

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090538-TP

AMENDED COMPLAINT OF QWEST  
COMMUNICATIONS COMPANY, LLC, AGAINST  
MCIMETRO ACCESS TRANSMISSION SERVICES  
(D/B/A VERIZON ACCESS TRANSMISSION  
SERVICES); XO COMMUNICATIONS SERVICES,  
INC.; TW TELECOM OF FLORIDA, L.P.;  
GRANITE TELECOMMUNICATIONS, LLC;  
BROADWING COMMUNICATIONS, LLC; ACCESS  
POINT, INC.; BIRCH COMMUNICATIONS,  
INC.; BUDGET PREPAY, INC.; BULLSEYE  
TELECOM, INC.; DELTACOM, INC.; ERNEST  
COMMUNICATIONS, INC.; FLATEL, INC.;  
NAVIGATOR TELECOMMUNICATIONS, LLC;  
PAETEC COMMUNICATIONS, INC.; STS  
TELECOM, LLC; US LEC OF FLORIDA, LLC;  
WINDSTREAM NUVOX, INC.; AND JOHN DOES  
1 THROUGH 50, FOR UNLAWFUL DISCRIMINATION.

RECEIVED-FPSC  
12 NOV -9 PM 1:13  
COMMISSION  
CLERK

\*\*\* CORRECTED VOLUME 1 \*\*\*  
Pages 1 through 203

(Correction begins on Page No. 49 with the insertion of  
William Easton's direct and rebuttal testimony, and  
includes renumbering of subsequent pages.)

PROCEEDINGS: HEARING

COMMISSIONERS

PARTICIPATING: CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER EDUARDO E. BALBIS

DATE: Tuesday, October 23, 2012

TIME: Commenced at 9:38 a.m.  
Concluded at 11:59 a.m.

PLACE: Betty Easley Conference Center  
Room 148, 4075 Esplanade Way  
Tallahassee, Florida

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTED BY: LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6734

## 1 APPEARANCES:

2 ADAM L. SHERR, ESQUIRE, 1600 7th Avenue, Room  
3 1506, Seattle, Washington, 98191, and SUSAN MASTERSON,  
4 ESQUIRE, 315 South Calhoun Street, Suite 500,  
5 Tallahassee, Florida 32301, appearing on behalf of Qwest  
6 Communications Company.

7 ANDREW M. KLEIN, ESQUIRE, Klein Law Group,  
8 1250 Connecticut Avenue NW, Suite 200, Washington, DC  
9 20036, appearing on behalf of Bullseye Telecom, Inc.

10 MATTHEW FEIL, ESQUIRE, Gunster Law Firm, 215  
11 South Monroe Street, Suite 601, Tallahassee, Florida  
12 32301, appearing on behalf of tw telecom of florida,  
13 l.p.

14 LEE ENG TAN, ESQUIRE, and LARRY HARRIS,  
15 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak  
16 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
17 behalf of the Florida Public Service Commission Staff.

18 MARY ANNE HELTON, Deputy General Counsel,  
19 Florida Public Service Commission, 2540 Shumard Oak  
20 Boulevard, Tallahassee, Florida 32399-0850, Advisor to  
21 the Florida Public Service Commission.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESSES

NAME:	PAGE NO.
WILLIAM R. EASTON	
Direct Examination by Mr. Sherr	39
Prefiled Direct Testimony (Revised) Inserted	49
Prefiled Rebuttal Testimony (Revised) Inserted	94
Cross Examination by Mr. Feil	135
Cross Examination by Mr. Klein	155
Redirect Examination by Mr. Sherr	197

## EXHIBITS

	NUMBER:		ID.	ADMTD.
1				
2				
3	1	Comprehensive Exhibit List	9	9
4	2	Staff's Exhibit 2	9	9
5	3	Staff's Exhibit 3	9	9
6	4	Staff's Exhibit 4	9	9
7	5	Staff's Exhibit 5	9	9
8	6	Staff's Exhibit 6	9	9
9	7	Staff's Exhibit 7	9	9
10	8	Staff's Exhibit 8	9	9
11	9	Staff's Exhibit 9	9	9
12	10	Staff's Exhibit 10	9	9
13	11	Staff's Exhibit 11	9	9
14	12	Staff's Exhibit 12	9	9
15	13	Staff's Exhibit 13	9	9
16	14	Staff's Exhibit 14	9	9
17	15	Staff's Exhibit 15	9	9
18	16	Staff's Exhibit 16	9	9
19	17	Staff's Exhibit 17	9	9
20	18	Staff's Exhibit 18	9	9
21	19	Staff's Exhibit 19	9	9
22	20	Staff's Exhibit 20	9	9
23	21	Staff's Exhibit 21	9	9
24	22	Staff's Exhibit 22	9	9
25				

EXHIBITS

	NUMBER :		ID.	ADMTD.
1				
2				
3	23	Staff's Exhibit 23	9	9
4	24	Staff's Exhibit 24	9	9
5	25	Staff's Exhibit 25	9	9
6	26	Staff's Exhibit 26	9	9
7	27	Staff's Exhibit 27	9	9
8	28	Staff's Exhibit 28	9	9
9	29	Staff's Exhibit 29	9	9
10	30	Staff's Exhibit 30	9	9
11	31	Staff's Exhibit 31	9	9
12	32	Staff's Exhibit 32	9	9
13	33	Staff's Exhibit 33	9	9
14	34	Staff's Exhibit 34	9	9
15	35	Staff's Exhibit 35	9	9
16	36	Staff's Exhibit 36	9	9
17	37	WRE-1A	46	198
18	39	WRE-2	46	198
19	40	WRE-3	46	198
20	41	WRE-4	46	198
21	42	WRE-11	46	198
22	43	WRE-12	46	198
23	44	WRE-13	46	198
24	45	WRE-17A	46	198
25	46	WRE-17B	46	198

## EXHIBITS

	NUMBER :	ID.	ADMTD.
1			
2			
3	47 WRE-18	46	198
4	48 WRE-19	46	198
5	49 WRE-20	46	198
6	50 WRE-21	46	198
7	51 WRE-22	46	198
8	52 WRE-30	46	198
9	53 WRE-31	46	198
10	54 WRE-32	46	198
11	55 WRE-36	46	198
12	56 WRE-37	46	198
13	57 WRE-38	46	198
14	83 (Late-Filed) Qwest Supplemental Response and Attachments	10	200
15			
16	84 (Confidential) Excerpted Pages from Exhibit 83	11	200
17			
18	85 Qwest Response to Interrogatories 18, 21, and 22	15	200
19			
20			
21			
22			
23			
24			
25			
	86 QCC Testimony Errata	41	

## P R O C E E D I N G S

1  
2           **CHAIRMAN BRISÉ:** Good morning, everyone.  
3 Today is October 23, 2012. It is 9:30 something. And  
4 so we'll go ahead and call this hearing to order, and  
5 we'll ask our staff to read the notice.

6           **MS. TAN:** Pursuant to notice published  
7 September 14th, 2012, this hearing has been set for this  
8 time and place in Docket Number 090538-TP. The purpose  
9 of this hearing has been set forth in the notice.

10           **CHAIRMAN BRISÉ:** Thank you. At this time we  
11 will take appearances, and we'll start from my left,  
12 your right.

13           **MR. SHERR:** Good morning, Chairman. Adam  
14 Sherr on behalf of Qwest Communications Company.

15           **MS. MASTERTON:** Good morning, Mr. Chairman and  
16 Commissioners. Susan Masterton on behalf of Qwest  
17 Communications Company as well.

18           **MR. KLEIN:** Good morning. Andrew Klein on  
19 behalf of Bullseye Telecom, and with me is Mr. Peter  
20 LaRose of Bullseye Telecom.

21           **MR. FEIL:** I'm Matthew Feil with the Gunster  
22 Law Firm here in Tallahassee, address as stated on the  
23 Prehearing Order, and I'm representing tw telecom.

24           **CHAIRMAN BRISÉ:** All right. Thank you and  
25 good morning, everyone.



1 Mary Anne.

2 **MS. TAN:** Lee Eng Tan on behalf of Commission  
3 staff, along with making an appearance for Larry Harris.

4 **MS. HELTON:** Mary Anne Helton, advisor to the  
5 Commission.

6 **CHAIRMAN BRISÉ:** All right. Thank you, and  
7 good morning to you, too.

8 Are there any preliminary matters that we need  
9 to deal with?

10 **MS. TAN:** Yes. Staff has prepared a  
11 Comprehensive Exhibit List. The list itself is marked  
12 as Exhibit Number 1, and at this time staff asks that  
13 Exhibit Number 1 be entered into the record.

14 **CHAIRMAN BRISÉ:** Okay. At this time if there  
15 are no objections, we will enter Exhibit 1.

16 (Exhibit 1 marked for identification and  
17 admitted into the record.)

18 **MS. TAN:** In addition, there are a number of  
19 stipulated exhibits that staff recommends be marked as  
20 Exhibits Number 2 through 36 and have them moved into  
21 the record.

22 **CHAIRMAN BRISÉ:** Okay. We will move into the  
23 record 2 through 36, if there are no objections. Seeing  
24 none, we move in 2 through 36.

25 (Exhibits 2 through 36 marked for

1 identification and admitted into the record.)

2 **MS. TAN:** And it is also my understanding that  
3 Bullseye has an exhibit that can be entered into the  
4 stipulated exhibit list, and I believe that would be  
5 number, Exhibit Number 23 -- 83.

6 **CHAIRMAN BRISÉ:** Okay. 83. Bullseye?

7 **MR. KLEIN:** Yes. That exhibit is, is here in  
8 part. I believe that's going to be filed as a  
9 late-filed exhibit. This is responses to discovery that  
10 was received by Bullseye Telecom yesterday, and the  
11 requisite number of copies of some of the attachments of  
12 that discovery need to be, need to be produced.

13 (Late-Filed Exhibit 83 identified for the  
14 record.)

15 **CHAIRMAN BRISÉ:** Okay. What would you like to  
16 give as a title to the exhibit?

17 **MR. KLEIN:** Well, we do have the, the actual  
18 copies of the discovery with the exhibit cover page that  
19 we can distribute now.

20 **CHAIRMAN BRISÉ:** Okay. I think that that  
21 would be acceptable. If you'd make it available to, to  
22 our staff person so that they can be distributed.

23 **MS. TAN:** Excuse me. Could I ask if,  
24 Bullseye's counsel if this is confidential filings?

25 **MR. KLEIN:** There is one page of confidential

1 information included within that.

2 **MS. TAN:** Okay. We would need, we would need  
3 two different filings, one for the confidential portion  
4 and one for the regular, unless --

5 **MS. HELTON:** I guess the concern here is that  
6 we don't normally leave out, laying around, confidential  
7 documents. So let me ask this question, if I may,  
8 Mr. Chairman. Is the confidential document in this red  
9 folder now?

10 **MR. KLEIN:** Yes, it is.

11 **MS. HELTON:** I think that maybe for everyone's  
12 ease if we could take that out and keep that in the red  
13 folder so it can be gathered back up at the end of the  
14 day and mark that -- I think Ms. Tan's idea of marking  
15 that separately from the nonconfidential documents might  
16 help us keep everything straight and avoid disclosure of  
17 the confidential information.

18 **CHAIRMAN BRISÉ:** Okay. So we will then mark  
19 the confidential exhibit as 84.

20 (Confidential Exhibit 84 marked for  
21 identification.)

22 **MS. HELTON:** Mr. Klein, when were you planning  
23 on using the confidential document, or did you just want  
24 it in the record?

25 **MR. KLEIN:** That will be used today.

1           **MS. HELTON:** Will we need it this morning, or  
2 should we gather that back up for when you're going to  
3 use it?

4           **MR. KLEIN:** I think that will be needed this  
5 morning.

6           **CHAIRMAN BRISÉ:** Okay. Thank you.

7           **MS. TAN:** Chairman, we'll need titles for both  
8 Exhibit Number 83, which will be late-filed, and also  
9 for Exhibit Number 84.

10          **CHAIRMAN BRISÉ:** Okay. All right. So we have  
11 a cover here that says Qwest Supplemental Response and  
12 Selected Attachments.

13          **MS. MASTERTON:** Mr. Chairman, may I ask a  
14 question?

15          **CHAIRMAN BRISÉ:** Sure, you may ask a question.

16          **MS. MASTERTON:** When this was circulated to  
17 the parties yesterday to ask for their agreement to have  
18 the exhibit entered into the record, it was our  
19 understanding that it was going to be the entire  
20 discovery response. So this selected attachments,  
21 that's news to me. And I think if -- understanding that  
22 it's not everything, we may want to ask to have the  
23 entire response entered into the record. So maybe  
24 Mr. Klein can explain.

25          **MR. KLEIN:** Yeah. There were several hundred

1 pages of attachments that we received yesterday, the day  
2 before the hearing, when we were traveling to this  
3 hearing. So we did not have an opportunity to produce  
4 all of the attachments. It wasn't our understanding  
5 that the entire attachments were, were necessary, so we  
6 were trying to save some trees and save some time and  
7 just produce selected attachments instead of the several  
8 hundred pages. If Qwest's counsel would prefer to have  
9 the entire attachments included, we would have no  
10 objection to that.

11 **MS. MASTERTON:** Yeah. I had thought that's  
12 what you meant when you said you were going to still  
13 make copies and file it as a late-filed exhibit, that  
14 that was what was taking the time. So, yes, thank you,  
15 we would appreciate that.

16 **MR. KLEIN:** Okay.

17 **MS. HELTON:** And, Mr. Chairman, if I could add  
18 one more thing.

19 **CHAIRMAN BRISÉ:** Sure.

20 **MS. HELTON:** When I flipped through the  
21 package that was included in the red folder, it was not  
22 readily clear to me what exactly was confidential.  
23 Nothing is highlighted that would make it clear to  
24 anyone in the room what's confidential and so we would  
25 know what to keep separate and so that we would know

1 what information not to, to say out loud.

2 **MR. KLEIN:** It does appear that the  
3 highlighting did not come through on the photocopying.  
4 It is the third page of the exhibit.

5 **CHAIRMAN BRISÉ:** Third page.

6 **MR. KLEIN:** It's marked at the top, Begin  
7 Lawyer's Only Confidential, and it has End Lawyer's  
8 Confidential after the chart. But unfortunately the  
9 highlighting did not come through. We apologize.

10 **CHAIRMAN BRISÉ:** Right. Okay. So then, in  
11 essence, page 3 of the exhibit would be the confidential  
12 portion.

13 **MR. KLEIN:** Yes, Mr. Chairman.

14 **CHAIRMAN BRISÉ:** Okay. All right. So 83 will  
15 be the Qwest supplemental response and, and attachments.  
16 And 84 will be the confidential, which is page 3 of 83.  
17 Okay?

18 **MS. TAN:** In addition, Chairman, it was my  
19 understanding that there was another document that  
20 Bullseye wanted to enter in the Composite Exhibit List  
21 or the Stipulated Exhibit List, and that was discovery  
22 from Granite. And I may be incorrect, but I'd like to  
23 double-check.

24 **CHAIRMAN BRISÉ:** Okay. Mr. Klein.

25 **MR. KLEIN:** That is correct, and I do have

1 that here as well.

2 **CHAIRMAN BRISÉ:** Okay.

3 **MR. SHERR:** Mr. Chairman, Adam Sherr. While  
4 this is being distributed, just another point of  
5 clarification.

6 With regard to Exhibit 84, I think Mr. Klein  
7 will agree, at present in the folder there's only one  
8 page that has confidential information, but the  
9 attachments contain, that are going to be provided  
10 later, contain many pages of confidential information.  
11 I didn't want you to be under the belief that there was  
12 only going to be one page that was confidential.

13 **CHAIRMAN BRISÉ:** Okay. So if sometime later  
14 we can sort of amend what's on 84 and so we can have a  
15 layout of what other pages should be dealt with as  
16 confidential, that would be helpful.

17 **MR. KLEIN:** Okay. Very well.

18 **CHAIRMAN BRISÉ:** Exhibit 85 will be Qwest's  
19 response to interrogatories 18, 21, and 22.

20 (Exhibit 85 marked for identification.)

21 Okay. Any other preliminary matters at this  
22 time?

23 **MS. TAN:** None at this time.

24 **CHAIRMAN BRISÉ:** Okay.

25 **MR. FEIL:** Mr. Chairman, I did have one

1 request relative to the Prehearing Order, sir.

2 **CHAIRMAN BRISÉ:** Sure.

3 **MR. FEIL:** Since there have been a number of  
4 parties who have been dismissed from the case between  
5 the prehearing and now, I wanted to ask whether or not  
6 we could change the order of witnesses, just two  
7 witnesses on page 5. If we could flip the two people at  
8 the bottom there, Mr. LaRose and Ms. Jones. And I ask  
9 this because the witnesses before there, Mr. Wood and  
10 Mr. Deason, are also tw only witnesses. Ms. Jones is a  
11 tw only witness, and it seemed to me that we could silo  
12 tw's case in that way rather than have Mr. LaRose  
13 testify in there. I don't expect that we will have a  
14 time issue over the course of the hearing, but that's my  
15 proposal.

16 **CHAIRMAN BRISÉ:** Okay. Are there any issues  
17 with that arrangement?

18 **MR. KLEIN:** No, Mr. Chairman. The only thing  
19 I would note is that Mr. LaRose -- I don't anticipate a  
20 time issue, as Mr. Feil said. But if it does become an  
21 issue, we would prefer to stick with the initial order  
22 to the extent this hearing runs longer than we  
23 anticipate it will. But I do not anticipate that will  
24 be an issue.

25 **CHAIRMAN BRISÉ:** Okay.



1           **MS. MASTERTON:** QCC has no objection to that.

2           **CHAIRMAN BRISÉ:** Okay. And then we'll hear  
3 from our Prehearing Officer.

