCATION AND TELEPHONE COMPANY EXPERIENCE.**

A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980, I received a Masters of Business Administration from the University of Washington. In addition, I am a Certified Management Accountant.

I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in financial management with U S WEST, Qwest and now CenturyLink, including staff positions in the Treasury and Network organizations. From 1996 through 1998, I was Director - Capital Recovery. In this role I negotiated depreciation rates with state commission and FCC staffs and testified in various regulatory proceedings. From 1998 until 2001 I was a Director of Wholesale Finance, responsible for the management of Wholesale revenue streams from a financial perspective. In this capacity I worked closely with the Product Management organization on their product offerings and projections of revenue. In October of 2001 I moved from Wholesale Finance to the Wholesale Advocacy group, where I am currently responsible for advocacy related to Wholesale products and services. In this role I work extensively with the Product Management, Network and Costing organizations.

1 **Q. HAVE YOU TESTIFIED BEFORE THIS OR OTHER REGULATORY**  
2 **COMMISSIONS?**

3 A. I have not testified before this Commission, but have provided testimony in Arizona,  
4 Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota,  
5 Oregon, Pennsylvania, South Dakota, Utah, Wyoming and Washington. Among those  
6 appearances, I testified on behalf of QCC in the parallel proceeding before the Colorado  
7 Public Utilities Commission (Docket No. 08F-259T).

8 **II. PURPOSE OF TESTIMONY**

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

10 A. For many years, the Respondent competitive local exchange carriers ("CLECs")  
11 subjected QCC to unjust and unreasonable rate discrimination in connection with the  
12 provision of intrastate switched access services. These CLECs entered into off-price list  
13 individual case basis agreements with select interexchange carriers and failed to make  
14 those same rates, terms and conditions available to QCC as otherwise required by statute  
15 and (in many cases) the terms of the CLECs price lists. In my testimony I will provide  
16 some necessary context, by first explaining how switched access service and charges  
17 work. I will then discuss why the off-price list agreements are unreasonably  
18 discriminatory from a public policy perspective. Finally, I will identify the intrastate  
19 switched access price lists used by each of the Respondent CLECs to charge QCC, an  
20 interexchange carrier ("IXC") providing long-distance services in Florida. I will also  
21 identify the switched access rates charged by each of the Respondent CLECs to certain  
22 other IXCs that are parties to the off-price list arrangements, and will attach the most  
23 relevant agreements.

24 My testimony will show that QCC was not provided with the same rates, terms or  
25 conditions received by certain other IXCs that are parties to the off-price list

1 arrangements and that QCC was subjected to unreasonable rate discrimination in the  
2 provisioning of intrastate switched access service. QCC witness Mr. Derek Canfield's  
3 testimony will identify the financial impact on QCC created by virtue of the higher rates  
4 charged by the CLECs to QCC and the preferential rates the same CLECs charged  
5 certain other IXCs for the identical service.

6 **Q. WHO ELSE IS TESTIFYING ON BEHALF OF QCC IN ADDITION TO**  
7 **YOURSELF AND MR. CANFIELD?**

8 **A.** Two other witnesses will be filing testimony on behalf of QCC. Lisa Hensley Eckert  
9 testifies as to how QCC discovered (albeit initially only generally) the existence of off-  
10 price list arrangements and what steps QCC took to address the issue. Finally, Dr.  
11 Dennis Weisman, a Professor of Economics, testifies regarding the bottleneck nature of  
12 switched access services and the distorting effects of rate discrimination. Dr. Weisman  
13 also analyzes whether QCC is similarly situated to the IXCs preferred by the CLEC  
14 secret agreements and whether the CLECs have identified reasonable bases for their  
15 disparate treatment of QCC and the preferred IXCs.

16 **Q. WHAT ISSUES IDENTIFIED IN THE ORDER ESTABLISHING PROCEDURE**  
17 **(ORDER NO. PSC-12-0048-PCO-TP) DOES YOUR TESTIMONY ADDRESS?**

18 **A.** My testimony will address issues 5, 6, 7 and 8(e). Those are as follows:

19 5) Has the CLEC engaged in unreasonable rate discrimination, as alleged in Qwest's  
20 First Claim for Relief, with regard to its provision of intrastate switched access?

21 6) Did the CLEC abide by its Price List in connection with its pricing of intrastate  
22 switched access service? If not, was such conduct unlawful as alleged in Qwest's  
23 Second Claim for Relief?

24 7) Did the CLEC abide by its Price List by offering the terms of off-Price List  
25 agreements to other similarly-situated customers? If not, was such conduct

1 unlawful, as alleged in Qwest's Third Claim for Relief?

2 8) Are Qwest's claims barred or limited, in whole or in part, by:

3 e) the filed rate doctrine;

4 **III. CORPORATE BACKGROUND**

5 **Q. PLEASE EXPLAIN ON WHOSE BEHALF YOU ARE TESTIFYING TODAY**  
6 **AND THAT ENTITY'S RELATIONSHIP TO THE CENTURYLINK FAMILY**  
7 **OF COMPANIES.**

8 A. I am testifying on behalf of QCC, a CenturyLink affiliate, which is an interexchange  
9 carrier and a competitive local exchange carrier providing service across the country,  
10 including Florida.

11 **Q. PLEASE EXPLAIN THE ROLE QCC PLAYS IN PROVIDING**  
12 **TELECOMMUNICATION SERVICES.**

13 A. QCC is primarily an IXC, and provides long distance services to both wholesale and  
14 retail customers on a nationwide basis. QCC also provides competitive local exchange  
15 carrier services, generally outside the areas in which Qwest Corporation provides  
16 services as an ILEC. As a CLEC, QCC sells data services, hosting, and large bandwidth  
17 facilities, as well as reselling local services. Because of the nature of services provided  
18 by QCC, QCC pays switched access charges to local exchange carriers to reach their end  
19 user customers but does not currently charge switched access to other IXCs.

20 **Q. IS QCC A LARGE PARTICIPANT IN THE LONG DISTANCE MARKET?**

21 A. Yes, it is. According to the most recent available FCC data, QCC was, in fact, the third  
22 largest long distance company, in terms of retail residential market share for 2008.<sup>1</sup> In  
23 addition, QCC is a primary provider of wholesale services for long haul traffic.

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<sup>1</sup> Trends in Telephone Service, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, Report  
September 2010, Table 9.5 ([http://hraunfoss.fcc.gov/edoc\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edoc_public/attachmatch/DOC-301823A1.pdf))

1 **IV. SWITCHED ACCESS SERVICE**

2 **Q. WHAT IS SWITCHED ACCESS SERVICE?**

3 A. Switched access is a service provided by local exchange carriers ("LECs") which allows  
4 IXCs to reach the LEC's end user customer.<sup>2</sup> When a customer dials a 1+ long distance  
5 call, the LEC is responsible for routing the call from the customer to the IXC point of  
6 presence ("POP"). The IXC pays originating switched access to the LEC for  
7 performance of this function. To complete the call, the IXC then hands the call off to a  
8 LEC who delivers it to the end user being called. IXCs pay terminating switched access  
9 to the LEC who terminates the call.

10 **Q. WHY ARE SWITCHED ACCESS RATES IMPORTANT?**

11 A. Switched access is a necessary input for the delivery of virtually all long distance calls.  
12 These charges directly drive the cost of providing long distance services. While QCC  
13 has not performed a study to calculate the precise percentage of its overall cost as a long  
14 distance provider, I would expect it to be quite significant.<sup>3</sup> A 1992 FCC order stated  
15 that switched access comprises 40% of an IXC's cost of providing long distance  
16 provider.<sup>4</sup>

17 **Q. DOES QCC ROUTE SWITCHED ACCESS IN THE SAME MANNER AS**  
18 **OTHER IXCS?**

19 A. Yes. QCC's routing is similar to other large IXCs.

20 **Q. HOW ARE SWITCHED ACCESS CALLS GENERALLY ROUTED?**

21 A. Depending on the volume of calls going to an end office, the calls are either routed

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<sup>2</sup> When IXCs have large volumes of traffic to or from a single customer, they may also purchase a direct facility, called *special access*, or build their own facility to the customer location. However, for most long distance traffic, the volumes do not warrant the expense of building additional network facilities to the home or business location of the customer. For this reason IXCs typically utilize the LEC network to reach the end user.

<sup>3</sup> Mr. Canfield testifies as to the amount QCC is billed each month by CLECs for switched access.

<sup>4</sup> *In the Matter of Transport Rate Structure and Pricing: Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Red 7006, 7042 ¶ 68 (1992).

1 indirectly, through a tandem switch, or directly over dedicated facilities. If the volumes  
2 to an end office are not high enough to justify the use of dedicated facilities, terminating  
3 traffic goes through a tandem switch, which allows the DXCs to reach multiple end  
4 offices. These calls are charged tandem switching and transport rate elements, in  
5 addition to the end office elements, and carrier common line ("CCL") charges, if allowed  
6 in the particular state. The tandem switch may be owned by the CLEC (in which case  
7 QCC pays the CLEC's tandem switching rates) or by the local ILEC. If the ILEC owns  
8 the serving tandem, QCC also pays the ILEC for tandem service (in addition to the  
9 switched access charges it pays the CLEC providing the other elements of switched  
10 access).

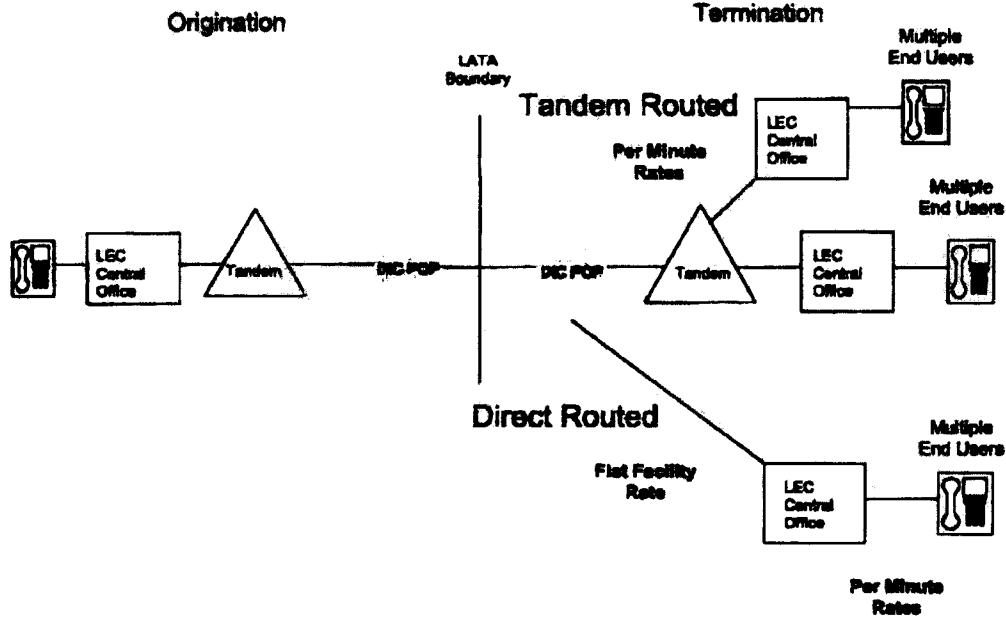
11 **Q. WHAT IF AN IXC HAS A LARGE VOLUME OF TRAFFIC TO/FROM A**  
12 **PARTICULAR END OFFICE?**

13 **A. An IXC with enough volume to/from a particular end office location can order dedicated**  
14 **facilities (also known as direct trunked transport, or DTT) to the local switch at that**  
15 **location to help lower its overall access expense. In this event, the IXC avoids paying**  
16 **tandem switching and transport to the LEC, since no tandem functions are provided. The**  
17 **following diagram illustrates the basic differences between tandem-routed and direct-**  
18 **routed calls.**

19 The diagram depicts the call path for calls routed over tandem switching and tandem  
20 transport and the call path for direct routed calls.

21  
22  
23  
24

**InterLATA Tandem Routed Call and Direct Routed Call**



15 **Q. IS IXC TRAFFIC BILLED DIFFERENTLY DEPENDING ON THE**  
 16 **JURISDICTION OF THE CALL?**

17 **A. Yes.** If a long distance call begins in one state and terminates in another state, it is  
 18 jurisdictionally interstate, is regulated by the FCC and is billed at interstate rates. A call  
 19 which crosses a LATA boundary, but stays within a state, is jurisdictionally intrastate, is  
 20 regulated by the state utility commission and is billed at intrastate rates. Generally,  
 21 LECs' interstate rates are lower than their intrastate rates.<sup>5</sup> This case exclusively

<sup>5</sup> For interstate calls, the FCC requires CLECs to mirror the switched access rates of the local ILEC in whose territory the call originates or terminates. *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, 16 FCC Rcd 9923, 9941-49 ¶¶ 45-63 (2001). *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9110-11 para. 4, 9112 para. 9 (2004).

1 involves intrastate switched access.

2 **Q. DO DIFFERENT IXCS USING THE SAME LEC TO ORIGINATE OR**  
3 **TERMINATE A CALL USE DIFFERENT LEC FACILITIES TO REACH AN**  
4 **END USER CUSTOMER?**

5 A. It depends. If the long distance call goes through the LEC's local switch and tandem,  
6 then no, there is no difference in how one IXC's calls are delivered versus another IXC's  
7 calls. For example, if two end users with different IXCs dial long distance to the same  
8 terminating number, the calls to the end user will travel over the exact same LEC  
9 facilities for each of the IXCs. The LEC facilities in this example are common facilities  
10 and are not dedicated to a particular IXC.

11 If an IXC has enough traffic to warrant a direct connection from the POP to the local  
12 switch, then the IXC can order DTT from the LEC, as discussed above. Calls delivered  
13 by this IXC are routed over the DTT facility and not over the common tandem facilities  
14 used in the first scenario.

15 Finally, there are some instances where an IXC has enough traffic to or from a specific  
16 end user location to warrant avoiding the switch altogether. In that scenario, the IXC  
17 purchases or builds a special access circuit (or similar dedicated facility), from the IXC  
18 POP to the end user location. Calls routed over this point to point circuit would therefore  
19 be carried over different facilities than those in the first two scenarios.

20 **Q. WHY WOULD AN IXC PURCHASE DTT OR SPECIAL ACCESS TODAY?**

21 A. Tandem switching and transport elements are priced on a per minute of use basis, while  
22 DTT is priced at a flat rate (based on a fixed and a per mile charge).<sup>6</sup> When the volume  
23 of traffic to a particular end office reaches a certain point, it becomes more economical  
24 for an IXC to purchase the flat rated DTT than to pay per minute of use charges on each

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<sup>6</sup> Like DTT, tandem transport is distance sensitive in that the per minute of use charge is based on a fixed charge plus a per mile charge.



1 call. Similarly, special access, which is designed to bypass all of the switching elements  
2 (local and tandem) is purchased when there are very high volumes of traffic to or from a  
3 single end user location. IXCs must continue to analyze whether there is an incentive to  
4 moving to a fixed monthly rate (such as with DTT or Special Access) or keep the traffic  
5 on a non-dedicated facility and pay for each minute of use.

6 **Q. TO THE EXTENT THAT AN IXC IS ATTEMPTING TO REACH AN END USER**  
7 **THAT IS NOT LARGE ENOUGH TO WARRANT SPECIAL ACCESS, CAN**  
8 **THE IXC CHOOSE WHICH LEC IT USES TO REACH THAT CUSTOMER?**

9 A. No. The only LEC able to complete the call to the end user is the LEC (be it an  
10 incumbent LEC or, CLEC) who has the direct relationship with the end user. The IXC  
11 has no choice with whom the call terminates. Therefore, switched access is a monopoly,  
12 and IXCs have no ability to route the call differently. The FCC itself has called switched  
13 access a bottleneck service.<sup>7</sup>

14 **Q. DO THE SECRET SWITCHED ACCESS AGREEMENTS AT ISSUE IN THIS**  
15 **CASE CONCERN THE USE OF DEDICATED FACILITIES TO DELIVER 1+**  
16 **DIALED TRAFFIC?**

17 A. No. The agreements concern rates for the use of the common facilities discussed in  
18 scenario number 1, above. They do not concern the purchase of direct trunks or special  
19 access.

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<sup>7</sup> See, e.g., *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, CC Docket No. 99-249, Report and Order, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rod 12962, 12972 ¶ 24, 13027 ¶ 158 (2000) (subsequent history omitted); *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, Fifteenth Report and Order, CC Docket Nos. 98-77 and 98-166, Report and Order, 16 FCC Rod 19613, 19617 ¶ 3, 19634-35 ¶ 43, 19643-44 ¶ 63 (2001) (subsequent history omitted). See also generally *CLEC Access Order*, 16 FCC Rod 9923, which details the FCC's analysis of the switched access services market as it relates to CLEC pricing and the FCC's continued efforts to enhance competition in that market.

1 **Q. IF THE AGREEMENTS DO NOT INVOLVE DTT OR SPECIAL ACCESS, WHY**  
2 **ARE THOSE IMPORTANT?**

3 **A.** They are important to the extent that they provide a form of a volume discounts to larger  
4 **IXCs** who can avoid or reduce paying traffic-sensitive rate switched access elements.  
5 Thus, AT&T's size should only benefit it to the extent that its larger volumes allow it to  
6 circumvent tandem charges by purchasing DTT (or to circumvent switched access  
7 entirely by purchasing special access).

8 **Q. DOES QCC EVER USE THIRD PARTIES (OTHER THAN THE END USER'S**  
9 **LEC) TO ROUTE AND DELIVER LONG DISTANCE TRAFFIC?**

10 **A.** Yes. On occasion QCC hands traffic to third party providers, which QCC refers to  
11 generally as "underlying carriers." Once handed the QCC traffic, the underlying carrier  
12 will carry it on its long distance network and will ensure that the call is terminated. In  
13 that scenario, the underlying carrier (and not QCC) is responsible for paying the switched  
14 access rates of the serving LEC, be it an ILEC or a CLEC.

15 It should be noted that calls that QCC has routed through underlying carriers are not at  
16 issue in this case. This case focuses on intrastate switched access directly charged by the  
17 respondent CLECs to QCC. While the underlying carriers QCC utilizes may possess  
18 their own claims against the respondents on similar grounds as those possessed by QCC,  
19 this complaint does not apply to those calls.

20 **Q. ARE CLECS REQUIRED TO FILE TARIFFS OR PRICE LISTS FOR**  
21 **SWITCHED ACCESS A SERVICE IN FLORIDA?**

22 **A.** No. In Florida, CLECs are only required to provide price lists for "basic services."  
23 However, many CLECs (including, I believe, all but one of the CLECs named in this  
24 case) have chosen to file price lists for access services. It is my understanding that  
25 CLEC switched access price lists are not approved by the Commission but are effective

1 on one day's notice.

2 **Q. DO LECS (INCLUDING CLECS) SOMETIMES OFFER SWITCHED ACCESS**  
3 **VIA OFF-PRICE LIST AGREEMENT RATHER THAN IN ACCORDANCE**  
4 **WITH THEIR PRICE LIST?**

5 **A. Yes. While I am not a legal expert, it is my understanding that CLECs are permitted to**  
6 **use individual contracts to deviate from their switched access price lists. I also**  
7 **understand that, if they do so, they must make those same rates, terms and conditions**  
8 **available to similarly-situated customers (IXCs) to ensure that they are not unlawfully**  
9 **discriminating. Factually, QCC's investigation revealed that many CLECs operating in**  
10 **Florida entered into off-price list agreements for switched access, yet did not make them**  
11 **available to QCC or other IXCs. Those off-price list agreements are the focus of this**  
12 **proceeding.**

13 **Q. WHAT DO SWITCHED ACCESS PRICE LISTS CONTAIN?**

14 **A. They contain the rates, terms, and conditions under which the IXCs obtain switched**  
15 **access services from the LECs.**

16 **Q. WHAT ARE THE GENERAL RATE ELEMENTS OF SWITCHED ACCESS?**

17 **A. Price lists contain both traffic sensitive elements and flat-rated elements. Depending on**  
18 **the mix of these elements, the price of delivering a call to a LEC can vary. The traffic**  
19 **sensitive elements, which are charged to the IXCs on a per-minute-of-use basis, are**  
20 **generally switching elements (e.g., local switching) and tandem transport elements.**  
21 **These also often include the CCL, which is a rate element designed to recover part of the**  
22 **cost of the local loop. The local switching elements are charged for all switched access**  
23 **calls. The tandem elements (tandem switching and tandem transport) are generally only**  
24 **charged if the tandem is actually used. However, many CLECs blend their tandem and**  
25 **local switching elements, offering one single per minute rate regardless of whether all of**

1 the elements are actually provided.

2 There is also the potential for an originating charge for calls dialed by the originating end  
3 user destined for a toll free (8XX) number. This additional charge is the 8XX database  
4 dip charge, and is charged per query. It is in addition to other originating access charges  
5 which could also apply.

6 While switching and tandem transport charges are traffic sensitive, DTT is, as discussed  
7 above, a flat rated charge which allows an IXC to bypass the traffic sensitive rate  
8 elements when there is a large volume of traffic in or out of a particular end office.

9 **V. UNREASONABLE DISCRIMINATION**

10 **Q. WHY DOES QCC BELIEVE IT WAS DISCRIMINATED AGAINST?**

11 A. QCC believes that the CLECs unreasonably discriminated against QCC by offering  
12 select IXCs lower switched access rates through secret agreements and by failing to  
13 make those rates available to QCC.

