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**REDACTED**

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

Via hand delivery

RECEIVED-FPSC  
12 JUN 14 PM 4:28  
COMMISSION  
CLERK

RE: Docket No. 090538-TP  
Amended Complaint of Qwest Communications Company, LLC

Dear Ms. Cole:

The following documents are enclosed for filing in the above-referenced docket on behalf of by tw telecom of florida, l.p., STS Telecom, LLC, DeltaCom, Inc., Windstream NuVox, Inc., PAETEC Communications, Inc., US LEC of Florida, LLC d/b/a US LEC Business Services, Broadwing Communications, LLC, and Granite Telecommunications, LLC:

- DN 03883-12 1. An original and 15 copies of the redacted direct testimony and exhibits of Don J. Wood; and
- DN 03884-12 2. Confidential Attachment A: a sealed envelope marked "CONFIDENTIAL," containing pages 56-59 of Mr. Wood's testimony and Confidential Exhibits DJW-2 and DJW-3.

Please note that Qwest Communications Company, LLC (CenturyLink QCC) claims that the contents of Attachment A are confidential and proprietary business information pursuant to §364.183(1), Florida Statutes, that should be kept confidential and exempt from public disclosure.

COM \_\_\_\_\_  
 APA \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCD 1  
 RAD 1  
 SRC \_\_\_\_\_  
 ADM \_\_\_\_\_  
 OPC \_\_\_\_\_  
 CLK 1

A copy of this letter and Mr. Wood's redacted testimony and exhibits have been provided to parties in accordance with the attached certificate of service. Copies of confidential materials have been provided to those persons who have executed a mutual non-disclosure agreement.

DOCUMENT NUMBER 1451  
03883 JUN 14 2012  
FPSC-COMMISSION CLERK

Ms. Ann Cole  
June 14, 2012  
Page 2 of 6

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Marsha E. Rule". The signature is written in black ink and is positioned above the printed name.

Marsha E. Rule

Encl.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by U.S. mail this 14<sup>th</sup> day of June, 2012.

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Marsha E. Rule

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 090538-TP

DIRECT TESTIMONY OF DON J. WOOD  
ON BEHALF OF TW TELECOM OF FLORIDA, L.P., STS TELECOM, LLC,  
DELTACOM, INC., WINDSTREAM NUVOX, INC., PAETEC  
COMMUNICATIONS, INC., US LEC OF FLORIDA, LLC D/B/A US LEC  
BUSINESS SERVICES, BROADWING COMMUNICATIONS, LLC, AND  
GRANITE TELECOMMUNICATIONS, LLC

REDACTED

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RAD 1  
SRC \_\_\_\_\_  
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OPC \_\_\_\_\_  
CLK \_\_\_\_\_  
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03883 JUN 14 2009  
FPSC-COMMISSION CLERK

1 **I. Introduction and Qualifications**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an  
4 economic and financial consulting firm. My business address is 914 Stream  
5 Valley Trail, Alpharetta, Georgia 30022. I provide economic and regulatory  
6 analysis of telecommunications and related convergence industries with an  
7 emphasis on economic and regulatory policy, competitive market  
8 development, and cost-of-service issues.

9

10 Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

11 A. I received a BBA in Finance with distinction from Emory University and an  
12 MBA with concentrations in Finance and Microeconomics from the College of  
13 William and Mary. My telecommunications experience includes employment  
14 at both a Regional Bell Operating Company and an Interexchange Carrier.

15 Specifically, I was employed in the local exchange industry by  
16 BellSouth Services, Inc. in its Pricing and Economics, Service Cost Division.  
17 My responsibilities included performing cost analyses of new and existing  
18 services, and preparing documentation for filings with state regulatory  
19 commissions and the Federal Communications Commission ("FCC").

20 I was employed in the interexchange industry by MCI  
21 Telecommunications Corporation, as Manager of Regulatory Analysis for the  
22 Southern Division. In this capacity I was responsible for the development and

1 implementation of regulatory policy for operations in the southern U. S. I then  
2 served as a Manager in MCI's Economic Analysis and Regulatory Affairs  
3 Organization, where I participated in the development of regulatory policy for  
4 national issues.

5

6 Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE  
7 REGULATORS?

8 A. Yes. I have testified on telecommunications issues before the regulatory  
9 commissions of forty-three states, Puerto Rico, and the District of Columbia. I  
10 have also presented testimony regarding telecommunications issues in state,  
11 federal, and overseas courts, before alternative dispute resolution tribunals, and  
12 at the FCC. A description of my qualifications and a list of my previous  
13 testimony are attached as Exhibit No. DJW-1.

14

15 **II. Purpose and Summary of Testimony**

16 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

17 A. I have been asked by tw telecom of florida, l.p., STS Telecom, LLC,  
18 DeltaCom, Inc., Windstream NuVox, Inc., PAETEC Communications, Inc.,  
19 US LEC of Florida, LLC d/b/a US LEC Business Services, Broadwing  
20 Communications, LLC, and Granite Telecommunications, LLC to review the  
21 December 11, 2009 *Complaint of Qwest Communications Company, LLC*  
22 ("Qwest Complaint") as amended in October, 2010, and to respond to the



1           assertions set forth therein.<sup>1</sup> Where necessary, I will refer to this group of  
2           eight CLECs as “Joint CLECS”.

3           The Qwest Complaint provides only a limited description of its claims,  
4           and ultimately compels more questions than it answers. In my direct testimony  
5           I will respond to the limited discussion of issues in the Qwest Complaint and  
6           attempt to lay some fundamental groundwork for an evaluation of claims  
7           regarding switched access services provided to Interexchange Carriers  
8           (“IXCs”) by Competitive Local Exchange Carriers (“CLECs”).

9  
10   **III. The Elements of the Qwest Complaint**

11   Q.    WHAT IS YOUR UNDERSTANDING OF THE QWEST COMPLAINT?

12   A.    The Qwest Complaint is based on a dispute regarding the level of the rates for  
13           intrastate switched access service charged to Qwest by certain CLECs over  
14           certain periods of time. Qwest seeks a number of retroactive and prospective  
15           remedies, including the payment of damages, based on its claims.

16           As I understand the Complaint, Qwest is effectively asking the  
17           Commission to treat CLEC-provided switched access service as a regulated  
18           service and to determine a rate (or set of rates) for switched access that should

---

<sup>1</sup> On October 22, 2010, the Commission granted Qwest’s motion to file Amended Complaint that named additional CLECs as respondents. All references to Qwest’s Complaint in my testimony refer to Qwest’s Amended Complaint. Qwest later moved to file a second amended complaint on April 20, 2012, to add another CLEC as a respondent but to date the Commission has not ruled on the motion.

1 have been charged to Qwest over a claimed damages period that in some cases  
2 exceeds ten years. Qwest then seeks a number of remedies, including a  
3 requirement that these Commission-determined rates be imposed on a going-  
4 forward basis and the payment of damages based on the difference between  
5 these Commission-determined rates and the amount actually charged during  
6 the claimed damages period.

7  
8 Q. WHEN SEEKING THE REMEDIES SET FORTH IN ITS COMPLAINT,  
9 DOES QWEST CLAIM THAT THE RATES FOR CLEC-PROVIDED  
10 SWITCHED ACCESS SERVICES ARE, OR EVER HAVE BEEN,  
11 REGULATED BY THIS COMMISSION?

12 A. No. I have not been able to locate any such claim in the Qwest Complaint.

13  
14 Q. WHEN SEEKING THE REMEDIES SET FORTH IN ITS COMPLAINT,  
15 DOES QWEST CLAIM THAT THE RATES FOR CLEC-PROVIDED  
16 SWITCHED ACCESS SERVICES ARE, OR EVER HAVE BEEN,  
17 REQUIRED TO BE TARIFFED IN FLORIDA?

18 A. No. While Qwest refers throughout its Complaint to “tariffs or price lists” and  
19 makes claims regarding “off tariff pricing,” it makes no claim that CLECs have  
20 ever been required to tariff their intrastate switched access service offerings.  
21 To my knowledge, there is no such thing as a “tariff” for CLEC-provided  
22 intrastate switched access service in Florida, because the rates for this service

1           have never been regulated by the Commission and no requirement for the  
2           filing of CLEC “tariffs” has ever been in place.

3

4    Q.    WHEN SEEKING THE REMEDIES SET FORTH IN ITS COMPLAINT,  
5           DOES QWEST CLAIM THAT THE RATES FOR CLEC-PROVIDED  
6           SWITCHED ACCESS SERVICES CONTAINED IN CLEC PRICE LISTS  
7           ARE UNLAWFUL OR OTHERWISE EXCESSIVE?

8    A.    No. Of course, it would be difficult for Qwest to argue that a rate that is not  
9           regulated by the Commission exceeds a lawful level. It would likewise be  
10          difficult for Qwest to argue that a price list that is not required to be filed with  
11          the Commission contains rates that are excessive. At least to date, it does not  
12          appear that Qwest has made either of these claims in this case.

13

14   Q.    WHEN SEEKING THE REMEDIES SET FORTH IN ITS COMPLAINT,  
15          DOES QWEST CLAIM THAT IT HAS BEEN CHARGED RATES FOR  
16          CLEC-PROVIDED SWITCHED ACCESS SERVICES THAT EXCEED THE  
17          RATES SET FORTH IN CLEC PRICE LISTS?

18   A.    No. I have not identified any claim by Qwest that it has, at any time, been  
19          charged more than the amount of the unregulated rates set forth in the CLEC  
20          price lists voluntarily filed with the Commission.

21

1 Q. IF QWEST IS NOT CLAIMING THAT THE UNREGULATED RATES FOR  
2 CLEC-PROVIDED SWITCHED ACCESS SERVICES ARE EXCESSIVE,  
3 AND IS NOT CLAIMING THAT IT HAS BEEN CHARGED ANY  
4 AMOUNT THAT EXCEEDS THE RATES CONTAINED IN THE  
5 VOLUNTARY CLEC PRICE LISTS, WHAT IS THE BASIS FOR THE  
6 RELIEF IT SEEKS?

7 A. As I understand the Complaint, Qwest is not arguing that the unregulated rates  
8 that it has paid for CLEC-provided switched access service have been  
9 excessive or that it has been charged any rate other than the rate set forth in a  
10 CLEC's voluntarily-filed price list. Instead, Qwest's Complaint appears to  
11 claim that – at various (and as yet unspecified) times over the past ten-plus  
12 years – some other IXCs were charged lower rates based on agreements  
13 between that IXC and a CLEC. The Qwest Complaint does not argue that  
14 these negotiated agreements are somehow unlawful or otherwise improper, but  
15 instead argues that Qwest should have automatically been entitled to the  
16 negotiated rates for switched access service, without regard to the  
17 circumstances that caused the CLEC to enter into a negotiated agreement with  
18 a given IXC; without regard to other essential elements of the agreement  
19 beyond simply the rates for switched access; and without regard to the fact that  
20 – unlike some other IXCs – Qwest did not negotiate similar agreements with  
21 Florida CLECs.

1           At pp. 16-19 of its Complaint, Qwest sets forth three claims for relief.  
2           The first relates to a claim of rate discrimination, and relies on §364.08 and  
3           §364.10 of the Florida Statutes in effect at the time of the complaint.<sup>2</sup> Qwest's  
4           second claim asserts that CLECs failed to "abide" by the level of unregulated  
5           rates for services contained in their voluntarily-filed price lists, and relies on  
6           §364.04. The third claim asserts that certain CLECs were required by the  
7           terms of their voluntarily-filed price lists to make contract offerings available  
8           to Qwest, and relies on §364.04.

9           I will address each of the Qwest claims in detail in Section V of my  
10          testimony. Before reaching the details of the Qwest claims, however, it is  
11          important to recognize that even Qwest (1) does not claim that the rates of  
12          CLEC-provided intrastate switched access are regulated in Florida or that this  
13          service has ever been required to be tariffed, (2) does not claim that the rates  
14          that it has been charged for CLEC-provided intrastate switched access are  
15          unlawful or otherwise excessive, and (3) does not claim that it has been  
16          charged anything other than the rates set forth in CLEC price lists for intrastate  
17          switched access service.

18

---

<sup>2</sup> Chapter 364, Florida Statutes, has changed over the ten-plus years over which Qwest claims damages. These statutes, particularly the sections on which Qwest seeks to rely, underwent further significant revisions in the 2011 Regulatory Reform Act after Qwest filed its Complaint in 2009. For the purposes of this discussion, I am assuming that previous versions of the statute sections cited by Qwest apply at different times during the damages period, to the extent that they apply at all.

1 **IV. The Nature and Regulation of Switched Access Service**

2 Q. WHAT IS SWITCHED ACCESS SERVICE?

3 A. Switched access service is a service provided by Local Exchange Carriers  
4 (“LECs”), including both Incumbent Local Exchange Carriers (“ILECs”) and  
5 CLECs, to IXC’s such as Qwest. For many (though not all) end user  
6 customers, an IXC does not have network facilities in place that connect its  
7 “long distance” network directly to the premises of the end user customer. In  
8 the originating direction, switched access service provides the network  
9 functionality for calls to travel from an end user customer (the calling party) to  
10 the IXC’s long distance network. In the terminating direction, switched access  
11 service provides the network functionality for calls to travel from the IXC’s  
12 network to an end user customer (the called party). In order to provide long  
13 distance services – services for which it receives revenue from its customers –  
14 an IXC often uses the network facilities of LECs (ILECs and CLECs).<sup>3</sup> The  
15 LECs are compensated for the use of these facilities through access charges:  
16 the ILEC or CLEC that provides the network connection from the calling party  
17 to the IXC charges the IXC for originating access, and the ILEC that provides

---

<sup>3</sup> IXCs are not required to use the network facilities of unaffiliated LECs to complete calls, and often do not do so. Prior to the 1996 Telecommunications Act, Florida was one of the first states to allow Alternative Access Vendors (“AAVs”) to provide access services. IXCs were able to use either affiliated or unaffiliated AAVs to originate and terminate calls without the use of LEC access facilities. Since the 1996 Telecommunications Act, IXCs have been able to create their own affiliated CLECs to provide the necessary access facilities.

1 the network connection from the IXC to the called party charges the IXC for  
2 terminating access.

3 As the FCC has noted, there are certain basic functions that commonly  
4 make up the switched access service offered by most LECs: “switched access  
5 service typically entails: (1) a connection between the caller and the local  
6 switch, (2) a connection between the LEC switch and the serving wire center  
7 (often referred to as ‘interoffice transport’), and (3) an entrance facility which  
8 connects the serving wire center and the long distance company’s point of  
9 presence.”<sup>4</sup>

10

11 Q. DOES QWEST CLAIM THAT THE SWITCHED ACCESS SERVICE  
12 PROVIDED TO IT BY CLECS IN FLORIDA HAS BEEN  
13 FUNCTIONALLY DIFFERENT FROM THE SERVICE DESCRIBED BY  
14 THE FCC?

15 A. No. Based on the description in the various CLEC price lists, it appears that  
16 the switched access service provided to Qwest is consistent with the FCC’s  
17 definition. I am not aware of any claim by Qwest that the service provided to  
18 it by CLECs in Florida and billed as switched access service has been anything  
19 but switched access service as that term is understood and used in the industry.

20

---

<sup>4</sup> *Seventh Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-146, released April 27, 2001 (“*FCC CLEC Access Order*”), ¶55.

1 Q. DOES QWEST CLAIM THAT THE SWITCHED ACCESS SERVICE  
2 PROVIDED BY CLECS IN FLORIDA HAS BEEN SUBSTANDARD IN  
3 ANY WAY?

4 A. No. The Qwest Complaint contains no claim that CLECs have in any way  
5 failed to provide high-quality switched access services when requested to do  
6 so. All available evidence suggests that Qwest received quality service from  
7 the CLECs, and in return was billed the rates set forth in the CLECs'  
8 voluntarily-filed price lists. In short, Qwest paid what it should have, and got  
9 what it paid for.

10

11 Q. HOW HAVE SWITCHED ACCESS SERVICES BEEN REGULATED?

12 A. The regulation of switched access services has varied by jurisdiction (interstate  
13 versus intrastate) and by the type of LEC (ILEC versus CLEC) providing the  
14 service.<sup>5</sup>

15

16 Q. ALTHOUGH THIS CASE DOES NOT DIRECTLY INVOLVE *INTERSTATE*  
17 SWITCHED ACCESS, HOW HAS INTERSTATE SWITCHED ACCESS  
18 SERVICE BEEN REGULATED?