4           **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
5 I was just going to point out that the order of  
6 witnesses that Mr. Feil has suggested is the way it is  
7 listed on the witness order separate sheet that was  
8 provided to us, and I do agree that that makes sense as  
9 the case has developed as we've moved through. And I  
10 certainly would think that if there are time constraints  
11 as we go along, I'm glad to work with you and the  
12 witnesses to facilitate.

13           **CHAIRMAN BRISÉ:** All right. Perfect. Any  
14 other issues that we need to deal with?

15           **MS. TAN:** None at this time.

16           **CHAIRMAN BRISÉ:** Okay. Are we ready for  
17 opening statements? Okay. We will take opening  
18 statements, and per the Prehearing Order, we have 15  
19 minutes per, per side. And so we will go in this order:  
20 Qwest, CLEC group, Broadwing Communications, Bullseye,  
21 and then tw of florida.

22           **MR. FEIL:** Mr. Chairman, since those, since  
23 the CLEC group was representative of a larger group  
24 that's not present anymore, may I suggest that either we  
25 go with the order of Qwest, then Bullseye or tw.

1           **CHAIRMAN BRISÉ:** Understood. All right.

2           **MR. SHERR:** Should I proceed?

3           **CHAIRMAN BRISÉ:** Qwest.

4           **MR. SHERR:** Chairman and Commissioners, good  
5 morning. My name is Adam Sherr and I represent Qwest  
6 Communications Company, the complainant in this  
7 proceeding. I'm joined by co-counsel Susan Masterton.

8                   This is a case of great importance not only to  
9 Qwest, but also to all long distance providers operating  
10 in Florida. Given the Commission's statutory obligation  
11 to ensure fair competition and to prevent  
12 anticompetitive behavior, it is also important to the  
13 Commission's ability to abide by its mandate.

14                   As Qwest's prefiled testimony makes clear,  
15 this case focuses on the respondent CLECs' provision of  
16 intrastate switched access to Qwest in Florida. It  
17 concerns the Respondents' unreasonable and unlawful  
18 preference of some long distance providers, also known  
19 as interexchange carriers or IXCs, over others. The  
20 respondent CLECs entered into contracts with a select  
21 few IXCs by which they agreed to charge the favored IXCs  
22 switched access at far lower than the published rates  
23 they charged and still charge Qwest.

24                   Before diving deeper into the evidence that  
25 establishes the CLECs' unlawful conduct, let's talk

1 about the service at issue, switched access. Switched  
2 access is an absolutely critical input service required  
3 to allow an IXC like Qwest to provide long distance  
4 service. As a long distance provider, Qwest carries a  
5 call between distant central offices but relies on the  
6 calling and called party's end user -- the called end  
7 user's local exchange providers to carry the call from  
8 and to the end users. As an IXC, Qwest doesn't select  
9 who the end users choose as their local exchange  
10 companies.

11 When a Qwest long distance customer places a  
12 long distance call from one Florida local area to  
13 another, Qwest is handed the call from the calling  
14 party's local exchange carrier and Qwest compensates  
15 that carrier. That is known as originated switched  
16 access or originating switched access. Qwest then  
17 carries the call on its long distance network and hands  
18 the call to the called party's local exchange carrier,  
19 and Qwest compensates that, that company. That is known  
20 as terminating switched access.

21 In Florida, CLEC switched access rates are not  
22 set by the Commission and, in fact, are uncapped.  
23 Accordingly, except in rare circumstances where Qwest  
24 has very large volumes of traffic justifying the  
25 purchase of special access to a given location, Qwest

1 must pay the rates unilaterally set by the CLEC when  
2 Qwest carries a long distance call and hands it directly  
3 to a CLEC for termination.

4           While the absolute rate of a CLEC -- while the  
5 absolute rate a CLEC charges for switched access, be it  
6 one cent per minute or ten cents per minute, is not  
7 Commission set or approved, during the vast majority of  
8 the time period relevant to Qwest's complaint *Florida*  
9 *Statutes* expressly prohibited unreasonable rate  
10 discrimination. That is, while the PSC didn't prescribe  
11 the actual rate charged, state statute required the  
12 CLECs charge all similarly situated interexchange  
13 carriers the same rate. Through the secret switched  
14 access agreements at the core of this case, other IXCs,  
15 principally AT&T, received steep discounts on CLEC  
16 provided switched access.

17           That Qwest was charged a couple or few cents  
18 more per minute than its long distance competitors may  
19 sound trivial, but it is not. Switched access is an  
20 absolutely critical input in any long distance company's  
21 provision of service. Switched access drives an IXC's  
22 cost of providing long distance service and is thus  
23 critical in establishing the price the IXC can charge  
24 its retail and wholesale long distance customers.

25           By way of illustration, as Mr. Canfield

1 explains in his direct testimony, Qwest is billed in the  
2 millions of dollars each year in Florida just by CLECs  
3 and just for intrastate switched access. The access  
4 rates Qwest is charged, it should be no surprise, play a  
5 decisive role in determining Qwest's ability to compete  
6 with other interexchange carriers. Secret, preferential  
7 pricing for input services undoubtedly skews any market  
8 and leads to anticompetitive results.

9 Dr. Dennis Weisman, a professor of economics  
10 at Kansas State University, explains the harm of input  
11 service discrimination in his prefiled direct and  
12 rebuttal testimony.

13 Taking a step back, I'm reminded of what a  
14 California Commission judge said about this case at a  
15 prehearing conference a few years ago. She said, and I  
16 certainly agree, that this case is factually simple but  
17 procedurally complicated. As everyone in this room can  
18 attest, the judge's description was pretty apt.

19 At an earlier stage, 18 different CLECs were  
20 respondents in this case, and Qwest was tasked with  
21 establishing its factual and legal case as to each of  
22 those companies.

23 After the many dismissals, virtually all by  
24 settlement, we're left with five respondents: Bullseye,  
25 tw telecom, Ernest, Flatel, and Navigator. Each, each

1 of those companies entered into one or more secret  
2 agreements with an IXC by which that IXC received  
3 discounted below price list switched access in Florida.

4 Coming back to the California judge's comment,  
5 the essential facts of this case are straightforward and  
6 in fact nearly uncontested. The record evidence  
7 demonstrates that the following facts are uncontested or  
8 virtually so. Each of the remaining -- each of the  
9 remaining respondent CLECs, one, provides intrastate  
10 switched access in Florida to Qwest and other IXCs; two,  
11 has in place a published price list which contains  
12 generally applicable rates for switched access; three,  
13 charged Qwest pursuant to those published price lists;  
14 four, charged lower rates to one or more other IXCs by  
15 virtue of secret written agreements; and five, failed to  
16 publish or otherwise disclose to the PSC or to Qwest the  
17 existence of those agreements or even just the  
18 availability of the rates found in those agreements.

19 The fact that the respondents charged Qwest  
20 more for switched access than they charged one or more  
21 other IXCs for the identical service is uncontested.  
22 Instead, the primary issue facing this Commission is not  
23 whether discrimination occurred but whether the  
24 discrimination was reasonable. Not surprisingly, the  
25 parties sharply disagree on this point.

1           Through the testimony of Dr. Weisman and Qwest  
2 witness Bill Easton, Qwest establishes the critical  
3 elements required to answer this question. Beyond  
4 doubt, the service provided to Qwest as well as the  
5 preferred IXCs was identical, let alone similar.  
6 Further, there is no record evidence suggesting that the  
7 respondent CLECs' cost of providing switched access  
8 differs as between customers. The cost of providing a  
9 minute of switched access to Qwest is the same as it is  
10 to provide a minute of switched access to AT&T.

11           In the absence of proof that the CLECs' cost  
12 of providing service actually varied between customers,  
13 Dr. Weisman explains that the CLECs' price  
14 discrimination was unreasonable as a matter of  
15 economics.

16           While the examination of potential cost  
17 differences drives a rate discrimination analysis, Qwest  
18 also analyzed the various excuses and justifications  
19 offered by the CLECs in their testimony. In their  
20 direct and rebuttal testimonies, Dr. Weisman and  
21 Mr. Easton refute the applicability and legitimacy of  
22 these excuses.

23           More specifically, Bullseye believes that it  
24 was coerced by AT&T into entering the 2004 agreement at  
25 issue. It asserts that AT&T and Qwest were not, quote,

1 under like circumstances because, unlike AT&T, Qwest  
2 paid Bullseye's switched access invoices and did not  
3 withhold payment on the basis of BullsEye's high rate  
4 levels. While Bullseye may have believed it had no  
5 choice but to enter into that agreement, this does not  
6 explain why Qwest deserved to be punished by Bullseye  
7 for being a customer which paid its bills.

8 As Dr. Weisman and Mr. Easton testified,  
9 Bullseye's attempt to justify its admitted rate  
10 discrimination is unreasonable as a matter of economics  
11 and as a matter of public policy. To grant Bullseye  
12 immunity from Florida Statute on that basis would be to  
13 endorse and encourage self-help. It would send a  
14 powerful signal to customers unhappy with a utility's  
15 published rate to simply refuse to pay unless and until  
16 a lower off-book discount is offered. And to that --  
17 and to the utility here, Bullseye, it would send a  
18 signal that secretly preferring disgruntled customers to  
19 the detriment of all other dutiful customers is  
20 acceptable and consistent with Florida public policy.

21 Tw telecom, on the other hand, suggests that  
22 it is immune from liability in this case because it  
23 charged AT&T lower switched access rates as one  
24 component of a larger nationwide services agreement  
25 through which AT&T purchased large volumes of other



1 services, primarily competitive and unregulated services  
2 including special access and dedicated service.

3 As Dr. Weisman explains, tw telecom fails to  
4 make any showing that its cost of providing AT&T  
5 switched access was reduced or altered in any way by  
6 AT&T's purchase of unrelated services. As to tw  
7 telecom's provision of intrastate switched access  
8 services in Florida, Qwest and AT&T are and were under  
9 like circumstances except that tw telecom steeply  
10 discounted its switched access rates to AT&T while  
11 charging Qwest its higher price list rates.

12 I will say very little about Ernest, Flatel,  
13 and Navigator because they have not actively  
14 participated in this proceeding. They did not file  
15 testimony, direct or rebuttal, and did not appear at the  
16 Prehearing Conference. Qwest's presentation of evidence  
17 as to those three CLECs is entirely uncontested.

18 As I mentioned before, the steep differences  
19 in switched access rates are not trivial. The CLEC  
20 practice of entering into secret switched access  
21 agreements persisted for many years. In some cases it  
22 began in 2001, and with some CLECs persists yet today,  
23 even years after Qwest initiated these complaints, after  
24 Qwest was awarded victory in the parallel case in  
25 Colorado, and many years after the CLECs, some of which

1 paint themselves as the innocent victims of AT&T's  
2 aggression and thus immune from all responsibility, had  
3 the contractual right to terminate the agreements.

4 Given the high volumes of traffic in Florida  
5 and the steep rate differentials, Qwest paid, just from  
6 the remaining parties, many hundreds of thousands of  
7 dollars more than it would have had the CLECs provided  
8 switched access at the preferential rate.

9 Qwest's overcharge calculations are presented  
10 in great detail by witness Derek Canfield of TEOCO  
11 Corporation. Mr. Canfield thoroughly describes his  
12 methodology and unique factors needed to calculate the  
13 overcharge as to each individual CLEC, and of course  
14 attaches very specific month by month overcharge  
15 calculations. While Bullseye and tw telecom clearly  
16 disagree that Qwest is entitled to relief in this  
17 docket, their prefiled testimony reveals no  
18 company-specific critiques of Mr. Canfield's  
19 calculations.

20 As I mentioned earlier, most of the material  
21 facts in this case are uncontested. I have said little  
22 about the CLECs' prefiled testimony because much of it  
23 contains legal argument. Qwest and the CLECs have  
24 opposing views of former Sections 364.04, 08, and 10,  
25 and those differences will be more appropriately

1 chronicled in post-hearing statements.

2 In brief, the CLEC's prefiled testimony of  
3 Mr. Deason suggests that the statutes I just mentioned  
4 were never meant to apply to CLEC provided switched  
5 access, yet the language of those statutes doesn't  
6 support his position. Also, Mr. Wood's testimony  
7 repeatedly discusses the statute of limitations and how  
8 it limits Qwest's relief. Qwest does not believe the  
9 statute of limitations applies for this type of claim,  
10 and even if it did, the secretive nature of the  
11 agreements and the respondent CLECs' efforts to conceal  
12 them limits any statute of limitations defense.

13 Qwest witness Lisa Hensley Eckert explains the  
14 history of the switched access agreements in more  
15 particularity in her direct testimony. She also  
16 explains how and when Qwest first learned of the  
17 agreements at least generally, and the many steps Qwest  
18 took to gather information sufficient to protect its  
19 rights.

20 I appreciate the opportunity to address you  
21 today, and I believe that once you have, you have a  
22 chance to hear the witnesses testify and consider all  
23 the record evidence, it will be clear to you that Qwest  
24 has been the victim of the respondent CLECs' unlawful,  
25 unreasonable, and anticompetitive discrimination. Thank

1 you.

2 **CHAIRMAN BRISÉ:** All right. Bullseye.

3 **MR. KLEIN:** Thank you, Mr. Chairman,  
4 Commissioners. Qwest has filed a complaint with this  
5 Commission that has no basis and seeks relief that  
6 simply makes no sense. Qwest clearly did not consider  
7 the state of the law in Florida when it filed its  
8 complaint here. The provision of intrastate access by  
9 competitive carriers has never been subject to the type  
10 of strict regulation that Qwest now asks this Commission  
11 to retroactively impose.

12 Since this case has been pending, the law in  
13 Florida has been even further clarified by the  
14 Regulatory Reform Act. Those statutory revisions  
15 confirm the lack of any cause of action by Qwest, as  
16 well as a lack of jurisdiction by this Commission.  
17 Qwest has failed to recognize that there is no  
18 requirement in Florida that carriers price access at  
19 cost or some other level, and there is likewise no  
20 requirement that carriers even file price lists.  
21 Indeed, when carriers such as Bullseye choose to file  
22 price lists, they do so voluntarily and remain free to  
23 enter into customer-specific contracts for access  
24 services.

25 In fact, the price list filed by Bullseye

1 contains explicit language to that effect. It reads, in  
2 part, at the option of the company services may be  
3 offered on a contract basis to meet specialized pricing  
4 requirements of the customer not contemplated by this  
5 price list. The terms of each contract shall be  
6 mutually agreed upon between the customer and company,  
7 and may include discounts off of rates contained herein  
8 and waiver of recurring, nonrecurring, or usage charges.  
9 This language in Bullseye's price list took effect on  
10 November 7th, 2003, nearly nine years ago.

11 Any carrier customer such as Qwest who cared  
12 to review the Bullseye price list would clearly have  
13 known that intrastate access services were available on  
14 a contract basis and that such contracts may include  
15 discounts off of rates contained in the price list.

16 Qwest apparently did not care to review the  
17 price list, but Qwest never negotiated or requested  
18 contract-specific pricing from Bullseye, nor did Qwest  
19 ever notify Bullseye that Qwest disputed or otherwise  
20 challenged the price list rates. Qwest simply  
21 voluntarily paid the price list rates without dispute.

22 What Qwest did know, however, is quite  
23 significant. Qwest itself entered into contracts with  
24 other CLECs under which Qwest itself paid off-price list  
25 rates for intrastate switched access services in Florida

1 or, in some instances, paid no rate at all. Not  
2 surprisingly, Qwest did not reveal the existence of  
3 these agreements. Instead, rather fortuitously, two  
4 CLECs who were actually parties to such agreements with  
5 Qwest revealed them earlier this year. Those two CLECs  
6 are no longer parties to this proceeding.

7 When Qwest was then asked to reveal other such  
8 agreements, Qwest refused. Thankfully Qwest was  
9 compelled by the order of the Prehearing Officer that  
10 was released on Friday to produce those agreements, and  
11 those agreements with these other CLECs that Qwest has  
12 were thankfully produced yesterday.

13 So now we have Qwest saying on the one hand  
14 that the CLEC contract-based pricing agreements are  
15 discriminatory if not extended to every other customer,  
16 but on the other hand has now been shown to have had  
17 those very same agreements which Qwest sought to keep  
18 secret solely for Qwest's own benefit.

19 Moreover, part of Qwest's argument in this  
20 case is that the CLEC agreements were somehow secret  
21 agreements of which Qwest was not aware and that Qwest  
22 was somehow prejudiced as a result. However, we now  
23 know that Qwest was a party to such agreements before  
24 these supposed secret agreements of other IXCs came into  
25 existence. For example, Qwest had off-price agreements

1 with carriers in Florida as far back as 2002. The  
2 Bullseye agreement about which Qwest complains did not  
3 come into existence until the fourth quarter of 2004,  
4 more than two years later. As if this was not enough,  
5 Qwest was made aware that AT&T had entered into hundreds  
6 of contract-based pricing agreements in the 2004/2005  
7 time frame. At that time the Minnesota Commission  
8 opened a docket to look into such agreements. Qwest --  
9 Minnesota is a Qwest ILEC state, and Qwest became a  
10 party to that proceeding in 2005.

11 So there's no secret that such agreements  
12 existed, and any claimed prejudice results from Qwest's  
13 own lack of effort in entering into contract-based  
14 agreements or additional agreements more than it did.  
15 Instead, upon finding out about AT&T's agreements during  
16 the Minnesota proceedings, Qwest chose to sue AT&T  
17 claiming that AT&T obtained its agreements through  
18 anticompetitive conduct. Bullseye, in fact, agrees with  
19 the way AT&T -- agrees that the, that the way AT&T went  
20 about creating the CLEC agreements is significant.  
21 Specifically, as Mr. Sherr noted, AT&T decided to  
22 withhold payment of all access charges from CLECs with  
23 whom it did not have an agreement to force those CLECs  
24 to agree to AT&T's terms. Since AT&T was the largest  
25 IXC and access payments were a very significant part of

1 each CLEC's revenue, nascent CLECs like Bullseye had no  
2 choice but to enter into the settlement agreement under  
3 which AT&T paid some of the access charges it had  
4 withheld and agreed to pay in full, albeit at a lower  
5 rate going forward.