14 **Q. WHY DO YOU THINK THE CLECS' CONDUCT WAS UNREASONABLY  
15 DISCRIMINATORY FROM A PUBLIC POLICY PERSPECTIVE?**

16 A. At the heart of the issue is the fact that the CLECs contracted to provide certain IXCs  
17 (primarily, AT&T and Sprint) critical, monopoly service at lower (often far lower) rates  
18 than their competitors (including QCC) pay. As IXC customers of tandem-routed CLEC  
19 switched access, AT&T, Sprint and QCC are similarly situated. As I discussed earlier,  
20 the same LEC facilities are used to reach the same end user customers. The relative size  
21 of any given company is not relevant, since each call is separate and distinct and carried  
22 in identical fashion, unless the IXC chooses to avoid certain switched access rate  
23 elements by purchasing dedicated facilities to a particular local switch or to a particular  
24 end user.

25

1 **Q. HAVE CLECS OFFERED ANY EXPLANATION FOR OFFERING THESE**  
2 **DEALS?**

3 **A. Yes, CLECs have raised a couple of explanations. A common argument advanced by the**  
4 **CLECs is "duress." They argue that AT&T (and perhaps to some extent Sprint) "forced"**  
5 **the CLECs into discriminatory behavior by refusing to pay any switched access charges,**  
6 **thereby forcing the CLECs to offer discounted rates in order to obtain some switched**  
7 **access revenues from those non-paying IXCs.<sup>8</sup> This argument places the blame for the**  
8 **CLECs' actions upon the IXC customer, and in essence states that the CLECs had such**  
9 **little power in the marketplace that they had no ability to withstand the demands of**  
10 **AT&T.**

11 **Q. IS THIS ARGUMENT PERSUASIVE AS A MATTER OF PUBLIC POLICY?**

12 **A. No. The Respondent CLECs had the ability to bring such behavior to the attention of the**  
13 **Commission. Other CLECs did so in Minnesota and Iowa, and were successful. In**  
14 **Minnesota, a CLEC named PrairieWav filed a complaint against AT&T for failing to pay**  
15 **its tariffed switched access charges. The Commission sided with PrairieWav and**  
16 **rejected AT&T's contention that it was authorized to withhold payment on the basis that**  
17 **PrairieWave's tariffed rates were excessive.<sup>9</sup> The Iowa Utilities Board reached the same**  
18 **conclusion in a complaint brought by numerous CLECs against AT&T.<sup>10</sup>**

19 **Certainly, settling their differences with AT&T and Sprint by giving those IXCs (with**  
20 **whom QCC competes in the long distance market), and only those IXCs, substantial and**

<sup>8</sup> See, for example, Exhibits WRE 12, p.8. WRE 24A, p.3 and WRE 24B, p.3 (BullsEye's and Granite's responses to QCC Interrogatory No. 2b).

<sup>9</sup> *Order Finding Failure to Pay Tariffed Rate, Requiring Filing and Notice and Order for Hearing*, Docket No. P-442/C-05-1842 (Minn. PUC Feb. 8, 2006).

<sup>10</sup> *IN RE: FIBERCOMM, L.C., FOREST CITY TELECOM, INC., HEART OF IOWA COMMUNICATIONS, INC., INDEPENDENT NETWORKS, L.C., AND LOST NATION-ELWOOD TELEPHONE COMPANY, Complainants, vs. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent. Final Decision and Order*, October 25, 2001. (Iowa Utilities Board).

1 secret discounts was not appropriate and should not be condoned by the Commission as a  
2 reasonable justification for the CLECs' rate discrimination.

3 **Q. WHAT OTHER EXPLANATION HAS BEEN OFFERED?**

4 A. Some CLECs have argued that the agreements in question are in fact settlements of  
5 disputes. However, the crux of those disputes appear to be that AT&T did not want to  
6 pay the exorbitantly high CLEC switched access rates, and rather than challenge the rates  
7 in a regulatory proceeding, chose the self help mechanism of withholding payment from  
8 the CLECs. Instead of bringing AT&T's non-payment to the attention of state  
9 commissions or pursuing other available legal avenues, CLECs opted to enter into  
10 agreements, through which they settled past disputes and prospectively set a heavily-  
11 discounted rate for intrastate switched access. In most cases, the discounted rates were  
12 not apparently tied to term or volume commitments, nor were they limited to a certain  
13 number of minutes. In my experience, switched access settlements are generally related  
14 to disputes regarding improper jurisdiction, improper billing, and/or failure to follow  
15 specific rules. They do not typically relate solely to an IXC challenging the LEC's  
16 published rate. To the extent that the "settlements" in this discussion were really setting  
17 a new rate for one party, settlement is not a valid reason for allowing certain IXCs to  
18 enjoy dramatic discounts while others (including QCC) incur far higher costs. Dr.  
19 Weisman discusses the market distortion that can occur in such a scenario, especially  
20 when the preferential treatment is kept secret.

21 **Q. COULD THE CLECS HAVE RESOLVED THE ISSUES WITH THE**  
22 **PARTICIPATING IXCS WITHOUT ENTERING INTO DISCRIMINATORY**  
23 **AGREEMENTS?**

24 A. Yes, the CLECs could have pursued several courses of action which would not have  
25 caused the agreements to discriminate against other IXCs. First, they could have pursued

1 legal action through Commission complaints or lawsuits against the IXCs for failure to  
2 pay price list switched access charges. Alternatively, the CLECs could have changed  
3 their price lists in light of the negotiations with the preferred IXCs, thus extending the  
4 lower rates for this critical service to all IXCs.<sup>11</sup> Finally, the CLECs could have  
5 appended copy of the agreement to their price lists or otherwise filed them with the  
6 Commission and made the terms, conditions and rates known and available to other  
7 IXCs.

8 **Q. WHAT ABOUT THE ARGUMENT THAT QWEST IS NOT SIMILARLY**  
9 **SITUATED TO THE PREFERRED IXCS?**

10 **A. I would anticipate that CLECs will focus on differences (whether or not relevant)**  
11 **between QCC and AT&T and Sprint to try and escape responsibility for their conduct.**  
12 **To date, no reasonable explanation has been given as to how and why QCC is not, in the**  
13 **context of intrastate switched access in Florida, similarly situated to AT&T and Sprint.**  
14 **In fact, the CLECs' true motivation had nothing to do with the size or serving**  
15 **characteristics of AT&T or Sprint. Instead, the CLECs desired to quietly and quickly**  
16 **resolve billing disputes with the non-paying IXCs. As a matter of public policy, QCC's**  
17 **willingness to pay its bills should not be held against QCC by permitting this factual**  
18 **distinction to justify the CLECs' rate discrimination.**

19 **QCC does not disagree with the general proposition that volume, calling patterns, cost of**  
20 **negotiation, etc. could be sufficient to distinguish one customer from another. However,**  
21 **as a general matter, those factors are not relevant to an analysis of alleged rate**

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<sup>11</sup> This is precisely what respondent Broadwing's corporate affiliate, Level 3, did. In the parallel Colorado proceeding, Level 3 testified that after entering into an off-tariff switched access agreement with AT&T, it modified its state switched access tariffs to reflect the same rate as set forth in the AT&T agreement. See Answer Testimony of Mack D. Greene on Behalf of Level 3 Communications, LLC (Col. PUC Docket 08F-259T), filed August 10, 2009, admitted as Hearing Exhibit 9. Upon learning that Level 3 had modified its tariff to reflect the AT&T agreement rate, QCC voluntarily dismissed Level 3 as a respondent in the Colorado proceeding.

1 discrimination for switched access since, as Dr. Weisman's testimony further explains, a  
2 CLEC's cost of providing switched access does not vary from IXC to IXC.

3 **Q. TW TELECOM HAS ALLEGED THAT AT&T'S PURCHASE OF OTHER**  
4 **SERVICES JUSTIFIED LOWER SWITCHED ACCESS RATES FOR AT&T. DO**  
5 **YOU AGREE?**

6 **A. No.** As Dr. Weisman discusses in his testimony, the cost of providing switched access  
7 does not vary depending upon the amount of unrelated services purchased by an IXC.  
8 Thus, it is not reasonable (from a public policy perspective) to permit a CLEC to  
9 condition a discount on intrastate switched access on the IXC's purchase of unrelated  
10 services.

11 **Q. MCI HAS ARGUED THAT ITS AGREEMENT WITH AT&T WAS**  
12 **RECIPROCAL AND THAT QCC WAS NOT ABLE TO ENTER INTO SUCH A**  
13 **RECIPROCAL AGREEMENT. WAS THE MCI AGREEMENT TRULY**  
14 **RECIPROCAL?**

15 **A. No.** ~~As will be discussed in detail in the MCI analysis section of testimony, the~~  
16 ~~agreement was not truly reciprocal and MCI has not provided a justifiable basis for its~~  
17 ~~differential rate treatment.~~

18 **Q. WHAT RELIEF IS QCC PURSUING IN THIS CASE?**

19 **A. QCC is primarily seeking two forms of relief.** Retrospectively, QCC believes it is  
20 entitled to refunds of amounts it overpaid the respondent CLECs relative to the  
21 discounted amounts it would have paid had the CLECs extended the same discount to  
22 QCC as they did to AT&T and Sprint. This is precisely the relief QCC sought, and was  
23 awarded (with interest) in the parallel Colorado complaint proceeding. Mr. Canfield  
24 provides a granular, CLEC-by-CLEC quantification of that amount, although his  
25 calculations will need to be updated as to several CLECs with ongoing agreements once



1 the Commission enters a final order granting QCC refunds. Prospectively, QCC believes  
2 it is entitled to the same discounted rates still in effect for the IXCs benefiting from the  
3 CLEC agreements.

4 **VL CLEC PRICE LISTS AND AGREEMENTS**

5 **Q. DOES QCC OBTAIN SWITCHED ACCESS SERVICES FROM THE**  
6 **RESPONDENT CLECS PURSUANT TO THEIR PRICE LISTS IN FLORIDA?**

7 **A. Yes. QCC, in its capacity as an IXC, obtains intrastate switched access services from the**  
8 **CLECs in Florida for the provisioning of its intrastate long distance service. The CLECs**  
9 **typically bill QCC for large quantities of intrastate switched access services in**  
10 **accordance with their Florida price lists.<sup>12</sup>**

11 **Q. WERE THE CLECS' PRICE LISTS AFFIRMATIVELY APPROVED BY THE**  
12 **COMMISSION?**

13 **A. I do not believe so. I believe that CLEC switched access price lists, which are not**  
14 **strictly required (but are permitted) in Florida, become effective after being filed. I am**  
15 **not aware of any order of the Commission affirmatively approving any CLEC price lists**  
16 **at issue in this case.**

17 **Q. HAVE CLECS OFFERED SWITCHED ACCESS SERVICE TO OTHER IXCS**  
18 **WITH TERMS AND CONDITIONS DIFFERENT THAN THOSE CONTAINED**  
19 **IN THEIR FLORIDA PRICE LISTS?**

20 **A. Yes. The Respondent CLECs have entered into contracts with some IXCs with terms**  
21 **and conditions that deviated from their price list rates for intrastate switched access**  
22 **services. These contracts have not been made available to QCC. I will discuss each**

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<sup>12</sup> In some cases it may be difficult to match the individual price list rate elements identified in my testimony and exhibits to QCC's invoiced rate elements identified in Mr. Canfield's testimony. It appears that some CLECs bill QCC using blended or other rates rather than the rate structure found in their Florida price lists. The fact remains, however, as Mr. Canfield quantifies, that QCC was billed at rates which were higher than the rates billed to the IXCs party to the off-price list agreements. Where there is conflict between the price list rates identified in my testimony and the rates identified in Mr. Canfield's testimony, the rates in Mr. Canfield's testimony are more relevant, as they reflect what QCC was actually charged by the respondent CLECs.

1 CLEC agreement in the next section. I will also attach many of the agreements. The  
2 attached agreements were produced to QCC in response to the Commission-ordered  
3 subpoenas and/or in response to discovery propounded by QCC in this case.

4 **Q. CAN YOU GENERALLY DESCRIBE THOSE AGREEMENTS?**

5 A. Yes. Generally speaking, the agreements relevant to this case provided AT&T, Sprint, or  
6 MCI discounted switched access rates when compared to the respective CLEC's price  
7 list and the invoices generated to IXCs other than to AT&T, Sprint, or MCI. Oftentimes,  
8 the agreements were national in scope, meaning that the CLEC and IXC did not enter  
9 into separate agreements for each state. In a couple of cases, the stated (discount) rates  
10 were state-specific, but more commonly the CLEC provided the IXC a uniform rate or  
11 rate standard across all states. The discounts follow one of three patterns. Many of the  
12 agreements contain straightforward composite per-minute-of-use rates (i.e., unitary rates  
13 that blend together all elements of switched access) for switched access. Other  
14 agreements provide that the CLEC will charge the IXC the local ILEC's switched access  
15 rates rather than the CLEC's price list rate. In almost all cases, CLEC intrastate price list  
16 rates exceed the ILECs' rates. The final (albeit far less common) form of agreement  
17 applies a discount or total dollar credit off of the CLEC's switched access billing to the  
18 IXC.

19 **Q. YOU STATE THAT MANY OF THE SECRET AGREEMENTS CHARGED THE**  
20 **IXC THE ILEC RATE. WHAT ARE THE ACCESS RATE PROVISIONS IN**  
21 **THE INCUMBENT LOCAL EXCHANGE CARRIER'S ACCESS TARIFF?**

22 A. In Florida, there are three applicable ILECs: BellSouth (now AT&T), Verizon and  
23 former Embarq (now CenturyLink). I have attached copies of Bell South's, Verizon's  
24 and Embarq's current switched access tariffs as Exhibits WRE 2, 3 and 4, respectively.<sup>13</sup>

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<sup>13</sup> I understand that the ILEC access rates were reduced as result of rate rebalancing during the 2005 - 2007

1 As an example, the following elements from the Verizon tariff are the most relevant rate  
2 elements to this analysis:

3 Tandem-Switched Transport-Facility

4		Per Access
5		Minutes of Use
6	Per Access Minute/Mile	
7	Zone 1	.0000135
8	Zone 2	.0000141
9	Zone 3	.0000149

10 Tandem Switched Transport - Termination

11	Zone 1	.0001344
12	Zone 2	.0001344
13	Zone 3	.0001344

15 Tandem Switching

16	Zone 1	.0007500
17	Zone 2	.0007500
18	Zone 3	.0007500

20 Interconnection

21	Per Access Minute	.0011421
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22 End Office Switching

23	Per Access Minute	.0089000
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timeframe. The varying rates that existed during the relevant timeframes are incorporated into QCC's refund calculations, as detailed in Mr. Canfield's testimony and exhibits.

VII. CLEC BY CLEC ANALYSIS<sup>14</sup>

A. BROADWING COMMUNICATIONS, LLC

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2  
3 Q. PLEASE DESCRIBE THE BROADWING COMMUNICATIONS, LLC  
4 (~~"BROADWING") AGREEMENTS AT ISSUE IN THIS CASE?~~

5 A. ~~Focal Communications Corporation, which was later acquired by Broadwing, has or had~~  
6 ~~agreements for intrastate switched access services with [REDACTED] which~~  
7 ~~contained rates lower than the rates contained in Focal's Florida intrastate access price~~  
8 ~~list. These off-price list arrangements [REDACTED]~~

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] ~~See Confidential Exhibits WRE 5A and 5B).~~

12 ~~Under the agreements, Broadwing/Focal charged or charges these EXCs the rates~~  
13 ~~identified in Exhibit WRE 1A, row 1, and Exhibit WRE 1B, row 1.<sup>15</sup>~~

14 Q. ~~WAS QCC OFFERED THE SAME RATES THAT BROADWING/FOCAL~~  
15 ~~OFFERED UNDER THESE AGREEMENTS?~~

16 A. ~~No. Broadwing/Focal charged QCC its higher switched access price list rates.~~  
17 ~~Broadwing did not disclose copies of all past and current off-price list arrangements to~~  
18 ~~QCC and did not offer QCC the discounts it provided pursuant to the secret agreements.~~  
19 ~~In response to a discovery request asking whether Broadwing had offered the contract~~  
20 ~~rates and terms to any other EXC, Broadwing stated:~~

<sup>14</sup> Please note that, while Access Point, Inc. and Birch Communications, Inc. are still technically respondents in this case, QCC has entered into a settlement with Access Point and is working to finalize a settlement with Birch. On June 1, 2012, QCC filed a notice dismissing its complaint as against Access Point. QCC anticipates filing a notice dismissing its complaint against Birch once the written settlement agreement is final. As a result of these settlements, my testimony does not include a discussion of Access Point's or Birch's 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.

<sup>15</sup> Confidential Exhibit WRE 1A (confidential) and Exhibit WRE 1B (lawyers only confidential) summarize the agreements, the effective dates and the rates for each of the agreements relied upon in Mr. Canfield's analysis.

1           ~~To the extent that any DXC, including Qwest, has the same collection of~~  
2           ~~services, architectural arrangements, call volumes and types, and where~~  
3           ~~applicable, the ability to provide reciprocal services, as the entities entering into~~  
4           ~~these agreements, to the best of current management's knowledge, Broadwing~~  
5           ~~would have been willing to enter into a commercial agreement (or in the~~  
6           ~~context of a dispute similar to those presented above, a settlement agreement)~~  
7           ~~on similar terms and conditions. (See Exhibit WRE 6A for a copy of~~  
8           ~~Broadwing's response to Data Request 2h).~~

9           ~~The fact remains however, that QCC was never made aware of the secret agreements and~~  
10           ~~thus was denied an opportunity to determine whether it was willing to enter into such an~~  
11           ~~agreement, and to evaluate whether the criteria Broadwing lists above were or should~~  
12           ~~have been applicable.~~

13    **~~Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN FOCAL'S~~**  
14    **~~FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?~~**

15    **~~A. Focal's Price List No. 2, Section 5, specifies the rates, terms and conditions for its~~**  
16    **~~provision of intrastate switched access services (see Exhibit WRE 7 for copies of Focal~~**  
17    **~~Communications Corporation of Florida's Price List No. 2, Section 5):~~**

18    ~~The actual pages of the Focal switched access price list rate elements are identified in~~  
19    ~~Exhibit WRE 7, however following are the most relevant rate elements billed to QCC for~~  
20    ~~intrastate switched access service:~~

21           ~~Switched Access Services~~

22           ~~Per Access Minute Originating and Terminating \$0.050500~~

23           ~~800 Data Base Access Service Rate~~

24           ~~Customer Identification -Per Query \$0.00431~~

1 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
2 ~~IN THIS CASE?~~

3 A. ~~Yes. To the best of QCC's knowledge, these price lists were in effect during the~~  
4 ~~timeframe of the Focal agreements discussed above.~~

5 ~~B. BUDGET PREPAY, INC.~~

6 Q. ~~PLEASE DESCRIBE THE BUDGET PREPAY, INC. ("BUDGET")~~  
7 ~~AGREEMENT AT ISSUE IN THIS CASE?~~

8 A. ~~Budget has an agreement for intrastate switched access services with [REDACTED] which~~  
9 ~~contains rates lower than the rates contained in Budget's Florida intrastate access price~~  
10 ~~list. The agreement between Budget Phone, Inc. and [REDACTED] was effective [REDACTED]~~  
11 ~~[REDACTED] (see Exhibit WRE-8). Under the agreement, Budget~~  
12 ~~charged or charges [REDACTED] the rates identified in Exhibit WRE-1A, row 2.~~

13 Q. ~~WAS QCC OFFERED THE SAME RATES THAT BUDGET OFFERED IN THIS~~  
14 ~~AGREEMENT?~~

15 A. ~~No. Budget charged QCC Budget's higher switched access price list rates. Budget did~~  
16 ~~not disclose copies of all past and current off-price list arrangements to QCC. To QCC's~~  
17 ~~knowledge, Budget did not offer QCC the discount Budget provided under the~~  
18 ~~agreement. In discovery, Budget was asked if it had offered QCC the equivalent rates,~~  
19 ~~terms and conditions which were in the [REDACTED] agreement. Budget objected and refused~~  
20 ~~to answer any of QCC's discovery. (See Exhibit WRE-9 for a copy of Budget's response~~  
21 ~~to QCC Data Request 2hr).~~

22 Q. ~~WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN BUDGET'S~~  
23 ~~FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?~~

24 A. ~~Budget's Florida Price List No. 3, Section 5, specifies the rates, terms and conditions for~~  
25 ~~its provision of intrastate switched access services (see Exhibit WRE-10 for a copy of~~

REDACTED

1 ~~Budget Prepay Inc. Price List No. 3, Section 5, effective January 17, 2004).~~  
2 ~~The actual pages of the Budget switched access price list rate elements are identified in~~  
3 ~~Exhibit WRE 10, however following are the most relevant rate elements billed to QCC~~  
4 ~~for intrastate switched access service:~~

5 ~~Budget Price List Effective January 17, 2004~~

6 ~~Blended Carrier Switched Access~~

7 ~~BellSouth Service Area Originating \$0.0334200 Terminating \$0.0334200~~

8 ~~Verizon Service Area Originating \$0.0334200 Terminating~~  
9 ~~\$0.0334200~~

10 ~~Sprint Service Area Originating \$0.0334200 Terminating~~  
11 ~~\$0.0334200~~

12 ~~Toll-Free 8XX Data Base Query Per Query \$0.0041~~

13 **Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~**  
14 **~~IN THIS CASE?~~**

15 **A. ~~Yes. To the best of QCC's knowledge, the price list was in effect during the timeframe~~**  
16 **~~of the Budget agreement discussed above.~~**

17 **Q. ~~DOES BUDGET'S PRICE LIST ALLOW FOR OFF-PRICE LIST~~**  
18 **~~AGREEMENTS?~~**

19 **A. ~~Yes. Section 7 of Budget's price list indicates that Budget may enter into individual~~**  
20 **~~contracts for access services, and provides that such contracts will be made available to~~**  
21 **~~similarly situated customers in substantially similar circumstances. As discussed above,~~**  
22 **~~the Budget agreement rates were not made available to QCC.~~**

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**C. BULLSEYE TELECOM, INC.**

**Q. PLEASE DESCRIBE THE BULLSEYE TELECOM, INC. ("BULLSEYE") AGREEMENT AT ISSUE IN THIS CASE?**

**A. BullsEye has an agreement for intrastate switched access services with AT&T which contains rates different than the rates contained in its intrastate access price list. This off-price list arrangement between BullsEye and AT&T was effective [REDACTED] [REDACTED] (See Confidential Exhibit WRE 11). Under the agreement, BullsEye charged or charges AT&T the rates identified in Exhibit WRE 1A, row 3.**

**Q. DID BULLSEYE OFFER THE SPECIAL RATES TO QCC?**

**A. No. BullsEye charged QCC its higher switched access price list rates. BullsEye did not disclose copies of all past and current off-price list arrangements to QCC. To QCC's knowledge, BullsEye did not offer QCC the discount BullsEye provided to AT&T. In discovery, BullsEye was asked if it had offered QCC the equivalent rates, terms and conditions which were in the AT&T agreement. BullsEye objected and did not answer the question. (See Exhibit WRE 12 for a copy of BullsEye's response to QCC Data Request 2h).**

**Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN BULLSEYE'S ACCESS PRICE LIST?**

**A. BullsEye's Florida Price list No. 2, Section 3.9 specifies the rates, terms and conditions for its provision of intrastate switched access services. (See Exhibit WRE 13 for a copy of BullsEye Telecom, Inc. Florida P.U.C. Price list No. 2, Section 3.9).**

**Following are the most relevant rate elements for intrastate switched access service:**

**BullsEye Telecom, Inc. Price List No. 2 (effective November 7, 2003)**

Local Switching	Per Minute: \$0.04100
800 Data Base Access Service	Per Query: \$0.0055



1 Q. WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES  
2 IN THIS CASE?

3 A. Yes. To the best of QCC's knowledge, the price list was in effect during the timeframe  
4 of the BullsEye agreement with AT&T.