---

<sup>5</sup> The regulation of switched access also varies by the technology used to originate the call (i.e. wireline versus wireless) and the way that the call is processed (circuit switched versus Internet Protocol ("IP")).



1 A. Interstate switched access service (switched access service used to complete a  
2 call that originates in one state and terminates in a different state) is regulated  
3 by the FCC. Traditionally, the FCC has closely regulated the access services  
4 provided by ILECs. Because of their legacy market position and  
5 corresponding market power, the FCC has regulated both the tariffing of  
6 ILEC-provided switched access services and the level of the rates.

7 In contrast, the FCC has taken a different regulatory approach to the  
8 services provided by non-dominant carriers such as CLECs. The FCC initially  
9 did not place constraints on the level of the rates for CLEC-provided switched  
10 access, preferring instead to have CLECs and IXCs negotiate the rates and  
11 enter into contracts for the provisioning of switched access. The *FCC's 2001*  
12 *CLEC Access Order* introduced a set of phased-in rate caps so that interstate  
13 CLEC switched access rates were eventually capped at the level of the rates  
14 charged by the ILEC in a given geographic area. Notably, the FCC did not  
15 place a lower bound on the rates for CLEC-provided switched access, and did  
16 not preclude the use of negotiated agreements in which a CLEC and an IXC  
17 might agree on switched access rates different than those in the CLEC's  
18 interstate tariff.

19 In the FCC's regulatory framework, the CLEC's interstate access tariff  
20 serves as a notice of the rates that will be in effect absent a negotiated  
21 agreement: "we recognize the attraction of a tariffed regime because it permits  
22 CLECs to file the terms on which they will provide service and to know that,

1        *absent some contrary negotiated agreement*, any IXC that receives access  
2        service is bound to pay the tariffed rates. Similarly, IXCs know that, whatever  
3        the source or destination of their access traffic, they will be assured a rate that  
4        is either within the benchmark zone of reasonableness or is *one to which they*  
5        *have agreed in negotiations.*<sup>6</sup>

6                The FCC was also clear that it did not intend for a CLEC's benchmark  
7        tariffed rates to trump the rates in contracts negotiated with IXCs: "we expect  
8        that our benchmark rule will have no effect on negotiated contracts, under  
9        which CLECs have chosen to charge even more favorable access rates to  
10        particular IXCs. Rather, these contracts will remain in place and the  
11        participating IXCs will continue to be entitled to any lower access rates for  
12        which they provide."<sup>7</sup> These passages make it clear that while the FCC elected  
13        to permit the tariffing of CLEC interstate access rates (and capped those rates  
14        at benchmark levels), it did not intend for tariffed rates to supersede contract  
15        rates negotiated between CLECs and IXCs, and fully expected that the access  
16        rates charged by CLECs to IXCs would continue to be, in many cases,  
17        determined by negotiated contracts rather than by the tariff benchmark. Of  
18        course, rates that are established through negotiated contracts will inherently  
19        differ from tariffed rates.

---

<sup>6</sup> *FCC CLEC Access Order*, ¶42, emphasis added. Throughout my testimony, I have omitted the embedded footnotes from the FCC text in order to improve readability.

<sup>7</sup> *Id.*, ¶57.

1

2 Q. HAS THE FCC REAFFIRMED ITS SUPPORT OF NEGOTIATED  
3 AGREEMENTS FOR SWITCHED ACCESS SERVICE SINCE THE 2001  
4 *CLEC ACCESS ORDER*?

5 A. Yes. In 2011, the FCC undertook a broad reform of intercarrier compensation,  
6 including but not limited to traffic that has traditionally been subject to  
7 switched access charges.<sup>8</sup> In this Order, the FCC established timelines for  
8 phasing down ILEC and CLEC switched access charges, to a target “bill and  
9 keep” mechanism. Like the rates in the FCC CLEC Access Order, the rates in  
10 the *FCC Intercarrier Compensation Reform Order* serve as a notice of the  
11 rates that will be in effect absent a negotiated agreement, and fully anticipates  
12 that carriers will enter into negotiated agreements for switched access service:  
13 “The transition we adopt sets a default framework, leaving carriers free to enter  
14 into negotiated agreements that allow for different terms.”<sup>9</sup> This language  
15 underscores the FCC’s consistent policy of permitting CLECs to reach  
16 negotiated agreements with IXCs for switched access and other services.

17

18 Q. HOW HAS INTRASTATE ACCESS SERVICE BEEN REGULATED BY  
19 THE STATES?

---

<sup>8</sup> *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011 (“*FCC Intercarrier Compensation Reform Order*”).

<sup>9</sup> *FCC Intercarrier Compensation Reform Order*, ¶739.

1 A. Intrastate switched access service (switched access service used to complete a  
2 call that originates in a state and terminates within that same state) is  
3 potentially subject to regulation by state regulators through state law. Like the  
4 FCC, state regulators (Legislatures and Regulatory Commissions) have  
5 historically regulated the access services provided by ILECs in order to ensure  
6 that such rates are consistent with various policy objectives. The legacy  
7 market position and corresponding market power of the ILECs has caused state  
8 regulators to place limits on rate levels and the ILEC tariffing process.  
9 Consistent with other states, the Florida Statutes have traditionally constrained  
10 the level of the rates for ILEC-provided access services and have set forth  
11 tariffing requirements for these services.

12 In contrast, rates for CLEC-provided access services have not been  
13 subject to the same level of regulatory oversight, and in many states --  
14 including Florida -- have not been subject to any express regulatory  
15 requirements. The Florida Statutes in effect during Qwest's claimed damages  
16 period did place some consumer-protection requirements on CLECs, but these  
17 requirements were related specifically to the CLEC's provisioning of basic  
18 local exchange telecommunications service to end user customers. For  
19 example, the version of §364.337 previously in effect required CLECs to offer  
20 "911" services at a level equivalent to that provided by the ILEC serving the  
21 same geographic area, required "relay services for the hearing impaired" to be  
22 provided, and required a "flat rated" pricing option to be offered. §364.337(5)

1 directly focused the Commission's oversight on the protection of the end user  
2 customers of basic local exchange service: "the Commission shall have  
3 continuing regulatory oversight over the provision of basic local exchange  
4 telecommunications service provided by a certificated competitive local  
5 exchange telecommunications company."<sup>10</sup>

6 It is important to note that, consistent with other sections of the Florida  
7 Statutes in effect during Qwest's claimed damages period, §364.337 made no  
8 reference whatsoever to the regulation of CLEC-provided switched access  
9 services. Based on my review of the versions of the Florida Statutes in effect  
10 since 1996,<sup>11</sup> at no time has the Florida Legislature found it appropriate to  
11 impose any regulatory requirements on the provision of switched access  
12 services provided by CLECs or the rates to be charged by CLECs for these  
13 services.

14 It is also noteworthy that §364.337(2) explicitly stated that a number of  
15 other regulations applicable to ILECs do not apply to CLECs. §364.03 – the  
16 first on the list of regulatory requirements that did *not* apply to CLECs – was  
17 the regulation of the rates charged for services, including but not limited to

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<sup>10</sup> §364.02(1) defines basic local telecommunications service as the phrase is used in this context. This definition sets forth the features and functions that must be provided to the end user customer; it does not address carrier access services (such as the switched access service at issue in this case) provided by a CLEC to other telecommunications carriers.

<sup>11</sup> In 1996, both federal and state law opened the markets for local telecommunications services to competition and authorized the creation of CLECs to compete with ILECs.

1 switched access service. This differentiated approach – exercising a greater  
2 degree of regulatory oversight over ILECs and a lesser degree over CLECs –  
3 was fully consistent with the Legislature’s stated intent when it authorized the  
4 creation of CLECs and permitted them to compete in the local  
5 telecommunications market in 1995: in §364.01(4)(d), the Legislature  
6 specifically directed the Commission to exercise a “lesser degree of regulatory  
7 oversight” over CLECs than ILECs. The Commission’s rules related to  
8 CLECs (Rule Chapter 25-24-800, Florida Administrative Code) have been  
9 consistent with limited regulation focused squarely on consumer protection for  
10 CLEC-provided basic local exchange service.

11

12 Q. IS THE QWEST COMPLAINT CONSISTENT WITH THE DEGREE OF  
13 REGULATORY OVERSIGHT IN FLORIDA DURING THE TIME OF THE  
14 QWEST DAMAGES PERIOD?

15 A. No. The Qwest Complaint seeks to have the Commission act in a manner  
16 wholly inconsistent with the regulatory regime by asking the Commission to:

17 (1) treat CLEC-provided switched access service as a service subject to  
18 a strict liability form of regulation,

19 (2) treat the rates (whether filed with the Commission or unfiled) for  
20 CLEC-provided switched access as subject to regulatory oversight, and

21 (3) treat the voluntarily-filed CLEC price lists as mandatory tariffs for a  
22 regulated service.

1           While Chapter 364 was amended several times during the ten-plus year span  
2           over which Qwest seeks damages, my review of the language of Chapter 364  
3           and Chapter 25-24.800 of the Commission's rules in effect during this entire  
4           period reveals that the Commission's oversight of CLEC-provided services  
5           consistently has been limited to a set of consumer-protection mechanisms that  
6           related specifically to basic local exchange service provided to end user  
7           customers.

8

9    **V. Sections of the Florida Statutes Relied Upon by Qwest**

10   Q.    ARE YOU ADDRESSING THE SECTIONS OF THE FLORIDA STATUTE  
11           AS AN ATTORNEY, OR INTENDING TO PROVIDE A LEGAL  
12           INTERPRETATION OF THE STATUTE IN YOUR TESTIMONY?

13   A.    No. In this section of my testimony, my intention is to address the plain  
14           language of the sections of the statute cited by Qwest, and to discuss this  
15           language within the context of sound economic and public policy.

16

17   Q.    WHAT SECTIONS OF THE FLORIDA STATUTES DOES QWEST RELY  
18           ON TO JUSTIFY THE REMEDIES THAT IT SEEKS IN THIS CASE?

1 A. At pp. 16-19 of its Complaint, Qwest sets forth three Claims for Relief. These  
2 Claims refer specifically to §§364.08(1), 364.10(1), and 364.04(1) and (2).<sup>12</sup>  
3 I will address each of these sections of the statute separately below. It is  
4 important to note, however, that none of the individual statute sections cited by  
5 Qwest (or the isolated fragments of individual statute sections) should be  
6 considered in isolation, but should instead be considered within the context of  
7 Chapter 364 as a whole and the Commission's rules.

8  
9 Q. AS AN INITIAL MATTER, DO ANY OF THE SECTIONS OF THE  
10 FLORIDA STATUTES CITED BY QWEST RELATE SPECIFICALLY TO  
11 THE PRICING OF CLEC-PROVIDED SWITCHED ACCESS SERVICES?

12 A. No. None of the cited sections refer to switched access charges.

13 Because no section of the Florida Statutes in effect at any time during  
14 the ten-plus years of Qwest's claimed damages period provides for the  
15 regulation of CLEC-provided switched access service (and CLECs were  
16 explicitly exempted from the rate regulation described in §364.03), Qwest has  
17 attempted to justify the regulation of CLEC-provided switched access service  
18 (and the regulation of the rates for that service) by cobbling together a number  
19 of general and unrelated provisions in the statute that it argues can be used to

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<sup>12</sup> In other sections of the Complaint, Qwest makes a passing reference to §§364.01(4)(g) and 364.337(2) and (5), though these sections are not cited by Qwest as the bases for any of its Claims for Relief.



1 justify a level of regulatory oversight that is well beyond that authorized or  
2 previously exercised by the Commission.

3

4 Q. WHAT IS THE CURRENT STATUS OF THE SECTIONS OF THE  
5 FLORIDA STATUTES RELIED UPON BY QWEST IN ITS COMPLAINT?

6 A. It is my understanding that the 2011 “Regulatory Reform Act” substantially  
7 revised Chapter 364. As part of the Legislative revision, §§ 364.08 and  
8 364.10(1) were repealed effective July 1, 2011, and §364.04 was amended to  
9 clarify that a telecommunications carrier is not prohibited from “entering into  
10 contracts establishing rates, tolls, rentals, and charges that differ from its  
11 published schedules or offering services that are not included in its published  
12 schedules.”<sup>13</sup>

13 To the extent that prior versions of the Florida Statutes apply (those in  
14 effect during Qwest’s ten-year claimed damages period and at the time of the  
15 filing of the Qwest Complaint), I address each of the sections relied upon by  
16 Qwest in turn below, with a view toward applying sound public and economic  
17 policy in a manner consistent with the law.

18

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<sup>13</sup> As discussed later in my testimony, whether the statute sections cited by Qwest apply outside of the context of retail services is questionable. Even if §364.04 did apply in the context of carrier-to-carrier services, the basic premise of the Qwest Complaint – that CLECs have entered into contracts with IXCs for rates other than those set forth in the voluntarily-filed price lists – is now explicitly permitted by §364.04.

1 Q. YOU STATED THAT THE QWEST COMPLAINT RELIES IN PART ON  
2 §364.08. WHAT IS YOUR UNDERSTANDING OF THIS SECTION?

3 A. When describing its First Claim for Relief at p. 16, Qwest first acknowledges  
4 that “a telecommunications company may, in appropriate circumstances, enter  
5 into separate contracts with switched access customers which deviate from the  
6 telecommunications company’s tariffs or price lists (‘off-tariff agreements’ or  
7 arrangements).” Qwest does not explain what the phrase “in appropriate  
8 circumstances” means in this context, or – more to the point – how  
9 circumstances surrounding a contract could somehow be “inappropriate” when  
10 they involve an unregulated rate and a voluntarily-filed price list. It is also  
11 important to note that in Florida there are no “tariffs” for CLEC-provided  
12 intrastate switched access services, because these rates have never been subject  
13 to regulation. Any discussion of “off-tariff agreements” can only have  
14 meaning in the context of *ILEC*-provided switched access service.

15 Qwest nonetheless goes on to argue that pursuant to §364.08,  
16 “telecommunications companies are prohibited from extending to another any  
17 advantage of contract or agreement ‘not regularly and uniformly extended to  
18 all persons under like circumstances for like or substantially similar service.’”  
19 Qwest then jumps directly to a conclusion that because CLECs have charged  
20 Qwest different rates for switched access than was charged to IXCs who  
21 entered into contracts, that §364.08 has been violated. But in doing so, Qwest  
22 has skipped over the “under like circumstances” phrase, and offers no

1 argument (and certainly no evidence) in the Complaint that it operated “under  
2 like circumstances” *vis-a-vis* other IXCs at any time during the claimed  
3 damages period. This is a significant omission in Qwest’s Complaint that  
4 presumably will be addressed at length in the direct testimony of its witnesses.  
5 My review of the contracts between Florida CLECs and IXCs reveals that,  
6 without exception, these contracts are detailed agreements that include terms  
7 that go beyond – and in most cases well beyond – the pricing of intrastate  
8 switched access services.<sup>14</sup> Qwest now asserts some type of retroactive  
9 entitlement to the switched access rates in these contracts, while ignoring the  
10 other elements that form the “circumstances” in which those rates were  
11 established.<sup>15</sup> Absent a demonstration by Qwest of “like circumstances” to  
12 each of the IXCs who entered into contracts with CLECs, §364.08 cannot be  
13 used to support a claim of discriminatory treatment toward Qwest.

14 Finally, while Qwest invokes §364.08 to support a claim of  
15 discrimination by one telecommunications carrier against another, it is not  
16 clear that this section of the statute was ever intended to apply to carrier-to-  
17 carrier transactions (and certainly not clear that sound public and economic

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<sup>14</sup> As explained in more detail in Section VI of my testimony, many of the contracts potentially at issue represent the settlement of a dispute (or of multiple disputes) between a CLEC and an IXC. These settlement agreements include, among other elements, an agreement regarding the pricing of switched access services. For ease in reference, I am referring to these multi-dimensional settlement agreements simply as “contracts.”

<sup>15</sup> A description of these contracts is provided in Section VI of my testimony.