6           Upon seeing all this, Qwest sued AT&T in court  
7 seeking monetary damages and other relief. Qwest stated  
8 in that case, not the CLECs, but Qwest stated that AT&T  
9 coerced nascent CLECs to provide off-tariff rates with  
10 various threats and incentives, including withholding  
11 compensation. Qwest also said AT&T pursued its national  
12 policy without regard to the unlawful results of its  
13 policy in filed rate states, which included, according  
14 to Qwest, Florida.

15           Qwest also said AT&T obtained enormous  
16 financial leverage over the CLECs through its unilateral  
17 decision to withhold payment of the tariffed access  
18 charges. This created a financial squeeze on CLECs that  
19 effectively eliminated meaningful opportunities for  
20 negotiation. And finally, Qwest said that the financial  
21 squeeze puts CLECs at the mercy of AT&T's demands.

22           In terms of the effect of the agreements,  
23 Qwest said that the AT&T CLEC agreements are, quote,  
24 void, illegal, and unenforceable. However, we now have  
25 to stop and think for a moment about the same relief



1 that Qwest is asking of the Florida PSC. Qwest seeks to  
2 enforce the terms of the AT&T/Bullseye agreement and  
3 obtain for itself those same terms that Qwest argued  
4 were the result of AT&T's anticompetitive conduct  
5 towards small CLECs like Bullseye. In other words,  
6 after obtaining a settlement from AT&T on the basis that  
7 its agreements are void, illegal, and unenforceable,  
8 Qwest is now seeking to obtain the same contractual  
9 benefits that Qwest claims to have been unlawful in the  
10 first instance. This is simply not consistent with  
11 sound and fair public policy.

12           These are some of the many reasons why Qwest's  
13 claims must be denied in their entirety. In brief,  
14 these also include that the so-called refunds that Qwest  
15 seeks in actuality constitute damages that the  
16 Commission is respectfully without authority to award;  
17 the lack of any demonstration by Qwest that it is under  
18 like circumstances to AT&T such that Qwest could even  
19 claim discrimination; and finally the fact that Qwest  
20 actually had alternatives to the purchase of switched  
21 access from Bullseye and other CLECs and actually used  
22 those alternatives such that its bottleneck,  
23 discrimination, and damages theories are completely  
24 negated.

25           Any true remedy in this case for one to be

1 considered would be to bring AT&T up to the price list  
2 rate that Qwest claims to have been -- that Qwest claims  
3 to have paid, rather than permitting Qwest to obtain a  
4 financial windfall from conduct that Qwest itself railed  
5 against as coercive and unlawful. Thank you very much.

6 **CHAIRMAN BRISÉ:** Okay. Tw.

7 **MR. FEIL:** Mr. Chairman, at one time there  
8 were over a dozen CLECs in this case. None, not one,  
9 had a contract with another carrier who agreed to a  
10 multimillion dollar take-or-pay revenue commitment for  
11 an assortment of unregulated services. That is the  
12 agreement at issue here for tw, tw's 2001 agreement with  
13 AT&T.

14 As you'll hear Ms. Rochelle Jones testify,  
15 2001, over ten years ago, tw secured that contract with  
16 AT&T. It was a straightforward arms-length business  
17 transaction whereby AT&T agreed to buy from tw several  
18 million dollars worth of unregulated services, of which  
19 switched access was a part. The agreement was  
20 reasonable, it was economically justified, and involved  
21 no coercion.

22 Under the contract, AT&T on a nationwide, not  
23 a Florida-only, basis agreed to pay tw for these  
24 services at varying pricing points whether AT&T actually  
25 used those services or not. That is to say AT&T made a

1 composite multimillion dollar take-or-pay commitment for  
2 all services. Thus, the AT&T/tw contract is not a  
3 situation where one may take one rate for one service  
4 out of that contract and compare it to one rate sold to  
5 somebody else. That is an invalid comparison, apples to  
6 oranges. You have to look at the deal as a whole, the  
7 total financial obligation AT&T made to tw and tw to  
8 AT&T.

9 Ms. Jones will also testify that Qwest had an  
10 agreement for unregulated services with tw and has had  
11 since 1995. That Qwest agreement is still in effect  
12 today. It does not cover switched access, it does not  
13 contain a multimillion dollar or avenue -- excuse me --  
14 or any take-or-pay revenue commitment.

15 Did Qwest know it could negotiate a switched  
16 access rate with tw? Yes. But did it negotiate a  
17 switched access rate with tw? No. Has Qwest committed  
18 to buying the volume of unregulated services that AT&T  
19 committed to buying from tw? No. Is Qwest willing to  
20 obligate itself to the multimillion dollar take-or-pay  
21 commitment that AT&T agreed to? No. Can Qwest even  
22 prove that the switched access rate from the AT&T/tw  
23 contract would have existed but for the rest of the  
24 rates, terms, and conditions of that agreement? Again,  
25 no. Qwest pulls one building block out of a large

1 contractual structure as though the remainder of the  
2 contract could have and would have existed unchanged and  
3 totally undisturbed by this removal. As Ms. Jones will  
4 testify, that is pure fiction. And that's not the only  
5 fiction that you have to accept to rule in Qwest's  
6 favor; there are many more.

7 Let me sum up Qwest's case and opening  
8 statement for you. Because switched access for the  
9 first time in this case should be designated a  
10 bottleneck service, you should impose uniform rates for  
11 switched access from CLECs and assume harm to other  
12 carriers and assume harm in downstream markets stemming  
13 from contract prices, all on a retroactive basis.  
14 Decide today what might have been ten years ago and do  
15 all even though you don't regulate the rates.

16 Former Chairman and Commissioner Terry Deason  
17 will testify for tw that this Commission never asserted  
18 authority over CLEC switched access pricing, never  
19 placed cost basis or any regulatory parameters or filing  
20 requirements on those services, never placed any  
21 obligations to file, disclose, post contracts, contract  
22 rates for switched access to avoid discrimination for  
23 any other purpose. And the Commission never held that  
24 switched access is or should be treated as a bottleneck  
25 service and never applied to CLECs the now repealed

1 discrimination statutes Qwest raises here. A lesser  
2 level of regulations for CLECs consistent with the  
3 statute, Mr. Deason will testify, was employed beginning  
4 in 1995 to encourage entry and investment in the state  
5 of Florida by CLECs. And that lesser level of  
6 regulation applied to the CLEC companies, not to one or  
7 two or more of their services.

8 Moreover, Mr. Deason emphasizes the time for  
9 Qwest's theoretical arguments, and those are the only  
10 arguments they have, were in 1995, not now, not at this  
11 point in time, not after the fact. Moreover, he also  
12 asserts that it's just plain bad regulatory policy to  
13 implement or impute new regulatory requirements and  
14 apply them retroactively as Qwest asks you to do in this  
15 case.

16 Also testifying for tw is Mr. Don Wood.  
17 Mr. Wood sheds additional light on these Qwest fictions  
18 I've just described as well as a few more. Mr. Wood,  
19 for instance, debunks Qwest's reliance on FCC  
20 pronouncements that switched access is a bottleneck. In  
21 the very FCC orders Qwest cites, the FCC specifically  
22 acknowledges that for CLEC switched access there are  
23 standard offer rates and contract rates, just like here  
24 in Florida.

25 Mr. Wood also busts the myth posited by Qwest

1 that Florida's regulatory requirements are in any way  
2 similar to Colorado. He states in Colorado the rules  
3 and statutes provide for mandatory tariff filing for  
4 switched access, cost-based rates, and specifically  
5 require contracts for switched access to be filed. None  
6 of these requirements are present here in Florida.

7           Additionally, Mr. Wood addresses the illusion  
8 that is Qwest's alleged harm. I ask that you please  
9 note with attention Qwest's words used when describing  
10 its alleged harm in downstream markets, words like may,  
11 could, and then you may even hear a probably. But look  
12 for real proof of harm in downstream markets or  
13 elsewhere, any actual impact on Florida customers or  
14 Florida rates. Absolutely none in this record. Look  
15 for real proof of an impact on Qwest's market share or  
16 probability. None. And as Mr. Wood states, there is no  
17 nexus whatsoever between the money Qwest asks you to  
18 force tw to remit to Qwest and this unproven harm.

19           A few quick points and I'll wrap up. Even if  
20 you get past the jurisdictional issue, and we maintain  
21 that you don't have jurisdiction to apply a repealed  
22 law, you still have to get past the arguments that  
23 Mr. Deason and Mr. Wood pose, but then you still have  
24 one core question. Was Qwest treated unduly or  
25 unreasonably by tw vis-a-vis AT&T? The answer to that

1 is emphatically no.

2 I'll wrap up. Tw maintains that actually the  
3 opposite is true. If you rule in Qwest's favor, you  
4 will actually be giving Qwest preferential treatment and  
5 treating tw and AT&T unfairly and unreasonably. Thank  
6 you.

7 **CHAIRMAN BRISÉ:** Thank you.

8 Okay. At this time we're going to move into  
9 testimony. If I could have all the witnesses stand as  
10 we -- we'll swear you in.

11 (Witnesses collectively sworn.)

12 All right. Thank you very much. You may be  
13 seated.

14 Qwest, you may call your first witness.

15 **MR. SHERR:** Thank you, Chairman.

16 Qwest calls William Easton.

17 **CHAIRMAN BRISÉ:** Just to remind everyone that  
18 each witness will have five minutes to summarize his or  
19 her testimony.

20 Whereupon,

21 **WILLIAM R. EASTON**

22 was called as a witness on behalf of Qwest  
23 Communications Company and, having been duly sworn,  
24 testified as follows:

25 **DIRECT EXAMINATION**

1 BY MR. SHERR:

2 Q Are you ready, Mr. Easton?

3 A I am.

4 Q Can you please state your name for the record.

5 A My name is William Easton.

6 Q Okay. And by whom are you employed?

7 A I am employed by CenturyLink.

8 Q And just for the record, you were just sworn  
9 in; is that correct?

10 A Correct.

11 Q Okay. You are appearing on behalf of QCC in  
12 this proceeding?

13 A That is correct.

14 Q Okay. Do you have before you a copy of your  
15 direct testimony?

16 A I do.

17 Q And that is 45 pages, plus a four-page index  
18 of exhibits; is that correct?

19 A Yes.

20 Q Was this prepared by you or at your direction?

21 A It was.

22 Q Okay. Mr. Easton, do you also have before you  
23 a document entitled QCC Testimony Errata Sheet  
24 Reflecting Dismissals?

25 A Yes.



1           **MR. SHERR:** Okay. Mr. Chairman, we'd like to  
2 mark this document for identification.

3           **CHAIRMAN BRISÉ:** Sure. We are on 86. What is  
4 the short title that you suggested again?

5           **MR. SHERR:** QCC Testimony Errata.

6           **CHAIRMAN BRISÉ:** Perfect.

7           (Exhibit 86 marked for identification.)

8 **BY MR. SHERR:**

9           **Q** So, I'm sorry, Mr. Easton, you have that  
10 document in front of you?

11          **A** I do.

12          **Q** Can you explain what it is?

13          **A** This errata is to account for the fact that a  
14 number of parties in this proceeding have now been, have  
15 settled and been dismissed from the case. As a result,  
16 portions of the testimony need to be stricken.

17          **Q** Okay. So this, this document reflects the  
18 pages and line numbers that need to be stricken?

19          **A** Yes.

20          **Q** Okay. Besides these, the corrections that are  
21 indicated in hearing Exhibit 86, the errata sheet, do  
22 you have any other corrections to your testimony?

23          **A** I do not.

24          **Q** And with the corrections indicated in hearing  
25 Exhibit 86, the errata, is your testimony true and

1 correct to the best of your knowledge?

2 **A** It is.

3 **MR. SHERR:** Mr. Chairman, QCC moves that the  
4 direct testimony of Bill Easton be entered into the  
5 record as if read.

6 **CHAIRMAN BRISÉ:** Okay. We will enter --

7 **MS. TAN:** Excuse me, Chairman. Sorry. Qwest,  
8 yesterday Qwest filed revised testimony reflecting the  
9 change in the, the errata, and we need to note that that  
10 has been, that we need to enter that into the record.

11 **MS. MASTERTON:** Okay. Lee Eng, I don't think  
12 we filed that. I think we just provided that to the  
13 parties so they could see what the page and line numbers  
14 are. But we would be happy to file that if the  
15 Commission, if that would make it easier for the  
16 Commission, but we haven't filed it yet.

17 **MS. TAN:** We may want to enter it into the  
18 record and we can do that at this time, the revised,  
19 because the Commissioners all have those revised  
20 testimonies.

21 **MS. MASTERTON:** Oh, okay. Sure. Sure. I  
22 think all the parties have copies as well because we  
23 handed it out. Sure. I think that would be easier. I  
24 just wasn't sure if that was the process for the  
25 Commission.

1           **MS. TAN:** And we can insert that in the other  
2 testimony; is that correct? It's a complete --

3           **MS. MASTERTON:** Yes. We provided it for each  
4 of the witnesses. Is that what you're asking?

5           **MS. TAN:** For everyone but Eckert; is that  
6 correct?

7           **MS. MASTERTON:** Yes. Her testimony did not  
8 change as a result of the dismissals.

9           **MS. TAN:** So, in other -- staff believes that  
10 the revised testimony should be inserted into the record  
11 as though read, instead of the current, what you were  
12 currently doing.

13           **MS. MASTERTON:** Exactly. And those are the  
14 pages that show, that physically strike these lines,  
15 page and line numbers that are on the errata sheet.  
16 Yes.

17           **MS. TAN:** Thank you. Excuse me.

18           **CHAIRMAN BRISÉ:** Okay.

19           **MR. KLEIN:** Mr. Chairman, Bullseye objects to  
20 the proposed deletion of a page and a half of  
21 Mr. Easton's direct testimony, more specifically page  
22 29, line 1, through page 30, line number 7, as this  
23 testimony deals with conduct of Qwest that remains at  
24 issue in this case.

25           **MS. MASTERTON:** Could you repeat those page

1 and line numbers, please?

2 **MR. KLEIN:** Sure. Page 29, line 1, through  
3 page 30, line 7.

4 **MR. SHERR:** May I have just a moment, Your  
5 Honor, Mr. Chairman?

6 **CHAIRMAN BRISÉ:** Sure.

7 **MS. MASTERTON:** I'm sorry, Mr. Chairman. This  
8 testimony that he's asking to keep in the record is  
9 specifically related to Granite Telecommunications. And  
10 Granite is no longer a party in the proceeding, so I  
11 think it's actually, you know, inappropriate for it to  
12 remain in the record.

13 **MR. KLEIN:** May I, Mr. Chairman?

14 **CHAIRMAN BRISÉ:** Sure.

15 **MR. KLEIN:** The conduct at issue addresses not  
16 only what, what Qwest alleges Granite to have charged  
17 Qwest but what Qwest received in terms of billings and  
18 what Qwest knew. Line 14 on page 29, for example, Qwest  
19 talks about QCC's knowledge about what was provided to  
20 Qwest versus other carriers. And, in fact, you know, we  
21 contend that that material has been shown to be  
22 incorrect based on discovery that was just received  
23 yesterday.

24 **CHAIRMAN BRISÉ:** Mary Anne.

25 **MS. HELTON:** Mr. Chairman, as I understand the

1 posture of this case, Qwest filed the complaint, Qwest  
2 has the burden of proof, and I think it's within Qwest's  
3 discretion that if it chooses not to present certain  
4 testimony to you that it prefiled, I think, I mean, that  
5 that is completely appropriate and within their, their  
6 rights to do that.

7 **MR. KLEIN:** Your Honor, the testimony has been  
8 presented and been accepted by the witness as accurate.  
9 It was filed by Qwest and remains apparently the  
10 position of Qwest.

11 **CHAIRMAN BRISÉ:** All right. So the question  
12 at hand is whether we want to keep page 29, lines  
13 1 through 7, and Granite is no longer an active  
14 participant in this case.

15 **MR. KLEIN:** That's correct, Mr. Chairman.

16 **CHAIRMAN BRISÉ:** Okay. So we'll go ahead and  
17 strike that. You may proceed.

18 **MR. SHERR:** Okay. Mr. Chairman, just to be  
19 clear, so page 29, line 1, through page 30, line 7, will  
20 be stricken as indicated in hearing Exhibit 86?

21 **CHAIRMAN BRISÉ:** That is correct.

22 **MR. SHERR:** Okay. Thank you. And has the  
23 rest of Mr. Easton's direct testimony then been entered?

24 **CHAIRMAN BRISÉ:** Yes. We will enter  
25 Mr. Easton's revised testimony as though read.

1                   **MR. SHERR:** Okay. Thank you. I didn't want  
2 to forget that part.

3 **BY MR. SHERR:**

4                   **Q** Mr. Easton, do you also have before you copies  
5 of testimony exhibits for your direct testimony?

6                   **A** Yes.

7                   **Q** Okay. And according to the Comprehensive  
8 Exhibit List, those are identified on the Comprehensive  
9 Exhibit List as Exhibits 37 and 39 through 57; is that  
10 correct?

11                   **A** Yes.

12                                 (Exhibits 37, and 39 through 57 marked for  
13 identification.)

14 **BY MR. SHERR:**

15                   **Q** Okay. And were those prepared by you or at  
16 your direction?

17                   **A** They were.

18                   **Q** Okay. Do you have any corrections to those  
19 exhibits?

20                   **A** I do not.

21                   **Q** Okay. Mr. Easton, do you have before you  
22 copies of -- a copy of your rebuttal testimony?

23                   **A** Yes.

24                   **Q** Okay. And is that rebuttal testimony 37 pages  
25 long?

1           **A**     Yes.

2           **Q**     Okay.  And was that prepared by you or at your  
3 direction?