5 Q. DOES BULLSEYE'S PRICE LIST ALLOW FOR OFF-PRICE LIST  
6 AGREEMENTS?

7 A. Yes. Section 5.1 of BullsEye's price list indicates that BullsEye may enter into  
8 individual contracts for switched services, and provides that such contracts will be made  
9 available to similarly situated customers. As discussed above, the AT&T rates were not  
10 made available to QCC.

11 D. DELTACOM, INC.

12 Q. ~~PLEASE DESCRIBE THE DELTACOM, INC. ("DELTACOM") AGREEMENTS~~  
13 ~~AT ISSUE IN THIS CASE?~~

14 A. ~~DeltaCom has two agreements for intrastate switched access services with AT&T and~~  
15 ~~one agreement with Sprint. All three agreements contain rates different than the rates~~  
16 ~~contained in its intrastate access price list. These off-price list arrangements include, but~~  
17 ~~are not limited to; a September 1, 2002 agreement between FCC<sup>A</sup>DeltaCom~~  
18 ~~Communications, Inc. and AT&T Corp., a January 1, 2011 agreement between~~  
19 ~~DeltaCom, Inc. and AT&T Corp., and a March 28, 2002 agreement between~~  
20 ~~FCC<sup>A</sup>DeltaCom Communications and Sprint Communications Company, L.P. (See~~  
21 ~~Confidential Exhibits WRE 14A, 14B and 14C). The 2002 AT&T agreement was~~  
22 ~~superseded by the 2011 AT&T agreement, which remains in effect. The 2002 Sprint~~  
23 ~~agreement terminated in April 2010. Under the agreements, DeltaCom charged or~~  
24 ~~charges AT&T and Sprint the rates identified in Exhibit WRE 1A, rows 4 through 6.~~

25

1 Q. ~~DID DELTACOM OFFER THE SPECIAL RATES TO QCC?~~

2 A. ~~No. DeltaCom charged QCC its higher switched access price listed rates. DeltaCom~~  
3 ~~did not disclose copies of all past and current off-price list arrangements to QCC and has~~  
4 ~~not provided QCC the rates, terms and conditions received by AT&T or Sprint (See~~  
5 ~~Exhibit WRE-15 for a copy of DeltaCom's responses to Data Request 2h).~~

6 Q. ~~WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN DELTACOM'S~~  
7 ~~ACCESS PRICE LIST?~~

8 A. ~~DeltaCom's Switched Access Tariff specifies the rates, terms and conditions for its~~  
9 ~~provision of intrastate switched access services. (See Exhibit WRE-16 for a copy of FCC~~  
10 ~~DeltaCom Inc.'s Florida Switched Access Tariff effective August 26, 1998). Following~~  
11 ~~are the most relevant rate elements for intrastate switched access service:~~

12 End Office Local Switching per MOU

13 LS2 \$:00876

14 LS2-Indiantown \$:01150

15 For All Other HECs \$:01770

16 Local Transport

17 Facility Termination \$:00046

18 Access Tandem Sw \$:00050

19 8XX Query Rate \$:0045

20 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
21 ~~IN THIS CASE?~~

22 A. ~~Yes. To the best of QCC's knowledge, the price list was in effect during the timeframes~~  
23 ~~of the DeltaCom agreements with AT&T and Sprint.~~

24

**E. ERNEST COMMUNICATIONS, INC.**

**Q. PLEASE DESCRIBE THE ERNEST COMMUNICATIONS, INC. ("ERNEST") AGREEMENTS AT ISSUE IN THIS CASE?**

**A. Ernest has agreements for intrastate switched access services with [REDACTED] for intrastate switched access service which contained rates different than the rates contained in its intrastate access price list. These off-price list arrangements are dated [REDACTED] and [REDACTED]. Under the agreements, Ernest charged or charges [REDACTED] the rates identified in Exhibit WRE 1A, rows 7 and 8. (see Confidential Exhibits WRE 17A and 17B).**

**Q. DID ERNEST OFFER THE SPECIAL RATES TO QCC?**

**A. No. Ernest charged QCC its higher switched access price listed rates. Ernest did not disclose copies of all past and current off-price list arrangements to QCC. To QCC's knowledge Ernest has not provided QCC the rates, terms and conditions received by the preferred DXC. In discovery, Ernest was asked if it had offered QCC the equivalent rates, terms and conditions which were in the agreements. Ernest did not respond to the data request (See Exhibit WRE 18 for a copy of QCC's discovery requests to Ernest).**

**Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN ERNEST'S ACCESS PRICE LIST?**

**A. Ernest's Switched Access Tariff specifies the rates, terms and conditions for its provision of intrastate switched access services. (See Exhibit WRE 19 for a copy of Ernest's Florida Price List No. 2 effective February 4, 2003). Following are the most relevant rate elements for intrastate switched access service:**

**Local Switching**

Per Minute Originating	\$0.0200
Per Minute Terminating	\$0.0280

**REDACTED**

1                   8XX Query   \$0.0055

2   **Q. WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES**  
3   **IN THIS CASE?**

4   A. Yes. To the best of QCC's knowledge, the price list was in effect during the timeframe  
5   of the Ernest agreements discussed above.

6   **F. FLATEL, INC.**

7   **Q. PLEASE DESCRIBE THE FLATEL, INC. ("FLATEL") AGREEMENT AT**  
8   **ISSUE IN THIS CASE?**

9   A. Flatel has an agreement for intrastate switched access services with [REDACTED] which  
10   contains rates different than the rates contained in its intrastate access price list. This  
11   agreement between Flatel and [REDACTED] became effective [REDACTED]  
12   [REDACTED] Under the agreement, Flatel charged or charges [REDACTED] the rates identified in  
13   Exhibit WRE 1A, row 9. (see Confidential Exhibit WRE 20).

14   **Q. DID FLATEL OFFER THE SPECIAL RATES TO QCC?**

15   A. No. Flatel charged QCC higher switched access rates. Flatel did not disclose copies of  
16   all past and current off-price list arrangements to QCC. To QCC's knowledge Flatel has  
17   not provided QCC the same rates, terms or conditions received by the preferred IXC. In  
18   discovery, Flatel was asked if it had offered QCC the equivalent rates, terms and  
19   conditions which were in the agreement. Flatel has not responded to the data request  
20   (See Exhibit WRE 21 for a copy of QCC's discovery requests to Flatel).

21   **Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN FLATEL'S**  
22   **ACCESS PRICE LIST?**

23   A. QCC has been unable to locate a copy of Flatel's price list. QCC will continue to look  
24   for the price list. Exhibit WRE 22, which is currently blank, is a placeholder in the event  
25   a Florida price list for Flatel is located.

**G. GRANITE TELECOMMUNICATIONS, INC.**

1  
2 **Q. PLEASE DESCRIBE THE GRANITE TELECOMMUNICATIONS, INC.**  
3 **AGREEMENTS AT ISSUE IN THIS CASE?**

4 A. ~~Granite had an agreement for intrastate switched access services with AT&T. The AT&T~~  
5 ~~agreement, which was effective [REDACTED]~~  
6 ~~[REDACTED] offered intrastate switched access services at lower rates than the rates in~~  
7 ~~Granite's effective state price lists. (See Confidential Exhibit WRE 23A). Under the~~  
8 ~~agreement, Granite charged AT&T the rates identified in Exhibit WRE 1A, row 10.~~  
9 ~~Granite also had an agreement for intrastate switched access with Sprint. (See~~  
10 ~~Confidential Exhibit WRE 23B).~~

11 **Q. DID GRANITE OFFER THE SPECIAL RATES TO QCC?**

12 A. ~~No. Granite charged QCC the higher access rate in the Granite Access price list. Granite~~  
13 ~~did not disclose copies of all past and current off-price list arrangements to QCC. To~~  
14 ~~QCC's knowledge Granite has not provided QCC the same rates, terms or conditions~~  
15 ~~received by AT&T and Sprint. In discovery, Granite was asked if it had offered QCC the~~  
16 ~~equivalent rates, terms and conditions which were in the AT&T and Sprint agreements.~~  
17 ~~Granite objected and did not respond to the data request (See Exhibit WRE 24A and 24B~~  
18 ~~for a copy of Granite's response and supplemental response to QCC Data Request 2h).~~

19 **Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN GRANITE'S**  
20 **ACCESS PRICE LIST?**

21 A. ~~Granite's Price list No. 2 specifies the rates, terms and conditions for its provision of~~  
22 ~~intrastate switched access services. (See Exhibit WRE 25 for a copy of the Granite~~  
23 ~~Telecommunications, LLC, Florida PUC Price list No. 2, Section 5.1, effective June 18,~~  
24 ~~2003). Following are Granite's most relevant switched access price-listed rate elements:~~

25 **REDACTED**

1 June 18, 2003 Price list

2 Switched Access \$0.057

3 8XX Query \$0.005

4 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
5 ~~IN THIS CASE?~~

6 A. ~~Yes. To the best of QCC's knowledge, the price list was in effect during the timeframe~~  
7 ~~of the Granite agreement with AT&T.~~

8 ~~H. MCIMETRO ACCESS TRANSMISSION SERVICES LLC~~

9 Q. ~~PLEASE DESCRIBE THE MCIMETRO ACCESS TRANSMISSION SERVICES~~  
10 ~~LLC ("MCI") AGREEMENTS AT ISSUE IN THIS CASE?~~

11 A. ~~MCI had an agreement for intrastate switched access services with AT&T which~~  
12 ~~contained rates lower than the rates contained in MCI's Florida intrastate access price~~  
13 ~~list. This off-price list arrangement (as amended) was effective January 27, 2004 with a~~  
14 ~~termination date of January 26, 2007. (See Confidential Exhibit WRE 26). Under the~~  
15 ~~agreement, MCI charged AT&T the rates identified in Exhibit WRE 1A, row 11.~~

16 Q. ~~WAS QCC OFFERED THE SAME RATES THAT MCI OFFERED AT&T?~~

17 A. ~~No. MCI charged QCC its higher switched access price listed rates. MCI did not~~  
18 ~~disclose copies of all past and current off-price list arrangements to QCC and has not~~  
19 ~~provided QCC the rates, terms or conditions received by AT&T. (See Exhibit WRE 27~~  
20 ~~for a copy of MCI's response to QCC Data Request 2h).~~

21 Q. ~~WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN MCI'S~~  
22 ~~FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?~~

23 A. ~~MCI's Florida Price list No. 1, Section 7.4, specifies the rates, terms and conditions for~~  
24 ~~its provision of intrastate switched access services (see Exhibit WRE 28 for a copy of~~  
25 ~~MCImetro Access Transmission Services, LLC, Florida Price list No. 1, Section 7.4,~~

1 ~~dated January 13, 1998). The actual pages of the MCI switched access price listed~~  
2 ~~rate elements are identified in Exhibit WRE 28, however following are the most relevant~~  
3 ~~rate elements billed to QCC for intrastate switched access service:~~

4	<del>Per Access Minute of Originating Use</del>	<del>\$0.029156</del>
5	<del>Per Access Minute of Terminating Use</del>	<del>\$0.036673</del>
6	<del>800 Data Base Query</del>	<del>\$0.0040</del>

7 ~~Q. WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
8 ~~IN THIS CASE?~~

9 ~~A. Yes. To the best of QCC's knowledge, these rates were in effect during the timeframe of~~  
10 ~~MCI's agreements with AT&T.~~

11 ~~Q. IN THE COLORADO PROCEEDING MCI ARGUED THAT ITS AGREEMENT~~  
12 ~~WITH AT&T WAS RECIPROCAL, WITH EACH PARTY PROVIDING~~  
13 ~~SWITCHED ACCESS TO THE OTHER. WAS THE AGREEMENT TRULY~~  
14 ~~RECIPROCAL?~~

15 ~~A. No. MCI's arrangement with AT&T was only nominally "reciprocal." [BEGIN~~  
16 ~~LAWYERS ONLY CONFIDENTIAL] [REDACTED]~~

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

<sup>16</sup> See Exhibit WRE 29A.

REDACTED

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
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12 [REDACTED]  
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18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

~~17 [BEGIN LAWYERS ONLY CONFIDENTIAL]~~ [REDACTED]  
~~[END LAWYERS ONLY CONFIDENTIAL]~~ See Exhibit WRE 29A.



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
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18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 [END LAWYERS ONLY CONFIDENTIAL]  
23

<sup>18</sup> See Confidential Exhibit WRE-29D (Dates Nos. 270-271, provided in response to a QCC Colorado Data Request.  
<sup>19</sup> See Confidential Exhibit WRE-29D (Dates Nos. 403-406).  
<sup>20</sup> See Confidential Exhibit WRE-29B.

REDACTED

1 **Q. ~~COULD QCC HAVE ENTERED INTO A 'RECIPROCAL' AGREEMENT WITH~~**  
2 **~~MCI TO PROVIDE SWITCHED ACCESS SERVICES?~~**

3 **A. ~~Certainly. Although QCC did not provide switched access between the years 2004 and~~**  
4 **~~2007, QCC was certificated to provide local exchange service in nearly every state~~**  
5 **~~(including Florida) during that period. The availability of discounted switched access~~**  
6 **~~rates would certainly be a relevant factor in any decision regarding the offering of~~**  
7 **~~switched access services. Because MCI did not make the AT&T terms available to~~**  
8 **~~QCC, QCC was deprived of the opportunity to consider whether to offer switched~~**  
9 **~~access (assuming that was even a legitimate prerequisite for the discount afforded by~~**  
10 **~~MCI to AT&T) and the potential benefits such an offering may have brought. Also, if~~**  
11 **~~made aware of the agreement and the alleged "reciprocity" precondition, QCC would~~**  
12 **~~have been in a position to seek assistance at state commissions if MCI refused to apply~~**  
13 **~~the same discount to QCC.~~**

14 **Q. ~~IS THERE ANYTHING IN THE MCI-AT&T AGREEMENT THAT WOULD~~**  
15 **~~HAVE PREVENTED QCC FROM ENTERING INTO SUCH AN AGREEMENT?~~**

16 **A. No. [REDACTED]**  
17 **[REDACTED]**  
18 **[REDACTED]**  
19 **[REDACTED]**

20 **I. NAVIGATOR TELECOMMUNICATIONS, LLC**

21 **Q. PLEASE DESCRIBE THE NAVIGATOR TELECOMMUNICATIONS, LLC**  
22 **(“NAVIGATOR”) AGREEMENT AT ISSUE IN THIS CASE?**

23 **A. Navigator has an agreement for intrastate switched access services with AT&T which**  
24 **contains rates lower than the rates contained in Navigator's Florida intrastate access price**  
25 **list. This off-price list arrangement was effective July 1, 2001 and remains in effect.**

1 (See Confidential Exhibit WRE 30). Under the agreement, Navigator charged or charges  
2 AT&T the rates identified in Exhibit WRE 1A, row 12.

3 **Q. WAS QCC OFFERED THE SAME RATES THAT NAVIGATOR OFFERED**  
4 **AT&T?**

5 **A. No.** Navigator charged QCC its higher switched access price listed rates. Navigator did  
6 not disclose copies of all past and current off-price list arrangements to QCC and has not  
7 provided QCC the rates, terms or conditions received by AT&T. (See Exhibit WRE 31  
8 for a copy of Navigator's response to QCC Data Request 2h).

9 **Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN**  
10 **NAVIGATOR'S FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?**

11 **A.** Navigator's Florida Price List No. 2 specifies the rates, terms and conditions for its  
12 provision of intrastate switched access services (see Exhibit WRE 32 for a copy of  
13 Navigator Telecommunications, LLC, Florida Price List No. 2, effective May 7, 2002  
14 and a copy effective December 2, 2005).

15 The actual pages of the Navigator's switched access rate elements are identified in  
16 Exhibit WRE 32, however following are the most relevant rate elements billed to QCC  
17 for intrastate switched access service.

18 From the 2002 price list:

19 **Carrier Common Line**

20	Term	\$0.033600
21	Orig	\$0.025800
22	Local Switching	\$0.017700
23	Tandem Sw. Facility	\$0.000039
24	Tandem Termination	\$0.000197
25	Tandem Switching	\$0.000865

1           800 NPAS Query       \$0.008037

2           From the 2005 price list:

3           Blended Carrier Switched Access:

4                       Sprint and Verizon service areas: \$0.06152

5                       BellSouth service area:           \$0.03410

6   **Q. WERE THE RATES IN THE PRICE LISTS IN EFFECT DURING THE**  
7   **RELEVANT TIME FRAMES IN THIS CASE?**

8   **A. Yes. To the best of QCC's knowledge, the rates in the price lists were effect during the**  
9   **timeframe of Navigator's agreement with AT&T.**

10 **Q. DOES THE NAVIGATOR 2002 PRICE LIST ALLOW FOR OFF-PRICE LIST**  
11 **AGREEMENTS?**

12 **A. Yes. Section 4.7.2 and 7.6 of Navigator's 2002 price list indicates that Navigator may**  
13 **enter into individual case basis contracts for switched services subject to Florida Public**  
14 **Service Commission regulations and approval. As discussed above, the AT&T rates**  
15 **were not made available to QCC.**

16                               **~~J. PAETEC COMMUNICATIONS, INC.~~**

17 **Q. PLEASE DESCRIBE THE ~~PAETEC COMMUNICATIONS, INC. ("PAETEC")~~**  
18 **AGREEMENTS AT ISSUE IN THIS CASE?**

19 **A. ~~PAETEC had agreements for intrastate switched access services with AT&T which~~**  
20 **~~contained rates lower than the rates contained in PAETEC's Florida intrastate access~~**  
21 **~~price list. These off-price list arrangements include an agreement between PAETEC and~~**  
22 **~~AT&T Corp effective April 1, 2000 with a termination date of March 31, 2007 (as~~**  
23 **~~amended) and an Agreement with AT&T effective April 30, 2008. Under the 2000~~**  
24 **~~agreement, PAETEC charged AT&T the intrastate RBOC rate for switched access and~~**  
25 **~~8YY database queries. Under the 2008 agreement, PAETEC provide AT&T fixed dollar~~**

1 credits which could vary by year and by level of AT&T's purchase of other services.  
2 (See Exhibits WRE 33A and 33B). PAETEC also had agreements for intrastate switched  
3 access with Sprint (See Confidential Exhibits WRE 33C and 33D).

4 **Q. ~~WAS QCC OFFERED THE SAME RATES THAT PAETEC OFFERED AT&T?~~**

5 **A. No.** Although PAETEC responded in discovery that it provided intrastate switched  
6 access to Qwest and other IXCs in Florida under its price list at the same rates, terms and  
7 conditions it provided to AT&T, testimony of Mr. Canfield demonstrates that that is not  
8 the case. While AT&T was offered the lower RBOC rates, PAETEC charged QCC its  
9 higher switched access price listed rates. PAETEC did not disclose copies of all past and  
10 current off-price list arrangements to QCC and has not provided QCC the rates, terms or  
11 conditions received by AT&T and Sprint in these off-price list arrangements. (See  
12 Exhibit WRE 34A for a copy of PAETEC's response to QCC Data Request 2h.)