1 policy would support its application in this context). Instead, the language  
2 suggests that the intent of §364.08 was to protect end users from rate  
3 discrimination, if those end users are “under like circumstances” and are  
4 receiving a “like or substantially similar service.” Such an interpretation  
5 would be fully consistent with the remainder of Chapter 364, which limits the  
6 regulation of CLECs to consumer-protection requirements related to the  
7 provision of basic local exchange service.

8

9 Q. IS QWEST’S INTERPRETATION OF §364.08 CONSISTENT WITH  
10 SOUND ECONOMIC AND PUBLIC POLICY?

11 A. No. As Qwest concedes, “a telecommunications company may, in appropriate  
12 circumstances, enter into separate contracts” with other telecommunications  
13 carriers. Such contracts are in no way unusual; in reality, these carrier-to-  
14 carrier contracts are essential to the integrated operation of hundreds of  
15 telecommunications carriers operating both domestically and around the world  
16 to provide a seamless service to end user customers. The telecommunications  
17 industry is characterized by tariffs for a decreasing number of regulated  
18 services, and contract pricing for an increasing number of both regulated and  
19 unregulated services.

20 In its Complaint, Qwest appears to argue for “per se” discrimination –  
21 an idea that a rate is discriminatory simply because it is different. But in doing  
22 so, Qwest ignores the fact that this industry is filled with rates that would meet

1 its definition of discriminatory. Some forms of rate discrimination, such as the  
2 differential pricing for residence and business local exchange customers, are an  
3 artifact of prior regulatory regimes and have been in place for decades. Put  
4 into place at the time of the AT&T divestiture of the Bell Operating  
5 Companies, the initial pricing structure for ILEC-provided switched access  
6 services was built on the premise of discriminating between the dominant IXC  
7 and non-dominant IXCs in both rates and the forms of switched access  
8 available. The 1996 Federal Telecommunications Act explicitly created  
9 different and discriminatory pricing for the exchange of local versus  
10 interexchange traffic among carriers, even when the services were technically  
11 equivalent. Today, service contracts differentiate based on multiple factors,  
12 including traffic volumes and the degree of network integration. Any  
13 suggestion by Qwest that a rate is improperly discriminatory simply because it  
14 is different for different customers is factually inconsistent with the industry in  
15 which it operates.

16 In reality, carriers negotiate agreements based on a large number of  
17 factors, and many of the unique elements of their interaction are captured in  
18 the resulting contracts. As described in Section VI of my testimony, the  
19 contracts potentially at issue in this case contain a large number of such  
20 elements, and the elements vary widely based on the business relationship  
21 between each CLEC and IXC. By effectively ignoring the “under like  
22 circumstances” clause, Qwest is seeking to ignore all elements of these

1 contracts except for those specifically related to the going-forward pricing of  
2 intrastate switched access services. In doing so, Qwest is attempting to put  
3 itself into a favored position that would never exist in the real world: for a  
4 given contract between a CLEC and a different IXC, Qwest seeks to take the  
5 provisions of the contract that it likes, ignore the provisions of the contract that  
6 it doesn't like, and to force the CLEC to retroactively enter into this new,  
7 fundamentally different, and one-sided contract that would favor Qwest at the  
8 expense of the CLEC and other IXCs. In its Complaint, Qwest offers no  
9 explanation of why such an approach would represent sound public policy.

10

11 Q. YOU STATED THAT THE QWEST COMPLAINT RELIES IN PART ON  
12 §364.10. WHAT IS YOUR UNDERSTANDING OF THIS SECTION?

13 A. In its First Claim for Relief, Qwest also relies on §364.10(1): “a  
14 telecommunications company may not make or give any undue or  
15 unreasonable preference or advantage to any person or locality, or subject any  
16 particular person or locality to an undue or unreasonable prejudice or  
17 disadvantage in any respect whatsoever.” Based on this language, Qwest  
18 argues that CLECs were required to make “the terms” of any contracts entered  
19 into with other IXCs available to “similarly-situated carriers.”

20 As an initial matter, there is a contextual problem with Qwest's  
21 argument. As noted above with respect to §364.08, it is far from clear that this  
22 provision was intended or should be interpreted to apply to carrier-to-carrier

1 transactions, or that it was ever intended to apply to voluntarily-filed price lists  
2 of unregulated rates.

3 Even if one ignores the contextual issues, §364.10(1) prohibits only  
4 “*undue or unreasonable preference*” and “*undue or unreasonable prejudice.*”  
5 In its Complaint, Qwest fails to explain why any “preference” manifested as a  
6 lower rate for switched access service is inherently “unreasonable,”  
7 particularly if that lower rate is part of a negotiated agreement or settlement  
8 that contains multiple elements beyond the rates for switched access service,  
9 including any applicable elements that benefit both the CLEC and the IXC. It  
10 appears that Qwest is taking sections of the statute out of context in order to  
11 support a position that it should be able to avail itself of *only* the elements of  
12 an agreement that will benefit Qwest as an IXC, without accepting the  
13 elements that impose burdens, or that benefit the CLEC. Qwest apparently  
14 views anything less than such a one-sided bargain as “undue or unreasonable  
15 prejudice” by a CLEC toward Qwest.

16 Finally, Qwest’s conclusion underscores the same shortcoming in its  
17 case discussed above in the context of §364.08: any claim that §364.10  
18 supports a conclusion that CLECs must make “the terms” of contracts  
19 “available to other similarly-situated carriers” must be accompanied by a  
20 demonstration that Qwest was in fact “similarly situated.” As of the date of the  
21 filing of this testimony, Qwest has yet to provide any evidence that it was

1 similarly situated to any IXC whose contract terms Qwest seeks to confer upon  
2 itself.

3

4 Q. IS QWEST'S INTERPRETATION OF §364.10 CONSISTENT WITH  
5 SOUND ECONOMIC AND PUBLIC POLICY?

6 A. No. As noted above and in Section VI, the contracts potentially at issue in this  
7 case involve elements beyond the pricing of switched access service, and  
8 reflect the broader business relationship between a CLEC and a given IXC.  
9 Qwest seeks to have the Commission ignore all elements of these contracts  
10 except for those directly related to switched access pricing, including but not  
11 limited to elements that are favorable to the CLEC. Instead, Qwest seeks to  
12 have the Commission enable it to force CLECs into offering a "pick and  
13 choose process" in which Qwest takes the provisions of the contract that it  
14 likes, ignores the provisions of the contract that it doesn't like, and forces the  
15 CLEC to enter into this new contract on Qwest's terms.

16 According to Qwest, denying it the ability to "pick and choose" in this  
17 way amounts to an "*undue or unreasonable* preference" offered to another IXC  
18 and an "*undue or unreasonable* prejudice" against Qwest.

19

20 Q. YOU STATED THAT THE QWEST COMPLAINT RELIES IN PART ON  
21 §364.04. WHAT IS YOUR UNDERSTANDING OF THIS SECTION?



1 A. In support of its Second Claim for Relief, Qwest cites to §364.04 – a section  
2 that has undergone multiple revisions over the claimed damages period. As of  
3 July 1, 2009 (the only version cited by Qwest in its Complaint), this section  
4 states that a telecommunications company must publish rate schedules for its  
5 services, and states that “a telecommunications company may, as an option,  
6 file the published schedules with the Commission.” From 1991 until July 1,  
7 2009 (a period which encompasses much of the Qwest claimed damages  
8 period), §364.04 required telecommunications companies, including CLECs, to  
9 file schedules with the Commission only if such a filing was required by  
10 Commission order. From 1995 to the present, the Commission’s rules only  
11 require CLECs to file price lists for basic local exchange service (Rule 25-  
12 24.825, Florida Administrative Code). Nor is there any current requirement,  
13 and based on my review there has never been a requirement, for a CLEC to file  
14 with the Commission any agreement or contract for any service, including but  
15 not limited to switched access services.

16 It is my understanding that each of the CLECs identified in the Qwest  
17 Complaint elected to voluntarily file price lists with the Commission, and I am  
18 not aware of any claim by Qwest that any of the CLECs identified in the  
19 Complaint failed to meet the publication requirements of §364.04 as it existed  
20 at any point in time.

21 The Qwest Complaint (p. 17) goes on to assert that CLECs have  
22 charged rates “that deviate from their tariffs or price lists.” Setting aside the

1 question of whether a carrier can lawfully “deviate” from the level of  
2 unregulated rates in a voluntarily-filed list that is not a tariff, the question is  
3 how – if at all – Qwest would have been impacted by such a “deviation.” As  
4 noted previously in my testimony, Qwest has *not* claimed that it was at any  
5 time charged a rate higher than the rate in a CLEC’s price list, and is not  
6 seeking a refund of any alleged overcharges in this traditional sense. Instead,  
7 Qwest asserts that some IXCs entered into contracts with CLECs through  
8 which – among a number of other contract elements – those IXCs were  
9 charged a lower rate for intrastate switched access service.

10 If, as Qwest contends, CLECs were prohibited by §364.04 from  
11 deviating from their voluntarily-filed price lists for an unregulated rate, then  
12 the logical remedy – and the remedy that is consistent with the historic  
13 treatment of regulated rates – is to require the identified CLECs to charge the  
14 rate set forth in the price list to the IXCs who were previously billed a lower  
15 rate. But instead, Qwest has argued that – rather than have the CLECs comply  
16 with the statute section that Qwest claims they have violated – that the  
17 Commission should require the CLECs to commit a further “violation” of  
18 §364.04 and charge the below-price list rates to Qwest. I will address this and  
19 other logical inconsistencies in the Qwest Complaint in more detail in Section  
20 VII of my testimony.  
21

1 Q. IS QWEST'S INTERPRETATION OF §364.04 CONSISTENT WITH  
2 SOUND ECONOMIC AND PUBLIC POLICY?

3 A. No. While tariffed rates and published price lists of unregulated rates are  
4 fundamentally different in many respects, they can serve a common purpose.  
5 As the FCC noted when deciding to allow the tariffing of CLEC-provided  
6 *interstate* switched access service, such a published rate benefits both CLECs  
7 and IXCs. CLECs will “know that, absent some contrary negotiated  
8 agreement, any IXC that receives access service is bound to pay the tariffed  
9 rates.” IXCs also benefit, because they know that “whatever the source or  
10 destination of their access traffic,” they will either be charged the published  
11 rate or “one to which they have agreed to in negotiations.”<sup>16</sup>

12 All evidence suggests that the voluntarily-filed CLEC prices lists in  
13 Florida served this same purpose. The CLEC knew that, “absent some  
14 contrary negotiated agreement,” that it would charge IXCs the rates in the price  
15 list. Qwest also knew that it would pay either a rate it had “agreed to in  
16 negotiations” or the published rate. For the CLECs identified in the Qwest  
17 Complaint, Qwest was likewise charged the published rates (as noted in a later  
18 section of my testimony, in limited circumstances Qwest was actually charged  
19 a rate for switched access service that it agreed to in negotiations).

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<sup>16</sup> *FCC CLEC Access Order*, ¶42.

1           Qwest's proposed remedy also fails a basic public policy test. Qwest  
2 theorizes that CLECs improperly charged some IXCs a rate below the rate  
3 contained in the voluntarily-filed price list – and therefore charged some IXCs  
4 too little for intrastate switched access service. If this was the case, the remedy  
5 is to have the CLECs go back and adjust the charges so that the other IXCs are  
6 charged the rate in the price list. If public policy is best served by having all  
7 IXCs, regardless of circumstances, pay the published rate (something that  
8 Qwest has yet to demonstrate), then the only remedy is to adjust the charges to  
9 the other IXCs who paid a lower rate. But Qwest has not proposed this course  
10 of action: instead, it is asking the Commission to (1) conclude that public  
11 policy is best served by having all IXCs, regardless of circumstances, pay the  
12 rate in a voluntarily-filed price list, and (2) to implement this public policy  
13 conclusion by ordering CLECs to deviate from their price lists once again and  
14 to charge a lower rate to one, but only one, additional IXC.

15

16 **VI. A Review of the CLEC-IXC Negotiated Contracts**

17 Q.     WHY IS AN ANALYSIS OF THE CONTRACTS BETWEEN THE CLECS  
18         AND IXCS IMPORTANT IN THIS CASE?

19 A.     It is my understanding that the Commission does not require (and has never  
20         required) the filing, review, or approval of contracts between CLECs and  
21         IXCs. But the Qwest Complaint seeks to make these contracts an issue in this  
22         case. In its Complaint, Qwest sets forth three Claims for Relief. In Claim 1,

1 Qwest alleges that CLECs have engaged in rate discrimination and argues (pp.  
2 16-17) that CLECs have subjected Qwest to “discriminatory treatment with  
3 respect to rates for intrastate switched access services provided to similarly-  
4 situated IXCs by not making those off-tariff arrangements available to QCC,  
5 and by charging more for switched access services in Florida than they charged  
6 other IXCs that are parties to those off-tariff agreements.” As discussed  
7 previously in my testimony, Qwest’s assertion is simply inaccurate: there can  
8 be no “off-tariff arrangement” or “off-tariff agreements” for the rates for  
9 CLEC-provided intrastate switched access services in Florida, because rates  
10 for these services are not subject to regulation by the Commission and are not  
11 (nor have they ever been) “tariffed.”

12 To evaluate the Qwest’s claims, it is also important to recognize that  
13 none of the CLECs named by Qwest in its Complaint have simply offered  
14 lower switched access rates in isolation to certain IXCs, but have instead  
15 engaged in negotiated contracts that include elements beyond the pricing of  
16 switched access service. To the extent that they apply at all – and Qwest has  
17 not demonstrated that they do – the statute sections relied upon by Qwest  
18 require a further demonstration that Qwest is “under like circumstances” or  
19 that it is “similarly situated” to the IXCs who were charged a different rate for  
20 switched access service. The IXCs who entered into negotiated agreements  
21 with CLECs took on a number of obligations and commitments and in  
22 exchange contracted for lower switched access rates. The rates in a given

1 contract may have been different from the rates in a CLEC's price list, and  
2 different from the rates in contracts entered into by that CLEC with other  
3 IXCs. But a rate that is simply different would not automatically subject  
4 Qwest to "undue or unreasonable prejudice;" carriers and end users who are  
5 not similarly situated or under like circumstances are often charged different  
6 rates. In order to show that it was "under like circumstances" and "similarly  
7 situated," Qwest at a minimum would have to demonstrate that it was both able  
8 and willing to meet the IXC's obligations and commitments under each of the  
9 contracts, and that there are no other reasons to distinguish the contracting  
10 IXC from Qwest.

11 In Claim 2, Qwest asserts that CLECs improperly deviated from a filed  
12 price list, and by doing so subjected Qwest to "discriminatory treatment with  
13 respect to rates for intrastate switched access services provided to similarly-  
14 situated IXCs, and by charging QCC more for switched access that they  
15 charged other IXCs in Florida." In this claim, Qwest is seeking to have the  
16 Commission focus solely on the rates charged for switched access services,  
17 while ignoring all of the other elements of the contracts through which the  
18 lower rates were provided. CLECs did not simply begin to offer lower  
19 switched access rates to some IXCs, they entered into negotiated agreements  
20 that included – among a number of other elements – a set of rates for switched  
21 access service. Qwest cannot pick and choose from the elements of the  
22 negotiated contracts and select only those elements that would be to its benefit.

1           In Claim 3, Qwest asserts (p. 18) that language in the voluntarily-filed  
2 price lists of certain CLECs requires the CLEC to make a contract “available to  
3 similarly-situated customers in substantially similar circumstances.” Qwest  
4 then argues that these CLECs have violated Florida law because they “have not  
5 made the discounts set forth in those agreements” available to Qwest. This  
6 claim suffers from the same shortcomings as Claims 1 and 2, described above.  
7 First, at no time did any CLEC simply offer “the discounts set forth in those  
8 agreements” to any IXC; instead they entered into the complete agreement that  
9 included multiple elements beyond switched access pricing, some of which  
10 benefitted the CLEC. Second, Qwest has yet to demonstrate that -- at any time  
11 during the claimed damages period -- it fit into the category of “similarly-  
12 situated customer in substantially similar circumstances.” To do so, Qwest  
13 must at a minimum demonstrate that it was both able and willing to meet the  
14 IXC’s obligations and commitments under each of the contracts and that there  
15 are no reasons to distinguish the contracting IXC from Qwest.