4           **A**     It was.

5           **Q**     Okay.  Do you have any corrections?

6           **A**     I do not.

7           **Q**     Is your rebuttal testimony true and correct to  
8 the best of your knowledge?

9           **A**     Yes.

10          **Q**     Okay.  Mr. Chairman, QCC moves that the  
11 rebuttal testimony of William Easton be entered into the  
12 record as if read.

13          **A**     Okay.  At this time we will enter Mr. Easton's  
14 rebuttal testimony as though read into the record,  
15 seeing no objections.

16                **MS. TAN:**  Chairman, we also want to note that  
17 this is the revised rebuttal testimony.  Thank you.

18                **CHAIRMAN BRISÉ:**  Okay.  We will make that  
19 adjustment, that this is the revised rebuttal testimony  
20 that we will enter as though read, seeing no objections.  
21 And if, moving forward, if there are revised testimony,  
22 if the attorney would go ahead and, and state that so we  
23 can have that clarification.

24                **MS. MASTERTON:**  We will.  Thank you, Mr.  
25 Chairman.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CHAIRMAN BRISÉ:** Thank you very much.

**BY MR. SHERR:**

**Q** And just to be clear, Mr. Easton, were there any exhibits to your rebuttal testimony?

**A** There were not.



**I. IDENTIFICATION OF WITNESS**

1  
2 **Q. PLEASE STATE YOUR NAME, CURRENT TITLE, EMPLOYER AND**  
3 **BUSINESS ADDRESS.**

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

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

9 A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In  
10 1980, I received a Masters of Business Administration from the University of  
11 Washington. In addition, I am a Certified Management Accountant.

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

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

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

8 **II. PURPOSE OF TESTIMONY**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 e) the filed rate doctrine;

4 **III. CORPORATE BACKGROUND**

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

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

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

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

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

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

---

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

**IV. SWITCHED ACCESS SERVICE**

1

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

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

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

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

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

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

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

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

---

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

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

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

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

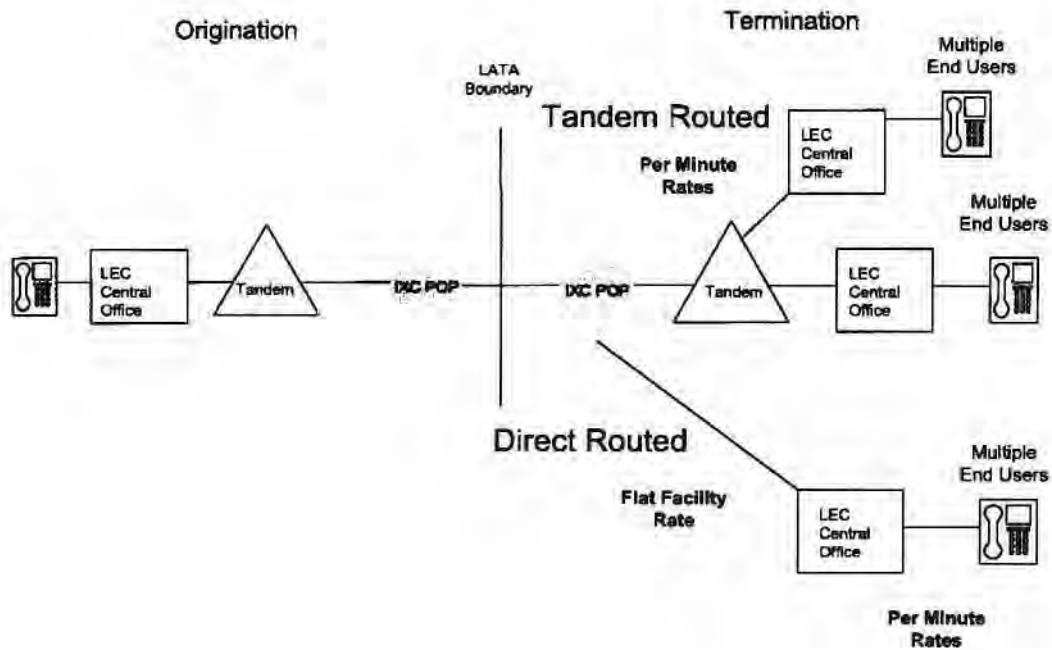
11 **Q. WHAT IF AN IXC HAS A LARGE VOLUME OF TRAFFIC TO/FROM A**  
12 **PARTICULAR END OFFICE?**

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

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

21  
22  
23  
24

## InterLATA Tandem Routed Call and Direct Routed Call



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

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

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

1 involves intrastate switched access.

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

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

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

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

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

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

---

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



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

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

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

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

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

---

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

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

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

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

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

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

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

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

1 on one day's notice.

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

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

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

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

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

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

1 the elements are actually provided.

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

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

9 **V. UNREASONABLE DISCRIMINATION**

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

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

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

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

25

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

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

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

12 A. No. The Respondent CLECs had the ability to bring such behavior to the attention of the  
13 Commission. Other CLECs did so in Minnesota and Iowa, and were successful. In  
14 Minnesota, a CLEC named PrairieWav filed a complaint against AT&T for failing to pay  
15 its tariffed switched access charges. The Commission sided with PrairieWav and  
16 rejected AT&T's contention that it was authorized to withhold payment on the basis that  
17 PrairieWave's tariffed rates were excessive.<sup>9</sup> The Iowa Utilities Board reached the same  
18 conclusion in a complaint brought by numerous CLECs against AT&T.<sup>10</sup>  
19 Certainly, settling their differences with AT&T and Sprint by giving those IXCs (with  
20 whom QCC competes in the long distance market), and only those IXCs, substantial and

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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



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

#### 4 VI. CLEC PRICE LISTS AND AGREEMENTS

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

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

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

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

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

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

---

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

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

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

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

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

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

---

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

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

3	<u>Tandem-Switched Transport-Facility</u>	
4		Per Access
5		Minutes of Use
6	Per Access Minute/Mile	
7	Zone 1	.0000135
8	Zone 2	.0000141
9	Zone 3	.0000149
10	Tandem Switched Transport - Termination	
11	Zone 1	.0001344
12	Zone 2	.0001344
13	Zone 3	.0001344
14		
15	Tandem Switching	
16	Zone 1	.0007500
17	Zone 2	.0007500
18	Zone 3	.0007500
19		
20	Interconnection	
21	Per Access Minute	.0011421
22	<u>End Office Switching</u>	
23	Per Accew2ss Minute	.0089000

---

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

VII. CLEC BY CLEC ANALYSIS<sup>14</sup>A. ~~BROADWING COMMUNICATIONS, LLC~~

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Switched Access Services

22 Per Access Minute Originating and Terminating \$0.050500

23 800 Data Base Access Service Rate

24 Customer Identification -Per Query \$0.00431

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

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

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

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

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

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

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

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

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

REDACTED

1 ~~Budget Prepay Inc. Price List No. 3, Section 5, effective January 17, 2004).~~

2 ~~The actual pages of the Budget switched access price list rate elements are identified in~~  
3 ~~Exhibit WRE 10, however following are the most relevant rate elements billed to QCC~~  
4 ~~for intrastate switched access service:~~

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

6 ~~Blended Carrier Switched Access~~

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

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

9 ~~\$0.0334200~~

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

11 ~~\$0.0334200~~

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

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

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

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

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

23

24

1 **C. BULLSEYE TELECOM, INC.**

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

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

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

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

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

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

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

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

24 Local Switching Per Minute: \$0.04100

25 800 Data Base Access Service Per Query: \$0.0055



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

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

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

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

11 D: DELTACOM, INC.

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

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

25

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

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

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

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

12 End Office Local Switching per MOU

13 ES2 \$:00876

14 ES2 Indiantown \$:01150

15 For All Other ILECs \$:01770

16 Local Transport

17 Facility Termination \$:00046

18 Access Tandem Sw \$:00050

19 8XX Query Rate \$:0045

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

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

24

**E. ERNEST COMMUNICATIONS, INC.**

1  
2 **Q. PLEASE DESCRIBE THE ERNEST COMMUNICATIONS, INC. ("ERNEST")**  
3 **AGREEMENTS AT ISSUE IN THIS CASE?**

4 A. Ernest has agreements for intrastate switched access services with [REDACTED] for intrastate  
5 switched access service which contained rates different than the rates contained in its  
6 intrastate access price list. These off-price list arrangements are dated [REDACTED] and  
7 [REDACTED]. Under the agreements, Ernest charged or charges [REDACTED] the rates  
8 identified in Exhibit WRE 1A, rows 7 and 8. (see Confidential Exhibits WRE 17A and  
9 17B).

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

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

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

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

**Local Switching**

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

REDACTED

1           8XX Query                               \$0.0055

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

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

6   **F. FLATEL, INC.**

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

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

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

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

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

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

**G. GRANITE TELECOMMUNICATIONS, INC.**

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

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

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

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

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

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

25 REDACTED

June 18, 2003 Price list

Switched Access \$0.057

~~8XX Query~~ \$0.005

1 June 18, 2003 Price list  
2 Switched Access \$0.057  
3 ~~8XX Query~~ \$0.005  
4 Q. ~~WERE THESE RATES IN EFFECT DURING THE RELEVANT TIME FRAMES~~  
5 ~~IN THIS CASE?~~

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

H. MCIMETRO ACCESS TRANSMISSION SERVICES LLC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REDACTED

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

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



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [END LAWYERS ONLY CONFIDENTIAL]  
23 [REDACTED]

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

REDACTED

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

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

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

16 A. No. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 **I. NAVIGATOR TELECOMMUNICATIONS, LLC**

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

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

REDACTED

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

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

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

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

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

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

18 From the 2002 price list:

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

1           800 NPAS Query       \$0.008037

2           From the 2005 price list:

3           Blended Carrier Switched Access:

4                   Sprint and Verizon service areas: \$.06152

5                   BellSouth service area:               \$.03410

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1	<u>Local Transport Termination per minute</u>	
2	Bell South & Smart City	\$0.0003600
3	Verizon	\$0.0001344
4	Sprint	\$0.0001800

5

6 Local Transport Facility per mile

7	Bell South & Smart City	\$0.0000400
8	Verizon	\$0.0000135
9	Sprint	\$0.0000360

10

11 Shared End Office Trunk Port per minute

12	Bell South Territory	\$0.0008000
13	Sprint Territory	\$0.0000000

14 \$00 Database Per Query

15	Bell South Territory	\$0.004000
16	Sprint Territory	\$0.008037
17	Smart City Territory	\$0.008100

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

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

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

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

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

3 **K. TW TELECOM OF FLORIDA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

---

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

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

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

6 September 19, 2002 Price List

7 Local Switching \$0.02982

8 800 Database Query \$0.0079

9 November 5, 2007 Price List

10 Network Switching (BellSouth territory) \$0.02800

11 Network Switching (Verizon territory) \$0.0347371

12 Network Switching (Embarq territory) \$0.025000

13 800 Database Query \$0.0079

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

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

18 **M. WINDSTREAM NUVOX, INC.**

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

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

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

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

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

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

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

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

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

1 billed to QCC for intrastate switched access service:

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

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

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

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

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

## 21 VIII. SUMMARY/CONCLUSION

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

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

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

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

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

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

18

19

20

21

22

23

24

25

1

**I. IDENTIFICATION OF WITNESS**

2

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

3

4

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

5

6

7

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

8

9

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

10

11

**II. PURPOSE OF TESTIMONY**

12

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

13

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

14

15

16

**III. WOOD REBUTTAL**

17

**A. MISCHARACTERIZATION OF QCC POSITION**

18

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

19

20

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

21

22

23

24

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1 pricing.

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

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

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

22

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **C. CLEC AGREEMENT ANALYSIS<sup>2</sup>**

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

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

---

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

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

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

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

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

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

---

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



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

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

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

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

---

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

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

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

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

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

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

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

REDACTED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REDACTED

**D. QCC CLEC AGREEMENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

REDACTED

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

REDACTED



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

[REDACTED]

[REDACTED] [END LAWYERS ONLY CONFIDENTIAL]

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

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

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

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

REDACTED

## E. OTHER ISSUES

1  
2 **Q. MR. WOOD ARGUES THAT QCC, UNLIKE SOME OTHER IXCS, DID NOT**  
3 **NEGOTIATE SIMILAR AGREEMENTS WITH FLORIDA CLECS, IMPLYING**  
4 **THAT IT WAS QCC'S FAULT THAT IT WAS DISCRIMINATED AGAINST**  
5 **(WOOD DIRECT TESTIMONY AT PAGE 6). PLEASE COMMENT.**

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

---

<sup>5</sup> This is true of Respondents: Budget Prepay, Inc., BullsEye Telecom, Inc., Navigator Telecommunications, LLC and TW Telecom of Florida, L.P.

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

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

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

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

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

---

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

<sup>7</sup> This excludes special access, which I discuss in my Direct Testimony and which is not relevant here.

**IV. VERIZON TESTIMONY**

1  
2 **Q. WHICH ISSUES RAISED IN MR. REYNOLDS' TESTIMONY WILL YOU BE**  
3 **ADDRESSING?**

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

**A. MCI BANKRUPTCY**

13  
14 **Q. MR. REYNOLDS DESCRIBES THE BACKGROUND AND NEGOTIATION OF**  
15 **THE MCI AT&T SWITCHED ACCESS AGREEMENT IN THE CONTEXT OF**  
16 **THE WORLDCOM BANKRUPTCY PROCEEDINGS BEGINNING ON PAGE 9**  
17 **OF HIS TESTIMONY. IS QCC CHALLENGING THE BANKRUPTCY**  
18 **COURT'S APPROVAL OF THE WORLDCOM AT&T SETTLEMENT?**

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

---

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

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

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

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

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

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

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

---

<sup>9</sup> See Exhibit PHR-1, page 7.

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

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

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

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

---

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

1 ~~Business at the time, former MCImetro = didn't think to forward it to~~  
2 ~~the regulatory people to have it filed with the Commission.<sup>211</sup>~~

3 ~~QCC did not employ an army of lawyers to review and monitor each and every filing in~~  
4 ~~the WorldCom Bankruptcy Case. QCC and its affiliate Qwest Corporation logically and~~  
5 ~~necessarily focused their resources on settling their own claims with WorldCom/MCI~~  
6 ~~and the other bankrupt telecom companies. QCC did not direct its resources to~~  
7 ~~reviewing, investigating and challenging the myriad of settlements between the debtor~~  
8 ~~carriers and other creditors. QCC cannot be presumed to be aware of the existence (or~~  
9 ~~especially the details) of the AT&T WorldCom settlement, even if WorldCom's~~  
10 ~~bankruptcy counsel served a motion (among the scores of others) on QCC's bankruptcy~~  
11 ~~counsel.~~

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

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

---

<sup>211</sup> Transcript from Prehearing Conference in the Qwest Communications, LLC Complaint, Case 08-08-006, San Francisco, California, July 29, 2009. Rudy Reyes for MCImetro (also known as Verizon business), page 49, lines 11-15.



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

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

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

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

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

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

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

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

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

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

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

1 ~~██████████ [END LAWYERS ONLY CONFIDENTIAL]~~

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

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

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

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

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

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

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

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

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

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

**B. RECIPROCITY**

1  
2 **Q. ~~ON PAGE 12 OF HIS TESTIMONY MR. REYNOLDS DESCRIBES THE~~**  
3 **~~BILATERAL AND "RECIPROCAL" NATURE OF THE AGREEMENT WITH~~**  
4 **~~AT&T. PLEASE RESPOND.~~**

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

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

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

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

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

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] ~~[END LAWYERS ONLY CONFIDENTIAL]~~

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

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

REDACTED

1 Q. ~~DID THE ADMINISTRATIVE LAW JUDGE ("ALJ") IN THE PARALLEL~~  
2 ~~COLORADO PROCEEDING RECENTLY EXAMINE THE SAME~~  
3 ~~RECIPROCITY DEFENSE THAT MCI HAS RAISED IN THIS PROCEEDING?~~

4 A. Yes. ~~On June 21, 2012, the Colorado ALJ issued a recommended decision, which~~  
5 ~~focused in large part on MCI's reciprocity defense. The ALJ rejected the reciprocity~~  
6 ~~defense and found that MCI had unlawfully discriminated against QCC. In his ruling~~  
7 ~~the ALJ stated the following:~~

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

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

1 competitor from being similarly situated, obviating requirements of  
2 Colorado law.

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

11 **C. OTHER ISSUES**

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

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

---

<sup>14</sup> § 40-15-105(1), C.R.S.: No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

<sup>15</sup> ~~Recommended Decision of Administrative Law Judge G. Harris Adams on Remand, Public Utilities Commission of the State of Colorado. Decision No. R12-0685. June 21, 2012.~~



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

#### 10 V. SUMMARY/CONCLUSION

#### 11 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

[REDACTED]

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

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

A. Yes, it does.

REDACTED

1 BY MR. SHERR:

2 Q Okay. Have you prepared a summary of your  
3 testimony?

4 A Yes.

5 Q Would you please provide that summary?

6 A For many years the respondent CLEC subjected  
7 QCC to unjust and unreasonable rate discrimination in  
8 connection with the provision of intrastate switched  
9 access services. These CLECs entered into off-price  
10 list agreements with select interexchange carriers and  
11 have failed to make those same rates, terms, and  
12 conditions available to QCC as otherwise required by  
13 statute, and in many cases the terms of the CLEC's own  
14 price list.

15 At the heart of the issue is the fact CLECs  
16 contracted to provide certain IXCs a critical monopoly  
17 service at lower, often far lower rates than their  
18 competitors paid. As IXC customers of tandem routed  
19 CLEC switched access, AT&T and QCC are under like  
20 circumstances. The same facilities are used to reach  
21 the same end user customers. The relative size of any  
22 given company is not relevant when it comes to switched  
23 access since each call is separate and distinct and  
24 carried in identical fashion.