13 **Q. ~~WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN PAETEC'S~~**  
14 **~~FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?~~**

15 **A. PAETEC's Florida Price list No. 3** specifies the rates, terms and conditions for its  
16 provision of intrastate switched access services (see Exhibit WRE 35 for a copy of  
17 PAETEC Communications Inc. Price lists No. 3).

18 The actual pages of the PAETEC's switched access price listed rate elements are  
19 identified in Exhibit WRE 35, however following are the most relevant rate elements  
20 billed to QCC for intrastate switched access service:

21	<u>Network Switching per MOU</u>	<u>Orig</u>	<u>Term</u>
22	Bell South Territory	\$0.0087400	\$0.0209930
23	Verizon Territory	\$0.0344212	\$0.0431753
24	Sprint Territory	\$0.0337920	\$0.0337920
25	Smart City Territory	\$0.0457609	\$0.0680200

1        Local Transport Termination per minute

2        Bell South & Smart City        \$0.0003600

3        Verizon        \$0.0001344

4        Sprint        \$0.0001800

5

6        Local Transport Facility per mile

7        Bell South & Smart City        \$0.0000400

8        Verizon        \$0.0000135

9        Sprint        \$0.0000360

10

11       Shared End Office Trunk Port per minute

12       Bell South Territory        \$0.0008000

13       Sprint Territory        \$0.0000000

14       800 Database Per Query

15       Bell South Territory        \$0.004000

16       Sprint Territory        \$0.000037

17       Smart City Territory        \$0.000100

18    Q.    ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
19        ~~IN THIS CASE?~~

20    A.    ~~Yes. To the best of QCC's knowledge, this price list was in effect during the timeframe~~  
21        ~~of PAETEC's off-price list agreements.~~

22    Q.    ~~DOES THE PAETEC PRICE LIST ALLOW FOR OFF-PRICE LIST~~  
23        ~~AGREEMENTS?~~

24    A.    ~~Yes. Section 6.3 of the PAETEC price list indicates that PAETEC may enter into~~  
25        ~~individual contracts for switched services, and provides that such contracts will be made~~

1 ~~available to similarly situated customers. As discussed above, the AT&T rates were not~~  
2 ~~made available to QCC.~~

3 **K. TW TELECOM OF FLORIDA**

4 **Q. PLEASE DESCRIBE THE TW TELECOM OF FLORIDA ("TWTC")**  
5 **AGREEMENT AT ISSUE IN THIS CASE?**

6 A. TWTC had an agreement for intrastate switched access services with AT&T which  
7 contained rates lower than the rates contained in TWTC's Florida intrastate access price  
8 list. This off-price list arrangement was effective January 1, 2001 with a termination  
9 date (as to the off-price list switched access rates) of October 1, 2008 (see Confidential  
10 Exhibit WRE 36). Under the agreement, TWTC charged AT&T the rates referenced in  
11 Exhibit WRE 1A, row 15, and identified in Exhibit WRE 36, pages 57-71.

12 **Q. WAS QCC OFFERED THE SAME RATES THAT TWTC OFFERED AT&T?**

13 A. No. TWTC charged QCC its higher switched access price listed rates. TWTC did not  
14 disclose copies of all past and current off-price list arrangements to QCC and has not  
15 provided QCC the rates, terms or conditions received by the AT&T off-price list  
16 arrangement. (See Exhibit WRE 37 for a copy of TWTC's response to QCC Data  
17 Request 2h).

18 **Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN TWTC'S**  
19 **FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?**

20 A. TWTC's Florida Price List No. 2, Section 3, specifies the rates, terms and conditions for  
21 its provision of intrastate switched access services (see Exhibit WRE 38 for a copy of  
22 Time Warner Telecom of Florida L.P. Price List effective October 29, 2004).

23 The actual pages of the TWTC switched access price listed rate elements are identified in  
24 Exhibit WRE 38, however following are the most relevant rate elements billed to QCC  
25 for intrastate switched access service:

1	Carrier Common Line (Orig)	\$0.01868
2	Carrier Common Line (Term)	\$0.02754
3	Transport Interconnection	\$0.00577
4	Tandem Transport Orig	\$0.00022
5	Tandem Transport Facility	\$0.00015
6	Tandem Transport Orig	\$0.00022 per mile
7	Tandem Transport Term	\$0.00015
8	Local Switching (Orig and Term)	\$0.01439
9	800 Data Base Query	\$0.000735

10 **Q. WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES**  
11 **IN THIS CASE?**

12 **A. Yes.** To the best of QCC's knowledge, these rates were in effect during the timeframe of  
13 TWTC's agreement with AT&T.

14 **Q. DOES THE TWTC PRICE LIST ALLOW FOR OFF-PRICE LIST**  
15 **AGREEMENTS?**

16 **A. Yes.** Section 8.1 of TWTC's price list indicates that TWTC may enter into customer  
17 specific contracts and provides that such contracts will be made available to similarly  
18 situated customers in substantially the similar circumstance. As discussed above, the  
19 AT&T rates were not made available to QCC.

20 ~~**L. US LEC OF FLORIDA, LLC**~~

21 ~~**Q. PLEASE DESCRIBE THE US LEC OF FLORIDA, LLC D/W/A PAETEC**~~  
22 ~~**BUSINESS SERVICES ("US LEC") AGREEMENTS AT ISSUE IN THIS CASE?**~~

23 ~~**A. US LEC had agreements for intrastate switched access services with AT&T which**~~  
24 ~~**contained rates lower than the rates contained in US LEC's Florida intrastate access price**~~  
25 ~~**list. These off-price list arrangements include, but are not limited to an agreement dated**~~



1 ~~March 14, 2002 with AT&T and an agreement with AT&T dated April 30, 2008, (see~~  
2 ~~Confidential Exhibit WRE 39A).<sup>21</sup> Under the 2002 agreement, US LEC charged AT&T~~  
3 ~~the rates identified in Exhibit WRE 1A, row 16. The 2008 agreement is the identical~~  
4 ~~2008 PAETEC agreement that provided AT&T fixed dollar credits, as described above.~~  
5 ~~US LEC also had agreements for intrastate switched access with Sprint and MCI. (See~~  
6 ~~Confidential Exhibits WRE 39B, WRE 39C and WRE 39D).~~

7 **Q. WAS QCC OFFERED THE SAME RATES THAT US LEC OFFERED AT&T?**

8 **A.** ~~No. US LEC charged QCC its higher switched access price listed rates. US LEC did not~~  
9 ~~disclose copies of all past and current off-price list arrangements to QCC. To QCC's~~  
10 ~~knowledge US LEC has not offered QCC the rates, terms or conditions received by~~  
11 ~~AT&T under the 2002 agreement. In discovery, US LEC was asked if it had offered~~  
12 ~~QCC the equivalent rates, terms and conditions which were in the AT&T agreement. US~~  
13 ~~LEC objected and did not answer the data request (see Exhibit WRE 40A for a copy of~~  
14 ~~US LEC's response to QCC Data Request 2b). I believe US LEC and PAETEC contend~~  
15 ~~that QCC was offered the opportunity to enter into the 2008 AT&T agreement. While~~  
16 ~~that offer was made, it would have obliged QCC to obtain from US LEC and PAETEC~~  
17 ~~large quantities of competitive, unrelated (to switched access) services in order to obtain~~  
18 ~~a discount on intrastate switched access. Because QCC does not believe that that~~  
19 ~~precondition is reasonable or lawful (a question counsel will address), QCC should have~~  
20 ~~been offered an equivalent discount on switched access without having being required to~~  
21 ~~purchase unrelated services.~~

22 **Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN US LEC'S**  
23 **FLORIDA INTRASTATE SWITCHED ACCESS PRICE LIST?**

24 **A.** ~~US LEC's Florida Price List No. 2, Section 3, specifies the rates, terms and conditions~~

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<sup>21</sup> The 2008 AT&T agreement is the identical 2008 PAETEC-AT&T agreement (see Exhibit WRE 33B) and is not duplicated in Exhibit WRE 39.

1 for its provision of intrastate switched access services (see Exhibit WRE 41 for copies of  
2 US LEC of Florida Inc. Price lists No. 2, Section 3.

3 The actual pages of the US LEC switched access price listed rate elements are identified  
4 in Exhibit WRE 41, however following are examples of the most relevant rate elements  
5 billed to QCC for intrastate switched access service:

6 September 19, 2002 Price List

7 Local Switching \$0.02982

8 800 Database Query \$0.0079

9 November 5, 2007 Price List

10 Network Switching (BellSouth territory) \$0.02800

11 Network Switching (Verizon territory) \$0.0347371

12 Network Switching (Embarq territory) \$0.025000

13 800 Database Query \$0.0079

14 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
15 ~~IN THIS CASE?~~

16 A. ~~Yes. To the best of QCC's knowledge, these rates were in effect during the timeframe of~~  
17 ~~US LEC's agreements with AT&T.~~

18 M. WINDSTREAM NUVOX, INC.

19 Q. ~~PLEASE DESCRIBE THE WINDSTREAM NUVOX, INC. ("WINDSTREAM~~  
20 ~~NUVOX") AGREEMENTS AT ISSUE IN THIS CASE?~~

21 A. ~~Windstream NuVox has or had agreements for intrastate switched access services with~~  
22 ~~AT&T and MCI which contained rates lower than the rates contained in Windstream~~  
23 ~~NuVox's Florida intrastate access price list. These off price list arrangements include,~~  
24 ~~but are not limited to, an agreement between NuVox Inc. and AT&T Corp. effective~~  
25 ~~November 1, 2001; an agreement between NewSouth Communications Corp. and AT&T~~

1 ~~effective January 1, 2001; an agreement between NuVox and AT&T Corp effective June~~  
2 ~~8, 2010. (See Confidential Exhibits WRE 42A, 42B and 42C). Under the agreement;~~  
3 ~~NuVox charged or charges AT&T the rates identified in Exhibit WRE 1A, rows 17~~  
4 ~~through 19. NuVox also had agreements for intrastate switched access with MCI and~~  
5 ~~Sprint. (See Confidential Exhibits WRE 42D and WRE 42E).~~

6 ~~For purposes of this case, QCC is applying the agreements as follows. 2001 NuVox-~~  
7 ~~AT&T agreement (January 2002 through January 2005); NewSouth-AT&T agreement~~  
8 ~~(February 2005 through May 2010); and 2010 NuVox-AT&T agreement (June 2010-~~  
9 ~~present).~~

10 ~~Q. WAS QCC OFFERED THE SAME RATES THAT WINDSTREAM NUVOX~~  
11 ~~OFFERED AT&T AND MCI OR THAT NEWSOUTH OFFERED AT&T?~~

12 ~~A. No. Windstream NuVox charged QCC its higher switched access price listed rates.~~  
13 ~~Windstream NuVox did not disclose copies of all past and current off-price list~~  
14 ~~arrangements to QCC and has not provided QCC the rates, terms or conditions received~~  
15 ~~by AT&T and MCI off-price list arrangements. (See Exhibit WRE 43A and 43B for a~~  
16 ~~copy of Windstream NuVox's response and supplemental response to Data Request 2h).~~

17 ~~Q. WHAT ARE THE SWITCHED ACCESS RATE PROVISIONS IN~~  
18 ~~WINDSTREAM NUVOX'S FLORIDA INTRASTATE SWITCHED ACCESS~~  
19 ~~PRICE LIST?~~

20 ~~A. Windstream NuVox's had Florida Price Lists on file for NuVox Communications Inc.,~~  
21 ~~Florida Tariff No. 3, Section 5, dated January 1, 2005 and dated April 2, 2008; that~~  
22 ~~specified the rates, terms and conditions for its provision of intrastate switched access~~  
23 ~~services (see Exhibit WRE 44 for a copy of these price lists).~~

24 ~~The actual pages of the Windstream NuVox switched access price list rate elements are~~  
25 ~~identified in Exhibit WRE 44, however following are the most relevant rate elements~~

1 billed to QCC for intrastate switched access service:

2 Direct Access Transport:

3 End User Access, per minute	0.0084
4 Local Switching, per minute	0.0430
5 Transport Termination, per minute	0.0015
6 per minute per mile	0.0003
7 Interconnection, per minute	0.0134
8 End User Access, per minute	0.0107
9 Local Switching, per minute	0.0512
10 Base Query, per query	0.0042

11 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
12 ~~IN THIS CASE?~~

13 A. ~~Yes. To the best of QCC's knowledge, these price list rates were in effect during the~~  
14 ~~timeframe of Windstream NuVox's (and New South's) agreements with AT&T and MCI.~~

15 Q. ~~DOES THE NUVOX PRICE LIST ALLOW FOR OFF-PRICE LIST~~  
16 ~~AGREEMENTS?~~

17 A. ~~Yes. Section 2.7 of the NuVox price list indicates that NuVox may enter into individual~~  
18 ~~contracts for switched services, and provides that such contracts will be made available~~  
19 ~~to similarly situated customers. As discussed above the AT&T and MCI rates were not~~  
20 ~~made available to QCC.~~

21 **VIII SUMMARY/CONCLUSION**

22 Q. **PLEASE SUMMARIZE YOUR TESTIMONY.**

23 A. For many years, the Respondent CLECs subjected QCC to unjust and unreasonable rate  
24 discrimination in connection with the provision of intrastate switched access services.  
25 These CLECs entered into off-price list individual case basis agreements with select

1 interexchange carriers and failed to make those same rates, terms and conditions  
2 available to QCC as otherwise required by statute and (in many cases) the terms of the  
3 CLEC price lists. My testimony and exhibits present the agreements that each  
4 respondent CLECs entered with their preferred IXCs and detail the switched access and  
5 8XX rates that were agreed to between these parties. My testimony and exhibits also  
6 present the same CLECs' publicly-filed price listed rates. Read together, these  
7 documents show that the CLECs charged AT&T, MCI, and Sprint different (and lower)  
8 sets of rates than they charged QCC and other IXCs obtaining switched access out of the  
9 price list.

10 As a result of this unreasonable discrimination, QCC is seeking two forms of relief.  
11 Retrospectively, QCC believes it is entitled to refunds equal to the amount it overpaid  
12 each respondent CLECs (plus interest) relative to the discounted amounts it would have  
13 paid had the CLECs extended the same preferential rates to QCC as they did to AT&T,  
14 MCI and Sprint. Prospectively, QCC believes it is entitled to the same discounted rates  
15 still in effect for the IXCs benefiting from the CLEC agreements.

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

17 **A. Yes, it does.**

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**INDEX TO EXHIBITS**

<b>DESCRIPTION</b>	<b>Exhibit</b>
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
<u>Verizon Florida Switched Access Tariff Section 6.6</u>	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
<u>Broadwing Communications, LLC Responses to Data Requests</u>	WRE 6A, 6B
Focal Communications Corporation of Florida Price List No. 2 effective July 16, 2003	WRE 7
<del>Budget Phone, Inc. and</del> [REDACTED]	Confidential WRE 8
<u>Budget Prepay, Inc. Responses to Data Requests</u>	WRE 9
<u>Budget Prepay, Inc. Florida Price List No. 3,</u> <u>effective January 17, 2004</u>	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

<del>ITC<sup>Δ</sup>DeltaCom Communications, Inc. and AT&amp;T Corp. Settlement and Switched Access Agreement, effective September 1, 2002</del>	Confidential WRE 14A
<del>DeltaCom, Inc. and AT&amp;T Corp. Switched Access Service Agreement, effective January 1, 2011</del>	Confidential WRE 14B
<del>ITC<sup>Δ</sup>DeltaCom Communications, Inc. and Sprint Settlement Agreement, effective March 28, 2002</del>	Confidential WRE 14C
<del>DeltaCom, Inc. Responses to Data Requests</del>	WRE 15
<del>ITC-DeltaCom Communications Inc. Switched Access Tariff, Section 3, effective August 26, 1998</del>	WRE 16
<del>Ernest Communications and [REDACTED]</del>	Confidential WRE 17A
<del>[REDACTED]</del>	Confidential WRE 17B
<del>Ernest Communications, Inc. Responses to Data Requests</del>	WRE 18
<del>Ernest Communications Inc. Access Services Tariff, Section 3, Effective February 4, 2003</del>	WRE 19
<del>Flatel, Inc. and [REDACTED]</del>	Confidential WRE 20
<del>Flatel, Inc. Data Requests</del>	WRE 21
<del>Flatel, Inc. Florida Pr [REDACTED]</del>	WRE 22
<del>Granite Telecommunications, LLC, and AT&amp;T Agreement effective [REDACTED]</del>	Confidential WRE 23A
<del>Granite Telecommunications, LLC and Sprint Agreement Effective [REDACTED]. (Lawyers Only)</del>	Confidential WRE 23B
<del>Granite Telecommunications, LLC Responses to Data Requests</del>	WRE 24A
<del>Granite Telecommunications, LLC Supplemental Responses to Data Requests</del>	WRE 24B

<u>Granite Telecommunications, LLC Florida Price List No. 2, Section 5.1, effective June 18, 2003</u>	WRE 25
<u>MCImetro Access Transmission Services and AT&amp;T Agreement effective 1-27-2004</u>	Confidential WRE 26
<u>Verizon Access Transmission Services Responses to Data Requests</u>	WRE 27
<u>MCImetro Access Transmission Services, LLC, Florida Price List No. 1, effective January 15, 1998</u>	WRE 28
<u>MCI Response to Colorado Data Request</u>	WRE 29A
<u>MCI Internal Correspondence (Lawyers Only)</u>	Confidential WRE 29B
<u>Navigator Telecommunications, LLC and AT&amp;T Agreement effective July 1, 2001</u>	Confidential WRE 30
<u>Navigator Telecommunications, LLC Responses to Data Requests</u>	WRE 31
<u>Navigator Telecommunications, LLC Florida Price List No. 2, Section 7, effective May 7, 2002 Section 7, effective December 2, 2005</u>	WRE 32
<u>PaeTec Communications Inc. and AT&amp;T: Agreement effective April 1, 2000</u>	WRE 33A
<u>Agreement effective April 30, 2008</u>	WRE 33B
<u>PaeTec Communications Inc. and Sprint: Agreement effective September 5, 2000</u>	Confidential WRE 33C
<u>Agreement effective November 1, 2004</u>	Confidential WRE 33D
<u>PAETEC Communications Inc. Responses to Data Requests</u>	WRE 34A
<u>Additional Data Request Response</u>	WRE 34B
<u>PAETEC Communications, Inc. Florida Price List No. 3, effective November 1, 2005</u>	WRE 35
<u>Time Warner Telecom and AT&amp;T Agreement effective July 1, 2001</u>	Confidential WRE 36



<b>TW TELECOM of Florida Responses to Data Requests</b>	<b>WRE 37</b>
<b>Time Warner Telecom of Florida, Florida Access Tariff PCS No. 2, effective October 29, 2004</b>	<b>WRE 38</b>
<b>US LEC Corp. and AT&amp;T</b> <b>Agreement effective March 14, 2002</b> <b>Agreement effective April 30, 2008</b>	<b>Confidential WRE 39A</b>
<b>US LEC Corp. and Sprint</b> <b>Agreement effective October 5, 2001</b> <b>Agreement effective February 16, 2006</b>	<b>Confidential WRE 39B</b> <b>Confidential WRE 39C</b>
<b>US LEC and MCI</b> <b>Agreement effective February 7, 2006</b>	<b>Confidential WRE 39D</b>
<b>US LEC Responses to Data Requests</b>	<b>WRE 40A</b>
<b>Additional Data Request Response</b>	<b>WRE 40B</b>
<b>US LEC of Florida, Inc. Florida Price List No. 2, Section 3</b>	<b>WRE 41</b>
<b>NuVox, Inc. and AT&amp;T</b> <b>Agreement effective November 1, 2001</b>	<b>Confidential WRE 42A</b>
<b>New South Communications and AT&amp;T</b> <b>Agreement effective January 1, 2001</b>	<b>Confidential WRE 42B</b>
<b>NuVox, Inc. and AT&amp;T</b> <b>Agreement effective June 8, 2010</b>	<b>Confidential WRE 42C</b>
<b>NuVox, Inc. and MCI</b> <b>Agreement effective January 1, 2006</b>	<b>Confidential WRE 42D</b>
<b>NuVox, Inc. and Sprint</b> <b>Agreement effective August 26, 2002</b>	<b>Confidential WRE 42E</b>
<b>Windstream NuVox Inc. Responses to Data Requests</b>	<b>WRE 43A</b>
<b>Windstream NuVox Inc. Supplemental Responses to Data Requests</b>	<b>WRE 43B</b>
<b>NuVox Communications Inc. Florida Tariff No. 3, effective January 21, 2005</b> <b>effective April 2, 2008</b>	<b>WRE 44</b>

**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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**I. IDENTIFICATION OF WITNESS**

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

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

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

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

**II. PURPOSE OF TESTIMONY**

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

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

**III. WOOD REBUTTAL**

**A. MISCHARACTERIZATION OF QCC POSITION**

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

**A. Yes. Rather than confronting the allegations in QCC's complaint head on, Mr. Wood chooses to mischaracterize the issues QCC raises, despite the fact that the language in the complaint and responses to subsequent discovery make it very clear what QCC's position actually is. Having created these straw men, Mr. Wood then proceeds to knock 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.<sup>1</sup>**

22

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<sup>1</sup> *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<sup>2</sup>**

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.**

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<sup>2</sup> 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.<sup>3</sup>

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 AGREEMENTS 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

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<sup>3</sup> 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.<sup>4</sup>

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~~

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<sup>4</sup> Order Addressing Exceptions and Motion to Reopen the Record. Public Utilities Commission of the State of Colorado. Decision No. C11-1216. October 17, 2011.