16

17 Q.   HAVE YOU PERFORMED AN ANALYSIS OF WHETHER QWEST WAS  
18 “SIMILARLY SITUATED” AND “UNDER LIKE CIRCUMSTANCES” TO  
19 OTHER IXCS DURING THE CLAIMED DAMAGES PERIOD?

20 A.   Yes; I have performed a preliminary analysis based on the information  
21 currently available. It is my understanding that Qwest has the burden in this  
22 case, and as a result it is up to Qwest to demonstrate that the statutes upon

1           which it relies were intended to apply, and should apply. It would then be up  
2           to Qwest to demonstrate that for each CLEC and each contract between a  
3           CLEC and a given IXC, Qwest was “similarly situated” to the IXC that was a  
4           party to the contract.<sup>17</sup> In order to do so, Qwest must – for example – show  
5           that it was in a position comparable to the IXC in order to negotiate such a  
6           contract, and that it could have – and would have – met all of the obligations  
7           undertaken by the IXCs in these agreements. It was only by meeting each of  
8           these requirements that other IXCs were able to avail themselves of lower rates  
9           for CLEC-provided intrastate switched access services. In order to prevail on  
10          any of its Claims for Relief, Qwest must – as a minimum condition --  
11          demonstrate its ability to meet these same requirements.

12                       While Qwest will presumably attempt to meet its burden by providing  
13                       such a demonstration in its direct testimony, I have performed a preliminary  
14                       analysis of Qwest’s “similarly situated” status by reviewing the contracts that  
15                       have been produced to Qwest. My analysis suggests that it will be difficult, if  
16                       not impossible, for Qwest to meet its burden in this case.

17  
18    Q.    ARE THE ELEMENTS OF THE CONTRACTS BETWEEN THE NAMED  
19           CLECS AND IXCS THE ONLY CONSIDERATION WHEN

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<sup>17</sup> Of course, in order to reach the question of whether Qwest has made such a demonstration, it is first necessary to conclude that the sections of the statute cited by Qwest would have applied in this context.



1 DETERMINING IF QWEST WAS "SIMILARLY SITUATED" OR UNDER  
2 LIKE CIRCUMSTANCES"?

3 A. No. Other factors are relevant. For example, the volume of traffic being  
4 originated from, or delivered to, a given CLEC by a given IXC would be  
5 relevant. Volume pricing plans are common in the industry and it would be  
6 reasonable to expect negotiated prices to reflect the volume of traffic that a  
7 given customer is expected to generate.

8 The broader business relationship between the CLEC and IXC may  
9 also be relevant. Carriers may exchange more than switched access traffic, and  
10 each carrier may purchase additional services from the other. The provisioning  
11 of switched access may take place within the context of these other  
12 transactions.

13 The scope and degree of integration of each carrier's network could  
14 also be a factor. The number and location of carrier Points of Interconnection  
15 can have an impact of the cost incurred by each carrier when traffic, including  
16 but not limited to switched access traffic, is exchanged. Some carriers have  
17 engaged in an additional degree of network coordination and integration that  
18 impact both the way that traffic is exchanged and the costs incurred by each  
19 carrier.

20 The existence of disputes, including pending or threatened litigation,  
21 can direct impact the relationship between telecommunications carriers. The

1 resolution of these disputes creates value for both parties by eliminating  
2 uncertainty and establishing a basis for a business relationship going forward.

3 Finally, other factors may be relevant depending on the circumstances  
4 of each carrier.

5

6 Q. PLEASE DESCRIBE THE PROCESS YOU USED TO ANALYZE THE  
7 CLEC-IXC CONTRACTS.

8 A. My first task was to collect the contracts that have been produced or identified  
9 to Qwest by the following CLECs: tw telecom, DeltaCom, Windstream  
10 NuVox, PAETEC, US LEC, Broadwing, and Granite. For any given CLEC,  
11 there may be contracts with multiple IXCs and there may be different contracts  
12 between a given CLEC and a given IXC over time. I have reviewed these  
13 contracts in order to identify elements of the contracts that go beyond the  
14 pricing of intrastate switched access services; and because reduced switched  
15 access rates were only one part of a larger agreement, I have reviewed the  
16 additional commitments and obligations undertaken by both the CLEC and the  
17 IXC in each contract.

18 Because the contracts are being treated as confidential, for the purposes  
19 of my testimony I will describe the kinds of elements that appear in these  
20 contracts that are relevant to a determination of whether Qwest was “similarly  
21 situated” or “under like circumstances,” but will not identify specific terms  
22 associated with specific contracts.

1

2 Q. WHAT ADDITIONAL ELEMENTS, BEYOND THE PRICING OF  
3 INTRASTATE SWITCHED ACCESS SERVICE, APPEAR IN THE CLEC-  
4 IXC CONTRACTS THAT YOU REVIEWED?

5 A. The additional contract elements can be grouped into a number of broad  
6 categories. Several of these categories are addressed below. To be clear, these  
7 categories are not meant as a statement of sole justification for any single  
8 agreement. For example, many agreements I reviewed fall under two or more  
9 of these categories, and – as noted above – there are considerations that exist  
10 outside of the explicit terms of the agreements that must also be considered.  
11 While the specific considerations for each agreement raised by Qwest will be  
12 addressed in my rebuttal testimony, the following list is provided by way of  
13 example.

14 **Agreements Regarding Volume and Revenue Commitments.** In a  
15 number of the contracts, the IXC has made a firm commitment to the CLEC  
16 for either a given volume of traffic or a given level of revenue in order to  
17 receive discounted rates for switched access service. These contracts include  
18 both a baseline commitment based on historic levels of traffic and year-over-  
19 year growth requirements in order to qualify. In order to be “similarly  
20 situated” to such an IXC, Qwest would need to make the same commitments to  
21 the CLEC for minimum revenues or traffic volumes.

1                   **Agreements Based on Historic Traffic Levels and Future Traffic**  
2                   **Projections.** Other contracts are also based directly on traffic volumes. For  
3 these contracts, the CLEC's willingness to enter into the contract was based on  
4 the IXC's historic traffic levels and the projection of increased traffic levels  
5 based on this demonstrated track record. In order to be "similarly situated" to  
6 such an IXC, Qwest would need to demonstrate a history of traffic volumes,  
7 either originated from or delivered to the CLEC, comparable to those of the  
8 IXC(s) who entered into the contract.

9                   **Agreements Regarding Payments From CLEC to IXC and From**  
10                   **IXC to CLEC.** Many of the contracts address the payment for services  
11 provided by the CLEC to the IXC (including but not limited to switched access  
12 service), and also address the payment for services provided by the IXC to the  
13 CLEC. In these agreements, the *quid pro quo* goes beyond switched access  
14 services and includes other services and payments. In order to be similarly  
15 situated to such an IXC, Qwest would need to be both engaged in the  
16 provisioning of the services and willing to agree to the payment arrangements  
17 set forth in the contract for services beyond switched access service.

18                   **Agreements for Network Integration.** A number of the agreements  
19 include commitments by the IXC to deploy facilities in order to increase the  
20 efficiency of the origination and termination of traffic to/from the CLEC. For  
21 example, some agreements include commitments by the IXC to deploy, at its  
22 expense, Direct End Office Trunks ("DEOTs") to connect its network to the

1 CLEC local switch. Other contracts include mutual commitments for the  
2 CLEC and IXC to engage in a more comprehensive form of network  
3 integration that would permit each carrier to originate, transport, and deliver  
4 traffic more efficiently. In order to be similarly situated to such an IXC, Qwest  
5 would have to be willing to commit to the same form of network integration  
6 with the CLEC described in the contract.

7 **Agreements to Establish “Bill and Keep” Arrangements for Local**  
8 **Traffic.** At the time many of the contracts were negotiated, the payment of  
9 reciprocal compensation for the exchange of local traffic was an issue of  
10 primary interest in the industry. Unlike interexchange traffic (for which both  
11 the originating and terminating carrier are paid access charges), the mechanism  
12 for the exchange of local traffic requires the originating carrier to compensate  
13 the terminating carrier (this payment is referred to as “reciprocal  
14 compensation”). The measurement of local traffic and the rates for reciprocal  
15 compensation were often in dispute, and an agreement between carriers to  
16 complete local calls originated by the other at no charge (a “payment in kind”  
17 arrangement) would have represented significant value to both carriers.<sup>18</sup>  
18 Many of the contracts include such a provision. In order to be similarly  
19 situated to such an IXC, Qwest would need to have local operations in Florida

---

<sup>18</sup> This kind of payment arrangement is referred to in the industry as a “bill and keep” arrangement: each carrier bills its end users for the service they use, and keeps the revenue rather than providing a portion of it to another carrier.

1 (through its own or an affiliated CLEC) sufficient to generate local traffic  
2 volumes similar to the CLEC operations of the IXC that entered into the  
3 contract.

4 **Agreement by the IXC to Pay Disputed Amounts.** At the time  
5 almost all of the contracts were negotiated, a significant dollar amount of  
6 billing to the IXC by the CLEC (for services including but not limited to  
7 switched access services) was in dispute and in many cases, the IXC had  
8 withheld all or a portion of the amount owed to the CLEC. As an integral part  
9 of these contracts, the IXC agreed to make a lump sum payment to the CLEC  
10 as a settlement of the dispute. These payments represented value to the CLEC,  
11 and any reduced rates for switched access services were provided at least in  
12 part in exchange for these payments. In order to be similarly situated to such  
13 an IXC, Qwest would need to be in a position to provide comparable value to  
14 the CLEC.

15 **Agreement to Settle Outstanding Disputes.** In addition to the  
16 payments by the IXCs of the disputed amounts, CLECs also benefitted from  
17 the resolution of the claims associated with these disputes. The resolution of  
18 the dispute placed the CLEC in a more certain and stable business position,  
19 and the various agreements within each contract related to future interaction  
20 between the CLEC and IXC allowed the CLEC to operate and invest with  
21 more certainty. In order to be similarly situated to such an IXC, Qwest would  
22 need to be in a position to provide comparable value to the CLEC.

1

2 Q. IN ITS COMPLAINT, DOES QWEST PROVIDE ANY EVIDENCE THAT  
3 IT WAS "SIMILARLY SITUATED" TO THE IXC IN ANY OF THE CLEC-  
4 IXC CONTRACTS?

5 A. No. Again, not only has Qwest failed to demonstrate that the statutes upon  
6 which it relies were intended to or should apply, but in each Claim for Relief  
7 set forth in its Complaint, Qwest acknowledges the requirement that it be  
8 similarly situated without offering any supporting evidence. Because of the  
9 importance of this issue to each and every claim that Qwest has made, it is my  
10 expectation that Qwest will devote a substantial amount of direct testimony to  
11 such a demonstration.

12

13 **VII. A Review of Qwest's Proposed Remedies**

14 Q. WHAT FORMS OF RELIEF DOES QWEST SEEK IN ITS COMPLAINT?

15 A. At p. 23 of its Complaint, Qwest makes four specific requests for relief.

16 The first request (Request A) is for the Commission to find that the  
17 CLECs identified in the Qwest Complaint have violated at least one of the  
18 statute sections identified by Qwest. As discussed in Section V of my  
19 testimony, it is at best unclear whether two of the sections relied upon by  
20 Qwest – §364.08 and §364.10(1) – were intended to or should apply to the  
21 provision of switched access charges by a telecommunications carrier to

1 another telecommunications carrier, and these statute sections were repealed  
2 on July 1, 2011.

3 Assuming that the Commission concludes that one or more of the  
4 statute sections relied upon by Qwest applied to switched access charges  
5 provided by a CLEC to an IXC (which it should not), Qwest still must  
6 demonstrate that it has been subject to “undue or unreasonable prejudice” and  
7 that the CLEC has charged Qwest more for intrastate switched access services  
8 than it charged to other IXCs “under like circumstances.” As noted in the  
9 previous section of my testimony, a review of the CLEC-IXC contracts  
10 suggests that it will be extremely difficult for Qwest to demonstrate that it was  
11 “similarly situated” to the IXCs who entered into negotiated agreements with  
12 CLECs. Such a demonstration, absent from the Complaint, is presumably  
13 forthcoming in Qwest’s direct testimony, and I will respond to specific claims  
14 in my rebuttal testimony.

15

16 Q. WHAT IS QWEST’S SECOND REQUEST FOR RELIEF?

17 A. Qwest next asks the Commission (Request B) to “order respondent CLECs to  
18 pay QCC reparations, with applicable interest, in an amount to be proven at  
19 hearing.”

20 This request is interesting in several respects. First, Qwest completely  
21 fails to address a fundamental question. If Qwest is correct that the Florida  
22 Statutes prohibit a CLEC from entering into a contract with an IXC that



1 provides for switched access rates below those in the CLEC's voluntarily-filed  
2 price list, then Qwest still has not demonstrated that it was charged too much,  
3 but only that other IXCs may have been charged too little. If Qwest seeks to  
4 use §364.04 to hold CLECs to the rates in their price lists, then Qwest was at  
5 all times charged the correct amount for intrastate switched access service  
6 the rate in the CLEC's price list. In order to restore Qwest to the position it  
7 would have been in if the CLEC's had not engaged in the alleged violation of  
8 §364.04 by offering lower contract rates to other IXCs, the *only* remedy is for  
9 the CLEC to go back and charge the contract IXCs the rates found in the price  
10 list. By seeking payments from the CLECs, Qwest is not asking the  
11 Commission to act in a way that would uphold Qwest's interpretation of the  
12 statute, but is instead asking the Commission to order the CLECs to engage in  
13 an additional violation of Qwest's interpretation of the statute. This additional  
14 violation is needed, in Qwest's view, in order to avoid discrimination. Of  
15 course, if Qwest's interpretation of §364.04 is correct (which it is not), the  
16 most direct means of avoiding discrimination is to have the CLECs charge all  
17 IXCs the rates set forth in the voluntarily-filed price lists.

18 Second, Qwest does not explain what it intends the term "reparations"  
19 to mean – in this context, it could mean "refunds" or it could mean "damages."  
20 I will discuss each possibility below.

21 For Qwest to seek a "refund," it would need to demonstrate that it was  
22 charged an amount higher than an approved rate. One possibility is for Qwest

1 to show that it was charged a rate higher than the rate set forth in the  
2 voluntarily-filed CLEC price lists, but Qwest makes no claim that it was  
3 charged any rate other than the rates contained in those price lists. The other  
4 possibility is for Qwest to ask the Commission to determine an appropriate rate  
5 for CLEC-provided intrastate switched access service that is different from the  
6 rates contained in the voluntarily-filed price lists, but doing so would require  
7 the rates for intrastate switched access service to be regulated in Florida.  
8 Unless Qwest can show that it was charged more than the published rate, or  
9 can have the Commission set a rate for a service with an unregulated rate that  
10 is below the published rate, it is impossible to construct a scenario in which it  
11 could be requesting a “refund.”

12 If Qwest is not seeking a “refund” – and for the reasons set forth above  
13 it does not appear that it could be – then it is seeking economic damages.  
14 Damages are the amount necessary to restore Qwest to the position it would  
15 have enjoyed if the alleged wrongdoing had not occurred. In this case, the  
16 wrongdoing alleged by Qwest is the action by CLECs to enter into negotiated  
17 contracts with some IXC, and the failure to affirmatively offer the same  
18 contracts to Qwest. These contracts included, among a number of other  
19 elements, reductions in the rates for switched access services. In order to  
20 prove any amount of damages, Qwest must set forth a plausible scenario in  
21 which it would have paid the reduced access rates. Since the IXCs who paid  
22 lower rates did so *only* within the context of contracts that were in effect at

1 different points in time, in order to prove damages associated with any given  
2 contract Qwest must show that it was able and willing to operate pursuant to  
3 that contract at the time it was in effect. For example, if a contract included  
4 volume or revenue commitments, Qwest must show that it could have met  
5 those commitments, and then must calculate damages based only on payments  
6 to the CLEC in excess of those commitments. Or if a contract contains  
7 agreements for network integration, Qwest must show that it could have  
8 engaged in the form of network integration, and must calculate damages net of  
9 the costs it would have incurred to meet its obligations. In summary, any  
10 damages calculation by Qwest must be specific to each CLEC-IXC contract,  
11 and must calculate the financial impact to Qwest of meeting all of the elements  
12 and terms of that contract.