25 The CLECs in this case have raised a couple of

1 explanations for offering special deals to the preferred  
2 carriers. One common argument advanced by the CLECs is  
3 duress. They argue that AT&T forced the CLECs into  
4 discriminatory behavior by refusing to pay any switched  
5 access charges, thereby forcing the CLECs to offer  
6 discounted rates in order to obtain some switched access  
7 revenues from those nonpaying IXCs. This argument  
8 places the blame for the CLECs' action upon the IXC  
9 customer, QCC, for not engaging in the same type of  
10 self-help. This argument is not particularly persuasive  
11 as a matter of public policy and in no way excuses the  
12 CLECs' discriminatory behavior.

13 The respondent CLECs had the ability to bring  
14 such behavior to the attention of the Commission. In  
15 fact, other CLECs did so in Minnesota and Iowa and were  
16 successful. Certainly settling their differences with  
17 AT&T by giving AT&T and only AT&T substantial and secret  
18 discounts is not appropriate and should not be adoned  
19 [sic] by -- should not be condoned by the Commission as  
20 a reasonable justification for the CLECs' rate  
21 discrimination.

22 Some CLECs have also argued that the  
23 agreements in question are, in fact, settlements of  
24 disputes. However, the crux of those disputes appear to  
25 be that AT&T did not want to pay the high CLEC switched

1 access rates and, rather than challenge the rates in a  
2 regulatory proceeding, chose the self-help mechanism of  
3 withholding payment.

4           Instead of bringing AT&T's nonpayment to the  
5 attention of state commissions or pursuing other legal  
6 avenues, CLECs opted to enter into agreements through  
7 which they settled past disputes and perspectivevely set a  
8 heavily discounted rate for interstate switched access.  
9 In most cases, the discounted rates were not apparently  
10 tied to term or volume commitments.

11           Based on my analysis of the individual  
12 agreements, the discounted rates were also not related  
13 to any concessions made by the favored IXCs. In my  
14 experience, switched access settlements are generally  
15 related to disputes regarding improper jurisdiction,  
16 improper billing, failure to follow rules. They do not  
17 typically relate solely to an IXC challenging the LEC's  
18 published rate.

19           The CLECs' defense also focuses on  
20 differences, relevant or not, between QCC and AT&T to  
21 try and escape responsibility for their conduct. To  
22 date, no reasonable explanation has been given as to how  
23 and why QCC is not, in the context of intrastate  
24 switched access, under like circumstances to AT&T. In  
25 fact, the CLECs' true motivation had nothing to do with

1 the size or serving characteristics of AT&T or other  
2 language in the agreement. Instead, the CLECs desired  
3 to quickly resolve billing disputes with the nonpaying  
4 IXCs. As a matter of public policy, QCC's willingness  
5 to pay its bills should not be held against QCC by  
6 permitting this factual distinction to justify the  
7 CLECs' rate discrimination.

8 QCC is seeking two forms of relief in this  
9 docket. Retrospectively, QCC believes it is entitled to  
10 refunds of amounts it overpaid the respondent CLECs  
11 relative to the amounts it would have paid had the CLECs  
12 extended the same discounts to QCC as they did to AT&T.  
13 This is precisely the relief QCC sought and was awarded  
14 in the parallel Colorado proceeding. Prospectively, QCC  
15 believes it should be awarded the same discounted rates  
16 still in effect for the IXCs benefiting from the CLEC  
17 agreements.

18 The joint CLECs have argued that a more  
19 appropriate remedy would be to require the favored IXCs  
20 to pay the higher price list rates, but such a remedy  
21 would serve only to reward the CLECs for their  
22 discriminatory behavior. QCC respectfully requests that  
23 this Commission order relief, the relief that QCC is  
24 seeking. Thank you.

25 **MR. SHERR:** Thank you, Mr. Easton.

1           Mr. Chairman, the witness is available for  
2 cross-examination.

3           **CHAIRMAN BRISÉ:** Okay. Thank you.

4           Bullseye.

5           **MR. FEIL:** I'll volunteer to go first, if  
6 that's okay with you, Mr. Chairman.

7           **CHAIRMAN BRISÉ:** Okay. That's fine with me.

8           **MR. FEIL:** Thank you.

9                           **CROSS EXAMINATION**

10          **BY MR. FEIL:**

11           **Q**     Good morning, Mr. Easton.

12           **A**     Good morning.

13           **Q**     You state in several places in your testimony  
14 that CLECs have a duty to disclose and offer contract  
15 rates to all other IXCs; that's correct?

16           **A**     Yes.

17           **Q**     And your testimony also states that Qwest's  
18 position is that it's not the fact that CLECs signed  
19 agreements for contract rates or that they didn't file  
20 contract rates with the PSC, but what Qwest takes  
21 offense to was the CLECs' conduct afterwards; is that  
22 correct?

23           **A**     That's correct.

24           **Q**     And specifically by the conduct afterwards,  
25 you mean that the CLECs are supposed to disclose an

1 offer of the contract rates to other IXC's in Florida;  
2 correct?

3 A Yes. The CLECs did not make those same rates  
4 available to QCC.

5 Q Okay. In your opinion, when are the CLECs  
6 supposed to disclose an offer of contract rates in terms  
7 of timing? I want to make sure I understand.

8 A Once those rates have been offered to AT&T,  
9 those rates should also be offered to QCC.

10 Q So immediately, is that your testimony?

11 A To the extent -- yes, to the extent they are  
12 not made available at that same time, QCC is  
13 disadvantaged.

14 Q Okay. How are the CLECs supposed to disclose  
15 an offer of the contract rate to every IXC? Is it  
16 supposed to write a letter, issue a notice? What is it  
17 supposed to do?

18 A There are different ways they could go about  
19 it. Certainly letters to the IXC's making those rates  
20 available would be one option. Another option would be  
21 to file those rates with this Commission.

22 Q So would the CLEC under your testimony then  
23 have to have a price list or doesn't have to have a  
24 price list as long as it writes a letter?

25 A The IXC's such as QCC need to be made aware of



1 the rates that are available. Whether that's done by a  
2 letter, by a filing with the Commission, that's not so  
3 important as the fact that the IXCs are aware.

4 Q All right. So if I send a letter but I don't  
5 change the price list, then am I complying with the  
6 obligation that you've asserted in your complaint to  
7 charge only a price list rate?

8 MR. SHERR: Objection. This question and many  
9 of them before are asking Mr. Easton for a legal  
10 conclusion.

11 MR. FEIL: Mr. Chairman, his testimony says  
12 that we didn't follow our obligations, and I'm asking  
13 him what our obligations are.

14 CHAIRMAN BRISÉ: I'll allow the question.

15 THE WITNESS: Could you repeat the question,  
16 please?

17 BY MR. FEIL:

18 Q If I remember the question. I asked you if  
19 the CLEC chose to take your alternative of sending the  
20 IXCs a letter rather than changing the price list, would  
21 the CLEC be violating the argument you have in your  
22 complaint that you have to charge, a CLEC has to charge  
23 what's in its price list?

24 A Let's be clear about my testimony. At no  
25 point in my testimony do I require -- do I state that

1 CLECs are required to charge the price list rate. We  
2 just had a discussion that I acknowledged CLECs are free  
3 to negotiate rates with different IXCs to the extent  
4 they make those rates available.

5 Q So you're saying then that the count in your  
6 complaint that states that CLECs are supposed to charge  
7 the standard offer rate in their price list is not a  
8 valid count, is that what your testimony is, Mr. Easton?

9 A I'll leave it up to the lawyers what my  
10 testimony is. As I just stated, is that I believe CLECs  
11 are free to depart from their price list rates to the  
12 extent they make those rates available to other  
13 carriers.

14 Q Okay. So if a CLEC has one contract and that  
15 has a contract rate in it rather than a price list rate  
16 and there's a subsequent contract that has a higher  
17 rate, what is the CLEC supposed to do in that situation,  
18 Mr. Easton?

19 A Please, please repeat the hypothetical.

20 Q If a CLEC has a contract rate and then has a  
21 subsequent contract rate that is higher than the first,  
22 what is a CLEC supposed to do in that environment?

23 A Is the lower rate still in effect?

24 Q If the -- in your, in the hypothetical, yes,  
25 the lower rate is still in effect.

1           **A**     I would argue that if that lower rate is still  
2 in effect, that lower rate needs to be made available to  
3 other IXCs. And let's be clear, we're talking  
4 specifically with regard to switched access rates.

5           **Q**     Yes, sir.

6           **A**     Okay.

7           **Q**     So you only have to disclose an offer of lower  
8 rate, not a higher rate; is that your testimony?

9           **A**     I believe you should probably disclose both  
10 rates.

11          **Q**     Okay. Well, let's say you have a contract  
12 where one rate, origination, is higher and the other  
13 rate, termination, is lower. What is, what is the CLEC  
14 supposed to do in that environment?

15          **A**     I believe that the CLEC should be offering  
16 both the origination rate that's in effect and the  
17 termination rate that's in effect to other IXCs.

18          **Q**     So both the higher rate and the lower rate are  
19 supposed to be disclosed and offered?

20          **A**     Well, again, we're talking about, if I  
21 understand your question, two different elements of  
22 switched access.

23          **Q**     Correct.

24          **A**     Correct. And I believe that the rates for  
25 each element of switched access should made, be made

1 available to other IXCs.

2 Q Whether it's higher or lower; is that what  
3 your testimony is?

4 A Whether it's higher or lower. Again, the rate  
5 for origination is the rate for origination.

6 Q And it's your testimony, Mr. Easton, that  
7 CLECs should have known to follow this disclose and  
8 offer routine and immediately follow that routine after  
9 it signed any contract; is that correct?

10 A My position is that there are  
11 antidiscrimination statutes in Florida, and it is the  
12 obligation of the CLECs to make sure they comply with  
13 those statutes.

14 Q And in a situation like with the tw/AT&T  
15 agreement, was tw supposed to disclose and offer all  
16 terms and conditions of the agreement or just the  
17 switched access rate?

18 A We're talking here specifically in the context  
19 of switched access. So I believe that those switched  
20 access rates should have been made available to QCC.

21 Q So is your testimony then that all the other  
22 terms and conditions did not have to be disclosed and  
23 offered?

24 A I believe to the extent those other terms are  
25 relevant, they should have been disclosed.

1           Q     To the extent those other terms are relevant.  
2     How would they be relevant or irrelevant in your  
3     opinion?

4           A     It depends. Mr. Wood has argued that each and  
5     every term in these contracts is relevant and QCC has to  
6     be willing to opt into each and every one of those  
7     terms. I don't believe that is true. And, in fact,  
8     from an economic standpoint, Dr. Weisman will explain in  
9     detail why that doesn't make sense from an economic  
10    standpoint.

11          Q     So in the context of the tw/AT&T agreement  
12    specifically are you saying that the other rates, terms,  
13    and conditions of the agreement are not relevant?

14          A     I would argue they are not relevant when it  
15    comes to determining whether discrimination has  
16    occurred.

17          Q     All right.

18          A     To the extent those terms are not cost-based,  
19    they're not relevant.

20          Q     So we would not have to offer and disclose  
21    those other terms; is that your testimony?

22          A     That would be my testimony.

23          Q     Okay. Mr. Easton, you agree with Dr. Weisman,  
24    don't you, that the cost basis is the only economical --  
25    excuse me, economically justifiable reason for contract

1 rate pricing; is that correct?

2 A I do.

3 Q And you agree that CLECs have the right to  
4 contract for switched access rates. I believe you said  
5 that.

6 A I do.

7 Q And IXCs have the right to seek out such  
8 contract rates from CLECs; correct?

9 A They do.

10 Q So if I'm a CLEC and I sign a switched access  
11 contract rate in Florida and I think it's economically  
12 justified, what do I do? Do I file something with the  
13 Commission?

14 A I believe we've been over this line of  
15 questioning. That rate in some form needs to be made  
16 available to other IXCs.

17 Q Well, let's say I choose not to make it  
18 available to everybody. Do I file something with the  
19 Commission?

20 A I'm afraid I don't understand the question.  
21 You choose not to make the rate available?

22 Q I do not disclose and offer the rate to all  
23 other carriers because I think I have an economic  
24 justification. Do I file something at the Commission,  
25 and, if so, what do I file at the Commission?

1           **A**     Okay.  In this case, I would believe you would  
2 think you would be in compliance with antidiscrimination  
3 statutes.  You would not need to file anything.  To the  
4 extent another party disagreed with you, that other  
5 party is certainly free to bring that issue before this  
6 Commission, just as we've done here today.

7           **Q**     So if I believe I'm in compliance -- well,  
8 scratch that.

9                     And the requirements we've just been talking  
10 about, disclose an offer requirement, filing something  
11 with the Commission, that's what you're saying CLECs  
12 should have done, are supposed to do in all  
13 circumstances; correct?

14           **A**     What I'm saying again, just to be clear, is  
15 that they need to make that rate available to other  
16 IXC's.

17           **Q**     Okay.  For the 2002, 2008 period of time, do  
18 you agree with me that CLECs had no obligation to either  
19 file or publish switched access rates in Florida?

20           **A**     I would agree.

21           **Q**     All right.  The -- and it's your  
22 understanding, is it not, that tw only had one agreement  
23 with AT&T; correct?

24           **A**     I believe that's correct.  Yes.

25           **Q**     Does that one agreement in your mind

1 constitute a practice?

2           **A**     I'm afraid I don't, don't understand what you  
3 mean by "practice."

4           **Q**     Mr. Sherr mentioned in his opening that CLECs  
5 had a practice of signing these agreements. Does one  
6 agreement between tw and AT&T constitute a practice?

7           **A**     Well, certainly from the evidence I've looked  
8 at in this case and from the agreements I've put in my  
9 testimony as a part of this case, that was a practice of  
10 the CLECs in the state of Florida.

11          **Q**     Was it a practice of tw is what I'm asking  
12 you, Mr. Easton?

13          **A**     Well, clearly tw has an agreement with AT&T,  
14 or had an agreement with AT&T.

15          **Q**     And there was just one; correct?

16          **A**     There was just the one agreement that I have  
17 in my testimony.

18          **Q**     You have responded to, or Qwest has responded  
19 to discovery regarding the, what's called the CPLA  
20 mechanism or program, and that was a program whereby  
21 Qwest received reduced access or waivers of CLEC access  
22 charges in wholesale contract environments; is that  
23 correct?

24          **A**     Yes. CPLA is a rather unique situation.

25          **Q**     I didn't ask you to -- I just asked you



1 whether or not that was what was in your testimony and  
2 that was what the program was. But I have another line  
3 of questions for you unrelated to that.

4 Did Qwest tell the CLECs with whom it had CPLA  
5 contracts that if the contract rate with Qwest was not  
6 supported by cost, that the CLEC was at risk for  
7 discrimination claims?

8 **A** To help answer your question, I think it would  
9 be appropriate for me to be allowed to explain what the  
10 CPLA program is and then we can come back to your  
11 question.

12 **Q** My only question is whether or not you told  
13 carriers with whom you had CPLA agreements that they  
14 were at risk for discrimination claims. That's my  
15 question. That's all I want to know.

16 **A** I don't believe that carriers who had CPLA  
17 agreements with Qwest were at risk of discrimination  
18 claims.

19 **Q** You don't believe they were at risk. But did  
20 you tell them that they were at risk?

21 **A** I don't know whether they were told they were  
22 at risk. Again, I don't believe they were at risk. And  
23 I can explain why, if you'd like.

24 **Q** No. I've, I've seen your explanation already.  
25 It's in the record. I don't need any more information

1 on that.

2 **MR. SHERR:** Mr. Chairman, it's my  
3 understanding of Florida practice that the witness is  
4 allowed to explain his response. And Mr. Feil is  
5 repeatedly trying to cut the witness off from offering  
6 an explanation to his question, and I think he should be  
7 allowed to explain.

8 **MR. FEIL:** Mr. Chairman, if I may. His  
9 explanation has nothing to do with my question.

10 **CHAIRMAN BRISÉ:** Thank you, Mr. Feil.

11 Our practice is that if there's a question  
12 that can be answered by yes or no or a direct statement,  
13 that that is the preference. If there's a question that  
14 requires a subsequent explanation, then we generally  
15 allow that. Okay? And from the question that I heard I  
16 think the question was pretty direct with respect to  
17 what -- the response that was given. And you also have  
18 the opportunity on redirect.

19 **MR. SHERR:** Thank you, Mr. Chair.

20 **BY MR. FEIL:**

21 **Q** Did the CLECs with whom you had CPLA  
22 arrangements, did you, did Qwest ask for cost  
23 information from those CLECs?

24 **A** There was no need to ask for cost information  
25 for the CLECs because, as I stated before, this is not a

1 case of discrimination. These were very different types  
2 of agreements than the off-price list agreements the  
3 CLECs entered into with AT&T. These agreements were  
4 neutral agreements. Neither party was disadvantaged,  
5 unlike the case of the off-price list agreements at  
6 issue here.

7 Q You said that they were neutral. Do you have  
8 any document or data proof that they were neutral, that  
9 they had no impact in downstream markets?

10 A Yes, I do.

11 Q All right. Well, we'll, we'll address that as  
12 we get to that point.

13 A And, in fact, in my testimony I have language  
14 from the CPLA.

15 Q Right. You quote them. I, I have seen that.

16 A And --

17 **CHAIRMAN BRISÉ:** Mr. Feil, please allow  
18 Mr. Easton to finish.

19 **MR. FEIL:** I'm sorry, Mr. Chairman.

20 **THE WITNESS:** And perhaps we can look at that  
21 language to help support my answer to your question  
22 about whether in fact they were neutral.

23 **BY MR. FEIL:**

24 Q What page and line are you referring to,  
25 Mr. Easton?

1           **A**     I'm trying to find it here.

2           **Q**     Okay.

3           **MR. SHERR:** Mr. Easton -- Mr. Chairman, I just  
4 want to remind the witness to be mindful of what is  
5 confidential and what is not confidential.