REDACTED

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:

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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 ~~[REDACTED] [END LAWYERS ONLY CONFIDENTIAL] that.~~

9 ~~[BEGIN LAWYERS ONLY CONFIDENTIAL] [REDACTED]~~

10 ~~[REDACTED]~~

11 ~~[REDACTED]~~

12 ~~[REDACTED] [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

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) [REDACTED]~~  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] ~~(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 [REDACTED] 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. [REDACTED]~~

22 [REDACTED]  
23 [REDACTED]

REDACTED



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
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17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

REDACTED

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[REDACTED] [END LAWYERS ONLY CONFIDENTIAL]

3

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

4

5

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

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

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

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REDACTED

**E. OTHER ISSUES**

1  
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.<sup>5</sup> 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**

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<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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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<sup>6</sup> Direct Testimony of Lisa Hensley Eckert at pages 8-9.

<sup>7</sup> 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<sup>1</sup> 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,**

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<sup>1</sup> On July 21, 2002 WorldCom, Inc., and most of its domestic subsidiaries, including MCIwire, (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. 02-13593 (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-inflight MCI-AT&T insurance switched access  
2 agreement based on the larger confidential global settlement agreement in which it was  
3 named. 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." 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 WORLD COM 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

See Exhibit-FRM-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.<sup>10</sup>~~

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~~

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<sup>10</sup> 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.<sup>11</sup>~~

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~~

<sup>11</sup> Transcript from Probearing Conference in the Qwest Communications, LLC Complaint, Case 08-06-006, 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~~

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

22 mention it above in the context of BEGIN LAWYERS ONLY CONFIDENTIAL.

21 access issues generally. LNE-P has little or nothing to do with this case, although I do

20 LNE-P. LNE-P switched access issues would be a narrow and specialized subset of

19 switching need not be provided as a LNE and thus that LNE-P need not be provided as a

18 switched access on "their" network facilities. The FCC ultimately determined that

17 product to create an unbundled network element in order for the CLBC to charge IXC

16 A. Without providing unnecessary detail, LNE-P was an attempt to re-brand a resale

15 LNE-P?

14 Q. WHAT IS LNE-P AND WHAT WERE THE DISPUTES ASSOCIATED WITH

13 and that the parties were addressing access issues only as related to "LNE-P services."

12 settlement would lead the reader to assume the settlement was much narrower than that

11 settlement agreement. In fact, a fair reading of the motion to approve the global

10 However, no such statement is contained in the motion requesting approval of the global

9 CLBC offered local exchange service." Mr. Reynolds makes that clarification now.

8 single, uniform rate for switched access service provided anywhere in the country, the

7 companies' CLBC affiliates agreed to charge the other companies IXC affiliates "a

6 A. Yes. Mr. Reynolds states on page 12 of his testimony that by entering the agreement the

5 APPROVAL OF THE GLOBAL MCI-A-T AGREEMENT?

4 AGREEMENT BY THE LANGUAGE IN THE MOTION REQUESTING

3 PUT ON NOTICE OF THE OFF PRICE LIST INFRASTATE ACCESS

2 Q. ARE THERE ANY OTHER REASONS THAT QCC WOULD NOT HAVE BEEN

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



1 ~~██████████ [REDACTED] (LAWYERS ONLY CONFIDENTIAL)~~

2 Q. ~~WHY WOULD A REASONABLE READING OF THE MOTION TO APPROVE~~  
3 ~~THE GLOBAL MCLAT&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.<sup>13</sup> 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 MCLAT&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 MCLAT&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 ~~MCI metro 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~~

<sup>13</sup> Exhibit PHR-1, Section 8(h).

REDACTED

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.~~**

**B. RECIPROCFY**

1  
2 **Q. ~~ON PAGE 13 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 his testimony that QCC could not offer switched access to~~**  
8 **~~MCI metro and therefore could not have entered into the agreement MCI metro 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 businesses 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]~~ [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 ~~[END LAWYERS ONLY CONFIDENTIAL]~~ —

14 Q. ~~GOULD 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.

REDACTED

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 MCI'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.<sup>14</sup> An EXC requiring intrastate~~  
6 ~~access service to terminate a call is totally independent of the reciprocal~~  
7 ~~provision of access service. Such an EXC 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.<sup>15</sup>~~

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-Balart~~**  
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~~**

<sup>14</sup> § 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.

<sup>15</sup> ~~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] [REDACTED]~~

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[REDACTED]

[REDACTED] ~~[END LAWYERS ONLY CONFIDENTIAL]~~ Ultimately, the testimony of both the Joint CLECs and MCI fail to offer a credible and legal justification for the discriminatory behavior engaged in by the respondent CLECs and must be rejected.

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

A. Yes, it does.

REDACTED



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); 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 Nurvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

DOCKET NO. 090538-TP

Filed: June 14, 2012

**REDACTED**

**DIRECT TESTIMONY OF DEREK CANFIELD**

**ON BEHALF OF**

**QWEST COMMUNICATIONS COMPANY, LLC**

**Filed: June 14, 2012**

COM 5  
APA \_\_\_\_\_  
ECR \_\_\_\_\_  
GCI 8  
RAD 1  
SRU \_\_\_\_\_  
ADM \_\_\_\_\_  
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**I. INTRODUCTION**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

2 My name is Derek Canfield. I am employed by TEOCO Corporation (TEOCO) as  
3 Executive Director of Usage Audit and Analysis. My business address is 10955  
4 Lowell Ave Ste 705, Overland Park, KS, 66210.

5 **Q. PLEASE GIVE A BRIEF DESCRIPTION OF THE RELATIONSHIP**  
6 **BETWEEN QWEST COMMUNICATIONS COMPANY, LLC AND TEOCO.**

7 **A.** Qwest Communications Company, LLC (QCC) is a customer of certain products and  
8 services provided by TEOCO, including, but not limited to, the audit and analysis of  
9 its switched access expenses which are at issue within this complaint.

10 **Q. WHAT IS YOUR WORK EXPERIENCE?**

11 **A.** I have been in the telecommunications industry for fifteen years. For the past six years,  
12 I have worked in my capacity at TEOCO Corporation, providing among other things,  
13 extensive auditing of our clients' switched access invoices received from local  
14 exchange carriers (LECs). Prior to joining TEOCO, I worked one year as an  
15 independent consultant, working on various projects such as the integration of two  
16 wireless telephone company networks that was the result of a merger. My initial eight  
17 years in telecommunications were spent with Sprint Corporation, which at that time  
18 had operations as a wireless provider, a long distance provider, an incumbent local  
19 exchange carrier (ILEC), and a competitive local exchange carrier (CLEC). For  
20 Sprint, I was responsible for the initial build out, and subsequent operations, of groups  
21 that both billed switched access and verified the incoming invoices for switched  
22 access, special access, and various wholesale services.

23

1 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

2 **A.** I received my Bachelor of Arts degree from Bethany College in 1994 and my Master  
3 of Business Administration degree from Wichita State in 1996.

4 **Q. HAVE YOU EVER SUBMITTED TESTIMONY BEFORE AN**  
5 **ADMINISTRATIVE AGENCY?**

6 **A.** Yes. In the parallel Colorado complaint proceeding (Docket No. 08F-259T), I filed  
7 two rounds of pre-filed testimony and testified at hearing. In the parallel California  
8 complaint proceeding (Case No. C.08-08-006), I submitted sworn declarations.

9 I have also filed testimony before the Minnesota Public Utilities Commission in  
10 conjunction with Docket No. P-5096, 5542 / C09-265; OAH 12-2500-21151-2, which  
11 related to access stimulation. In connection with access stimulation, I have also filed  
12 declarations and affidavits with the Iowa Utilities Board (Docket No. FCU-07-2) and  
13 the Federal Communications Commission in File No. EB-08-MD-012.

14 **II. PURPOSE OF DIRECT TESTIMONY**

15 **Q. WHAT ISSUE IDENTIFIED IN THE ORDER ESTABLISHING PROCEDURE**  
16 **(ORDER NO. PSC-12-0048-PCO-TP) DOES YOUR TESTIMONY ADDRESS?**

17 **A.** My testimony primarily addresses Issue 9(b)(i), which states "If the Commission  
18 finds a violation or violations of law as alleged by Qwest and has the authority to  
19 award remedies to Qwest per the preceding issue, for each claim: (i) If applicable,  
20 how should the amount of any relief be calculated and when and how should it be  
21 paid."

22 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

23 **A.** The purpose of my testimony is to describe the financial impact upon QCC of the rate  
24 discrimination at issue in this complaint. Very specifically, my testimony will define

1 the relevant time period at issue for each CLEC named in this case, illustrate the  
2 intrastate switched access billed by each to QCC during the pertinent time period,  
3 describe the variance in rate between the billed rate and the rate provided to certain of  
4 QCC's interexchange carrier (IXC) competitors, and calculate the financial impact on  
5 QCC from inception to termination of the agreement. For agreements that remain  
6 active, I calculated the variance only through March 31, 2012. I understand that my  
7 calculations will need to be brought current later in the case. Also, to the extent QCC  
8 is missing billing data for earlier periods I may need to update my calculations  
9 (assuming that billing data can be obtained from the CLECs) for the earlier periods.

10 **III. ANALYSIS OVERVIEW**

11 **Q. WHAT IS THE SIGNIFICANCE OF SWITCHED ACCESS COST TO QCC?**

12 **A.** Switched access is a very significant expense to QCC. By way of example, for 2010  
13 and 2011, QCC incurred switched access expenses (interstate and intrastate) on average  
14 exceeding [REDACTED] *per month*. Of this total, [REDACTED] was for intrastate  
15 switched access. In other words, intrastate switched access accounted for 48 percent of  
16 QCC's switched access expense for 2010 and 2011. Thus, while the majority of traffic  
17 is rated as "interstate," the expense to interexchange carriers (IXCs) such as QCC is  
18 balanced equally between *interstate* and *intrastate* charges because intrastate rates are  
19 typically far higher than interstate rates.

20 **Q. HOW MUCH OF THE [REDACTED] IN MONTHLY SWITCHED ACCESS**  
21 **COST WAS BILLED BY CLECS?**

22 **A.** Of this total, and again on average, [REDACTED] of this monthly expense has been billed  
23 by CLECs. Of [REDACTED] total, approximately [REDACTED] (34 percent) was for  
24 intrastate switched access billed by CLECs.

REDACTED

1 Q. HOW MUCH OF THE [REDACTED] IN MONTHLY SWITCHED ACCESS  
2 COST WAS BILLED IN FLORIDA?

3 A. According to my review, [REDACTED] per month has been billed by LECs in Florida  
4 in 2010 and 2011. Of that total, [REDACTED] (or 38 percent) was billed as *intrastate*  
5 switched access, and [REDACTED] per month was billed by CLECs as *intrastate* switched  
6 access. Thus, on average QCC was billed [REDACTED] per year in that period by  
7 CLECs for intrastate switched access in Florida

8 Q. YOU MENTIONED ABOVE THAT YOUR TESTIMONY FOCUSES  
9 PRIMARILY ON ANALYZING THE FINANCIAL IMPACT OF CLEC OFF-  
10 PRICE LIST SWITCHED ACCESS AGREEMENTS WITH CERTAIN IXCS.  
11 CAN YOU GENERALLY DESCRIBE THOSE AGREEMENTS?

12 A. Yes. Generally speaking, the agreements relevant to this case provided AT&T,  
13 Sprint, or MCI Worldcom discounted switched access rates when compared to the  
14 respective CLEC's price list and the invoices generated to IXCs other than to AT&T,  
15 Sprint, or MCI Worldcom. Oftentimes, the agreements were national in scope,  
16 meaning that the CLEC and IXC did not enter into separate agreements for each state.  
17 In a couple of cases, the stated (discount) rates were state-specific, but more  
18 commonly the CLEC provided the IXC a uniform rate or rate standard across all  
19 states. The discounts follow one of three patterns. Many of the agreements contain  
20 straightforward composite per-minute-of-use rates (i.e., unitary rates that blend  
21 together all elements of switched access) for switched access. Other agreements  
22 provide that the CLEC will charge the IXC the local ILEC's switched access rates  
23 rather than the CLEC's price list rate. CLEC intrastate price list rates typically  
24 exceed ILEC rates (unless restricted under a particular state's law). The final (albeit

1 far less common) form of agreement applies a discount or total dollar credit off of the  
2 CLEC's switched access billing to the IXC.

3 **Q. GENERALLY SPEAKING, HOW DID YOU CALCULATE THE FINANCIAL**  
4 **IMPACT OF THE AGREEMENTS ON QCC?**

5 **A.** To determine the financial impact, I evaluated the difference between what QCC was  
6 actually billed by the CLEC for intrastate switched access (generally, the CLEC's price  
7 list rate multiplied by the minutes of use) and what QCC *would have* paid had QCC  
8 enjoyed the same discounts the CLEC provided to the preferred IXCs for the same  
9 services during the same period of time. I performed this calculation for originating  
10 switched access, terminating switched access and 800 query charges.<sup>1</sup> For those  
11 CLECs whose agreements use composite (flat) per-minute-of-use rates, my calculation  
12 was rather straightforward. I simply multiplied the billed minutes of use times the  
13 discount rate provided to the preferred IXCs by the CLEC and then subtracted that total  
14 from the amount QCC was actually billed by the CLEC for the same number of  
15 minutes. For those CLECs whose agreements use the local ILEC intrastate rate as the  
16 rate to be billed to the preferred IXCs, I had to calculate and use a proxy for that ILEC  
17 rate. This proxy slightly varies from CLEC to CLEC. For the discount/total dollar  
18 credit agreements, I attempted to apply an equivalent discount or credit to QCC's  
19 billing to the extent I could identify the applicable discount.

20 **Q. FOR THE SECOND CATEGORY OF AGREEMENTS, CAN YOU PLEASE**  
21 **EXPLAIN WHY THE PROXY WILL VARY FROM CLEC TO CLEC?**

22 **A.** Florida has three predominant ILECs: Bellsouth (now AT&T), Embarq (now  
23 CenturyLink) and Verizon. All of the previously mentioned ILECs' rates were taken

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<sup>1</sup> The 800 database query is a look-up function performed on all originating 800 calls to determine the proper IXC to route the call to for termination. ILECs (including CLECs) charge for this function on a per-query basis, rather than on a per-minute of use basis.

1 into consideration when calculating the proxy rate. In addition, each ILEC's rates were  
2 weighted by the quantity of minutes originating from or terminating to the CLEC in the  
3 appropriate ILEC territory. Bellsouth, Embarq and Verizon bill the minutes by rate  
4 element utilized, some of which are distance sensitive.<sup>2</sup> To calculate the average rate  
5 for these distance-sensitive elements, I calculated the appropriate transport mileage for  
6 each CLEC route (which was the distance between the end office and the tandem).  
7 Certain rate elements are only applicable to traffic delivered via the access tandem  
8 while other rate element are applicable to all traffic, either delivered via the tandem or  
9 directly from/to the CLEC switch. Thus, for an accurate determination of the  
10 applicable rates under this type of agreement, I calculated the percentage of traffic for  
11 each CLEC that was routed via an access tandem and assigned those specific rate  
12 elements only to that percentage of traffic, while applying the non-route specific  
13 elements to all minutes. The weighting of traffic by ILEC, weighted average mileage  
14 and percentage direct versus tandem routed traffic are all incorporated into my analysis  
15 and for these reasons the effective ILEC rate proxy I used slightly varies from CLEC to  
16 CLEC.

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<sup>2</sup> Mr. Easton discusses and describes the differences between flat-rated and distance-sensitive switched access elements in his Direct Testimony.



1 IV. CLEC BY CLEC ANALYSIS<sup>3</sup>

2 A. ~~Broadwing Communications, LLC~~

3 Q. ~~PLEASE DESCRIBE THE BROADWING COMMUNICATIONS, LLC~~  
4 ~~AGREEMENTS AT ISSUE IN THIS CASE?~~

5 A. ~~QCC's claims against Broadwing in this case stem from Focal Communications~~  
6 ~~Corporation's switched access agreements. They do not stem directly from~~  
7 ~~Broadwing's switched access agreements. It is my understanding that Broadwing~~  
8 ~~acquired Focal (or Focal's assets) many years ago, and that "Focal" has continued to~~  
9 ~~provide QCC switched access in Florida. Focal has separate and distinct off-price list~~  
10 ~~agreements for intrastate switched access with [REDACTED] and [REDACTED] in the state of Florida.~~  
11 ~~Copies of the agreements are attached to the Direct Testimony of William Easton as~~  
12 ~~Exhibits WRE 5A and 5B.~~

13 Q. ~~WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-~~  
14 ~~PRICE LIST AGREEMENTS?~~

15 A. ~~No. QCC was billed at rates higher than those set forth in those agreements.~~

16 Q. ~~WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENTS?~~

17 A. ~~I understand the agreement with [REDACTED] to have a beginning effective date of [REDACTED]~~  
18 ~~[REDACTED] and a termination date of [REDACTED]. The [REDACTED] agreement has a~~  
19 ~~beginning effective date of [REDACTED] and [REDACTED]~~  
20 ~~[REDACTED]. I was only able to obtain invoices data beginning in [REDACTED]. Thus, the~~  
21 ~~relevant timeframe for my current analysis is [REDACTED] through [REDACTED]~~

<sup>3</sup> Please note that, while Access Point, Inc. and Birch Communications, Inc. are still technically respondents in this case, QCC has entered into a settlement with Access Point and is working to finalize a settlement with Birch. On June 1, 2012, QCC filed a notice dismissing its complaint as against Access Point. QCC anticipates filing a notice dismissing its complaint against Birch once the written settlement agreement is final. As a result of these settlements, my testimony does not include a discussion of Access Point's or Birch's 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.

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[REDACTED]

[REDACTED]

**Q: PLEASE DESCRIBE FOCAL'S BILLING TO QCC DURING THIS PERIOD OF TIME?**

A. ~~For invoices dated from [REDACTED] through [REDACTED], Focal billed QCC for [REDACTED] for intrastate switched access in Florida. Focal billed a variety of switched access elements to reflect the various unique portions of the network utilized, including:~~

- ~~-Carrier Common Line;~~
- ~~-End Office Local Switching;~~
- ~~-Tandem Switched Transport Termination;~~
- ~~-Tandem Switched Transport Facility;~~
- ~~-Tandem Switching;~~
- ~~-Residual Interconnection Charge; and,~~
- ~~-800 Data Base Query~~

~~The rates for these elements are found in section 5 of Focal's Florida price list, a copy of which is attached to the Direct Testimony of William Easton as Exhibit WRE 7.~~

**Q. WHAT RATE DID THE FOCAL OFF-PRICE LIST AGREEMENTS CONTAIN?**

A. ~~The rate included in the agreement with [REDACTED] [REDACTED]. The rate included in the agreement with [REDACTED] [REDACTED]. Because the [REDACTED] agreement terminated in [REDACTED], I will utilize the off-price list rates and~~

1 terms from the [REDACTED] agreement for the period through [REDACTED] and the [REDACTED] rates  
2 thereafter.

3 Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE FOCAL  
4 AGREEMENTS?

5 A. By virtue of billing QCC the higher rates, Focal billed [REDACTED] more to  
6 QCC than it would have billed the preferred EXCs for the same set of minutes. More  
7 specifically, Focal billed [REDACTED] more to QCC than it would have billed to [REDACTED]  
8 for the exact same set of minutes between [REDACTED] Focal billed  
9 QCC [BEGIN LAWYERS ONLY CONFIDENTIAL] [REDACTED] [END LAWYERS  
10 ONLY CONFIDENTIAL] more than it would have billed [REDACTED] for the same set of  
11 minutes between [REDACTED] I found that QCC was charged [REDACTED] percent  
12 higher during the [REDACTED] agreement time frame and [BEGIN LAWYERS ONLY  
13 CONFIDENTIAL] [REDACTED] [END LAWYERS ONLY CONFIDENTIAL] percent higher  
14 during the [REDACTED] agreement time frame. My calculation is summarized at Exhibit DAC-1  
15 and DAC-2.<sup>4</sup> Exhibit DAC-1 is a month-by-month summary of the overcharge, while  
16 Exhibit DAC-2 provides a more granular analysis and is divided by category (83X  
17 database query, originating access, terminating access), by month and by type of invoice  
18 (electronic or manual).

19 Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?

20 A. I utilized the [REDACTED] agreement for the period of [REDACTED]  
21 [REDACTED] and the [REDACTED] agreement for the period of [REDACTED]  
22 For 68 percent of the minutes and dollars included in my analysis, QCC had received  
23 the electronic bill detail needed to complete the calculation. Thus, I simply extracted

<sup>4</sup> All of the Exhibits to my testimony, with the exception of Exhibit DAC-17 (which is a document provided by MCI in discovery), were prepared by myself or at my direction.