13

14 Q. HAS QWEST PRODUCED CALCULATIONS OF THE DAMAGES THAT  
15 IT SEEKS?

16 A. No. The Qwest Complaint refers to an amount to be proven at hearing, and its  
17 detailed damages calculations will presumably be included with its prefiled  
18 direct testimony.

19 In response to discovery, however, Qwest has produced a number of  
20 “preliminary” damages calculations for some CLECs. Based on my review,  
21 these preliminary calculations are puzzling at best, because they do not  
22 represent any of the options available to Qwest. It appears that in its

1 calculations, Qwest has simply calculated the difference between the rates in  
2 the CLEC's price list and the rates for switched access service contained in  
3 CLEC-IXC contracts. But such a number has no empirical meaning.<sup>19</sup> If  
4 Qwest is seeking a refund,<sup>20</sup> it is treating the rate in the contract as a rate set by  
5 the Commission – but these rates have never been set by the Commission, and  
6 Qwest has not cited to any statute that would give the Commission the  
7 authority to undo a rate that it never set, or had authority to set. If Qwest is  
8 seeking damages, its analysis is woefully incomplete – none of the IXCs who  
9 received lower rates did so in any way except through a contract that contained  
10 elements and terms beyond the rates for intrastate switched access service.  
11 There is no scenario in which Qwest would have simply have paid lower rates  
12 during its claimed damages period without also incurring the additional  
13 obligations taken on by the IXCs who entered into contracts.

14

15 Q. IF QWEST WERE TO PERFORM A COMPLETE AND MEANINGFUL  
16 CALCULATION OF DAMAGES, WOULD IT THEN HAVE A  
17 LEGITIMATE CLAIM TO THE REMEDIES IT SEEKS?

---

<sup>19</sup> In cases where Qwest has its own agreement with a CLEC, the calculation appears to ignore the benefit that Qwest received under such agreement.

<sup>20</sup> As noted above, it is unclear how Qwest could characterize its proposed remedy as a “refund,” because Qwest was at all times charged the rate set forth in each CLEC’s voluntarily-filed price list.

1 A. No. It is my understanding that the Commission does not have the authority to  
2 award monetary damages. As a result, the current situation is best summed up  
3 by saying that Qwest has failed to perform a meaningful calculation for a  
4 remedy that the Commission does not have the authority to order anyway.  
5

6 Q. WHAT IS QWEST'S THIRD REQUEST FOR RELIEF?

7 A. Qwest next asks the Commission (Request C) to "order Respondent CLECs to  
8 lower their intrastate access rates to QCC prospectively," and to do so  
9 "consistent with the most favorable rate offered to other IXCs in Florida."

10 While Qwest's Complaint cites to no statutory authorization for this  
11 relief and offers no detailed explanation of how this could be accomplished, it  
12 appears inescapable that Qwest is asking the Commission to review the terms  
13 of negotiated contracts entered into between carriers that are not required to be  
14 filed with the Commission; identify, among all of the elements of these  
15 detailed contracts, the elements that relate specifically to the pricing of  
16 intrastate switched access service; compare these contract rates and terms to  
17 the rates and terms contained in a CLEC's voluntarily-filed price list; and  
18 based on the results of that analysis – set a rate for a service that is not subject  
19 to rate regulation.  
20

21 Q. WHAT IS QWEST'S FOURTH REQUEST FOR RELIEF?

1 A. Qwest asks the Commission (Request E) to “order the Respondent CLECs to  
2 file with the Commission any contract service agreements the Respondent  
3 CLECs may have with other interexchange carriers in Florida,” if the contract  
4 includes “rates for intrastate switched access services to IXC’s that are  
5 inconsistent with the rates in their published tariffs or price lists.” Even setting  
6 aside the previously-identified issues (there are no “tariffs” for CLEC-provided  
7 switched access service in Florida, price lists are not required to be filed,  
8 Qwest has not identified any authority for the Commission to set a going-  
9 forward rate for an unregulated service), it remains unclear what Qwest or the  
10 Commission would do with the information that Qwest is asking the  
11 Commission to require CLECs to provide going forward. As noted above,  
12 §364.04 (as amended) explicitly permits a CLEC to enter into “contracts  
13 establishing rates, tolls, rentals, and charges that differ from its published  
14 schedules.” Qwest is asking the Commission to require the production of  
15 information regarding an explicitly-permitted activity, but does not explain  
16 how this information would then be used.

17

18 **VIII. Response to Commission-Identified Issues**

19 Q. WHICH OF THE ISSUES SET FORTH IN ATTACHMENT A TO ORDER  
20 NO. PSC-12-0048-PCO-TP ARE ADDRESSED IN YOUR TESTIMONY?

21 A. My testimony provides information that is relevant to the resolution of Issues  
22 5, 6, 7, 8, and 9b. Each of these issues addresses, at least in part, legal

1 questions that are beyond the scope of my testimony. My testimony is  
2 intended to address the factual, economic, and policy aspects of the identified  
3 issues.

4

5 Q. ISSUES 5, 6, AND 7 ADDRESS QWEST'S ALLEGATIONS AS SET  
6 FORTH IN ITS CLAIM FOR RELIEF. DO YOU ADDRESS THESE  
7 CLAIMS IN YOUR TESTIMONY?

8 A. Yes. These claims are addressed in Sections V and VI of my testimony.

9 Issue 5 addresses Qwest's First Claim that CLECs have engaged in  
10 unreasonable rate discrimination regarding the unregulated rates for switched  
11 access service; Issue 6 addresses Qwest's Second Claim that CLECs have  
12 improperly offered rates for switched access service in agreements with IXCs  
13 that differ from the rates in voluntarily-filed price lists; and Issue 7 addresses  
14 Qwest's Third Claim that CLECs improperly offered contract rates for  
15 switched access service without offering the same rates to other similarly-  
16 situated IXCs. In support of these three claims, Qwest cites to §§364.08(1),  
17 364.10(1), and 364.04(1) and (2).

18 Setting aside any legal issues, Qwest's interpretation of §364.08 is  
19 inconsistent with sound economic and public policy. As Qwest readily  
20 concedes, "a telecommunications company may, in appropriate circumstances,  
21 enter into separate contracts" with other telecommunications carriers. Such  
22 carrier-to-carrier contracts are in no way unusual in the industry, but instead

1 represent the means by which telecommunications carriers integrate their  
2 operations in order to provide a seamless service to end user customers.

3 The contracts potentially at issue in this case represent this kind of  
4 carrier-to-carrier contract. Carriers negotiate agreements based on a large  
5 number of factors, and many of the unique elements of their interaction are  
6 captured in the resulting contracts. As described in Section VI of my  
7 testimony, the contracts potentially at issue in this case vary widely based on  
8 the business relationship between each CLEC and IXC. By effectively  
9 ignoring the “under like circumstances” clause inherent in §364.08, Qwest is  
10 seeking to ignore all elements of these contracts except for those specifically  
11 related to the going-forward pricing of intrastate switched access services. If it  
12 were allowed to do so, Qwest would put itself into a favored position that  
13 would never exist in the real world: for a given contract between a CLEC and a  
14 different IXC, Qwest seeks to take the provisions of the contract that it likes,  
15 ignore the provisions of the contract that it doesn’t like, and to force the CLEC  
16 to retroactively enter into this new, fundamentally different, and one-sided  
17 contract that would favor Qwest at the expense of the CLEC and other IXCs.

18 Again setting aside any legal issues, Qwest’s interpretation of §364.10  
19 is also inconsistent with sound economic and public policy. As described in  
20 detail in Section VI of my testimony, the contracts potentially at issue in this  
21 case reflect the broader business relationship between a CLEC and a given  
22 IXC and therefore involve elements beyond the pricing of switched access



1 service. In its Complaint, Qwest seeks to have the Commission ignore all  
2 elements of these contracts *except* for those directly related to switched access  
3 pricing. By doing so, Qwest would have the Commission force CLECs into  
4 offering Qwest a “pick and choose process” in which Qwest takes the  
5 provisions of the contract that it likes, ignores the provisions of the contract  
6 that it doesn’t like, and forces the CLEC to enter into this new contract on  
7 Qwest’s terms. According to Qwest, denying it the ability to “pick and  
8 choose” in this way amounts to an “*undue or unreasonable preference*” offered  
9 to another IXC and an “*undue or unreasonable prejudice*” against Qwest.

10 Finally, Qwest’s interpretation of §364.04 is inconsistent with sound  
11 economic and public policy. A voluntarily-filed list of unregulated rates is not  
12 a “tariff” that sets forth the rates, terms, and conditions for the provisioning of  
13 a regulated service (though Qwest has difficulty making this distinction in its  
14 Complaint), but both a list of unregulated rates and a tariff can serve the  
15 common purpose of providing notice to carriers of the rates to be charged  
16 absent a negotiated agreement. As the FCC noted when deciding to allow the  
17 tariffing of CLEC-provided *interstate* switched access service, such a  
18 published rate benefits both CLECs and IXCs: CLECs will “know that, absent  
19 some contrary negotiated agreement, any IXC that receives access service is  
20 bound to pay the tariffed rates.” IXCs also benefit, because they know that  
21 “whatever the source or destination of their access traffic,” they will either be

1 charged the published rate or “one to which they have agreed to in  
2 negotiations.”<sup>21</sup>

3 All evidence suggests that the voluntarily-filed CLEC prices lists in  
4 Florida served this same purpose. The CLEC knew that, “absent some  
5 contrary negotiated agreement,” that it would charge IXCs the rates in the price  
6 list. Qwest also knew that it would pay either a rate it had “agreed to in  
7 negotiations” or the published rate. It is my understanding that throughout  
8 Qwest’s claimed damages period, Qwest was charged either the rate in a  
9 published price list or the rate contained in a contract to which it was a party.

10

11 Q. ISSUE 8 IDENTIFIES A NUMBER OF AFFIRMATIVE DEFENSES THAT  
12 MAY BE RAISED BY CLECS IN THIS CASE. ARE YOU ADDRESSING  
13 THIS ISSUE IN YOUR TESTIMONY?

14 A. Yes. While the legal question of whether Qwest’s claims are barred or limited  
15 by any of the listed defenses is beyond the scope of my testimony, I am  
16 addressing a number of facts that may be relevant to the resolution of certain  
17 legal questions before the Commission. Because many of the topics raised  
18 under Issue 8 are either mostly legal or may concern facts established in  
19 discovery, my testimony is not meant to address every defense that the CLECs  
20 may raise.

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<sup>21</sup> *FCC CLEC Access Order*, ¶42.

1                   When reviewing the Qwest claims, it is important to consider that no  
2 section of the Florida Statutes in effect at any time during the ten-plus years of  
3 Qwest's claimed damages period provides for the regulation of CLEC-  
4 provided switched access service, Qwest has attempted to justify the regulation  
5 of CLEC-provided switched access service (and the regulation of the rates for  
6 that service) by cobbling together a number of general and unrelated provisions  
7 in the statute that it argues can be used to justify a level of regulatory oversight  
8 that is well beyond that authorized or previously exercised by the Commission.

9  
10 Q.   ISSUE 8 REFERS TO "STATUTE OF LIMITATIONS ISSUES." ARE  
11 QWEST'S CLAIMS IMPACTED BY STATUTE OF LIMITATIONS  
12 ISSUES?

13 A.   Yes. The CLEC lawyers will argue the proper application of the statute of  
14 limitations (Chapter 95, Florida Statutes) under Florida law. For purposes of  
15 my direct testimony, my understanding is that any portion of Qwest's claims  
16 that pre-date its complaint against a given CLEC by more than four years are  
17 time barred under the Florida statute of limitations.

18                   Qwest makes a claim for injury each and every month it was billed the  
19 price list rate rather than another IXC's contract rate. As a result, Qwest's  
20 damages are calculated on a month-to-month basis, with the total being a roll-  
21 up of the referenced disparity for every month in which Qwest claims injury.  
22 Qwest served its complaint against TWTC and Broadwing on December 18,

1 2009. Therefore, even if the Commission rules Qwest's claims and its  
2 damages remedies are valid (and for the reasons set forth previously in my  
3 testimony, it should not), any portion of liability attributable to TWTC or  
4 Broadwing which occurred prior to December 18, 2005 is barred by the statute  
5 of limitations. In other words, Qwest's claims for damages from TWTC or  
6 Broadwing for months before December 18, 2005 are improper. DeltaCom,  
7 STS, Windstream NuVox, PAETEC and US LEC were not added as  
8 defendants until the Commission permitted the amendment of the Qwest  
9 complaint by Order issued October 22, 2010. Therefore, any portion of  
10 liability attributable to DeltaCom, STS, Windstream NuVox, PAETEC or US  
11 LEC which pre-date October 22, 2006, would also time barred.

12

13 Q. ARE THERE PRACTICAL REASONS TO LIMIT QWEST'S CLAIMS  
14 BASED ON THE AMOUNT OF TIME THAT HAS PASSED – IN SOME  
15 CASES TEN YEARS – FROM WHEN QWEST ASSERTS ITS CLAIMS  
16 BEGAN?

17 A. Yes. The relief sought by Qwest involves the use of detailed records. Qwest's  
18 Request B seeks "reparations" in an amount to be proven at hearing. As noted  
19 in Section VII above, Qwest does not explain what it intends the term  
20 "reparations" to mean in this context.

21 Whether Qwest is claiming that it has been charged a rate that exceeds  
22 the rate in the CLEC price lists (and is seeking the payment of a refund) or

1           whether Qwest is seeking to be restored to the position it would have enjoyed  
2           if it had been a party to the CLEC-IXC contracts (and is seeking economic  
3           damages), detailed call records will be required in order to calculate any  
4           amount that Qwest seeks to “prove at hearing.” While not yet specified, it  
5           appears that Qwest’s claimed damages period could extend to more than ten  
6           years (to any time that a CLEC and IXC have operated pursuant to a contract  
7           in Florida). In order to calculate damages, records for this ten-plus year time  
8           period would be required.

9                         In my experience, the Qwest damages period exceeds the typical record  
10           retention period of most LECs (both ILECs and CLECs). For billing related to  
11           switched access, the industry has developed standards for a Carrier Access  
12           Billing System (“CABS”).<sup>22</sup> This industry standard, adhered to by ILECs and  
13           CLECs, involves large volumes of detailed call record data. Because of the  
14           cost associated with retaining records of this magnitude, they are typically not  
15           retained longer than is required to provide carrier billing and to resolve any  
16           issues identified by the IXC upon receipt of the billing information. This is  
17           one reason that CLEC price lists often limit the time frame within which a  
18           dispute can be filed.

19                         It is also important to recognize the impact that industry consolidation  
20           can have on the availability of detailed records, including billing records. Over

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<sup>22</sup>This system has evolved and been updated over time through industry forums, and the acronym used to describe the CABS system has changed as a result.

1 the extended time frame of the Qwest damages period, there has been a  
2 significant degree of consolidation among both ILECs and CLECs, including  
3 the CLECs named in the Qwest Complaint. A merger or acquisition often  
4 results in changes to the way in which records are stored and retained. With  
5 each subsequent merger or acquisition, it becomes less likely that the detailed  
6 billing records will remain intact.

7 Finally, I am advised that the voluntary switched access price lists filed  
8 by many CLECs specify a limited period of time in which to dispute invoices,  
9 typically 90 days. Qwest has not asserted that it disputed any invoices from  
10 these CLECs based on or related to its claims in this proceeding, or that it  
11 otherwise complied with the parties' price lists in this regard.

12  
13 Q. ISSUE 8 REFERS TO DEFENSES BASED ON "ANY OTHER REASON"  
14 AND "ANY SEPARATE SERVICE AGREEMENTS BETWEEN QWEST  
15 AND ANY CLEC." IS QWEST PARTY TO ANY CONTRACTS THAT  
16 THE COMMISSION SHOULD CONSIDER IN THIS MATTER?