6           **THE WITNESS:** Good point.

7           **CHAIRMAN BRISÉ:** Thank you.

8           **THE WITNESS:** In light of that, let me just  
9 point to the language here. It's on page 19 of my  
10 rebuttal testimony and it's lines 7 through 14. And it  
11 is the language that describes what each party is giving  
12 and -- is receiving and is giving up. Based on my  
13 analysis of those agreements, it leaves each party as it  
14 was before and does not disadvantage any other carriers.

15 **BY MR. FEIL:**

16           **Q**     Well, the question I asked you, Mr. Easton,  
17 and I appreciate your reference, was whether or not you  
18 had any data supporting your allegation that these were  
19 neutral. The only thing you're pointing to me right now  
20 is the language.

21           **A**     And what that language explains is that one  
22 party is giving up something to which they're entitled,  
23 and in compensation for that they are receiving an  
24 offset. So those two zero each other out, and at the  
25 end of the day it's neutral.

1           Q     You referred me to page 19, lines 7 through  
2 14; is that correct?

3           A     Yes.

4           Q     Look at the word on line 10, "regardless."  
5 And I'll repeat to you my prior question: Do you have  
6 any data showing that this was in fact neutral to the  
7 CLEC?

8           A     I have no quantitative data. The basis for my  
9 statement is that was in fact the intent and I believe  
10 the result of the CPLA agreements.

11          Q     The CPLA agreements we're talking about were  
12 secret; correct?

13          A     They were not filed with the Commission to the  
14 best of my knowledge. I don't believe they were secret.  
15 In fact, letters were sent out by QCC to carriers who  
16 could take advantage of this CPLA.

17          Q     Were these actual contracts signed by the  
18 CLECs secret or not secret?

19          A     It depends on what you mean by "secret."

20          Q     You use the term "secret" in your testimony.  
21 I'm meaning it in the same sense you used it in your  
22 testimony.

23          A     No. I don't believe they were secret. As I  
24 stated a moment ago, QCC sent out letters to all  
25 carriers who purchased unbundled switching from Qwest

1 that would allow them to enter into these agreements.  
2 I -- that certainly doesn't meet my definition of  
3 secret.

4 Q If I wrote you a letter and asked you for a  
5 copy of one of these contracts with a CLEC, would I be  
6 able to get it?

7 A No. If you asked me -- if you wrote me a  
8 letter and said I am a purchaser of UNE-P and I would  
9 like to enter into a CPLA agreement during this  
10 relative -- relevant time frame, we certainly would have  
11 allowed you to do that.

12 Q You referred to UNE-P, Mr. Easton. Isn't it  
13 true that you never followed up with the carriers who  
14 signed these agreements to determine whether or not they  
15 were exclusively UNE-P in all states?

16 A That I don't know. It was our understanding  
17 that these are UNE-P carriers. That was, again, the  
18 intent of the agreement.

19 Q That was the intent. But the follow-up may  
20 not have taken place; isn't that true?

21 A I can't speak to the follow-up that, that our  
22 sales teams did or did not perform.

23 Q Okay. When we were talking earlier, you, you  
24 agreed with me that both CLECs and IXCs have a right to  
25 negotiate contract rates in Florida.

1           **A**     I agree.

2           **Q**     Okay.  And tw's price list specifically allows  
3 tw to negotiate contract rates; correct?

4           **A**     I believe it does.

5           **Q**     Okay.

6           **A**     And, and further that it requires that to the  
7 extent it does, make those available to other carriers  
8 in like circumstances.

9           **Q**     Well, isn't it correct, Mr. Easton, that Qwest  
10 had no interest in negotiating its own switched access  
11 contract rate with tw because what it really wanted was  
12 the AT&T contract rate?

13          **A**     Well, again, let's be clear.  QCC was not  
14 aware of the agreement between tw and AT&T until we got  
15 in the midst of these complaint proceedings.

16          **Q**     At any point in time did Qwest initiate a  
17 contact with tw to negotiate its own switched access  
18 rate?

19          **A**     QCC could only assume that the price list  
20 rates in Florida were the rates that tw was offering.  
21 Keep in mind that there's 700 CLECs that QCC is dealing  
22 with.  What you're proposing makes it the responsibility  
23 of QCC to constantly police those 700 CLECs to determine  
24 what agreements they've entered into.

25          **Q**     Even after you had the AT&T/tw agreement, did

1 Qwest ask for its own switched access rate with tw?

2 A That I don't know.

3 Q The only rate you were interested in was the  
4 AT&T contract rate; correct?

5 A To the extent that tw had granted that rate to  
6 AT&T, they needed to make that rate available to QCC  
7 under the antidiscrimination statutes in Florida and  
8 also under the language in its own agreement -- or its  
9 own price list. Excuse me.

10 Q Mr. Easton, you don't know then if Qwest  
11 expressed an interest in negotiating its own rate with  
12 tw, whether or not you would have gotten it or not,  
13 because you never attempted to negotiate; isn't that  
14 true?

15 A Perhaps that might be a more appropriate  
16 question for Ms. Hensley Eckert, who talks in her  
17 testimony about what QCC did when it found out about  
18 these off-price list agreements.

19 Q Well, let me ask the question this way,  
20 Mr. Easton. Isn't it true that Qwest has no interest  
21 whatsoever in accepting the tw/AT&T agreement in whole?  
22 The only thing you have an interest in is the switched  
23 access rate from that agreement.

24 A We are interested in that switched access  
25 rate. Correct.



1           Q     So Qwest, so Qwest has no interest in making a  
2 multimillion dollar revenue commitment to tw; isn't that  
3 correct?

4           A     That is correct. As we spoke earlier, I don't  
5 believe those commitments are relevant when it comes to  
6 determining whether discrimination has occurred.

7           Q     And, Mr. Easton, isn't it also correct that  
8 you have no idea whether or not that switched access  
9 rate in the AT&T agreement would have even existed but  
10 for the multimillion dollar revenue commitment in the  
11 contract?

12          A     Again, from the question of determining  
13 whether discrimination has occurred, that revenue  
14 commitment is not relevant.

15          Q     So the answer is no, you don't know.

16          A     Let's repeat the question, please.

17          Q     The question is whether or not you know if  
18 that switched access rate from the tw/AT&T agreement  
19 would have even existed but for the multimillion dollar  
20 revenue commitment.

21          A     I believe it would have existed.

22          Q     You believe it would have. And what do you  
23 base that belief on?

24          A     Because I don't believe that the revenue  
25 commitment is a relevant issue here.

1           Q     All right. Mr. Easton, we'll move on. There  
2 were some CLECs in Florida who had contract rates with  
3 other IXCs that Qwest did not involve at all in this  
4 proceeding; isn't that correct?

5           A     That I don't know.

6           Q     You don't know?

7           A     No.

8           Q     Okay.

9           A     I do know that there were obviously, you know,  
10 18 other parties at one time in this docket.

11          Q     So were you involved at all in the analysis of  
12 whether or not there was discrimination by CLECs after  
13 Qwest received subpoena responses with the contracts?

14          A     No. I was not involved in that analysis.

15          Q     You didn't make any decisions relative to  
16 whether or not there was discrimination or not?

17          A     No, I did not.

18          Q     Okay. On page 40, line 14, of your direct,  
19 you referred to this earlier, where you refer to tw's  
20 price list and the offering of a contract rate in the  
21 price list.

22               **MR. SHERR:** I'm sorry, Counselor. Can you  
23 give the reference again?

24               **MR. FEIL:** Page 40, line 14, I believe, of his  
25 direct.

1           **MR. SHERR:** Of direct testimony?

2           **THE WITNESS:** Yes.

3           **BY MR. FEIL:**

4           **Q**     When did Qwest discover this language in tw's  
5 price list?

6           **A**     That I don't know.

7           **Q**     But it's in your testimony?

8           **A**     It is in my testimony. I analyzed the  
9 contracts as I was preparing for this case. I saw the  
10 language in the contract. In fact, it's contained in my  
11 exhibit here.

12          **Q**     So you don't know whether or not it was  
13 discovered before or after the complaint was filed.

14          **A**     That I can't tell you.

15          **Q**     Could I refer you to -- well, your  
16 understanding of the contract rate between tw and AT&T  
17 was that the rate ended in 2008; isn't that correct?

18          **A**     That's correct.

19          **MR. FEIL:** Okay. Nothing further. Thank you,  
20 Mr. Chairman.

21          **CHAIRMAN BRISÉ:** Thank you.

22                    Bullseye?

23          **MR. KLEIN:** Thank you, Mr. Chairman.

24                    **CROSS EXAMINATION**

25          **BY MR. KLEIN:**

1 Q Good morning, Mr. Easton.

2 A Good morning.

3 Q Mr. Easton, on page 2 of your direct testimony  
4 you state that the CLECs failed to make certain rates,  
5 terms, and conditions available to QCC as otherwise  
6 required by statute, but you don't provide a statutory  
7 cite there; is that accurate?

8 A I do not.

9 Q You said in your testimony you'll identify the  
10 intrastate switched access price lists used by each  
11 respondent CLECs to charge QCC. My question is whether  
12 QCC was charged by each CLEC in accordance with its  
13 price list.

14 A I believe they were.

15 Q Did QCC have agreements with certain CLECs  
16 under which QCC was not charged price list rates?

17 A With regard to switched access?

18 Q Yes.

19 A I don't believe so.

20 Q There was discussion with Mr. Feil, counsel  
21 for tw telecom, a moment ago regarding CPLA agreements.

22 A Right.

23 Q Aren't CPLA agreements agreements under which  
24 Qwest was not being charged for switched access by  
25 certain CLECs?

1           **A**     Correct. The way I interpreted your question  
2 was Qwest was not charging its price list rates. Here  
3 we're talking about another party.

4           **Q**     So under those CPLA agreements Qwest was not  
5 being charged switched access by certain CLECs.

6           **A**     Correct. In exchange for those certain CLECs  
7 receiving lower wholesale long distance rates.

8           **Q**     Okay. And did those CLECs who did not charge  
9 access, intrastate access in Florida to Qwest, have  
10 price lists with this Commission?

11          **A**     That I don't know. As I stated in my  
12 testimony, they're not required to file such price lists  
13 with the Commission.

14          **Q**     Has Qwest determined in this proceeding that  
15 those CPLA agreements should be marked confidential?

16          **A**     I believe so.

17          **Q**     Will Qwest consent to making those agreements  
18 public? Do you feel those agreements should be made  
19 public?

20               **MR. SHERR:** Mr. Chairman, this question seems  
21 inappropriate for the witness. The answer to that  
22 question is no. I mean, he's asking, he's asking the  
23 witness to essentially give a legal opinion or bind the  
24 company to a legal position. That doesn't seem like a  
25 question for cross-examination.

1           **CHAIRMAN BRISÉ:** Okay. If you could move on.

2           **MR. KLEIN:** Okay. Thank you. I'll rephrase.

3 **BY MR. KLEIN:**

4           **Q** Mr. Easton, you testified earlier today that  
5 you thought that Qwest had publicized those agreements,  
6 the CPLA agreements to certain CLECs. Is that accurate?

7           **A** They made those available to the UNE-P CLECs,  
8 yes.

9           **Q** So in your opinion was it appropriate to make  
10 those available to those CLECs?

11          **A** Yes.

12          **Q** Why is it therefore not appropriate to make  
13 those agreements public to other carriers?

14          **A** I don't know what all is contained in those  
15 agreements. I do know that counsel has deemed that  
16 those should be confidential.

17          **Q** On page 4 of your direct testimony you state  
18 that QCC is a CLEC but does not currently charge  
19 switched access to other IXCs. Is that accurate?

20          **A** That is accurate. We in fact do not offer  
21 switched access in the state of Florida.

22          **Q** But Qwest does act as a local exchange carrier  
23 in Florida.

24          **A** We are certified as a local exchange carrier  
25 in Florida. Correct.

1           Q     Does QCC charge Qwest Corporation switched  
2 access?

3           **MR. SHERR:**   Objection.

4           **THE WITNESS:**   QCC, again, does not offer  
5 switched access.

6           **BY MR. KLEIN:**

7           Q     You also state on that same page 4 that QCC is  
8 a primary provider of wholesale services for long haul  
9 traffic; is that accurate?

10          A     That is accurate.

11          Q     Do those wholesale terms vary with the access  
12 rates?

13          A     As we discussed earlier, in the case of CPLA  
14 that is true. It was an offset for the UNE-P CLECs'  
15 inability to bill for the switched access to which they  
16 were entitled. They received compensation for that  
17 inability through lower wholesale long distance rates.

18          Q     And in exchange QCC was not charged intrastate  
19 switched access by certain CLECs.

20          A     Correct, due to the inability of those CLECs  
21 to charge that.

22          Q     Okay. And which CLECs were unable to charge  
23 switched access?

24          A     Well, there are eight CLECs in the state of  
25 Florida. I believe that was made available to you.

1           Q     Are some of those CLECs named in the complaint  
2 that Qwest filed in this proceeding?

3           A     That I don't know. I do know of the  
4 remaining, for example, Bullseye and tw, they were not  
5 CPLA.

6           Q     Hasn't Qwest in fact alleged that certain of  
7 those CLECs who had CPLA agreements charged Qwest for  
8 switched access in Florida?

9           A     I believe that is the case, that in fact some  
10 carriers, despite the claim that they were unable to  
11 charge for switched access, did in fact charge QCC for  
12 switched access.

13          Q     Did there come a point in time where Qwest  
14 realized that it was incorrect in asserting that certain  
15 of those CPLA CLECs had actually charged Qwest for  
16 intrastate switched access?

17          A     Could you repeat that, please?

18          Q     Was there a point in time where Qwest realized  
19 that its contention that certain of those CLECs with  
20 CPLA agreements had charged Qwest was actually  
21 incorrect?

22          A     Well, I guess I'd rephrase it. It became  
23 clear that some of those CLECs who said they were unable  
24 to charge for switched access and would waive their  
25 charges for switched access in fact did not waive the



1 charges.

2 Q Was that the case with all or some of those  
3 carriers?

4 A I believe it was just some.

5 Q And did Qwest modify its claims with regard to  
6 those CLECs?

7 A That I don't know.

8 Q You state in your testimony that, that access  
9 charges directly drive the cost of providing long  
10 distance services, but you don't know the precise  
11 percentage. Is that correct?

12 A Again, it's a major input to the provision of  
13 long distance service.

14 Q Now you were director of --

15 A And I, I do cite a percentage there on page 5  
16 of my testimony. This is rather dated, but at one time  
17 the FCC stated that switched access comprised 40% of an  
18 IXC's cost of providing long distance service.

19 Q And that figure is 20 years old; correct?

20 A That is, as I mentioned, it is out of date.  
21 But, again, that, I think we would all agree that that  
22 is certainly one of the major inputs to long distance  
23 service.

24 Q What is the -- what is that percentage today?

25 A I have no idea what it is today.

1           Q     You are a Director of Wholesale Finance, or at  
2     least were a Director of Wholesale Finance.  You don't  
3     know that percentage?

4           A     I do not know that percentage.  At the time I  
5     was Director of Wholesale Finance we had not been  
6     granted 271 relief and were not providing long distance  
7     service.

8           Q     Haven't there been huge changes in the  
9     industry in the last 20 years?

10          A     There certainly have.  I guess I would just  
11     argue that if it wasn't still a significant input to  
12     long distance service, AT&T wouldn't have been  
13     withholding payment, we wouldn't be sitting here today.  
14     It remains a significant issue.

15          Q     Mr. Easton, you state on page 5 that QCC's  
16     routing of access traffic is similar to other IXCs.  
17     What's the basis for that assertion?

18          A     Again, I'm talking specifically about tandem  
19     routing.  I mean, switched access is switched access.  
20     There's only so many ways you can do it.  You can use  
21     common transport, you can use dedicated transport.  I  
22     mention all of those things in my testimony.  It's  
23     pretty much a commodity, if you will.

24          Q     Well, let me ask you specifically with regard  
25     to line 17 of page 5 of your direct testimony.  You were

1 asked, does QCC route switched access in the same manner  
2 as other IXCs? Answer, yes, QCC's routing is similar to  
3 other IXCs. My question is what's the basis for your  
4 assertion in that regard?

5 **A** If I want to route a call to a Bullseye end  
6 user customer, I'm going to route that call just as any  
7 other IXC is going to route it. Either I'm going to  
8 tandem route it and go to a switch, a tandem switch that  
9 is subtended by a Bullseye switch, or I, to the extent I  
10 have enough traffic, I would use direct trunk transport.

11 Actually let me back up. I believe Bullseye  
12 does not have its own switch. Instead, it's a UNE-P  
13 provider -- or purchaser from probably BellSouth. So in  
14 fact I would route it just as other IXCs would, going  
15 either to BellSouth's tandem or maybe, to the extent  
16 there was enough volume of traffic, to a direct trunk to  
17 a particular BellSouth end office. I mean, those are  
18 the only options that are available to IXCs.

19 **Q** Well, respectfully, Mr. Easton, I don't think  
20 you've answered the question. The question is what's  
21 the basis for your assertion that other IXCs route  
22 traffic the same way that Qwest does or that Qwest  
23 routes it the same way that they do?

24 **A** I think I just gave you the explanation.

25 **Q** Have you ever worked for AT&T?

1           A     Yes, I have.  If, if --

2           Q     Okay.  When, when was that?

3           A     I became employed by the Bell system in 1980.

4     But let's go back to your question.

5           Q     Well, let me ask you, that was Pacific,

6     Pacific Northwest Bell?

7           A     That's correct.

8           Q     And that subsequently became US West?

9           A     That subsequently became US West.

10          Q     And then Qwest and now CenturyLink.

11          A     Correct.

12          Q     Okay.  In the last ten years have you worked

13     for AT&T?

14          A     I have not.

15          Q     Okay.  Do you know how AT&T routes its calls?

16          A     If I could please go on with my example, I

17     think I can explain that.