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] END

19 ~~LAWYERS ONLY CONFIDENTIAL~~

20 ~~B. Budget Prepay, Inc.~~

21 ~~Q. PLEASE DESCRIBE THE BUDGET PREPAY, INC. (BUDGET) AGREEMENT~~  
22 ~~AT ISSUE IN THIS CASE?~~

23 ~~A. Budget had an off-price list agreement for intrastate switched access with [REDACTED] in the~~  
24 ~~state of Florida. A copy of the agreement is attached to the Direct Testimony of~~

1 ~~William Easton as Exhibit WRE 8.~~

2 **Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
3 **PRICE LIST AGREEMENT?**

4 A. ~~No. QCC was billed at rates higher than those set forth in those agreement.~~

5 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?**

6 A. ~~I understand the agreement with [REDACTED] to have a beginning effective date of [REDACTED]~~  
7 ~~[REDACTED] I was able to retrieve invoice information for the entire~~  
8 ~~timeframe; therefore my analysis is from [REDACTED]~~

9 [REDACTED]  
10 [REDACTED]  
11 **Q. PLEASE DESCRIBE BUDGET'S BILLING TO QCC DURING THIS PERIOD**  
12 **OF TIME?**

13 A. ~~For the invoices from [REDACTED] Budget billed QCC for~~  
14 ~~[REDACTED] for intrastate switched access in Florida. Budget billed a variety of~~  
15 ~~switched access elements to reflect the various unique portions of the network utilized,~~  
16 ~~including:~~

- 17 ~~-End Office Local Switching;~~
- 18 ~~-Carrier Common Line; and~~
- 19 ~~-800 Data Base Query~~

20 ~~The rates for these elements are found in section 5 of Budget's Florida price list, a copy~~  
21 ~~of which is attached to the Direct Testimony of William Easton as Exhibit WRE 10.~~

22 **Q. WHAT RATE DID THE PREVIOUSLY MENTIONED AGREEMENT**  
23 **CONTAIN?**

24 A. ~~The rate included in the agreement with [REDACTED] is [REDACTED]. For the service~~

1 known as 800 database look-up the rate was [REDACTED]

2 [REDACTED]

3 Q. ~~WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE BUDGET~~  
4 ~~AGREEMENT?~~

5 A. ~~By virtue of billing QCC the higher rates, Budget billed [REDACTED] more to QCC than~~  
6 ~~it would have billed to [REDACTED] for the exact same set of minutes during the relevant time~~  
7 ~~frame. I found that QCC was charged [REDACTED] percent higher than was [REDACTED]. My~~  
8 ~~calculation is summarized at Exhibit DAG 3 and DAG 4. Exhibit DAG 3 is a month-~~  
9 ~~by-month summary of the overcharge, while Exhibit DAG 4 provides a more granular~~  
10 ~~analysis and is divided by category (8XX database query, originating access,~~  
11 ~~terminating access), by month and by type of invoice (electronic or manual).~~

12 Q. ~~HOW WAS THIS FINANCIAL IMPACT CALCULATED?~~

13 A. ~~For 100 percent of the minutes and dollars, QCC had received the electronic bill detail~~  
14 ~~needed to complete the calculation. Thus, I simply extracted the quantity of minutes~~  
15 ~~and database queries from the switched access invoices and multiplied each by the~~  
16 ~~respective contract rate to derive the amount QCC would have been billed had QCC~~  
17 ~~enjoyed the same discount Budget was providing to the preferred IXG. The financial~~  
18 ~~impact, therefore, was calculated by subtracting the amount QCC would have been~~  
19 ~~billed at the contract rate from the amount it was actually billed.~~

20 Q. ~~WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?~~

21 A. No.

22

23

REDACTED

1 **C. BullsEye Telecom, Inc.**

2 **Q. PLEASE DESCRIBE THE BULLSEYE TELECOM, INC. (BULLSEYE)**  
3 **AGREEMENT AT ISSUE IN THIS CASE?**

4 A. BullsEye has an off-price list agreement for intrastate switched access with AT&T in  
5 the state of Florida. A copy of the agreement is attached to the Direct Testimony of  
6 William Easton as Exhibit WRE 11.

7 **Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
8 **PRICE LIST AGREEMENT?**

9 A. No. QCC was billed at rates higher than those set forth in the agreement.

10 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?**

11 A. I understand the agreement to have a beginning effective date of [REDACTED]  
12 [REDACTED] I was able to retrieve invoice information for  
13 invoices beginning [REDACTED] Thus, the relevant timeframe for my current  
14 analysis is [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 **Q. PLEASE DESCRIBE BULLSEYE'S BILLING TO QCC DURING THIS**  
18 **PERIOD OF TIME?**

19 A. For the invoices dated from [REDACTED] BullsEye billed  
20 QCC [REDACTED] for intrastate switched access in Florida. BullsEye billed QCC a  
21 composite rate for intrastate switched access in Florida. Both originating and  
22 terminating switched access were billed \$.0410 per minute. QCC was separately billed  
23 \$.0055 per 800 database query. These rates are found in section 3.9 of BullsEye's  
24 Florida price list, a copy of which is attached to the Direct Testimony of William



1 Easton as Exhibit WRE 13.

2 **Q. WHAT RATE DID THE PREVIOUSLY MENTIONED OFF-PRICE LIST**  
3 **AGREEMENT CONTAIN?**

4 A. The rate included in the agreement with AT&T is [REDACTED]

5 [REDACTED]

6 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC?**

7 A. By virtue of billing the higher rates, BullsEye billed [REDACTED] more to QCC than it  
8 would have billed to AT&T for the exact same set of minutes. I found that QCC was  
9 charged [REDACTED] percent higher than was AT&T. My calculation is summarized at Exhibit  
10 DAC-5 and DAC-6. Exhibit DAC-5 is a month-by-month summary of the overcharge,  
11 while Exhibit DAC-6 provides a more granular analysis and is divided by category  
12 (8XX database query, originating access, terminating access), by month and by type of  
13 invoice (electronic or manual).

14 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

15 A. For 88 percent of the minutes and dollars included in my analysis, QCC had received  
16 the electronic bill detail needed to complete the calculation. Thus, I simply extracted  
17 the quantity of minutes and database queries from the switched access invoices and  
18 multiplied each by the respective contract rate to derive the amount QCC would have  
19 been billed had QCC enjoyed the same discount as AT&T. The financial impact,  
20 therefore, was calculated by subtracting the amount QCC would have been billed at the  
21 contract rate from the amount it was actually billed.

22 The electronic invoices also provided me with information as to what percentage of  
23 BullsEye's total monthly invoices was comprised of intrastate switched access charges  
24 (including intrastate 800 query charges). In this instance, that percentage was 85

1 percent.

2 For the remaining 12 percent of the minutes and dollars included in my analysis, QCC  
3 had access only to the total dollars billed on a particular invoice. For this subset of  
4 invoices, I applied the percentage of intrastate switched access from the electronic  
5 invoices discussed above (i.e., 85 percent) to the total amount of the manual bills to  
6 derive a reasonable estimate of the intrastate switched access charges on those manual  
7 invoices. I then applied the previously mentioned [REDACTED] percent variance calculated from  
8 the electronic bill detail to determine the financial impact of this remaining 12 percent.

9 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

10 A. No.

11 **D. DeltaCom, Inc.**

12 **~~Q. PLEASE DESCRIBE THE DELTACOM, INC. (DELTACOM) AGREEMENTS~~**  
13 **~~AT ISSUE IN THIS CASE?~~**

14 A. ~~DeltaCom had three off-price list agreements for intrastate switched access in the state~~  
15 ~~of Florida. DeltaCom had 2002 agreements with AT&T and Sprint, and has a 2011~~  
16 ~~agreement with AT&T. Copies of the agreements are attached to the Direct Testimony~~  
17 ~~of William Easton as Exhibits WRB-14A, 14B and 14C.~~

18 **~~Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-~~**  
19 **~~PRICE LIST AGREEMENTS?~~**

20 A. ~~No. QCC was billed at rates higher than those set forth in these agreements.~~

21 **~~Q. WHAT WERE THE RELEVANT TIME FRAMES OF THE AGREEMENTS?~~**

22 A. ~~I understand the agreement with Sprint to have a beginning effective date of March 28,~~  
23 ~~2002 and have a termination date of April 15, 2010. I understand that the 2002 AT&T~~  
24 ~~agreement to have a beginning effective date of September 1, 2002 and a termination~~

1 ~~date of January 1, 2011. The 2011 AT&T agreement has a beginning effective date of~~  
2 ~~January 1, 2011 and remains in effect. I have invoice data for the entire time frame~~  
3 ~~covered by the agreements and thus, the relevant timeframe for my current analysis is~~  
4 ~~March 2002 through March 2012. Because DeltaCom continues to overcharge QGC,~~  
5 ~~my calculations will need to be updated at a later point that the Commission deems~~  
6 ~~appropriate.~~

7 **Q. PLEASE DESCRIBE DELTACOM'S BILLING TO QGC DURING THIS**  
8 **PERIOD OF TIME?**

9 **A. For invoices dated from March 2002 through April 2010 billed QGC for [REDACTED]**  
10 **for intrastate switched access in Florida. DeltaCom billed a variety of switched access**  
11 **elements to reflect the various unique portions of the network utilized, including:**

- 12 ~~-End Office Local Switching;~~
- 13 ~~-Tandem Switching;~~
- 14 ~~-Tandem Switched Transport Termination;~~
- 15 ~~-Tandem Switched Transport Facility;~~
- 16 ~~-Information Surcharge; and,~~
- 17 ~~-800 Data Base Query~~

18 ~~The rates for these elements are found in section 3.7 of DeltaCom's Florida price list, a~~  
19 ~~copy of which is attached to the Direct Testimony of William Easton as Exhibit WRE~~  
20 ~~16.~~

21 **Q. WHAT RATES DID DELTACOM'S AT&T AND SPRINT AGREEMENTS**  
22 **CONTAIN?**

23 **A. DeltaCom's agreement with Sprint defined the effective rate as follows:**  
24 **- [REDACTED] from 1/1/02-6/30/02**

1 - [REDACTED] from 7/1/02-6/30/03

2 [REDACTED] from 7/1/03-12/31/03

3 - Thereafter, the agreement applies [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 The 2002 AT&T agreement in effect applied [REDACTED] while the 2011

7 AT&T agreement charges the following rates:

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. ~~WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE DELTACOM~~  
15 ~~AGREEMENT?~~

16 A. ~~By virtue of billing QCC the higher rates, DeltaCom billed a total of [REDACTED] more~~  
17 ~~to QCC than it would to the preferred IXCs. More specifically, DeltaCom billed~~  
18 ~~[REDACTED] more to QCC than it would have billed to Sprint for the exact same set of~~  
19 ~~minutes during the relevant time frame. For AT&T, DeltaCom billed [REDACTED] for~~  
20 ~~the first agreement and [REDACTED] for the second agreement for the exact same set of~~  
21 ~~minutes during the relevant time frames. I found that QCC was charged [REDACTED] percent~~  
22 ~~higher than Sprint. For the first AT&T agreement, QCC was charged [REDACTED] percent higher~~  
23 ~~than AT&T. For the second AT&T agreement, QCC was charged [REDACTED] percent higher~~  
24 ~~than AT&T. My calculation is summarized at Exhibit DAG-7 and DAG-8. Exhibit~~

1 ~~DAC-7 is a month-by-month summary of the overcharge, while Exhibit DAC-8~~  
2 ~~provides a more granular analysis and is divided by category (8XX database query,~~  
3 ~~originating access, terminating access), by month and by type of invoice (electronic or~~  
4 ~~manual).~~

5 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

6 **A.** ~~For 99 percent of the minutes and dollars, QCC had received the electronic bill detail~~  
7 ~~needed to complete the calculation. Thus, I simply extracted the minutes from the~~  
8 ~~switched access invoices and multiplied the minutes by the contract rate to derive the~~  
9 ~~amount QCC would have been billed had QCC enjoyed the same discount DeltaCom~~  
10 ~~was providing to AT&T. The financial impact, therefore, was calculated by subtracting~~  
11 ~~the amount QCC would have been billed at the contract rate from the amount it was~~  
12 ~~actually billed.~~

13 ~~For the remaining 1 percent of the minutes and dollars included in my analysis, QCC~~  
14 ~~had access only to the total dollars billed on a particular invoice. Because DeltaCom~~  
15 ~~bills multiple states per BAN, I was unable to apply the previous method as it would~~  
16 ~~overstate the portion of dollars attributed to intrastate switched access usage for Florida.~~  
17 ~~I first determined the percentage of the total dollars billed that was attributed to~~  
18 ~~intrastate switched access usage in Florida for the two months before and one month~~  
19 ~~after the manual invoice. I then took the average of this percentage. This average was~~  
20 ~~then applied to the total dollars billed for the manual invoice to determine the estimated~~  
21 ~~intrastate switched access amount for the manual invoice. I then applied the previously~~  
22 ~~mentioned [REDACTED] percent variance calculated from electronic bill detail to determine the~~  
23 ~~financial impact of this remaining 1 percent.~~

24

1 Q. ~~WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?~~

2 A. Yes: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

**E. Ernest Communications, Inc.**

12 **Q. PLEASE DESCRIBE THE ERNEST COMMUNICATIONS, INC. (ERNEST)**  
13 **AGREEMENTS AT ISSUE IN THIS CASE?**

14 **A. Ernest has off-price list agreements for intrastate switched access with AT&T in the**  
15 **state of Florida. Copies of the agreements are attached to the Direct Testimony of**  
16 **William Easton as Exhibits WRE 17A and 17B.**

17 **Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
18 **PRICE LIST AGREEMENTS?**

19 **A. No. QCC was billed at rates higher than those set forth in the agreements.**

20 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENTS?**

21 **A. I understand [REDACTED]**  
22 [REDACTED]  
23 [REDACTED]

24 [REDACTED] However, I was only able to retrieve invoice information for

1 invoices beginning in [REDACTED] Thus, the relevant timeframe for my current  
2 analysis is the [REDACTED] Because Ernest [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 **Q. PLEASE DESCRIBE ERNEST'S BILLING TO QCC DURING THIS PERIOD**  
6 **OF TIME?**

7 A. For invoices dated from [REDACTED] Ernest billed QCC for  
8 [REDACTED] for intrastate switched access in Florida. Originating switched access  
9 minutes of use were billed at a rate of \$0.02 and terminating switched access minutes of  
10 use were billed at a rate of \$0.028 per minute. QCC was separately billed \$.000448 or  
11 \$0.0055 per 800 database query depending on the relative date of the charges. These  
12 rates are found in section 3.9 of Ernest's Florida price list, a copy of which is attached  
13 to the Direct Testimony of William Easton as Exhibit WRE 19.

14 **Q. WHAT RATE DID THE PREVIOUSLY MENTIONED OFF-PRICE LIST**  
15 **AGREEMENTS CONTAIN?**

16 A. The rates included in the [REDACTED] were:  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 The rates included in the [REDACTED]

22 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC?**

23 A. By virtue of billing the higher rates, Ernest billed [REDACTED] more to QCC than it  
24 would have billed to [REDACTED] for the exact same set of minutes. I found that QCC was



1 charged [REDACTED] percent higher than was [REDACTED]. My calculation is summarized at Exhibit  
2 DAC-9 and DAC-10. Exhibit DAC-9 is a month-by-month summary of the  
3 overcharge, while Exhibit DAC-10 provides a more granular analysis and is divided by  
4 category (8XX database query, originating access, terminating access), by month and  
5 by type of invoice (electronic or manual).

6 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

7 A. For 91 percent of the minutes and dollars, QCC had received the electronic bill detail  
8 needed to complete the calculation. Thus, I simply extracted the minutes from the  
9 switched access invoices and multiplied the minutes by the contract rate to derive the  
10 amount QCC would have been billed had QCC enjoyed the same discount Ernest was  
11 providing to the preferred IXC. The financial impact, therefore, was calculated by  
12 subtracting the amount QCC would have been billed at the contract rate from the  
13 amount it was actually billed. The electronic invoices also provided me with  
14 information as to what percentage of Ernest's total monthly invoices was comprised of  
15 intrastate switched access charges (including intrastate 800 query charges). In this  
16 instance, that percentage was 68 percent

17 For the remaining 9 percent of the minutes and dollars included in my analysis, QCC  
18 had access only to the total dollars billed on a particular invoice. For this subset of  
19 invoices, I applied the percentage of intrastate switched access from the electronic  
20 invoices discussed above (i.e., 68 percent) to the total amount of the manual bills to  
21 derive a reasonable estimate of the intrastate switched access charges on those manual  
22 invoices. I then applied the previously mentioned [REDACTED] percent variance calculated from  
23 the electronic invoice detail to determine the financial impact of this remaining 9  
24 percent.

REDACTED

1 Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?

2 A. Yes. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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[REDACTED]

[REDACTED]

F. Flatel, Inc.

**Q. PLEASE DESCRIBE THE FLATEL, INC. (FLATEL) AGREEMENT AT ISSUE IN THIS CASE?**

A. Flatel has an off-price list agreement for intrastate switched access with [REDACTED] in the state of Florida. A copy of the agreement is attached to the Direct Testimony of William Easton as Exhibit WRE 20.

**Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-PRICE LIST AGREEMENT?**

A. No. QCC was billed at rates higher than those set forth in the agreement.

**Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?**

A. I understand the agreement to have a [REDACTED]  
[REDACTED] I was able to retrieve invoice information for invoices beginning in [REDACTED] Flatel stopped billing QCC in [REDACTED] Thus, the relevant timeframe for my current analysis is the equivalent of [REDACTED]  
[REDACTED]

**Q. PLEASE DESCRIBE FLATEL'S BILLING TO QCC DURING THIS PERIOD OF TIME?**

A. For the invoices dated from [REDACTED], Flatel billed QCC for [REDACTED] for intrastate switched access in Florida. Flatel billed a variety of switched access elements to reflect the various unique portions of the network utilized, including:

REDACTED

- 1 - Carrier Common Line;  
2 - End Office Local Switching; and  
3 - 800 Data Base Query

4 **Q. WHAT RATE DID THE PREVIOUSLY MENTIONED OFF-PRICE LIST**  
5 **AGREEMENT CONTAIN?**

6 A. The rates included in the agreement with [REDACTED]

7 [REDACTED]

8 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC?**

9 A. By virtue of billing the higher rates, Flatel billed [REDACTED] more to QCC than it  
10 would have billed to [REDACTED] for the exact same set of minutes. I found that QCC was  
11 charged [REDACTED] percent higher than was [REDACTED]. My calculation is summarized at Exhibit  
12 DAC-11 and DAC-12. Exhibit DAC-11 is a month-by-month summary of the  
13 overcharge, while Exhibit DAC-12 provides a more granular analysis and is divided by  
14 category (8XX database query, originating access, terminating access), by month and  
15 by type of invoice (electronic or manual).

16 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

17 A. For 76 percent of the minutes and dollars included in my analysis, QCC had received  
18 the electronic bill detail needed to complete the calculation. Thus, I simply extracted  
19 the minutes from the switched access invoices and multiplied the minutes by the  
20 contract rate to derive the amount QCC would have been billed had QCC enjoyed the  
21 same discount as the preferred IXC. The financial impact, therefore, was calculated by  
22 subtracting the amount QCC would have been billed at the contract rate from the  
23 amount it was actually billed. The electronic invoices also provided me with  
24 information as to what percentage of Flatel's total monthly invoices was comprised of

REDACTED

1 intrastate switched access charges (including intrastate 800 query charges). In this  
2 instance, that percentage was 58 percent.  
3 For the remaining 24 percent of the minutes and dollars included in my analysis, QCC  
4 had access only to the total dollars billed on a particular invoice. For this subset of  
5 invoices, I applied the percentage of intrastate switched access from the electronic  
6 invoices discussed above (i.e., 58 percent) to the total amount of the manual bills to  
7 derive a reasonable estimate of the intrastate switched access charges on those manual  
8 invoices. I then applied the previously mentioned [redacted] percent variance calculated from  
9 the electronic invoice detail to determine the financial impact of this remaining 24  
10 percent.

11 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

12 A. Yes. [redacted]  
13 [redacted]  
14 [redacted]  
15 [redacted]  
16 [redacted]  
17 [redacted]  
18 [redacted]  
19 [redacted]  
20 [redacted]  
21 [redacted]  
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23 [redacted]  
24 [redacted]

REDACTED

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 **G. Granite Telecommunications, Inc.**

10 **Q. PLEASE DESCRIBE THE GRANITE TELECOMMUNICATIONS, INC.**  
11 **(GRANITE) AGREEMENTS AT ISSUE IN THIS CASE?**

12 A. Granite has separate and distinct off-price list agreements for intrastate switched access  
13 with AT&T and Sprint in the state of Florida. Copies of the agreements are attached to  
14 the Direct Testimony of William Easton as Exhibit WRE 23A and 23B.