17 **\*\*BEGIN LAWYERS ONLY CONFIDENTIAL INFORMATION\*\***

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

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[REDACTED]

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<sup>23</sup> See Qwest's supplemental response to BCI/AIN's Interrogatory No. 1. Although Qwest did not provide a complete answer to this interrogatory and all of the information the CLECs have sought or will seek on this subject is yet to come, the information that has been provided suggests that [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]  
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22 **\*\*END LAWYERS ONLY CONFIDENTIAL INFORMATION\*\***

1

2 Q. ISSUE 9 ADDRESSES REMEDIES THAT COULD APPLY IF THE  
3 COMMISSION WERE TO (1) FIND THAT CLECS HAVE VIOLATED  
4 THE LAW AND (2) CONCLUDE THAT IT HAS THE AUTHORITY TO  
5 AWARD REMEDIES. DO YOU ADDRESS THIS ISSUE IN YOUR  
6 TESTIMONY?

7 A. Yes. Section VII addresses the issue of the various remedies sought by Qwest,  
8 including its request that the CLECs be required to pay "reparations."

9           When describing the remedies that it seeks, Qwest fails to address a  
10 fundamental question. If Qwest were correct that the Florida Statutes prohibit  
11 a CLEC from entering into a contract with an IXC that provides for switched  
12 access rates below those in the CLEC's voluntarily-filed price list, then Qwest  
13 still has not demonstrated that it was charged too much, *but only that other*  
14 *IXCs may have been charged too little*. In order to restore Qwest to the  
15 position it would have been in if the CLEC's had not engaged in the alleged  
16 violation by offering lower contract rates to other IXCs, the *only* remedy is for  
17 the CLEC to go back and charge the contract IXCs the rates found in the price  
18 list. By seeking payments from the CLECs, Qwest is not asking the  
19 Commission to act in a way that would uphold Qwest's interpretation of the  
20 statute, but is instead asking the Commission to order the CLECs to engage in  
21 an additional violation of Qwest's interpretation of the statute.

1           Qwest does not define the term “reparations” in its Complaint, though  
2           the term could refer to “refunds” or “economic damages.” For Qwest to seek a  
3           “refund,” it would need to demonstrate that it was charged an amount higher  
4           than an approved rate. One possibility is for Qwest to show that it was charged  
5           a rate higher than the rate set forth in the voluntarily-filed CLEC price lists, but  
6           Qwest makes no claim that it was charged any rate other than the rates  
7           contained in those price lists. The other possibility is for Qwest to ask the  
8           Commission to determine an appropriate rate for CLEC-provided intrastate  
9           switched access service that is different from the rates contained in the  
10          voluntarily-filed price lists, but doing so would require the rates for intrastate  
11          switched access service to be regulated in Florida.

12           If Qwest is not seeking a “refund,” then it is seeking economic  
13          damages. Damages are the amount necessary to restore Qwest to the position  
14          it would have enjoyed if the alleged wrongdoing had not occurred. In this  
15          case, the wrongdoing alleged by Qwest is the action by CLECs to enter into  
16          negotiated contracts with some IXCs, and the failure to affirmatively offer the  
17          same contracts to Qwest. These contracts included, among a number of other  
18          elements, reductions in the rates for switched access services. In order to  
19          prove any amount of damages, Qwest must set forth a plausible scenario in  
20          which it would have paid the reduced access rates. Since the IXCs who paid  
21          lower rates did so *only* within the context of contracts that were in effect at  
22          different points in time, in order to prove damages associated with any given

1 contract Qwest must show that it was able and willing to operate pursuant to  
2 that contract at the time it was in effect. Any damages calculation by Qwest  
3 must be specific to each CLEC-IXC contract, and must calculate the financial  
4 impact to Qwest of meeting all of the elements and terms of that contract.

5

6 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

7 A. Yes.

***Curriculum Vitae of Don J. Wood***  
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*770.475.9971, don.wood@woodandwood.net*

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## **CURRENT EMPLOYMENT**

Don J. Wood is a principal in the firm of Wood & Wood. He provides economic, financial, and regulatory analysis services in technology-driven industries, specializing in economic policy related to the development of competitive markets, cost of service issues, and the calculation of financial damages. In addition, Mr. Wood advises industry associations on regulatory and economic policy and assists investors in their evaluation of investment opportunities.

In the area of administrative law, Mr. Wood has presented testimony before the regulatory bodies of forty-three states, the District of Columbia, and Puerto Rico, and has prepared comments and testimony for filing with the Federal Communications Commission. The subject matter of his testimony has ranged from broad policy issues to detailed cost and rate analysis.

Mr. Wood has also presented testimony in state, federal, and overseas courts regarding business plans and strategies, competition policy, intercarrier compensation disputes, and cost of service issues. He has presented studies of the damages incurred by plaintiffs and has provided rebuttal testimony to damage calculations performed by others. Mr. Wood has also testified in alternative dispute resolution proceedings conducted pursuant to both AAA and CPR rules.

Mr. Wood is an experienced commercial mediator and is registered as a neutral with the Georgia Office of Dispute Resolution.

## **PREVIOUS EMPLOYMENT**

### **Klick, Kent & Allen/FTI Consulting, Inc.**

Regional Director.

### **GDS Associates, Inc.**

Senior Project Manager.

### **MCI Telecommunications Corporation**

Manager of Regulatory Analysis, Southeast Division.

Manager, Corporate Economic Analysis and Regulatory Affairs.

### **BellSouth Services, Inc.**

Staff Manager.

### **Georgia Power Company/Southern Company Services, Inc.**

Generating Plant Construction cost analyst and scheduler.

## **EDUCATION**

### **Emory University, Atlanta, Ga.**

BBA in Finance, with Distinction (1985).

### **College of William and Mary, Williamsburg, Va.**

MBA, with concentrations in Finance and Microeconomics (1987).

**TESTIMONY - STATE REGULATORY COMMISSIONS:**

**Alabama Public Service Commission**

Docket No. 19356, Phase III: Alabama Public Service Commission vs. All Telephone Companies Operating in Alabama, and Docket 21455: AT&T Communications of the South Central States, Inc., Applicant, Application for a Certificate of Public Convenience and Necessity to Provide Limited IntraLATA Telecommunications Service in the State of Alabama.

Docket No. 20895: In Re: Petition for Approval to Introduce Business Line Termination for MCI's 800 Service.

Docket No. 21071: In Re: Petition by South Central Bell for Introduction of Bidirectional Measured Service.

Docket No. 21067: In Re: Petition by South Central Bell to Offer Dial Back-Up Service and 2400 BPS Central Office Data Set for Use with PulseLink Public Packet Switching Network Service.

Docket No. 21378: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. 21865: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Introduce Network Services to be Offered as a Part of Open Network Architecture.

Docket No. 25703: In Re: In the Matter of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 25704: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated and CONTEL of the South, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996.

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Docket No. 26029: In Re: Generic Proceeding - Consideration of TELRIC Studies.

Docket No. 25980: Implementation of the Universal Support Requirements of Section 254 of the Telecommunications Act of 1996.

Docket No. 27091: Petition for Arbitration by ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 27821: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements.

Docket Nos. 27989 and 15957: BellSouth "Full Circle" Promotion and Generic Proceeding Considering the Promulgation of Telephone Rules Governing Promotions.

Docket No. 28841: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 29075: Petition of CenturyTel to Establish Wholesale Avoidable Cost Discount Rates for Resale of Local Exchange Service.

Docket No. 29054: IN RE: Implementation of the Federal Communications Commission's Triennial Review Order (Phase II – Local Switching for Mass Market Customers).

Docket No. 29172: Southern Public Communication Association, Complainant, and BellSouth Telecommunications, Inc., Defendant.

Docket No. 31176: Deltacom, Inc. v. KMC Data, LLC, Hypercube, LLC, and Hypercube Telecom LLC.

#### **The Regulatory Commission of Alaska**

Case No. U-02-039: In the Matter of Request by Alaska Digitel, LLC for Designation as a Carrier Eligible To Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

Case No. U-04-62: In the Matter of the Request by Alaska Wireless Communications, LLC For Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996.

#### **Arkansas Public Service Commission**

Docket No. 92-337-R: In the Matter of the Application for a Rule Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

#### **Public Utilities Commission of the State of California**

Rulemaking 00-02-005: Order Instituting Rulemaking on the Commission's Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Service Provider Modems.

Application Nos. 01-02-024, 01-02-035, 02-02-031, 02-02-032, 02-02-034, 02-03-002: Applications for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application No. 05-02-027: In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application No. 05-04-020: In the Matter of the Joint Application of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI.



**Public Utilities Commission of the State of Colorado**

Docket No. 96A-345T: In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Mountain States, Inc., and US West Communications, Inc., Pursuant to 47 U.S.C. Section 252. Docket No. 96A-366T: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West Communications, Inc. (consolidated).

Docket No. 96S-257T: In Re: The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc., with Advice Letter No. 2608 Regarding Proposed Rate Changes.

Docket No. 98F-146T: Colorado Payphone Association, Complainant, v. US West Communications, Inc., Respondent.

Docket No. 02A-276T: In the Matter of the Application of Wiggins Telephone Association for Approval of its Disaggregation Plan

Docket No. 02A-444T: In the Matter of NECC's Application to Redefine the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc., and Sunflower Telephone Co., Inc.

Docket No. 07A-153T: In the Matter of the Combined Application of N.E. Colorado Cellular, Inc. for Designation as an Eligible Telecommunications Carrier and Eligible Provider in Additional Areas of Colorado.

Docket No. 09a-107t: In the Matter of the Application of N.E. Colorado Cellular, Inc. D/B/A Viaero Wireless for Initial Receipt of Support From Colorado High Cost Support Mechanism for New Territories.

Docket No. 10R-191T: In the Matter of Proposed Rules Relating to the Colorado High Cost Support Mechanism Regulations 723-2.

**State of Connecticut, Department of Utility Control**

Docket 91-12-19: DPUC Review of Intrastate Telecommunications Services Open to Competition (Comments).

Docket No. 94-07-02: Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the Eight Criteria Set Forth in Section 6 of Public Act 94-83 (Comments).

Docket No. 03-11-16: Petition of Tel Comm Technologies, et. al., for Review and Amendment of Southern New England Telephone Company's Charges for Pay Telephone Access Services.

**Delaware Public Service Commission**

Docket No. 93-31T: In the Matter of the Application of The Diamond State Telephone Company for Establishment of Rules and Rates for the Provision of IntelliLinQ-PRI and IntelliLinQ-BRI.

Docket No. 41: In the Matter of the Development of Regulations for the Implementation of the

Telecommunications Technology Investment Act.

Docket No. 96-324: In the Matter of the Application of Bell Atlantic-Delaware, Inc. for Approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996 (Phase II).

Docket No. 02-001: In the Matter of the Inquiry into Verizon Delaware Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c).

**Florida Public Service Commission**

Docket No. 881257-TL: In Re: Proposed Tariff by Southern Bell to Introduce New Features for Digital ESSX Service, and to Provide Structural Changes for both ESSX Service and Digital ESSX Service.

Docket No. 880812-TP: In Re: Investigation into Equal Access Exchange Areas (EAEAs), Toll Monopoly Areas (TMAs), I+ Restriction to the Local Exchange Companies (LECs), and Elimination of the Access Discount.

Docket No. 890183-TL: In Re: Generic Investigation into the Operations of Alternate Access Vendors.

Docket No. 870347-TI: In Re: Petition of AT&T Communications of the Southern States for Commission Forbearance from Earnings Regulation and Waiver of Rule 25-4.495(1) and 25-24.480 (1) (b), F.A.C., for a trial period.

Docket No. 900708-TL: In Re: Investigation of Methodology to Account for Access Charges in Local Exchange Company (LEC) Toll Pricing.

Docket No. 900633-TL: In Re: Development of Local Exchange Company Cost of Service Study Methodology.

Docket No. 910757-TP: In Re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies.

Docket No. 920260-TL: In Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization, Implementation Orders, and Other Relief.

Docket No. 950985-TP: In Re: Resolution of Petitions to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

Docket No. 960846-TP: In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a proposed agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 and Docket No. 960833-TP: In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 960847-TP and 960980-TP: In Re: Petition by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Service, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Inc. Concerning

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Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 961230-TP: In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996.

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP: Investigation to develop permanent rates for certain unbundled network elements.

Docket No. 980696-TP: In Re: Determination of the cost of basic local telecommunications service, pursuant to Section 364.025 Florida Statutes.

Docket No. 990750-TP: Petition by ITC^DeltaCom Communications, Inc., d/b/a/ ITC^DeltaCom, for arbitration of certain unresolved issues in interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc.

Docket No. 991605-TP: Petition of BellSouth Telecommunications, Inc. for Arbitration of the Interconnection Agreement Between Time Warner Telecom of Florida, L.P., pursuant to Section 252 (b) of the Telecommunications Act of 1996.

Docket No. 030137-TP: In re: Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with BellSouth Telecommunications, Inc. by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

Docket No. 030300-TP: In re: Petition for expedited review of BellSouth Telecommunications, Inc.'s intrastate tariffs for pay telephone access services (PTAS) rate with respect to rates for payphone line access, usage, and features, by Florida Public Telecommunications Association.

Docket No. 030851-TP: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 040353-TP: In Re: Petition of Supra Telecommunications and Information Systems, Inc. to Review and Cancel BellSouth's Promotional Offering Tariffs Offered In Conjunction with its New Flat Rate Service Known as PreferredPack.

Docket No. 040604-TL: In Re: Adoption of the National School Lunch Program and an Income-based Criterion at or Below 135% of the Federal Poverty Guidelines as Eligibility Criteria for the Lifeline and Linkup Programs.

Docket No. 050119-TP: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc., and Frontier Communications of the South, LLC ("Joint Petitioners") objecting to and requesting suspension of Proposed Transit Traffic Service Tariff filed by BellSouth Telecommunications, Inc. and Docket No. 050125-TP: Petition and complaint for suspension and cancellation of Transit Tariff Service No. FL 2004-284 filed by BellSouth Telecommunications, Inc. by AT&T Communications of the Southern States, LLC (consolidated).

Docket No. 060598-TL: In Re: Petition by BellSouth Telecommunications, Inc., Pursuant to Florida

Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses.

Docket No. 060644-TL: Petition by Embarq Florida, Inc., Pursuant to Florida Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses.

Docket No. 060763-TL: In Re: Petition for waiver of carrier of last resort obligations for multitenant property in Collier County known as Treviso Bay, by Embarq Florida, Inc.

Docket No. 090327-TP: In re: Petition of DeltaCom, Inc. for order determining DeltaCom, Inc. not liable for access charges of KMC Data LLC and Hypercube Telecom, LLC.

Docket No. 110087-TP: In re: Notice of the Adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT& T Florida d/b/a AT&T Southeast and Image Access, Inc. d/b/a New Phone, Inc. by Express Phone Service, Inc.

### **Georgia Public Service Commission**

Docket No. 3882-U: In Re: Investigation into Incentive Telephone Regulation in Georgia.

Docket No. 3883-U: In Re: Investigation into the Level and Structure of Intrastate Access Charges.

Docket No. 3921-U: In Re: Compliance and Implementation of Senate Bill 524.

Docket No. 3905-U: In Re: Southern Bell Rule Nisi.

Docket No. 3995-U: In Re: IntraLATA Toll Competition.

Docket No. 4018-U: In Re: Review of Open Network Architecture (ONA) (Comments).

Docket No. 5258-U: In Re: Petition of BellSouth Telecommunications for Consideration and Approval of its "Georgians FIRST" (Price Caps) Proposal.

Docket No. 5825-U: In Re: The Creation of a Universal Access Fund as Required by the Telecommunications Competition and Development Act of 1995.

Docket No. 6801-U: In Re: Interconnection Negotiations Between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., Pursuant to Sections 251-252 and 271 of the Telecommunications Act of 1996.

Docket No. 6865-U: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Docket No. 7061-U: In Re: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services.

Docket No. 10692-U: In Re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements.

Docket No. 10854-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 16583-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 17749-U: In Re: FCC's Triennial Review Order Regarding the Impairment of Local Switching for Mass Market Customers.

Docket No. 22682-U: In Re: Notice of Merger of AT&T, Inc. and BellSouth Corporation together with its Certificated Georgia Subsidiaries.

#### **Public Utilities Commission of Hawaii**

Docket No. 7702: In the Matter of Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii.