18          Q     Well, I'm asking you a question, please.

19          A     Yes, I do.

20          Q     Okay.  How do you know that?

21          A     If you look through my testimony, it talks  
22     about there's only so many different ways that the calls  
23     can be routed.  It can either be routed over common  
24     transport, dedicated transport, or to the extent there's  
25     significant enough volume to a particular customer you

1 could have a private line to that customer.

2 Q And you're saying those are the only ways that  
3 any call can be routed?

4 A That's correct.

5 Q Okay. What about alternate routers? Can't  
6 carriers use alternate routing?

7 A Certainly carriers can use alternate routers.

8 Q Can carriers use VoIP carriers?

9 A Well, let's come back to the alternate  
10 routers.

11 Q Well, let me ask you, can carriers use VoIP  
12 carriers to carry their traffic?

13 A They could certainly use VoIP carriers.

14 Q Do you know which, which particular calls AT&T  
15 routes to each of those alternate methods?

16 A No, I don't.

17 Q Okay. You say in your testimony that  
18 depending on the volume of calls, traffic may be routed  
19 in one way versus another. Is that accurate?

20 A That is accurate.

21 Q Okay. And when you talk about call volume,  
22 what specifically are you referring to? Is that just  
23 the volume of, of calls?

24 A I'm referring specifically to the minutes of  
25 use related to those volumes of calls.

1 Q And you indicate --

2 A To the extent, to the extent you have a  
3 significant enough number of minutes of use, it makes  
4 more sense to pay a flat rate for a dedicated facility  
5 rather than pay on a per minute basis.

6 Q And I believe you testify, correct me if I'm  
7 wrong, that if the volume of calls is high enough, calls  
8 can be routed to an end office to help lower the overall  
9 access expense.

10 A That's correct.

11 Q Okay. And if there's also sufficient traffic,  
12 an IXC can build a direct connection or buy a direct  
13 connection to an end user.

14 A Correct, using special access or private line.

15 Q Okay. And those methods, that latter method  
16 will avoid switched access charges altogether, won't it?

17 A That it will.

18 Q Okay. In that, in that sense it sometimes  
19 becomes more economical to do that.

20 A If there's truly significant enough volume  
21 going to one particular end user, that would be a, a  
22 viable option.

23 Q Okay. And I think you specifically state on  
24 page 9 that special access is designed to bypass all of  
25 the switching elements, local and tandem, and is

1 purchased when there are very high volumes of traffic to  
2 or from a single end user location.

3 A Correct. It is not a switched service.

4 Q Now you indicate also on page 9 of your  
5 testimony your opinion that switched access is a  
6 monopoly; is that correct?

7 A That's correct.

8 Q Do all providers of interLATA services pay  
9 access?

10 A Could you repeat the question, please?

11 Q Do all providers of interLATA traffic pay  
12 access charges?

13 A To the extent they use switched access, yes,  
14 they would.

15 Q Okay. But to the extent they don't use  
16 switched access the answer would be no?

17 A Well, they wouldn't pay for a service that  
18 they didn't use, I would assume.

19 Q So there are certain carriers providing  
20 interLATA services that do not pay switched access?

21 A Well, again, if they went through the local  
22 carrier switch to reach that end user customer, yes,  
23 they would be charged for switched access.

24 Q Okay. But that wasn't my question.

25 A Maybe I didn't understand what the question

1 was.

2 Q Okay. The question is are there not certain  
3 carriers providing interLATA carriage that are not  
4 paying switched access charges?

5 A If they are, in fact, using switched access  
6 services, I would assume that they're being charged for  
7 switched access.

8 Q Okay. Let me ask you if you've ever heard of  
9 Voice over Internet Protocol.

10 A I have.

11 Q Okay. Does Qwest use Voice over Internet  
12 Protocol, or VoIP for short, in its network?

13 A I believe we do.

14 Q Okay. When, when VoIP traffic is terminated,  
15 does Qwest pay access charges?

16 A There is still an issue in the industry --  
17 well, I guess actually it's not an issue at this point,  
18 given that the Connect America order came out, and in  
19 fact switched access charges are assessed now on VoIP  
20 traffic.

21 Q And effective as of when?

22 A Whatever the effective date of that order is.

23 Q Okay.

24 A Late 2011, I believe.

25 Q And prior to that order was Qwest, was Qwest



1 paying switched access for termination of VoIP traffic?

2 A I believe we were in some cases.

3 Q But not in others?

4 A Again, it was not clear in the industry. It's  
5 been a subject of some debate whether switched access  
6 was charged for VoIP traffic. That has now been made  
7 clear in the Connect America order.

8 Q Okay. And that's been within the last year or  
9 so?

10 A Correct.

11 Q Okay. So during the time period covered by  
12 Qwest's claims in this case there was a question as to  
13 whether access charges apply to VoIP traffic  
14 termination; correct?

15 A Different parties had different views of that  
16 issue. Correct.

17 Q Was there any traffic that was originated by  
18 Qwest during the time period covered by its claims that  
19 was originated as tandem traffic and then terminated as  
20 VoIP traffic?

21 A That I don't know.

22 Q Mr. Easton, you indicate in your testimony  
23 that, that AT&T's size could have a bearing on the  
24 manner in which AT&T's traffic is being routed and  
25 terminated; correct?

1           **A**     To the extent that they had sufficient enough  
2 traffic to a particular end office, they may purchase  
3 direct trunk transport rather than using common  
4 transport. To the extent they had sufficient traffic to  
5 a specific end user, they could have purchased private  
6 line and avoid switched access. So the size would be  
7 relevant in that sense. To the extent they had neither  
8 of those and used common transport, I would argue that  
9 the size was not relevant.

10           **Q**     So to the extent AT&T had a significant volume  
11 of traffic, AT&T could avoid switched access charges.

12           **A**     To the extent they had significant enough  
13 volume to a particular end user, they could have  
14 purchased special access and avoided switched access.  
15 Yes, I would agree with that.

16           **Q**     Let me, let me ask you again with regard to  
17 your contention that switched access is a monopoly. Are  
18 there instances in which Qwest terminated traffic to the  
19 respondents in this case that was not sent directly by  
20 Qwest to those carriers?

21           **A**     I believe you're referring to the use of  
22 underlying carriers. And Qwest does, like everybody  
23 else in the industry, use underlying carriers. With an  
24 underlying carrier, that would be a case where we would  
25 hand it off for another carrier, who would in turn

1 deliver it to Bullseye, for example. In no way is  
2 switched access avoided in that scenario. In fact, I  
3 would assume Bullseye would charge switched access, but  
4 the party they would charge it to is the party that  
5 dropped it off to them, the underlying carrier.

6 Q Do you know for a fact as you sit here today  
7 that each of those underlying carriers used by Qwest  
8 paid switched access to Bullseye?

9 A That was certainly the intent of our agreement  
10 with those underlying carriers. In fact, in our  
11 contracts they are required to follow the letter of the  
12 law, they're required to use Feature Group D to  
13 terminate the traffic. That is -- was our intent and  
14 that's our assumption that they're following the terms  
15 of the contract.

16 Q So as a matter of fact you do not know that?

17 A I do not know that in each case. But, again,  
18 that's the intention of QCC when it enters into those  
19 contracts with underlying carriers. To the extent we  
20 find out they're not following those procedures, we'll  
21 take them off, off the network.

22 Q Okay. And have you taken any of those, such  
23 carriers off that network?

24 A Carriers have been removed from the network,  
25 yes.

1           Q     Okay.  When was the most recent instance of  
2 that occurring?

3           A     I'm not familiar with all the specific  
4 occurrences.

5           Q     When was just the most recent?

6           A     I know of cases in the last year, for example.

7           Q     Okay.  And why were those carriers removed?

8           A     There were issues about whether they were  
9 following the terms of the contract and appropriately  
10 delivering the traffic to the terminated carrier.

11          Q     Were some of those carriers engaging in access  
12 avoidance schemes?

13          A     That I can't tell you for sure.

14          Q     Okay.  Who would know that?

15          A     Folks who actually deal with our underlying  
16 carrier contracts and the carriers themselves.

17          Q     Okay.  But in what way is it your  
18 understanding that those carriers did not comply with,  
19 with your expectations, with Qwest's expectations?

20          A     That, most likely that they did not deliver  
21 the traffic over Feature Group D as required in the  
22 contract.

23          Q     Did Qwest pay more or less to those underlying  
24 carriers than it would have paid by directly routing the  
25 traffic to Bullseye?

1           **A**     I don't know the answer to that.  If we  
2 directly send the traffic to Bullseye as we discussed  
3 earlier, we're going to be paying switched access.  When  
4 we contract with an underlying carrier, we're paying for  
5 what I would refer to as a termination service.  It's  
6 not --

7           **Q**     Do any of those other underlying carriers have  
8 off-price contracts with any of the carriers that were  
9 involved in this proceeding?

10          **A**     I don't know that.

11          **Q**     Is that something you've researched?

12          **A**     I have not researched it.

13          **Q**     Do you know if in some instances Qwest did pay  
14 less to terminate calls to Bullseye than it would have  
15 paid by directly routing those calls to Bullseye?

16          **A**     That's possible, and that's possible for a  
17 couple of reasons.  An underlying carrier may have  
18 sufficient enough volumes of traffic, unlike Qwest, that  
19 they would be able to purchase direct trunk transport to  
20 an end office; whereas, QCC may not have sufficient  
21 enough volumes to do that.  It also has to do with the  
22 location of the underlying carrier's point of presence.  
23 They may be, their point of presence may be closer to  
24 the particular end office or tandem switch than QCC's  
25 would be, and so in fact they would pay less in switched

1 access than QCC would.

2 Q Let me turn to your understanding of the  
3 requirements of Florida regulation. You state on page  
4 10 that the CLECs are only required to provide price  
5 lists for basic services in Florida; correct?

6 A Correct.

7 Q And that CLECs are not required to file  
8 tariffs or price lists for switched access services in  
9 Florida.

10 A That's my understanding.

11 Q It's also your understanding set forth in your  
12 testimony that CLECs are permitted to use individual  
13 contracts to deviate from their switched access price  
14 list; is that correct?

15 A That's correct.

16 Q And you, you had the discussion with Mr. Feil  
17 earlier with regard to how you felt those contract-based  
18 agreements should be publicized, do you recall that?

19 A I do.

20 Q Is it your understanding that the agreements  
21 between Qwest and CLECs that provide for off-price list  
22 contract rates have been publicized?

23 A Excuse me. Could you repeat the question?

24 Q Is it your understanding that the contracts  
25 that Qwest has entered into that provide for off-price

1 list switched access have been publicized by Qwest?

2           **A**     I don't believe that we've entered into  
3 agreements that provide for off-price list switched  
4 access. Again, QCC does not offer switched access in  
5 the state of Florida.

6           **Q**     Let me ask you with regard to page 14 of your  
7 testimony, I think you indicate that you, you have  
8 experience with regard to switched access settlements.

9           **A**     Yes.

10          **Q**     Okay. And switched access settlements can  
11 involve items such as improper jurisdiction, improper  
12 billing, or failure to follow specific rules; is that  
13 correct?

14          **A**     That's correct.

15          **Q**     And when there is a settlement of a switched  
16 access dispute that Qwest initiates, does Qwest  
17 generally pay more or less than the amount that it  
18 disputed to begin with?

19          **A**     Repeat the question. I guess I'm not --

20          **Q**     To the extent Qwest has engaged in disputes of  
21 switched access charges, does Qwest often times end up  
22 paying less than the initial amount billed by the, by  
23 the LEC, the local exchange carrier?

24          **A**     Sometimes to the extent, the extent that  
25 dispute is upheld.

1           Q     Let me ask you, is it your testimony that AT&T  
2 engaged in self-help with regard to the CLEC contracts  
3 at issue in this case, or at least with regard to  
4 Bullseye's?

5           A     I believe that's true.

6           Q     And that self-help included the withholding of  
7 payment from the CLECs?

8           A     That appears to be the case.

9           Q     Again, you talk about the CLEC motivations in  
10 entering those agreements. How do you know those CLEC  
11 motivations?

12          A     We're getting into an area of confidential  
13 information. Let me just say generally I had access to  
14 e-mails that indicated at least one particular carrier  
15 wanted to enter into this agreement so they could ensure  
16 some level of collectibles going forward.

17          Q     Were you involved, Mr. Easton, in the suit  
18 between Qwest Communications Company and AT&T regarding  
19 the switched access agreements?

20          A     This was the civil suit in Minnesota you're  
21 referring to?

22          Q     Yes.

23          A     I was not involved in that, no.

24          Q     At what point did you first become aware of  
25 that lawsuit?



1           **A**     I became involved in this case, I believe,  
2           sometime in around 2009.  So sometime several years  
3           after that suit was brought.

4           **Q**     Mr. Easton, is it your understanding that  
5           tariffs and publicly filed price lists put customers on  
6           notice as to what terms that carrier is offering service  
7           under?

8           **A**     I would agree with that.

9           **Q**     Okay.  Did there come a time when Bullseye  
10          Telecom filed a price list with the Florida Public  
11          Service Commission?

12          **A**     Excuse me?  Please repeat that.

13          **Q**     Did there come a time when Bullseye Telecom  
14          filed a price list with the Florida Public Service  
15          Commission?

16          **A**     Yes, I believe I, I noted in my testimony that  
17          the price list I have as an exhibit was filed with the  
18          Florida commission.

19          **Q**     Okay.  When did you first examine the terms of  
20          that price list?

21          **A**     Probably sometime within the last year.

22          **Q**     So sometime between 2011 and 2012?

23          **A**     Correct.

24          **Q**     And was this lawsuit, this proceeding already  
25          underway prior to that time?

1           **A**     It was. I believe this complaint was filed at  
2 the end of 2009 in Florida.

3           **Q**     Okay. And do you know when Bullseye was added  
4 as a party?

5           **A**     That I don't know.

6           **Q**     Okay. Have you at any time reviewed Section  
7 5.1 of the Bullseye price list which relates to  
8 individual-based contracts?

9           **A**     I believe I have, yes.

10          **Q**     Okay. And does that section of the Bullseye  
11 price list indicate that Bullseye may enter into  
12 individual contracts for switched services and provides  
13 that such contracts will be made available to other  
14 customers who are similarly situated?

15          **A**     Yes.

16          **Q**     So it's fair to say Qwest was on notice as to  
17 the terms of, of that price list.

18          **A**     It was --

19          **Q**     Okay.

20          **A**     -- in fact on notice as to the terms of that  
21 price list. What it was not on notice to was the fact  
22 that in fact Bullseye had entered into an off-price list  
23 agreement with another carrier offering more favorable  
24 terms than QCC was receiving.

25          **Q**     In 2004, did Qwest ask Bullseye whether it had

1 any off-price list agreements?

2 A I don't believe we did. As I stated earlier,  
3 you know, that puts the burden on QCC to monitor the  
4 price list and agreements of, of over 700 CLECs in this  
5 country.

6 Q In 2005, did QCC ask Bullseye whether it had  
7 any off-price list contracts?

8 A I know we sent out a letter after the  
9 off-price list issue became known in Minnesota. I don't  
10 recall when that letter was sent out.

11 Q Now those agreements to which you just  
12 referenced in Minnesota --

13 A Excuse, excuse me.

14 Q -- became aware in 2005; correct?

15 A It was in 2008, February of 2008 we sent out a  
16 letter to the different CLECs.

17 Q Okay.

18 A Asking if they had --

19 Q Okay.

20 A -- a price list or off-tariff agreements.

21 Q In 2008?

22 A Correct.

23 Q Okay. And in April of 2005 Qwest became aware  
24 of the Minnesota proceeding dealing with these access  
25 agreements, did it not?

1           **A**     Yeah. I think when we get into the area of  
2 specific timelines related to when we found out about  
3 these, that really falls in the area of Ms. Hensley  
4 Eckert's testimony and she'd probably be the appropriate  
5 party.

6           **Q**     Okay. But you would take it that in 2005  
7 Qwest became aware of the Minnesota proceeding and these  
8 contracts.

9           **A**     We did become aware of -- in the proceeding of  
10 the existence of the contract. I don't believe we had  
11 the particulars at that time.

12          **Q**     Okay. And in 2005 did Qwest ask Bullseye for  
13 an off-price list contract for Florida switched access?

14          **A**     Again, I think this is probably an appropriate  
15 question for Ms. Hensley Eckert. I don't know that in  
16 2005 we knew that Bullseye had an off-tariff or  
17 off-price list agreement.

18          **Q**     But do you know whether Qwest asked for an  
19 agreement in 2005?

20          **A**     I don't know. Again, that's probably a  
21 question more appropriate for Ms. Hensley Eckert.

22          **Q**     And, similarly, you don't know if one was  
23 requested in 2006 or 2007, I imagine.

24          **A**     Correct.

25          **Q**     In 2002, Qwest was aware that off-price list

1 contracts existed for switched access; correct?

2 A I don't know that.

3 Q Well, didn't Qwest in fact have those  
4 agreements as early as 2002?

5 A I don't believe so.

6 Q Okay. Let me ask you to turn to what's been  
7 marked and entered as Exhibit 84. It's a confidential  
8 page.

9 A Is that in my testimony?

10 Q It is not. I will provide you with a copy, if  
11 that's my responsibility.

12 A Okay.

13 **MS. MASTERTON:** I mean, I think -- isn't it?  
14 You're the one asking the questions; right?

15 **BY MR. KLEIN:**

16 Q With regard to Exhibit 84, which Qwest  
17 contends is confidential, does that exhibit indicate the  
18 date on which Qwest had first entered into an agreement  
19 under which Qwest was not being charged intrastate,  
20 intrastate switched access in Florida?

21 A It appears that the first one --

22 **MR. SHERR:** Mr. Chairman, I'm sorry. Again I  
23 want to remind the witness that information may be  
24 confidential. I apologize for that.