15 **Q. WAS GGC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
16 **PRICE LIST AGREEMENTS?**

17 A. No. GGC was billed at rates higher than those set forth in these agreements.  
18 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THESE AGREEMENTS?**

19 A. I understand the agreement with AT&T to have a beginning effective date of [REDACTED]  
20 and, according to Granite, [REDACTED] I also understand the  
21 agreement with Sprint to have a beginning effective date of [REDACTED] and to have  
22 terminated effective [REDACTED] I was able to obtain invoice data beginning in

23 [REDACTED]. Thus, the relevant timeframe for my current analysis is [REDACTED].  
24 [REDACTED] Because Granite's overcharge of GGC [REDACTED]

1 [REDACTED]

2 Q. PLEASE DESCRIBE GRANITE'S BILLING TO QCC DURING THIS PERIOD  
3 OF TIME?

4 A. For investors dated from [REDACTED] Granite billed QCC for

5 [REDACTED] for intrastate switched access in Florida. Granite billed individual

6 composite rates for switched access. Both originating and terminating switched access

7 minutes of use were billed at the same \$0.057 per minute. For the service known as the

8 800 database lookup, Granite billed rates of \$0.005 and \$0.023 depending on the relative

9 timeframe of the charges. The rates for those elements are found in section 5 of

10 Granite's Florida price list, a copy of which is attached to the Direct Testimony of

11 William Easton as Exhibit WPE 25.

12 Q. WHAT RATE DID THE GRANITE AGREEMENTS CONTAIN?

13 A. The agreement with AT&T defined the effective rate as [REDACTED]

14 [REDACTED] The rate included in the agreement with Sprint is [REDACTED]

15 [REDACTED] Because [REDACTED]

16 the rates contained in the AT&T agreement had a greater financial impact on QCC than

17 the Sprint agreement, I will utilize the off-price list rates and terms from the AT&T

18 agreement for the remainder of my analysis and conclusions for Granite.

19 Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE GRANITE

20 AGREEMENT?

21 A. By virtue of billing QCC the higher rates, Granite billed [REDACTED] more to QCC than

22 it would have billed to AT&T for the exact same set of minutes during the relevant time

23 frame. I found that QCC was charged [REDACTED] percent higher than was AT&T. My

24 calculation is summarized at Exhibit DAC-13 and DAC-14. Exhibit DAC-13 is a

1 ~~month-by-month summary of the overcharge, while Exhibit DAG-14 provides a more~~  
2 ~~granular analysis and is divided by category (8XX database query, originating access,~~  
3 ~~terminating access), by month and by type of invoice (electronic or manual).~~

4 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

5 **A.** ~~For 99 percent of the minutes and dollars, QCC had received the electronic bill detail~~  
6 ~~needed to complete the calculation. Thus, I simply extracted the minutes from the~~  
7 ~~switched access invoices and multiplied the minutes by the contract rate to derive the~~  
8 ~~amount QCC would have been billed had QCC enjoyed the same discount Granite was~~  
9 ~~providing to AT&T. The financial impact, therefore, was calculated by subtracting the~~  
10 ~~amount QCC would have been billed at the contract rate from the amount it was~~  
11 ~~actually billed. The electronic invoices also provided me with information as to what~~  
12 ~~percentage of Granite's total monthly invoices was comprised of intrastate switched~~  
13 ~~access charges (including intrastate 900 query charges). In this instance, that percentage~~  
14 ~~was 74 percent.~~

15 ~~For the remaining 1 percent of the minutes and dollars included in my analysis, QCC~~  
16 ~~had access only to the total dollars billed on a particular invoice. For this subset of~~  
17 ~~invoices, I applied the percentage of intrastate switched access from the electronic~~  
18 ~~invoices discussed above (i.e. 74 percent) to the total amount of the manual bills to~~  
19 ~~derive a reasonable estimate of the intrastate switched access charges on these manual~~  
20 ~~invoices. I then applied the previously mentioned [REDACTED] percent variance calculated from~~  
21 ~~the electronic invoice detail to determine the financial impact of this remaining 1~~  
22 ~~percent.~~

23  
24

REDACTED



1 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

2 **A. Yes.** [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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21 [REDACTED]

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23 [REDACTED]

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[REDACTED]

~~H. MCI Metro Access Transmission Services, LLC~~

~~Q. PLEASE DESCRIBE THE MCI METRO ACCESS TRANSMISSION SERVICES, LLC (MCI) AGREEMENT AT ISSUE IN THIS CASE?~~

~~A. MCI had an off-price list agreement for intrastate switched access with AT&T in the state of Florida. A copy of the agreement is attached to the Direct Testimony of William Easton as Exhibit WRE-26.~~

~~Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE MCI-AT&T OFF-PRICE LIST AGREEMENT?~~

~~A. No. QCC was billed at rates higher than those set forth in the agreement.~~

~~Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?~~

~~A. I understand the agreement to have a beginning effective date of January 27, 2004 and termination date of January 26, 2007. However, I was only able to obtain invoice information beginning with March 2004. Thus, the relevant timeframe for my current analysis is March 2004 through January 2007.~~

~~Q. PLEASE DESCRIBE MCI'S BILLING TO QCC DURING THIS PERIOD OF TIME?~~

~~A. From January 2004 through January 2007, MCI billed QCC [REDACTED] for intrastate switched access in Florida. MCI billed a variety of switched access elements to reflect the various unique portions of the network utilized, including:~~

- ~~-Carrier Common Line;~~
- ~~-End Office Local Switching;~~
- ~~-Tandem Switched Transport;~~
- ~~-Tandem Switched Facility;~~

REDACTED

- 1           ~~–Directory Assistance Information Surcharge; and,~~  
2           ~~–800 Data Base Query~~

3           ~~These rates are found in section 7.4 of MCI's Florida price list, a copy of which is~~  
4           ~~attached to the Direct Testimony of William Easton as Exhibit WRE 28.~~

5   **Q.   ~~WHAT RATE DID THE OFF-PRICE LIST MCI-AT&T AGREEMENT~~**  
6   **~~CONTAIN?~~**

7   A.   ~~The rate included in the agreement with AT&T was a~~ [REDACTED]  
8       [REDACTED]  
9       [REDACTED]

10 **Q.   ~~WHAT WAS THE FINANCIAL IMPACT TO QCC?~~**

11 A.   ~~The answer depends on how one calculates the overcharge and whether one~~  
12 ~~incorporates the effect of the AT&T (CLEC) agreement with MCI that was entered at~~  
13 ~~the same time.~~

14       ~~Looking only at the MCI (CLEC) agreement, as the Commission may choose to do,~~  
15       ~~MCI billed~~ [REDACTED] ~~more to QCC than it would have billed to AT&T for the~~  
16       ~~exact same set of minutes during the relevant time period. I found that QCC was~~  
17       ~~charged~~ [REDACTED] ~~percent higher than was AT&T. My calculation is summarized in Exhibit~~  
18       ~~DAC 15 and DAC 16. Exhibit DAC 15 is a month by month summary of the~~  
19       ~~overcharge, while Exhibit DAC 16 provides a more granular analysis and is divided by~~  
20       ~~category (8XX database query, originating access, terminating access), by month and~~  
21       ~~by type of invoice (electronic or manual).~~

22 **Q.   ~~HOW IS THE FINANCIAL IMPACT CALCULATED USING THE~~**  
23 **~~AGREEMENT RATE?~~**

24 A.   ~~For essentially all of the minutes and dollars included in my analysis (99 percent of the~~

1 minutes and dollars), QCC had received the electronic bill detail needed to complete  
2 the calculation. Thus, I simply extracted the minutes from the switched access invoices  
3 and multiplied the minutes by the contract rate to derive the amount QCC would have  
4 been billed had QCC enjoyed the same discount MCI was providing to AT&T. The  
5 financial impact, therefore, was calculated by subtracting the amount QCC would have  
6 been billed at the contract rate from the amount it was actually billed. The electronic  
7 invoices also provided me with information as to what percentage of MCI's total  
8 monthly invoices was comprised of intrastate switched access charges (including  
9 intrastate 800 query charges). In this instance, that percentage was 78 percent.  
10 For the remaining 1 percent of the minutes and dollars included in my analysis, QCC  
11 had access only to the total dollars billed on a particular invoice. For this subset of  
12 invoices, I applied the percentage of intrastate switched access from the electronic  
13 invoices discussed above (i.e., 78 percent) to the total amount of the manual bills to  
14 derive a reasonable estimate of the intrastate switched access charges on those manual  
15 invoices. I then applied the previously mentioned [REDACTED] percent variance calculated from  
16 the electronic invoice detail to determine the financial impact of this remaining 1  
17 percent.

18 Q. ~~WAS THIS THE EXTENT OF YOUR ANALYSIS?~~

19 A. No.

20 Q. ~~WHAT IS THE BASIS FOR ADDITIONAL ANALYSIS?~~

21 A. In discovery, QCC asked MCI for documents relating to the original negotiation of the  
22 dual agreements in 2004 (including external communications between MCI and AT&T  
23 and internal MCI analyses regarding the financial impact) and relating to the one-year  
24 extension (agreed to in 2006) that extended the agreement until January 2007. [BEGIN

1 **LAWYERS ONLY CONFIDENTIAL]** [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] **[END LAWYERS ONLY CONFIDENTIAL]**  
10 **Q. WHAT OBSERVATIONS DID YOU MAKE FROM THIS MCI ANALYSIS?**  
11 **A. [BEGIN LAWYERS ONLY CONFIDENTIAL]** [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] ~~[END-LAWYERS ONLY CONFIDENTIAL]~~

20 Q. ~~WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?~~

21 A. No.

22  
23

1 **I. Navigator Telecommunications, LLC**

2 **Q. PLEASE DESCRIBE THE NAVIGATOR TELECOMMUNICATIONS, LLC**  
3 **(NAVIGATOR) AGREEMENT AT ISSUE IN THIS CASE?**

4 **A. Navigator has an off-price list agreement for intrastate switched access with AT&T in**  
5 **the state of Florida. A copy of the agreement is attached to the Direct Testimony of**  
6 **William Easton as Exhibit WRE 30.**

7 **Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
8 **PRICE LIST AGREEMENTS?**

9 **A. No. QCC was billed at rates higher than those set forth in these agreements.**

10 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?**

11 **A. I understand the agreement with AT&T to have a beginning effective date of July 1,**  
12 **2001 and to still be in effect as of March 31, 2012. However, I was only able to obtain**  
13 **invoices data beginning in June 2002. Thus, the relevant timeframe for my current**  
14 **analysis is June 2002 through March 2012. Because Navigator continues to overcharge**  
15 **QCC, my calculations will need to be updated at a later point that the Commission**  
16 **deems appropriate.**

17 **Q. PLEASE DESCRIBE NAVIGATOR'S BILLING TO QCC DURING THIS**  
18 **PERIOD OF TIME?**

19 **A. For invoices dated June 2002 through March 2012, Navigator billed QCC for**  
20 **██████████ for intrastate switched access in Florida. Navigator billed a variety of**  
21 **switched access elements to reflect the various unique portions of the network utilized,**  
22 **including:**

23 **- End Office Local Switching;**

24 **- Carrier Common Line;**

**REDACTED**

- 1 - Tandem Switching;
- 2 - Tandem Switched Transport Termination;
- 3 - Tandem Switched Transport Facility; and,
- 4 - 800 Data Base Query

5 The rates for these elements are found in Navigator's Florida price list, a copy of which  
6 is attached to the Direct Testimony of William Easton as Exhibit WRE 32.

7 **Q. WHAT RATES DID THE NAVIGATOR OFF PRICE LIST AGREEMENT**  
8 **CONTAIN?**

9 A. Navigator's agreement with AT&T defined the effective rate as [REDACTED]  
10 [REDACTED]

11 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE AT&T**  
12 **AGREEMENT?**

13 A. By virtue of billing QCC the higher rates, Navigator billed [REDACTED] more to QCC  
14 than it would have billed to AT&T for the exact same set of minutes during the relevant  
15 time frame. I found that QCC was charged [REDACTED] percent higher than was AT&T. My  
16 calculation is summarized at Exhibits DAC-20 and DAC-21. Exhibit DAC-20 is a  
17 month-by-month summary of the overcharge, while Exhibit DAC-21 provides a more  
18 granular analysis and is divided by category (8XX database query, originating access,  
19 terminating access), by month and by type of invoice (electronic or manual).

20 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

21 A. For 87 percent of the minutes and dollars, QCC had received the electronic bill detail  
22 needed to complete the calculation. For an additional 10 percent of the minutes and  
23 dollars, QCC received paper invoices that supplemented the electronic detail. Thus, I  
24 simply extracted the minutes from the switched access invoices and multiplied the

REDACTED



1 minutes by the contract rate to derive the amount QCC would have been billed had  
2 QCC enjoyed the same discount Navigator was providing to AT&T. The financial  
3 impact, therefore, was calculated by subtracting the amount QCC would have been  
4 billed at the contract rate from the amount it was actually billed. The electronic  
5 invoices also provided me with information as to what percentage of Navigator's total  
6 monthly invoices was comprised of intrastate switched access charges (including  
7 intrastate 800 query charges). In this instance, that percentage was 74 percent.  
8 For the remaining 3 percent of the minutes and dollars included in my analysis, QCC  
9 had access only to the total dollars billed on a particular invoice. For this subset of  
10 invoices, I applied the percentage of intrastate switched access from the electronic  
11 invoices discussed above (i.e., 74 percent) to the total amount of the manual bills to  
12 derive a reasonable estimate of the intrastate switched access charges on those manual  
13 invoices. I then applied the previously mentioned [REDACTED] percent variance calculated from  
14 the electronic invoice detail to determine the financial impact of this remaining 3  
15 percent.

16 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

17 **A. Yes.** [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
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13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 **J. PAETEC Communications, Inc.**

19 **Q. PLEASE DESCRIBE THE PAETEC COMMUNICATIONS, INC. (PAETEC)**  
20 **AGREEMENTS AT ISSUE IN THIS CASE?**

21 **A. PAETEC has separate and distinct off-price list agreements for intrastate-switched**  
22 **access with AT&T and Sprint (among other IXCs) in the state of Florida. Copies of the**  
23 **agreements are attached to the Direct Testimony of William Easton as Exhibits WRE**  
24 **33A, 33B, 33C and 33D.**

REDACTED

1 Q. ~~WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-~~  
2 ~~PRICE LIST AGREEMENTS?~~

3 A. ~~No. QCC was billed at rates higher than those set forth in these agreements.~~

4 Q. ~~WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENTS?~~

5 A. ~~PAETEC has two agreements with AT&T. I understand the first agreement with~~  
6 ~~AT&T to have a beginning effective date of April 1, 2000 and a termination date of~~  
7 ~~March 31, 2007. The second agreement with AT&T has a beginning effective date of~~  
8 ~~April 30, 2008 and was apparently terminated effective June 20, 2011. PAETEC also~~  
9 ~~has two agreements with Sprint. I understand the first agreement with Sprint to have a~~  
10 ~~beginning effective date of September 5, 2000 and a termination date of February 2004.~~  
11 ~~The second Sprint agreement has a beginning effective date of November 19, 2004 and~~  
12 ~~is still in effect as of March 2012. However, I was only able to obtain invoices data~~  
13 ~~beginning in January 21, 2002. It appears that AT&T began receiving lower rates than~~  
14 ~~QCC starting in January 2006. Thus, the relevant timeframe for my current analysis is~~  
15 ~~January 2006 through June 2011.~~

16 Q. ~~PLEASE DESCRIBE PAETEC'S BILLING TO QCC DURING THIS PERIOD~~  
17 ~~OF TIME?~~

18 A. ~~For invoices dated from January 2006 through March 2012, PAETEC billed QCC~~  
19 ~~██████████ for intrastate switched access in Florida. PAETEC billed a variety of~~  
20 ~~switched access elements to reflect the various unique portions of the network utilized,~~  
21 ~~including:~~

- 22 ~~-End Office Local Switching;~~
- 23 ~~-Common Trunk Port;~~
- 24 ~~-Tandem Switched Transport Termination;~~

- 1           ~~-Tandem Switched Transport Facility; and,~~
- 2           ~~-800 Data Base Query~~

3           ~~The rates for these elements are found in section 10 of PAETEC's Florida price list, a~~  
4           ~~copy of which is attached to the Direct Testimony of William Easton as Exhibit WRE~~  
5           ~~35.~~

6   **~~Q. WHAT RATE DID THE PAETEC-AT&T AGREEMENTS CONTAIN?~~**

7   ~~A. The initial PAETEC agreement with AT&T called for the ILEC's intrastate price list~~  
8           ~~rates to be used. The second agreement called for AT&T to receive a fixed dollar~~  
9           ~~credit which could vary by year and by the level of monthly purchases of other~~  
10           ~~services. This credit will increase or decrease if AT&T's purchase of switched access~~  
11           ~~increases/decreases by more than 10 percent. In discovery, QCC has sought~~  
12           ~~information as to the precise credits (and, correspondingly, the percentage discount)~~  
13           ~~enjoyed by AT&T. Because QCC has yet to receive that information, I used the ILEC~~  
14           ~~intrastate rates from the initial agreement as a proxy. If and when QCC is provided the~~  
15           ~~requested information, I can update my calculations for the second agreement.~~

16   **~~Q. WHAT RATE DID THE PAETEC-SPRINT AGREEMENTS CONTAIN?~~**

17   ~~A. The first Sprint agreement effective September 2000 [BEGIN LAWYERS ONLY~~  
18           ~~CONFIDENTIAL] [REDACTED]~~

19           ~~[REDACTED]~~

20           ~~[REDACTED] [END LAWYERS~~

21           ~~ONLY CONFIDENTIAL] Because the rates contained in the AT&T agreement had a~~  
22           ~~greater financial impact on QCC than the Sprint agreements, I will utilize the off price~~  
23           ~~list rates and terms from the AT&T agreement for the remainder of my analysis and~~

<sup>5</sup> Wireless originated 877 calls are calls that originate on a wireless phone and terminate to a toll-free number.

1 ~~conclusions for PAETEC.~~

2 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE AT&T**  
3 **AGREEMENTS?**

4 A. ~~By virtue of billing QCC the higher rates, PAETEC billed a total of [REDACTED] more~~  
5 ~~to QCC than it would have billed to AT&T. More specifically, PAETEC billed~~  
6 ~~[REDACTED] more to QCC than it would have billed to AT&T for the first agreement and~~  
7 ~~[REDACTED] the exact same set of minutes during the relevant time frame. I found that~~  
8 ~~QCC was charged [REDACTED] percent higher than was AT&T based on the terms in the first~~  
9 ~~agreement. QCC was charged [REDACTED] percent higher with the second agreement. My~~  
10 ~~calculation is summarized at Exhibit DAC 22 and DAC 23. Exhibit DAC 22 is a~~  
11 ~~month-by-month summary of the overcharge, while Exhibit DAC 23 provides a more~~  
12 ~~granular analysis and is divided by category (8XX database query, originating access,~~  
13 ~~terminating access), by month and by type of invoice (electronic or manual).~~

14 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

15 A. ~~For 99.8 percent of the minutes and dollars, QCC had received the electronic bill detail~~  
16 ~~needed to complete the calculation. Thus, I simply extracted the minutes from the~~  
17 ~~switched access invoices and multiplied the minutes by the contract rate to derive the~~  
18 ~~amount QCC would have been billed had QCC enjoyed the same discount PAETEC~~  
19 ~~was providing to AT&T. The financial impact, therefore, was calculated by subtracting~~  
20 ~~the amount QCC would have been billed at the contract rate from the amount it was~~  
21 ~~actually billed.~~

22 ~~The electronic invoices also provided me with information as to what percentage of~~  
23 ~~PAETEC's total monthly invoices was comprised of intrastate switched access charges~~  
24 ~~(including intrastate 800 query charges). For the first AT&T agreement, that percentage~~

1 ~~was 55 percent. There were no missing invoices for the second AT&T agreement.~~  
2 ~~For the remaining .2 percent of the minutes and dollars included in my analysis, QCC~~  
3 ~~had access only to the total dollars billed on a particular invoice. For this subset of~~  
4 ~~invoices, I applied the percentage of intrastate switched access from the electronic~~  
5 ~~invoices discussed above (i.e., 55 percent) to the total amount of the manual bills to~~  
6 ~~derive a reasonable estimate of the intrastate switched access charges on those manual~~  
7 ~~invoices. I then applied the previously mentioned █ percent variance calculated from~~  
8 ~~the electronic bill detail to determine the financial impact of this remaining .2 percent.~~

9 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

10 **A.** ~~Yes. This relates to the application of the ILEC intrastate rate. Because PAETEC did~~  
11 ~~not otherwise bill for all individual elements covered under the BellSouth, Embarq and~~  
12 ~~Verizon intrastate switched access price lists, I created composite rates for each to~~  
13 ~~utilize within my analysis. Specifically, I created a composite end office rate which~~  
14 ~~included End Office Local Switching and Carrier Common Line. The Verizon price~~  
15 ~~list also includes the element of Interconnection Charge, which was also included in the~~  
16 ~~Verizon composite end office rate.~~

17 ~~I also create a composite transport rate which included the BellSouth, Embarq and~~  
18 ~~Verizon price list elements of Tandem Switched Transport Facility, Tandem Switched~~  
19 ~~Transport Termination, Common Multiplexing, Common Trunk Port, and Tandem~~  
20 ~~Switching.~~

21 ~~The transport rate discussed above is only applicable to traffic delivered via the access~~  
22 ~~tandem while other rate elements are applicable to all traffic. For this reason, I~~  
23 ~~calculated the percentage of traffic that was routed via an access tandem and assigned~~  
24 ~~those specific rate elements to only that percentage of traffic. For the first PAETEC-~~

1 ~~AT&T agreement this percentage is 31.72 percent and for the second agreement it is~~  
2 ~~31.93 percent.~~

3 ~~Because Tandem Switched Transport Facility is a per minute per mile rate and the~~  
4 ~~mileage in question for switched access is defined as the airline miles between an end~~  
5 ~~office and the tandem with which it is interconnected, I multiplied the rate by the~~  
6 ~~average mileage between the PAETEC end office and the appropriate tandem to~~  
7 ~~convert the rate to a per minute rate. This average is 9 miles for both the first~~  
8 ~~agreement and 10 miles for the second agreement.~~

9 ~~Lastly, I weighted the Bellsouth and Verizon composite rates by the quantity of minutes~~  
10 ~~originating from or terminating to PAETEC in the appropriate ILEC territory. For the~~  
11 ~~first agreement, the percentage of traffic in the Bellsouth territory is 60.27 percent,~~  
12 ~~35.31 percent in the Embarras territory and 4.42 percent in the Verizon territory. For the~~  
13 ~~second agreement the percentage of traffic in the Bellsouth territory is 82.25, 7.14~~  
14 ~~percent in the Embarras territory, and 10.62 percent in the Verizon territory.~~

15 ~~Q. IN RESPONSE TO QCC DISCOVERY, PAETEC INDICATED THAT THE~~  
16 ~~AT&T CONTRACT RATES DO NOT DEVIATE FROM PAETEC'S FLORIDA~~  
17 ~~PRICE LIST RATES. IS THIS ACCURATE?~~

18 ~~A. No, I don't believe that is accurate. The agreement calls for the application of the ILEC~~  
19 ~~intrastate rates. While some of PAETEC's rates do mirror the ILEC's intrastate rates in~~  
20 ~~Florida, others are higher. Often times, the transport rate elements (transport~~  
21 ~~termination, transport facility) mirror the ILEC rates. PAETEC's local switching rate is~~  
22 ~~higher in some instances. A cost per minute is calculated for each ILEC and compared~~  
23 ~~to PAETEC's rates for the same time period. Please see exhibit DAG-24 for a~~  
24 ~~comparison of these rates and cost per minute calculations.~~

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**K. Time Warner Telecom of Florida, LLC**

**Q. PLEASE DESCRIBE THE TIME WARNER TELECOM (TWT) AGREEMENT AT ISSUE IN THIS CASE?**

A. TWT has an off-price list agreement for intrastate switched access with AT&T in the state of Florida. A copy of the agreement is attached to the Direct Testimony of William Easton as Exhibit WRE 36.

**Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-PRICE LIST AGREEMENT?**

A. No. QCC was billed at rates higher than those set forth in these agreements.

**Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENT?**

A. I understand the agreement with AT&T to have a beginning effective date of January 1, 2001 and a termination date (with regard to its treatment of intrastate switched access) of October 1, 2008. However, I was only able to obtain invoice data beginning in January 2002. Thus, the relevant timeframe for my analysis on the Time Warner invoices is January 2002 through October 1, 2008.

**Q. PLEASE DESCRIBE TWT'S BILLING TO QCC DURING THIS PERIOD OF TIME?**

A. For invoices dated from April 2002 through October 2008, TWT billed QCC for [REDACTED] for intrastate switched access in Florida. TWT billed a variety of switched access elements to reflect the various unique portions of the network utilized, including:

- End Office Local Switching;
- Carrier Common Line;
- Tandem Switching;



- 1 - Tandem Switched Transport Termination;
- 2 - Tandem Switched Transport Facility;
- 3 - Residual Interconnection Charge; and,
- 4 - 800 Data Base Query

5 The rates for these elements are found in section 3.6 of TWT's Florida price list, a copy  
6 of which is attached to the Direct Testimony of William Easton as Exhibit WRE 38.

7 **Q. WHAT RATE DID THE TWT-AT&T AGREEMENT CONTAIN?**

8 A. TWT's agreement with AT&T [REDACTED]

9 [REDACTED]  
10 [REDACTED] Copies of the rate  
11 schedules are contained within Exhibit WRE 36 (pages 51-71) to the Direct Testimony  
12 of William Easton.

13 **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE TWT**  
14 **AGREEMENT?**

15 A. By virtue of billing QCC the higher rates, TWT billed [REDACTED] more to QCC than  
16 it would have billed to AT&T for the exact same set of minutes during the relevant time  
17 frame. I found that QCC was charged [REDACTED] percent higher than was AT&T. My  
18 calculation is summarized at Exhibit DAC-25 and DAC-26. Exhibit DAC-25 is a  
19 month-by-month summary of the overcharge, while Exhibit DAC-26 provides a more  
20 granular analysis and is divided by category (8XX database query, originating access,  
21 terminating access), by month and by type of invoice (electronic or manual).

22 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

23 A. For 95 percent of the minutes and dollars, QCC had received the electronic bill detail  
24 needed to complete the calculation. Thus, I simply extracted the minutes from the

REDACTED

1 switched access invoices and multiplied the minutes by the contract rate to derive the  
2 amount QCC would have been billed had QCC enjoyed the same discount TWT was  
3 providing to AT&T. The financial impact, therefore, was calculated by subtracting the  
4 amount QCC would have been billed at the contract rate from the amount it was  
5 actually billed.

6 For the remaining 5 percent of the minutes and dollars included in my analysis, QCC  
7 had access only to the total dollars billed on a particular invoice. Because TWT bills  
8 multiple states per BAN, I was unable to apply the previous method as it would  
9 overstate the portion of dollars attributed to intrastate switched access usage for Florida.  
10 One BAN comprised 98 percent of the charges associated with manual invoices. For  
11 this BAN, I first determined the percentage of the total dollars billed that was attributed  
12 to intrastate switched access usage in Florida for the months before and after the  
13 manual invoice. I then calculated the average of these percentages. This average was  
14 then applied to the total dollars billed for the manual invoice to determine the estimated  
15 intrastate switched access amount for the manual invoice. For the remaining 2 percent  
16 of the manual invoices, an intrastate percentage for Florida was created on a BAN level  
17 and then applied to the total dollars. Once the aforementioned percentages were  
18 applied to the total amount of the manual bills to derive a reasonable estimate of the  
19 intrastate switched access charges on those manual invoices, I then applied the  
20 previously mentioned █ percent variance calculated from the electronic invoice detail  
21 to determine the financial impact of this remaining 5 percent.

22 **Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?**

23 **A. No.**

REDACTED

1 **L. US LEC of Florida, LLC**

2 **Q. PLEASE DESCRIBE THE US LEC OF FLORIDA, LLC (US LEC)**  
3 **AGREEMENTS AT ISSUE IN THIS CASE?**

4 A. US LEC has separate and distinct off-price list agreements for intrastate switched  
5 access with AT&T, Sprint and MCI in the state of Florida. Copies of the AT&T  
6 agreements are attached to the Direct Testimony of William Easton as Exhibits WRE  
7 33B, 39A, 39B, 39C and 39D.

8 **Q. WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-**  
9 **PRICE LIST AGREEMENTS?**

10 A. No. QCC was billed at rates higher than those set forth in these agreements.

11 **Q. WHAT WAS THE RELEVANT TIME FRAME OF THE AGREEMENTS?**

12 A. US LEC has three agreements with AT&T. I understand the first agreement with  
13 AT&T to have a beginning effective date of May 1, 1998 and to have been superseded  
14 by the 2002 agreement. The second agreement with AT&T has a beginning effective  
15 date of March 14, 2002 and a termination date of June 30, 2007. The third agreement  
16 with AT&T is the 2008 agreement earlier described with regard to PABTEC. US LEC  
17 also has two agreements with Sprint. I understand the first agreement with Sprint to  
18 have a beginning effective date of May 1, 2001 and a termination date of February 16,  
19 2006. The second Sprint agreement has a beginning effective date of February 16,  
20 2006 and is still in effect as of March 31, 2012. US LEC has one agreement with MCI.  
21 I understand the agreement to have a beginning effective date of February 17, 2006 and  
22 to still be in effect as of March 31, 2012. I was able to obtain invoice data for the entire  
23 time frame. Thus, and because my analysis focuses on the AT&T agreements, the  
24 relevant timeframe for my current analysis is March 2002 through June 2011.



1        ~~\_\_\_\_\_ The rates included in the second agreement with AT&T~~  
2        ~~were:~~  
3        ~~\_\_\_\_\_ from 9/14/02 through 6/20/02~~  
4        ~~\_\_\_\_\_ from 6/21/02 through 6/20/03~~  
5        ~~\_\_\_\_\_ from 6/21/03 through 6/20/04~~  
6        ~~\_\_\_\_\_ from 6/21/04 through 6/20/05~~  
7        ~~\_\_\_\_\_ from 6/21/05 forward~~  
8        ~~\_\_\_\_\_~~

9        ~~The third AT&T agreement called for AT&T to receive a fixed dollar credit which~~  
10       ~~could vary by year and by the level of monthly purchases of other services. This~~  
11       ~~credit will increase or decrease if AT&T's purchase of switched access~~  
12       ~~increases/decreases by more than 10 percent. In discovery, QCC has sought~~  
13       ~~information as to the precise credits (and, correspondingly, the percentage discount)~~  
14       ~~enjoyed by AT&T. Because QCC has yet to receive that information, I \_\_\_\_\_~~  
15       ~~\_\_\_\_\_ as a proxy. If and when QCC is~~  
16       ~~provided the requested information, I can update my calculations for the 2008~~  
17       ~~agreement.~~

18       **Q. WHAT WAS THE FINANCIAL IMPACT TO QCC OF THE AT&T**  
19       **AGREEMENT?**

20       **A. By virtue of billing QCC the higher rates, US LEC billed a total of \_\_\_\_\_ more**  
21       **to QCC than AT&T would have been billed for the same number of minutes. More**  
22       **specifically, US LEC billed \_\_\_\_\_ more to QCC than it would have billed to**  
23       **AT&T for the exact same set of minutes during the second agreement time frame. I**  
24       **found that QCC was charged \_\_\_\_\_ percent higher than was AT&T. US LEC billed**

1 ~~more to QCC than it would have billed to AT&T for the exact same set of~~  
2 ~~minutes during the third agreement time frame. I found that QCC was charged~~ ~~■~~  
3 ~~percent higher than was AT&T. My calculation is summarized at Exhibit DAC-27 and~~  
4 ~~DAC-28. Exhibit DAC-27 is a month-by-month summary of the overcharge, while~~  
5 ~~Exhibit DAC-28 provides a more granular analysis and is divided by category (800X~~  
6 ~~database query, originating access, terminating access), by month and by type of~~  
7 ~~invoice (electronic or manual).~~

8 **Q. HOW WAS THIS FINANCIAL IMPACT CALCULATED?**

9 ~~For 57 percent of the minutes and dollars, QCC had received the electronic bill detail~~  
10 ~~needed to complete the calculation. Thus, I simply extracted the minutes from the~~  
11 ~~switched access invoices and multiplied the minutes by the contract rate to derive the~~  
12 ~~amount QCC would have been billed had QCC enjoyed the same discount US LEC was~~  
13 ~~providing to AT&T. The financial impact, therefore, was calculated by subtracting the~~  
14 ~~amount QCC would have been billed at the contract rate from the amount it was~~  
15 ~~actually billed.~~

16 ~~The electronic invoices also provided me with information as to what percentage of US~~  
17 ~~LEC's total monthly invoices was comprised of intrastate switched access charges~~  
18 ~~(including intrastate 800 query charges). For the second AT&T agreement, that~~  
19 ~~percentage was 65 percent. For the third AT&T agreement, that percentage was 45~~  
20 ~~percent.~~

21 ~~For the remaining 43 percent of the minutes and dollars included in my analysis, QCC~~  
22 ~~had access only to the total dollars billed on a particular invoice. For this subset of~~  
23 ~~invoices, I applied the percentage of intrastate switched access from the electronic~~  
24 ~~invoices discussed above (i.e., 65 percent and the 45 percent) to the total amount of the~~

1 manual bills to derive a reasonable estimate of the intrastate switched access charges on  
2 those manual invoices. I then applied the previously mentioned [REDACTED] percent for the time  
3 period associated with the second agreement and [REDACTED] percent for the time period  
4 associated with the third agreement variance calculated from the electronic invoice  
5 detail to determine the financial impact of this remaining 43 percent.

6 Q. ~~I UNDERSTAND QCC ENTERED INTO A SETTLEMENT AGREEMENT~~  
7 ~~WITH US LEC IN 2006. WAS THIS TAKEN INTO CONSIDERATION IN~~  
8 ~~YOUR CALCULATIONS?~~

9 A. ~~Yes. For the time period covered by the settlement, which was the beginning of my~~  
10 ~~analysis through June 2006, [BEGIN LAWYERS ONLY CONFIDENTIAL]~~

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] [END LAWYERS  
17 ONLY CONFIDENTIAL]

18 Q. ~~WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?~~

19 A. ~~Yes. [REDACTED]~~  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 M. Windstream NuVox, Inc.

21 Q. ~~PLEASE DESCRIBE THE WINDSTREAM NUVOX, INC. (WINDSTREAM~~  
22 ~~NUVOX) AGREEMENT AT ISSUE IN THIS CASE?~~

23 A. ~~Windstream NuVox has separate and distinct off-price list agreements for intrastate~~  
24 ~~switched access with AT&T, Sprint and MCI in the state of Florida. Copies of the~~



1 ~~agreements are attached to the Direct Testimony of William Easton as Exhibits WRE~~  
2 ~~42A, 42B, 42C, 42D and 42E.~~

3 Q. ~~WAS QCC BILLED AT THE SAME RATES CONTAINED WITHIN THE OFF-~~  
4 ~~PRICE LIST AGREEMENT?~~

5 A. ~~No. QCC was billed at rates higher than those set forth in the agreement.~~

6 Q. ~~WHAT WERE THE RELEVANT TIME FRAMES OF THE AGREEMENTS?~~

7 A. ~~I understand the initial agreement with AT&T to have a beginning effective date of~~  
8 ~~November 1, 2001 and was superseded by the New South AT&T agreement effective~~  
9 ~~February 1, 2006. The second agreement with AT&T has an effective date of June~~  
10 ~~2010 and still remains in effect. I understand the agreement with Sprint to have a~~  
11 ~~beginning effective date of August 26, 2002 and remains in effect. I understand the~~  
12 ~~agreement with MCI to have a beginning effective date of January 1, 2006 and still~~  
13 ~~remain in effect. I was able to obtain invoice data beginning in January 2002. Thus,~~  
14 ~~the relevant timeframe for my analysis is January 2002 through March 2012. Because~~  
15 ~~Windstream NuVox continues to overcharge QCC, my calculations will need to be~~  
16 ~~updated at a later point that the Commission deems appropriate.~~

17 Q. ~~PLEASE DESCRIBE WINDSTREAM NUVOX'S BILLING TO QCC DURING~~  
18 ~~THIS PERIOD OF TIME?~~

19 A. ~~From January 2002 through March 2012, Windstream NuVox billed QCC for~~  
20 ~~██████████ for intrastate switched access in Florida. Windstream NuVox billed a~~  
21 ~~variety of switched access elements to reflect the various unique portions of the~~  
22 ~~network utilized, including:~~

23 ~~-End Office Local Switching;~~

24 ~~-Carrier Common Line;~~

REDACTED

- 1           ~~-Tandem Switched Transport Termination;~~
- 2           ~~-Tandem Switched Transport Facility;~~
- 3           ~~-Interconnection Charge; and;~~
- 4           ~~-800 Data Base Query~~

5           These rates are found in section 5 of Windstream NuVox's Florida price list, a copy of  
6           which is attached to the Direct Testimony of William Easton as Exhibit WRE 44.

7   **Q.   WHAT RATE DID THE PREVIOUSLY MENTIONED OFF PRICE LIST**  
8   **AGREEMENT CONTAIN?**

9   **A.   The rates included in the initial agreement with AT&T** [REDACTED]

10 [REDACTED]

11 [REDACTED] Under the New South

12 AT&T agreement (as amended prior to taking effect for NuVox traffic), AT&T was  
13 charged [REDACTED]

14 [REDACTED] The second AT&T agreement has a rate of [REDACTED] The rates  
15 included in the Sprint agreement were [REDACTED]

16 [REDACTED] The rates included in the MCI Worldcom  
17 agreement were as follows:

18 [REDACTED] from 1/06 through 2/10

19 [REDACTED] from 2/10 — forward

20 Because of the timeframes of the agreements, I applied the agreements as follows:

- 21           • Rates from the initial (2001) NuVox AT&T agreement are applied to invoices
- 22           from November 2001 through January 2005;
- 23           • Rates from the New South AT&T agreement (as amended) are applied to

1 invoices from February 2005 through May 2010; and

2 • Rates from the second (2010) AT&T agreement are applied to invoices from  
3 June 2010 through March 2012

4 Q. ~~WHAT WAS THE FINANCIAL IMPACT TO QCC?~~

5 A. ~~By virtue of billing the higher rates, Windstream NuVox billed [REDACTED] more to~~  
6 ~~QCC than it would have billed to AT&T for the same set of minutes. More~~  
7 ~~specifically, Windstream NuVox billed [REDACTED] more to QCC than it would have~~  
8 ~~billed to AT&T for the exact same set of minutes under the initial agreement with~~  
9 ~~NuVox. I found that QCC was charged [REDACTED] percent higher than was AT&T.~~  
10 ~~Windstream NuVox billed [REDACTED] more to QCC than it would have billed to~~  
11 ~~AT&T for the exact same set of minutes under the New South agreement. I found that~~  
12 ~~QCC was charged [REDACTED] percent higher than was AT&T. Windstream NuVox billed~~  
13 ~~[REDACTED] more to QCC than it would have billed to AT&T for the exact same set of~~  
14 ~~minutes under the second AT&T agreement. I found that QCC was charged [REDACTED] percent~~  
15 ~~higher than was AT&T. My calculation is summarized at Exhibit DAC-29 and DAC-~~  
16 ~~30. Exhibit DAC-29 is a month-by-month summary of the overcharge, while Exhibit~~  
17 ~~DAC-30 provides a more granular analysis and is divided by category (8XX database~~  
18 ~~query, originating access, terminating access), by month and by type of invoice~~  
19 ~~(electronic or manual).~~

20 Q. ~~HOW WAS THIS FINANCIAL IMPACT CALCULATED?~~

21 A. ~~For 40 percent of the minutes and dollars included in my analysis, QCC had received~~  
22 ~~the electronic bill detail needed to complete the calculation. For an additional 4 percent~~  
23 ~~of the minutes and dollars, QCC received paper invoices that supplemented the~~

1 ~~electronic detail. Thus, I simply extracted the minutes from the switched access~~  
2 ~~invoices and multiplied the minutes by the contract rate to derive the amount QCC~~  
3 ~~would have been billed had QCC enjoyed the same discount as AT&T. The financial~~  
4 ~~impact, therefore, was calculated by subtracting the amount QCC would have been~~  
5 ~~billed at the contract rate from the amount it was actually billed.~~

6 ~~The electronic invoices also provided me with information as to what percentage of~~  
7 ~~Windstream NuVox's total monthly invoices was comprised of intrastate switched~~  
8 ~~access charges (including intrastate 800 query charges). For the first (2001) NuVox—~~  
9 ~~AT&T agreement, that percentage is 53 percent. For the New South—AT&T~~  
10 ~~agreement, this percentage is 78 percent. For the second (2010) NuVox—AT&T~~  
11 ~~agreement this percentage is 81 percent.~~

12 ~~For the remaining 56 percent of the minutes and dollars included in my analysis, QCC~~  
13 ~~had access only to the total dollars billed on a particular invoice. For this subset of~~  
14 ~~invoices, I applied the percentage of intrastate switched access from each agreement~~  
15 ~~time frame to the electronic invoices discussed above to the total amount of the manual~~  
16 ~~bills to derive a reasonable estimate of the intrastate switched access charges on those~~  
17 ~~manual invoices. I then applied the previously mentioned variance calculated from the~~  
18 ~~electronic invoice detail for each agreement to determine the financial impact of this~~  
19 ~~remaining 56 percent.~~

20 ~~Q. WERE THERE ANY OTHER FACTORS INCLUDED IN YOUR ANALYSIS?~~

21 ~~A. Yes. [REDACTED]~~  
22 ~~[REDACTED]~~  
23 ~~[REDACTED]~~  
24 ~~[REDACTED]~~

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22  
23

REDACTED

**V. FINANCIAL SUMMARY**

1 **Q. PLEASE SUMMARIZE YOUR ANALYSIS OF THE CLECS IN THIS**  
 2 **COMPLAINT.**

3 **A.** The analysis presented above quite simply applied the discounts provided by the  
 4 respondent CLECs to their preferred IXC customers to the switched minutes of use  
 5 billed by the respective CLEC to QCC in the state of Florida. The variance between  
 6 the amounts billed to QCC and the amounts calculated in the analysis reflects the  
 7 amount QCC was overcharged during the time analyzed. As I mentioned above, these  
 8 calculations will need to be updated and brought current at a later stage of the case.  
 9 The table below summarizes this analysis.

	CLEC	FROM	THROUGH	BILLED	OVERCHARGE
11	<del>{BEGIN LAWYERS ONLY CONFIDENTIAL}</del>				
12	BROADWING/FOCAL				
	<del>{END LAWYERS ONLY CONFIDENTIAL}</del>				
13	BUDGET				
14	BULLSEYE				
15	DELTA COM	4/1/2004	3/31/2012*		
	ERNEST				
16	FLATEL				
17	GRANITE				
	MGI	1/27/2004	1/26/2007		
18	NAVIGATOR	6/21/2002	3/31/2012*		
19	PAETEC	1/26/2002	6/20/2011		
	TIME WARNER	1/1/2001	1/1/2008		
20	US LEC	3/14/2002	6/30/2011		
21	WINDSTREAM NUVOX	1/1/2002	3/31/2012*		
22	<b>TOTAL</b>				

(\* indicates that the calculations need to be updated to reflect later time periods.)

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

2 **A. YES, IT DOES.**

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