#### **Idaho Public Utilities Commission**

Case No. GNR-T-03-08: In the Matter of the Petition of IAT Communications, Inc., d/b/a NTCIdaho, Inc., or ClearTalk, for Designation as an Eligible Telecommunications Carrier, and Case No. GNR-T-03-16: In the Matter of the Application of NCPR, Inc., d/b/a Nextel Partners, seeking designation as an Eligible Telecommunications Carrier.

#### **Illinois Commerce Commission**

Docket No. 04-0653: USCOC of Illinois RSA #1, LLC., USCOC of Illinois RSA #4 LLC., USCOC of Illinois Rockford, LLC., and USCOC of Central Illinois, LLC. Petition for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. Section 214(e)(2).

Docket Nos. 05-0644, 05-0649, and 05-0657: Petition of Hamilton County Telephone Co-Op et. al. for Arbitration under the Telecommunications Act to Establish Terms and Conditions for Reciprocal Compensation with Verizon Wireless and its Constituent Companies.

#### **Indiana Utility Regulatory Commission**

Cause No. 42303: In the Matter of the Complaint of the Indiana Payphone Association for a Commission Determination of Just and Reasonable Rates and Charges and Compliance with Federal Regulations.

Cause No. 41052-ETC-43: In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC Orders. In Particular, the Application of NPCR, Inc. d/b/a Nextel Partners to be Designated.

Cause No. 42530: In the Matter of the Indiana Utility Regulatory Commission's Investigation of Matters Related to Competition in the State of Indiana Pursuant to Ind. Code 8-1-2 *et seq.*

**Iowa Utilities Board**

Docket No. RPU-95-10.

Docket No. RPU-95-11.

**State Corporation Commission of the State of Kansas**

Docket No. 00-GIMT-1054-GIT: In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should Be Paid for Traffic to an Internet Service Provider.

Docket No. 04-RCCT-338-ETC: In the Matter of Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Docket No. 07-GIMT-498-GIT: In the Matter of a Review of the Commission's Federal USF Certification Requirements to Remove All Expenses and Investments by Competitive Eligible Telecommunications Carriers in a Southwestern Bell Telephone, L.P., Study Area from the Competitive Eligible Telecommunications Carrier's Justification of Use of High Cost Federal USF Support.

Docket No. 06-GIMT-187-GIT: IN the Matter of the General Investigation into the Commission's Telecommunications Billing Practices Standards.

Docket No. 11-CELZ-176-ETC: In the Matter of the Application of Cellco Partnership and Affiliates to Amend Eligible Telecommunications Carrier Designation Docket No. 11-CELZ-176-ETC in the State of Kansas.

**Kentucky Public Service Commission**

Administrative Case No. 10321: In the Matter of the Tariff Filing of South Central Bell Telephone Company to Establish and Offer Pulselink Service.

Administrative Case No. 323: In the Matter of An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

- Phase IA: Determination of whether intraLATA toll competition is in the public interest.
- Phase IB: Determination of a method of implementing intraLATA competition.
- Rehearing on issue of Imputation.

Administrative Case No. 90-256, Phase II: In the Matter of A Review of the Rates and Charges and Incentive Regulation Plan of South Central Bell Telephone Company.

Administrative Case No. 336: In the Matter of an Investigation into the Elimination of Switched Access Service Discounts and Adoption of Time of Day Switch Access Service Rates.

Administrative Case No. 91-250: In the Matter of South Central Bell Telephone Company's Proposed Area

Calling Service Tariff.

Administrative Case No. 96-431: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-478: In Re: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-482: In Re: The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Administrative Case No. 360: In the Matter of: An Inquiry into Universal Service and Funding Issues.

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Administrative Case No. 382: An Inquiry into the Development of Deaveraged Rates for Unbundled Network Elements.

Case No. 2003-00143: In the Matter of: Petition of NCPR, Inc., d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky.

Case No. 2003-00397: Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements.

Case Nos. 2006-00215: Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and consolidated Case Nos. 2006-00217, 2006-00218, 2006-00220, 2006-00252, 2006-00255, 2006-00288, 2006-00292, 2006-00294, 2006-00296, 2006-00298, and 2006-00300.

Case No. 2008-00135: In the Matter of Complaint of Sprint Communications Company L.P. Against Brandenburg Telephone Company for the Unlawful Imposition of Access Charges.

#### **Louisiana Public Service Commission**

Docket No. 17970: In Re: Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of AT&T Communications of the South Central States, Inc., in its Louisiana Operations.

Docket No. U-17949: In the Matter of an Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of South Central Bell Telephone Company. Its Louisiana Intrastate Operations, The Appropriate Level of Access Charges, and All Matters Relevant to the Rates and Service Rendered by the Company.

- Subdocket A (SCB Earnings Phase)

- Subdocket B (Generic Competition Phase)

Docket No. 18913-U: In Re: South Central Bell's Request for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. U-18851: In Re: Petition for Elimination of Disparity in Access Tariff Rates.

Docket No. U-22022: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost Based Tariffed Rates and Docket No. U-22093: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms and Conditions for Such Service Offerings (consolidated).

Docket No. U-22145: In the Matter of Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271 (c) (2) (b) in order to verify compliance with section 271 and provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Docket No. U-20883 Subdocket A: In Re: Submission of the Louisiana Public Service Commission's Forward Looking Cost Study to the FCC for Purposes of Calculating Federal Universal Service Support.

Docket No. U-24206: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. U-22632: In Re: BellSouth Telecommunications, Inc. Filing of New Cost Studies for Providing Access Line Service for Customer Provided Public Telephones and Smartline Service for Public Telephone Access.

Docket No. Docket No. U-24714-A: In Re: Final Deaveraging of BellSouth Telecommunications, Inc. UNE Rates Pursuant to FCC 96-45 Ninth Report and Order and Order on Eighteenth Order on Reconsideration Released November 2, 1999.

Docket No. U-27571: In Re: Louisiana Public Service Commission Implementation of the Requirements Arising from The Federal Communications Commission's Triennial Review Order, Order 03-36: Unbundled Local Circuit Switching for Mass Market Customers and Establishment of a Batch Cut Migration Process.

**Public Service Commission of Maryland**

Case 8584, Phase II: In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Intrastate Telecommunications Services in Areas Served by C&P Telephone Company of Maryland.



Case 8715: In the Matter of the Inquiry into Alternative Forms of Regulating Telephone Companies.

Case 8731: In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996.

**Massachusetts Department of Telecommunications and Energy**

D.P.U./D.T.E. 97088/97-18 (Phase II): Investigation by the Department of Telecommunications & Energy on its own motion regarding (1) implementation of section 276 of the Telecommunications Act of 1996 relative to public interest payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Service, and (4) the rate policy for operator service providers.

**Michigan Public Service Commission**

Case No. U-14781: In the matter on the Commission's Own Motion to examine the total service long run incremental costs of the Michigan Exchange Carriers Association Companies, including Ace Telephone Company, Barry County Telephone Company, Deerfield Farmers' Telephone Company, Kaleva Telephone Company, Lennon telephone Company, Ogden telephone Company, Pigeon Telephone Company, Upper Peninsula Telephone Company, and Waldron Telephone Company.

**Minnesota Public Utilities Commission**

PUC Docket No. PT6153/AM-02-686, OAH Docket No. 3-2500-14980-2: In the Matter of Petition of Midwest Wireless Communications, LLC for Designation as an Eligible Communications carrier under 47 U.S.C. § 214(e)(2).

PUC Docket No. PT-6182, 6181/M-02-1503: In the Matter of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

**Mississippi Public Service Commission**

Docket No. U-5086: In Re: MCI Telecommunications Corporation's Metered Use Service Option D (Prism I) and Option E (Prism II).

Docket No. U-5112: In Re: MCI Telecommunications Corporation's Metered Use Option H (800 Service).

Docket No. U-5318: In Re: Petition of MCI for Approval of MCI's Provision of Service to a Specific Commercial Banking Customers for Intrastate Interexchange Telecommunications Service.

Docket 89-UN-5453: In Re: Notice and Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan for its Mississippi Operations.

Docket No. 90-UA-0280: In Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition in the Telecommunications Industry and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies in Addition to Access Charges.

Docket No. 92-UA-0227: In Re: Order Implementing IntraLATA Competition.

Docket No. 96-AD-0559: In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 98-AD-035: Universal Service.

Docket No. 97-AD-544: In Re: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements.

Docket No. 2003-AD-714: Generic Proceeding to Review the Federal Communications Commission's Triennial Review Order.

**Public Service Commission of the State of Missouri**

Case No. TO-2004-0527: In the Matter of the Application of WWC License, LLC, d/b/a CellularOne, for Designation as an Eligible Telecommunications Carrier, and Petition for Redefinition of Rural Telephone Company Areas.

Case No. to-2005-0384: Application of USCOC of Greater Missouri, LLC For Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

**Public Service Commission of the State of Montana**

Docket No. D2000.8.124: In the Matter of Touch America, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Terms and Conditions of Interconnection with Qwest Corporation, f/k/a US West Communications, Inc.

Docket No. D2000.6.89: In the Matter of Qwest Corporation's Application to Establish Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale Services.

Docket No. D2003.1.14: In the Matter of WWC Holding Co. Application for Designation as an Eligible Telecommunications Carrier in Montana Areas Served by Qwest Corporation.

Docket No. D2007.7.86: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Ronan Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA; and Docket No. D.2007.7.87: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Hot Springs Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA (consolidated).

**Nebraska Public Service Commission**

Docket No. C-1385: In the Matter of a Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Midwest, Inc., and US West Communications, Inc.

Application No. C-3324: In the Matter of the Petition of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless

for designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2).

Docket No. 3725: In the Matter of Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant To Section 214(e)(2) of the Communications Act of 1934.

Application No. C-4302: In the Matter of the Application of Celco Partnership and its Subsidiaries and Affiliates to Amend Eligible Telecommunications Carrier Designation in the State of Nebraska.

**Public Utilities Commission of Nevada**

Docket No. 04-3030: In re: Application of WWD License LLC, d/b/a CellularOne, for redefinition of its service area as a designated Eligible Telecommunications Carrier.

Docket No. 08-12017: In the Matter of Commnet of Nevada, LLC, Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support.

Docket No. 10-09007: Application of Celco Partnership and its Subsidiaries and Affiliates to Amend Eligible Telecommunications Carrier Designation in the State of Nevada.

**New Jersey Board of Public Utilities**

Docket No. TM0530189: In the Matter of the Joint Petition of Verizon Communications Inc., and MCI, Inc. for Approval of Merger.

**New Mexico Public Regulation Commission**

Case No. 10-00315-UT: In the Matter of the Application of Sacred Wind Communications, Inc., for Approval of Initial Rates, Terms and Conditions of Service for Support from the New Mexico Rural Universal Service Fund and Petition for Variance from Commission Rules.

**New York Public Service Commission**

Case No. 28425: Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgement and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State.

**North Carolina Public Utilities Commission**

Docket No. P-100, Sub 72: In the Matter of the Petition of AT&T to Amend Commission Rules Governing Regulation of Interexchange Carriers (Comments).

Docket No. P-141, Sub 19: In the Matter of the Application of MCI Telecommunications Corporation to Provide InterLATA Facilities-Based Telecommunications Services (Comments).

Docket No. P-55, Sub 1013: In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation.

Docket No. 090538-TP  
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Docket Nos. P-7, Sub 825 and P-10, Sub 479: In the Matter of Petition of Carolina Telephone and Telegraph and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5.

Docket No. P-19, Sub 277: In the Matter of Application of GTE South Incorporated for and Election of, Price Regulation.

Docket No. P-141, Sub 29: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. (consolidated).

Docket No. P-141, Sub 30: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc. (consolidated).

Docket No. P-100, Sub 133b: Re: In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133d: Re: Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

Docket No. P-100, Sub 84b: Re: In the Matter of Petition of North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services (Comments).

Docket No. P-561, Sub 10: BellSouth Telecommunications, Inc., Complainant, v. US LEC of North Carolina, LLC, and Metacomm, LLC, Respondents.

Docket No. P-472, Sub 15: In the Matter of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of North Carolina, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Docket Nos. P-7, Sub 995; P-10, Sub 633: ALEC., Inc. v. Carolina Telephone and Telegraph Company and Central Telephone Company.

Docket No. P-500, Sub 18: In the Matter of: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. P-118, Sub 30: In the matter of: Petition of Celco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133q: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

**Public Utilities Commission of Ohio**

Case No. 93-487-TP-ALT: In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.

Case No. 05-0269-TP-ACO: In the matter of the Joint Application of SBC Communications, Inc. and AT&T Corp. for Consent and Approval of a Change of Control.

**Oklahoma Corporation Commission**

Cause No. PUD 01448: In the Matter of the Application for an Order Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Cause No. PUD 200300195: Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200300239: Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Cause No. PUD 200500122: In the matter of Dobson Cellular Systems, Inc., and American Cellular Corporation application for designation as a competitive eligible telecommunications carrier and redefinition of the service area requirement pursuant to Section 214(e) of the Telecommunications Act of 1996.

**Public Utility Commission of Oregon**

Docket No. UT 119: In the Matter of an Investigation into Tariffs Filed by US West Communications, Inc., United Telephone of the Northwest, Pacific Telecom, Inc., and GTE Northwest, Inc. in Accordance with ORS 759.185(4).

Docket No. ARB 3: In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996. Docket No. ARB 6: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (consolidated).

Docket No. ARB 9: In the Matter of the Petition of an Interconnection Agreement Between MCIMetro Access Transportation Services, Inc. and GTE Northwest Incorporated, Pursuant to 47 U.S.C. Section 252.

Docket No. UT-125: In the Matter of the Application of US West Communications, Inc. for an Increase in Revenues.

Docket No. UM 1083: RCC Minnesota, Inc. Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996.

Docket No. UM 1084: United States Cellular Corporation Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996.

Docket No. UM 1217: Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support.

**Pennsylvania Public Utilities Commission**

Docket No. I-00910010: In Re: Generic Investigation into the Current Provision of InterLATA Toll

Service.

Docket No. P-00930715: In Re: The Bell Telephone Company of Pennsylvania's Petition and Plan for Alternative Form of Regulation under Chapter 30.

Docket No. R-00943008: In Re: Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc. (Investigation of Proposed Promotional Offerings Tariff).

Docket No. M-00940587: In Re: Investigation pursuant to Section 3005 of the Public Utility Code, 66 Pa. C. S. §3005, and the Commission's Opinion and Order at Docket No. P-930715, to establish standards and safeguards for competitive services, with particular emphasis in the areas of cost allocations, cost studies, unbundling, and imputation, and to consider generic issues for future rulemaking.

Docket No. A-310489F7004: Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996.

Docket Nos. A-310580F9, A-310401F6, A-310407F3, A-312025F5, A-310752F6, A-310364F3: Joint Application of Verizon Communications Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger.

#### **South Carolina Public Service Commission**

Docket No. 90-626-C: In Re: Generic Proceeding to Consider Intrastate Incentive Regulation.

Docket No. 90-321-C: In Re: Petition of Southern Bell Telephone and Telegraph Company for Revisions to its Access Service Tariff Nos. E2 and E16.

Docket No. 88-472-C: In Re: Petition of AT&T of the Southern States, Inc., Requesting the Commission to Initiate an Investigation Concerning the Level and Structure of Intrastate Carrier Common Line (CCL) Access Charges.

Docket No. 92-163-C: In Re: Position of Certain Participating South Carolina Local Exchange Companies for Approval of an Expanded Area Calling (EAC) Plan.

Docket No. 92-182-C: In Re: Application of MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and Sprint Communications Company, L.P., to Provide IntraLATA Telecommunications Services.

Docket No. 95-720-C: In Re: Application of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company for Approval of an Alternative Regulation Plan.

Docket No. 96-358-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 96-375-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and GTE South Incorporated Pursuant to 47 U.S.C. § 252.

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

Docket No. 97-374-C: In Re: Proceeding to Review BellSouth Telecommunications, Inc. Cost for

Unbundled Network Elements.

Docket No. 97-239-C: Intrastate Universal Service Fund.

Docket No. 97-124-C: BellSouth Telecommunications, Inc. Revisions to its General Subscriber Services Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

Docket No. 1999-268-C: Petition of Myrtle Beach Telephone, LLC, for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.

Docket No. 1999-259-C: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Docket No. 2001-65-C: Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements and Other Related Elements and Services.

Docket No. 2003-326-C: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 2003-227-C: Application of Hargray Wireless, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. 214(e)(2).

#### **South Dakota Public Utilities Commission**

Docket No. TC03-191: In the Matter of the Filing by WWC License, LLC d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas.

Docket No. TC03-193: In the Matter of the Petition of RCC Minnesota, Inc., and Wireless Alliance, L.L.C., for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. §214(e)(2).

Docket No. TC10-090: In the Matter of the Petition of Celco Partnership and Its Subsidiaries and Affiliates to Amend and Consolidate Eligible Telecommunications Carrier Designations in the State of South Dakota and to Partially Relinquish ETC Designation.

#### **Tennessee Public Service Commission**

Docket No. 90-05953: In Re: Earnings Investigation of South Central Bell Telephone Company.

Docket Nos. 89-11065, 89-11735, 89-12677: AT&T Communications of the South Central States, MCI Telecommunications Corporation, US Sprint Communications Company -- Application for Limited IntraLATA Telecommunications Certificate of Public Convenience and Necessity.

Docket No. 91-07501: South Central Bell Telephone Company's Application to Reflect Changes in its Switched Access Service Tariff to Limit Use of the 700 Access Code.

#### **Tennessee Regulatory Authority**

Docket No. 96-01152: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration under the Telecommunications Act of 1996 and Docket No. 96-01271: In Re: Petition by MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 96-01262: In Re: Interconnection Agreement Negotiations Between AT&T of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252.

Docket No. 97-01262: Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements.

Docket No. 97-00888: Universal Service Generic Contested Case.

Docket No. 99-00430: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

Docket No. 97-00409: In Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission Docket No. 96-128.

Docket No. 03-00119: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc.

Docket No. 03-00491: In Re: Implementation of Requirements Arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers.

Docket No. 06-00093: In Re: Joint Filing of AT&T, Inc., BellSouth Corporation, and BellSouth's Certified Tennessee Subsidiaries Regarding Change of Control.

#### **Public Utility Commission of Texas**

Docket No. 12879: Application of Southwestern Bell Telephone Company for Expanded Interconnection for Special Access Services and Switched Transport Services and Unbundling of Special Access DS1 and DS3 Services Pursuant to P. U. C. Subst. R. 23.26.

Docket No. 18082: Complaint of Time Warner Communications against Southwestern Bell Telephone Company.

Docket No. 21982: Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996.

Docket No. 23396: Joint Petition of CoServ, LLC d/b/a CoServ Communications and Multitechnology Services, LP d/b/a CoServ Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company.

Docket No. 24015: Consolidated Complaints and Requests of Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for FX-Type Traffic Against Southwestern Bell Telephone Company.

PUC Docket No. 27709: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).



PUC Docket No. 28744: Impairment Analysis for Dedicated Transport.

PUC Docket No. 28745: Impairment Analysis for Enterprise Loops.

PUC Docket No. 29144: Application of Dobson Cellular Systems, Inc., for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 241 (e) and P.U. C. Subst. Rule 26.418.

#### **State of Vermont Public Service Board**

Docket No. 6533: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271.

Docket No. 6882: Investigation into Public Access Line Rates of Verizon New England, Inc., d/b/a Verizon Vermont.

Docket No. 6934: Petition of RCC Atlantic Inc. for designation as an Eligible Telecommunications Carrier in areas served by rural telephone companies under the Telecommunications Act of 1996.

#### **Virginia State Corporation Commission**

Case No. PUC920043: Application of Virginia Metrotel, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA Interexchange Telecommunications Services.

Case No. PUC920029: Ex Parte: In the Matter of Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies.

Case No. PUC930035: Application of Contel of Virginia, Inc. d/b/a GTE Virginia to implement community calling plans in various GTE Virginia exchanges within the Richmond and Lynchburg LATAs.

Case No. PUC930036: Ex Parte: In the Matter of Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, & Etc.

Case No. PUC-200540051: Application of Verizon Communications Inc. and MCI, Inc. for approval of Agreement and Plan of Merger resulting in the indirect transfer of control of MCImetro Access Transmission Services of Virginia, Inc., to Verizon Communications Inc.

#### **Washington Utilities and Transportation Commission**

Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Consolidated): Washington Utilities and Transportation Commission, Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle and Digital Direct of Seattle, Inc., Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle, Complainant, vs. GTE Northwest Inc., Respondent; Electric Lightwave, Inc., vs. GTE Northwest, Inc., Respondent.

Docket No. UT-950200: In the Matter of the Request of US West Communications, Inc. for an Increase in its Rates and Charges.

Docket No. UT-000883: In the Matter of the Petition of U S West Communications, Inc. for Competitive

Classification.

Docket No. UT-050814: In the Matter of the Joint Petition of Verizon Communications Inc., and MCI, Inc. for a Declaratory Order Disclaiming Jurisdiction Over or, in the Alternative a Joint Application for Approval of, Agreement and Plan of Merger.

**Public Service Commission of West Virginia**

Case No. 02-1453-T-PC: Highland Cellular, Inc. Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia.

Case No. 03-0935-T-PC: Easterbrooke Cellular Corporation Petition for consent and approval to be designated as an eligible telecommunications carrier in the area served by Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia.

**Public Service Commission of Wyoming**

Docket No. 70000-TR-95-238: In the Matter of the General Rate/Price Case Application of US West Communications, Inc. (Phase I).

Docket No. PSC-96-32: In the Matter of Proposed Rule Regarding Total Service Long Run Incremental Cost (TSLRIC) Studies.

Docket No. 70000-TR-98-420: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase III).

Docket No. 70000-TR-99-480: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase IV).

Docket No. 70000-TR-00-556: In the Matter of the Filing by US West Communications, Inc. for Authority to File its TSLRIC 2000 Annual Input Filing and Docket No. 70000-TR-00-570: In the Matter of the Application of US West Communications, Inc. for Authority to File its 2000 Annual TSLRIC Study Filing.

Docket No. 70042-AT-04-4: In the Matter of the Petition of WWC Holding Co., Inc., d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Areas Served by Qwest Corporation, and Docket No. 70042-AT-04-5: In the Matter of the Petition of WWC Holding Co., Inc., d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Clark, Basin, Frannie, Greybull, Lovell, Meeteetse, Burlington, Hyattville, and Tensleep (consolidated).

**Public Service Commission of the District of Columbia**

Formal Case No. 814, Phase IV: In the Matter of the Investigation into the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic - Washington, D. C. Inc.'s Jurisdictional Rates.

**Puerto Rico Telecommunications Regulatory Board**

Case No. 98-Q-0001: In Re: Payphone Tariffs.

Case No. JRT-2001-AR-0002: In the Matter of Interconnection Rates, Terms and Conditions between WorldNet Telecommunications, Inc. and Puerto Rico Telephone Company.

Case No. JRT-2003-AR-0001: Re: Petition for Arbitration pursuant to Section 252(b) of the Federal Communications Act, and Section 5(b), Chapter II of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms, and conditions.

Case No. JRT-2004-Q-0068: Telefónica Larga Distancia de Puerto Rico, Inc., Complainant, v. Puerto Rico Telephone Company, Defendant.

Case Nos. JRT-2005-Q-0121 and JRT-2005-Q-0218: Telefónica Larga Distancia de Puerto Rico, Inc., and WorldNet Telecommunications, Inc., Plaintiffs, v. Puerto Rico Telephone Company, Inc., Defendant.

Case No. JRT-2010-AR-0001: In the Matter of WorldNet Telecommunications, Inc.. Petition for arbitration pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms, and conditions with Puerto Rico Telephone Company.

**COMMENTS/DECLARATIONS - FEDERAL COMMUNICATIONS COMMISSION**

CC Docket No. 92-91: In the Matter of Open Network Architecture Tariffs of Bell Operating Companies.

CC Docket No. 93-162: Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access.

CC Docket No. 91-141: Common Carrier Bureau Inquiry into Local Exchange Company Term and Volume Discount Plans for Special Access.

CC Docket No. 94-97: Review of Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 94-128: Open Network Architecture Tariffs of US West Communications, Inc.

CC Docket No. 94-97, Phase II: Investigation of Cost Issues, Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 96-98: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996.

CC Docket No. 97-231: Application by BellSouth to Provide In-Region InterLATA Services.

CC Docket No. 98-121: Application by BellSouth to Provide In-Region InterLATA Services.

CCB/CPD No. 99-27: In the Matter of Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services.

CC Docket No. 96-128: In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CCB/CPD No. 99-31: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (consolidated).

CCB/CPD No. 00-1: In the Matter of the Wisconsin Public Service Commission Order Directing Filings.

CC Docket No. 99-68: In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic.

File No. EB-01-MD-020: In the Matter of Sprint Communications Company, L.P., Complainant v. Time Warner Telecom, Inc. Defendant.

WC Docket No. 03-225: Request by the American Public Communications Council that the Commission Issue a Notice of Proposed Rulemaking to Update the Dial-Around Compensation Rate.

File Nos. EB-02-MD-018-030: In the Matter of Communications Vending Corp. of Arizona, et. al., Complainants, v. Citizens Communications Co. f/k/a Citizens Utilities Co. and Citizens Telecommunications Co., et. al., Defendants.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Cellular South License, Inc., RCC Holdings, Inc., Petitions for designation as an Eligible Telecommunications Carrier in the State of Alabama.

CC Docket No. 96-45: In the Matter of Federal-State Joint Board on Universal Service, Declaration in

Support of the Comments to the Federal-State Joint Board of the Rural Cellular Association and the Alliance of Rural CMRS Carriers.

WC Docket No. 07-245/GN Docket No. 09-51: In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments.

**REPRESENTATIVE TESTIMONY – STATE, FEDERAL, AND OVERSEAS COURTS**

**Court of Common Pleas, Philadelphia County, Pennsylvania**

Shared Communications Services of 1800-80 JFK Boulevard, Inc., Plaintiff, v. Bell Atlantic Properties, Inc., Defendant.

**Texas State Office of Administrative Hearings**

SOAH Docket No. 473-00-0731: Office of Customer Protection (OCP) Investigation of Axces, Inc. for Continuing Violations of PUC Substantive Rule §26.130, Selection of Telecommunications Utilities, Pursuant to Procedural Rules 22.246 Administrative Penalties.

SOAH Docket No. 473-03-3673: Application of NPCR, Inc., dba Nextel Partners for Eligible Telecommunications Carrier Designation (ETC).

SOAH Docket No. 473-04-4450: Application of Dobson Cellular Systems, Inc., for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. 241 (e) and P.U. C. Subst. Rule 26.418.

**Superior Court for the State of Alaska, First Judicial District**

Richard R. Watson, David K. Brown and Ketchikan Internet Services, a partnership of Richard R. Watson and David K. Brown, Plaintiffs, v. Karl Amylon and the City of Ketchikan, Defendants.

**Superior Court for the State of Alaska, Third Judicial District**

Dobson Cellular Systems, Inc., Plaintiff, v. Frontline Hospital, LLC, Defendant.

**United States District Court for the Southern District of Iowa, Central Division**

Iowa Network Services, Inc., Plaintiff, v. Sprint Communications Company, L.P., Defendant.

**United States District Court for the District of Oregon**

Time Warner Telecom of Oregon, LLC, and Qwest Communications Corporation, Plaintiffs, v. The City of Portland, Defendant.

**United States District Court for the District of South Carolina, Columbia Division**

Brian Wesley Jeffcoat, on behalf of himself and others similarly situated, Plaintiffs, v. Time Warner Entertainment - Advance/Newhouse Partnership, Defendant.

**United States District Court for the Northern District of Texas, Fort Worth Division**

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Southwestern Bell Telephone Company, Defendant.

Multitechnology Services, L. P. d/b/a CoServ Broadband Services, Plaintiffs, v. Verizon Southwest f/k/a GTE Southwest Incorporated, Defendant.

**High Court of the Hong Kong Special Administrative Region, Court of First Instance**

Commercial List No. 229 of 1999: Cable and Wireless HKT International Limited, Plaintiff v. New World Telephone Limited, Defendant.

**REPRESENTATIVE TESTIMONY – PRIVATE COMMERCIAL ARBITRATION TRIBUNALS**

**American Arbitration Association**

Southwestern Bell Telephone Company, Claimant vs. Time Warner Telecom, Respondent.

New Access Communications LLC, Choicetel LLC and Emergent Communications LLC, Claimants vs. Qwest Corporation, Respondent (Case No. 77 Y 1818 0031603).

**CPR Institute for Dispute Resolution**

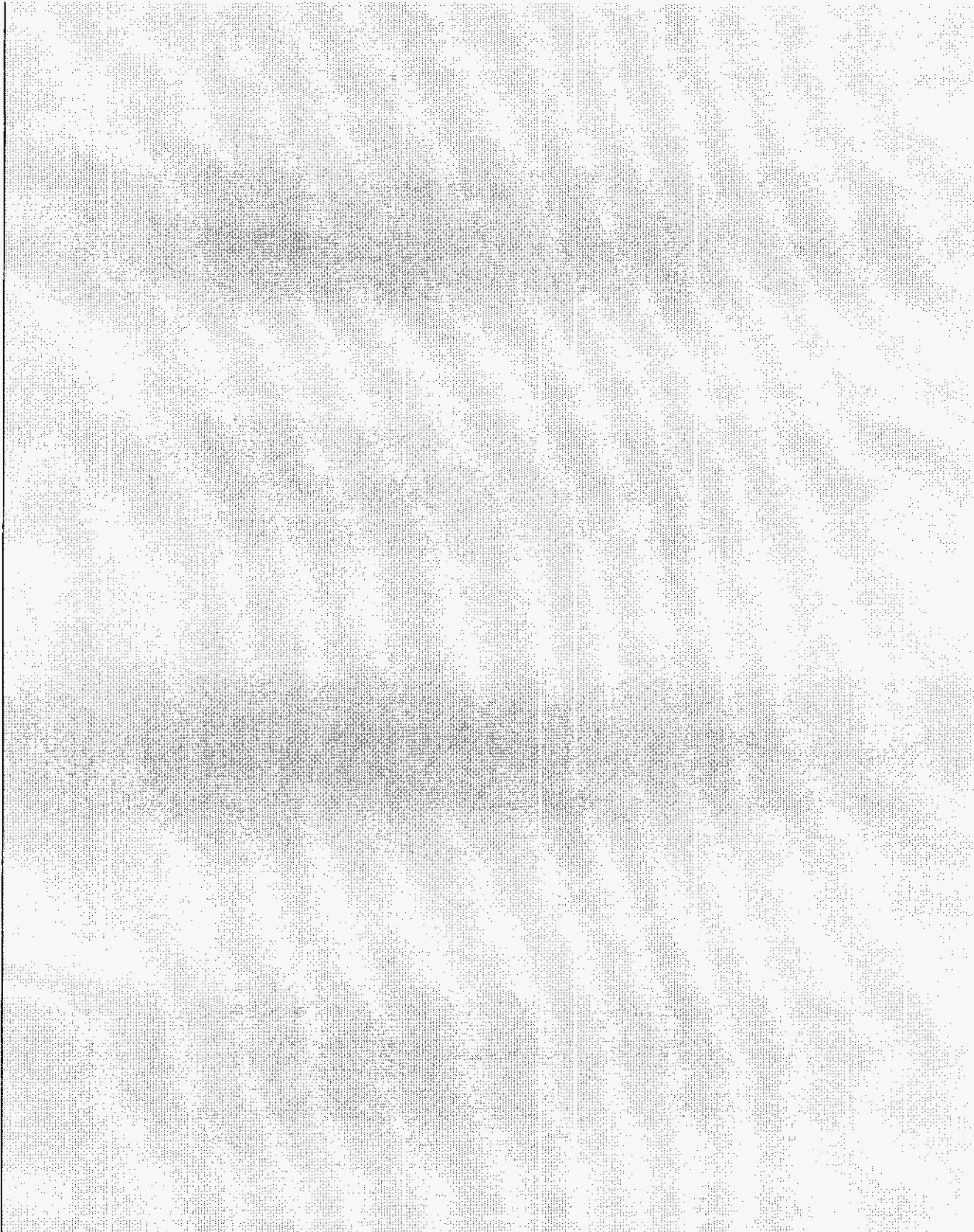
Supra Telecommunications and Information Systems, Inc., Claimant vs. BellSouth Telecommunications, Inc., Respondent.

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