25 **THE WITNESS:** Thank you very much. It does,

1 this exhibit does show the dates when CPLA began by  
2 carrier.

3 **BY MR. KLEIN:**

4 Q Okay. And without setting forth that date,  
5 was that date more or less than ten years ago today?

6 **THE WITNESS:** It would be --

7 **MR. SHERR:** Mr. Chairman, same -- he's asking  
8 for confidential information.

9 **MR. KLEIN:** I'm not sure why that would be  
10 confidential.

11 **MR. SHERR:** Well, the document states a date.  
12 I don't know why it needs to be repeated.

13 **MR. KLEIN:** Well, I'm asking just for a  
14 general time frame. I don't think that that would be  
15 confidential, particularly in light of the witness's own  
16 testimony.

17 **CHAIRMAN BRISÉ:** Let me help you out here. If  
18 you could simply identify, say the column and how many  
19 down, and then you all can agree on, on that, that would  
20 help out. Thank you.

21 **BY MR. KLEIN:**

22 Q Okay.

23 A All right. It would be the third column over.  
24 The title of the column is Wholesale Product Begin Date.  
25 The earliest one is five rows down.

1           Q     Okay.  And is that date prior to the date of  
2 the Minnesota proceeding to which you referenced  
3 earlier?

4           A     That's correct.  Again, when I was answering  
5 that question, I was assuming you were talking about QCC  
6 entering into off-price list agreements.  And, again,  
7 QCC does not offer switched access in Florida.

8           Q     Okay.  Now I was asking about Qwest as a  
9 purchaser of switched access.

10          A     That's correct.

11          Q     That is what's at issue here.

12          A     Yes.

13          Q     But it's fair to say that prior to the time of  
14 the Minnesota proceeding Qwest was aware that there  
15 existed in Florida off-price list contracts for switched  
16 access services.

17          A     I believe that would be true, yes.

18          Q     And, in fact, Qwest had itself several of  
19 those agreements prior to that time.

20          A     Agreed.

21          Q     Okay.  On page 29 of your testimony,  
22 Mr. Easton -- I'm sorry.  That was testimony that was  
23 stricken.

24                     Let me ask you generally, was it your opinion  
25 that AT&T got better rates for switched access

1 termination -- or origination, rather, than did Qwest in  
2 Florida?

3 A I don't think there's any question. That is  
4 in fact what this case is all about.

5 Q Well, if AT&T paid some rate and Qwest paid  
6 zero, which party would be getting the better rate?  
7 Wouldn't it be Qwest?

8 A In your hypothetical that would be true.

9 Q Okay.

10 A Now to the extent you're talking about CPLA, I  
11 would argue that in fact AT&T made out much better than  
12 Qwest. As we discussed earlier, the intent of CPLA was  
13 not to advantage either party, either QCC or the CPLA  
14 purchaser. And that to me --

15 Q So you're saying agreements can't be taken in  
16 isolation, that the entire terms of agreements need to  
17 be considered?

18 A No. That's, that's not what I'm saying. I'm  
19 saying in the case of the rates AT&T received, they  
20 received lower rates. That's it. They were advantaged  
21 by those lower rates.

22 In the case of CPLA that we've been talking  
23 about, yes, QCC received lower rates, but in exchange  
24 they granted those CPLA carriers lower long distance,  
25 wholesale long distance rates. The two offset each



1 other. Neither party was advantaged or disadvantaged,  
2 unlike the case of the AT&T agreement.

3 Q Isn't it true that Qwest asserted in this  
4 proceeding that Qwest was charged price list rates by  
5 certain CLECs, when in fact Qwest was not charged any  
6 rate by those same CLECs under the CPLA agreements?

7 A Under the CPLA agreements those carriers did  
8 not charge Qwest switched access. In return, Qwest  
9 granted those carriers lower wholesale long distance  
10 rates.

11 Q Let me ask you to turn to your rebuttal  
12 testimony, please. On pages 1 and 2 of your rebuttal  
13 you indicate that -- you refer to credible justification  
14 for differential pricing; is that correct?

15 A Do you have a specific line cite?

16 Q Let me find that for you. The top of page 2.

17 A Yes, I see that.

18 Q And I believe you rely on Dr. Weisman's theory  
19 that rate differences cannot be explained by differences  
20 in the cost of providing the services?

21 A Yes.

22 Q And there's a presumption that there's  
23 discriminatory pricing?

24 A Correct.

25 Q But there's no Florida rule that requires

1 cost-based pricing for switched access; correct?

2 A That is correct.

3 Q Are you aware of any rule or statute in  
4 Florida that specifically requires a CLEC to provide a  
5 justification for its access rates in response to a  
6 carrier claim?

7 A No.

8 Q Have you analyzed the underlying cost  
9 structure of Bullseye's switched access service?

10 A I don't have access to the cost information  
11 that would be necessary for such an analysis.

12 Q And I believe you've testified earlier you're  
13 aware that Bullseye's price list on file with this  
14 Commission permits price differences based on reasons  
15 other than cost?

16 A Excuse me. Repeat the question.

17 Q You're aware that Bullseye's price list on  
18 file with this Commission allows for rate differences  
19 based on reasons other than cost.

20 A It clearly allows, as we discussed earlier, to  
21 negotiate off-price list agreements. And, further, it  
22 requires that it make those agreements available to  
23 other similarly situated or carriers in like  
24 circumstances.

25 Q With regard to those CLECs with whom Qwest has

1 a CPLA under which Qwest is not charged switched access,  
2 does the, do those CLEC costs vary as between the cost  
3 to provide the service to Qwest and the cost to provide  
4 it to another IXC?

5 A Again, I don't know what those CPLA CLECs'  
6 costs are and I don't know what, what other carriers'  
7 costs would be. Actually in the case of the CPLA  
8 carriers, to the extent they're purchasing switching  
9 from Qwest --

10 Q We're not talking about purchasing. We're  
11 talking about providing, in terms of providing switched  
12 access.

13 A In terms of providing switched access. But in  
14 fact the switched access is being provided by the  
15 carrier selling the unbundled network element. In this  
16 case though that would be BellSouth. Again, I wouldn't  
17 know what BellSouth's underlying costs are. I wouldn't  
18 know what other carriers' underlying cost of providing  
19 switched access was.

20 Q So you do not know what BellSouth or now  
21 AT&T's price is for unbundled switching to any  
22 particular carrier that's leasing that switching today?

23 A The price, I could go out and find it in  
24 their, you know, interconnection agreements. But their,  
25 but their costs I don't know.

1           Q     But you're aware that UNE-P is no longer, but  
2 you're aware that UNE-P is no longer a required service  
3 as, as a UNE element.

4           A     That's correct, although unbundled switching  
5 is still made available through commercial agreements.

6           Q     Which are themselves confidential; correct?

7           A     Certainly in some cases they are.

8           Q     Would you agree with Dr. Weisman that economic  
9 regulation is now the exception rather than the rule?

10          A     You know, I think that's probably a question  
11 to explore with Dr. Weisman. I'm not an economist.

12          Q     You don't have an opinion on that?

13          A     No.

14          Q     Okay. On page 2 of that same rebuttal  
15 testimony you refer to Qwest seeking a refund of the  
16 amounts it overpaid, and you state then that QCC is not  
17 seeking civil damages; correct?

18          A     Correct.

19          Q     Okay. What are civil damages as used in that  
20 sentence?

21          A     Again, we're getting into a legal term. But  
22 it's, it's my understanding when you're talking about  
23 damages, you're talking about pricing out that harm, can  
24 be lost market share. Again, we have not priced out any  
25 of those types of damages in this case.

1 Q For lost market share.

2 A For lost market share.

3 Q Okay. And, and no other downstream impacts;  
4 correct?

5 A Correct.

6 Q Okay. So what are civil damages as you use  
7 that here? Are there any other civil damages as you use  
8 that term here that you're, that you're not seeking?

9 A Again, we're not seeking any damages at all  
10 here.

11 Q Okay.

12 A We're seeking refunds.

13 Q Okay. And are refunds a monetary remedy?

14 A Yes.

15 Q And can a monetary remedy also be a civil  
16 damage remedy as you use that word in your testimony?

17 A I'm assuming it could be a part of that.  
18 Again, I'm not a lawyer.

19 Q I believe that you testified earlier that QCC  
20 was charged the rate in Bullseye's price list; is that  
21 correct.

22 A Yes.

23 Q So QCC was not charged more than the rate set  
24 forth in Bullseye's price list?

25 A That's correct.

1           Q     But Qwest's contention is that it was  
2 overcharged in, by Bullseye; is that correct?

3           A     Yes. It was, was overcharged relative to what  
4 AT&T was charged.

5           Q     Okay. Isn't that the flip side of saying that  
6 AT&T was undercharged?

7           A     From QCC's perspective, no.

8           Q     Okay. But AT&T was the only IXC that QCC  
9 alleges to have been charged something other than the  
10 price list rate.

11          A     Again, QCC was disadvantaged because they were  
12 charged a higher rate.

13          Q     That's not what I was asking. Please listen  
14 to my question.

15          A     All right.

16          Q     We'll get through this more quickly.

17          A     Please repeat your question.

18          Q     Okay. Isn't it true that Qwest's contention  
19 is that AT&T was the only IXC charged below the price  
20 list rate set forth by Bullseye in its price list?

21          A     With regard to Bullseye, yes.

22          Q     And there are dozens of IXCs operating in  
23 Florida; correct?

24          A     Correct.

25               **MR. KLEIN:** Mr. Chairman, would it be

1 convenient to take just a five-minute break to get a  
2 drink of water? I do have more for this witness. I  
3 don't want to interrupt the schedule at all. I was just  
4 wondering if it might be a convenient time for a --

5 **CHAIRMAN BRISÉ:** We typically go to about  
6 noon. We take a break at around 11:30 to give our court  
7 reporter an opportunity to rest a little bit. We were  
8 trying to forge through 'til noon.

9 **MR. KLEIN:** Okay.

10 **CHAIRMAN BRISÉ:** So if you'll indulge us.

11 **MR. KLEIN:** Certainly. If I may just have a  
12 moment.

13 **CHAIRMAN BRISÉ:** Okay.

14 (Pause.)

15 **BY MR. KLEIN:**

16 **Q** Mr. Easton, on page 3 of your rebuttal  
17 testimony, line 17, you testify that other IXCs got  
18 preferential treatment. Is that accurate?

19 **A** That's accurate.

20 **Q** Because they were charged something other than  
21 the price list rate.

22 **A** They were charged a rate lower than the price  
23 list rate.

24 **Q** Okay. And in what ways is Qwest's nonpayment  
25 of access charges not also improperly preferential?

1           **A**     I guess I don't understand the question. For  
2           Qwest nonpayment of access charges?

3           **Q**     Well, to the extent Qwest paid other CLECs  
4           below the price list rate, wouldn't that similarly be a  
5           preferential rate in violation of Florida rules?

6           **A**     Again, we don't offer switched access in the  
7           state of Florida.

8           **Q**     In terms of purchasing switched access.  
9           Perhaps I was not clear.

10          **A**     And I'm assuming you're again referring to  
11          CPLA agreements that we talked about earlier?

12          **Q**     Yes.

13          **A**     Again, I don't believe that is a case of  
14          discrimination. In fact, no other carriers were  
15          disadvantaged as a result of that.

16          **Q**     So Qwest can get a below price list rate. But  
17          when other IXCs get a below price list rate, that's  
18          improperly preferential.

19          **A**     If, in fact, it results in discrimination, as  
20          I believe it does here, yes, that's the case. You and I  
21          have had the discussion a number of times this morning,  
22          in the case of CPLA, that was not the intent and that  
23          was not the result. Other carriers were not  
24          disadvantaged as a result of those CPLA agreements.

25          **Q**     Now on page 16 of that same testimony you



1 refer to penalizing QCC for paying its bills while  
2 rewarding carriers that do not. I believe that  
3 Mr. Sherr made reference to that same assertion. Do you  
4 recall that testimony?

5 A I do.

6 Q Hasn't Qwest previously taken the position  
7 that AT&T should not be allowed to profit from the  
8 action it took in withholding those access charge  
9 payments to CLECs?

10 A I believe you're referring to the civil,  
11 Minnesota civil suit?

12 Q Yes. Was that not Qwest's position in that  
13 case?

14 A Yes, I believe it was.

15 Q So wouldn't it make sense for Qwest to be  
16 contending here that AT&T should be brought up to the  
17 price list rate to remedy that misbehavior?

18 A I don't think, and as I stated in my  
19 testimony, that that would be the appropriate remedy  
20 here. What would happen if you did that is that you  
21 would be rewarding the CLECs who engaged in the  
22 discriminatory behavior because they would be receiving  
23 additional monies from AT&T. I don't think from a  
24 public policy standpoint that that, that is appropriate.

25 Q So, Mr. Easton, do you disagree with Qwest's

1 contention that the, that AT&T coerced the nascent CLECs  
2 into providing those off-tariff rates?

3 **A** I believe there was a certain amount of  
4 coercion involved. It's clear to me from looking at  
5 this that AT&T withheld payment from CLECs. The real  
6 issue is, to me is what the CLECs did in response to  
7 that coercion. And as I stated in my testimony, they  
8 could have brought complaints to this Commission.

9 **Q** Mr. Easton, did you bring a complaint to this  
10 Commission in 2005 when Qwest first became aware of  
11 those agreements?

12 **A** We have brought a complaint before this  
13 Commission. That's why we're here today.

14 **Q** Four and a half years after you found out  
15 about those agreements.

16 **A** I think that would be an appropriate line of  
17 questioning for Ms. Hensley Eckert. That is what her  
18 testimony addresses.

19 **Q** Did Qwest pursue relief against AT&T?

20 **A** You and I discussed earlier that in fact we  
21 filed a civil suit against AT&T.

22 **Q** And how did that work out for Qwest? Did  
23 Qwest receive any money?

24 **A** The civil suit was bounced out, said that that  
25 was not the appropriate venue.

1           Q     Because there were 35 other jurisdictions in  
2 which Qwest needed to pursue its relief; is that  
3 correct?

4           A     That's correct.

5           Q     Okay. And did Qwest pursue that relief in 35  
6 other jurisdictions?

7           A     We have pursued that relief in a number of  
8 other jurisdictions, including Florida.

9           Q     Well, my question is whether Qwest pursued the  
10 relief against AT&T in 35 other jurisdictions --

11          A     No, we didn't.

12          Q     -- after Minnesota said it was not the  
13 appropriate forum for all of those.

14          A     No.

15          Q     But it's your contention that the much smaller  
16 CLECs should have done that against AT&T.

17          A     I believe that they certainly had the ability  
18 to do that, as I have stated in my testimony and as I  
19 mentioned in my opening remarks. In fact, CLECs did  
20 take similar issues before the Minnesota Commission and  
21 the Iowa Commission, and they were successful in  
22 addressing AT&T's self-help remedies.

23          Q     So in one state the CLECs were successful, as  
24 you just pointed out.

25          A     Well, I --

1 Q Were they successful in 35 states?

2 A I don't know that they brought those. And,  
3 again, I said Minnesota and Iowa, so we're talking two  
4 states. I don't know if those suits were brought in  
5 other states. No.

6 Q Which company do you suppose has more  
7 financial and legal resources, AT&T or Bullseye Telecom?

8 A I would suggest that AT&T has more resources.

9 **MR. KLEIN:** If I may have a moment.

10 **CHAIRMAN BRISÉ:** Sure.

11 (Pause.)

12 **MR. KLEIN:** Okay. Thank you, Mr. Easton. No  
13 further questions at this time.

14 Thank you, Mr. Chairman.

15 **CHAIRMAN BRISÉ:** Thank you.

16 Staff?

17 **MS. TAN:** Staff has no questions.

18 **CHAIRMAN BRISÉ:** All right. Thank you.

19 Commissioners? Okay. No questions.

20 Redirect.

21 **MR. SHERR:** Can I have just another minute?

22 **CHAIRMAN BRISÉ:** Sure.

23 (Pause.)

24 **MR. SHERR:** Thank you for your patience. I'm  
25 going to need just one more moment, please.

1 (Pause.)

2 **REDIRECT EXAMINATION**

3 **BY MR. SHERR:**

4 **Q** Mr. Easton, I just have a couple of redirect  
5 questions. Mr. Klein was asking you about the use of  
6 underlying carriers. Do you recall that?

7 **A** I do.

8 **Q** Are -- is any of the traffic that Qwest would  
9 have delivered or had terminated via underlying carriers  
10 at issue in this case?

11 **A** No. No, it is not. Mr. Canfield's analysis  
12 is based on switched access billing to QCC. As I stated  
13 in my response to underlying carriers, it's the  
14 underlying carrier who's charged for switched access by  
15 the CLEC, and so those minutes would not be in  
16 Mr. Canfield's analysis.

17 **Q** Okay. What, what is in Mr. Canfield's  
18 analysis then?

19 **A** His analysis is based on the actual CLEC  
20 billing to QCC for switched access.

21 **Q** Mr. Klein also asked you whether you analyzed  
22 Bullseye's cost structure. Do you recall that?

23 **A** I do.

24 **Q** And I believe you answered that we didn't have  
25 that information; is that correct?

1           **A**     I'm, I'm sorry?

2           **Q**     I think we -- I think your response was that  
3 you don't have that information; is that correct?

4           **A**     I have no access to Bullseye's cost structure.

5           **Q**     Do you know whether QCC asked for cost  
6 analyses in this case?

7           **A**     In the course of discovery QCC did ask each of  
8 the parties for cost analysis. It's my understanding  
9 that nothing was provided.

10          **Q**     Okay. And that includes Bullseye?

11          **A**     Correct.

12          **MR. SHERR:** That's all I have. Thank you.

13          **CHAIRMAN BRISÉ:** All right. Thank you. At  
14 this time we will deal with exhibits.

15          **MR. SHERR:** I appreciate the reminder. Qwest  
16 would request the entry into the record of Mr. Easton's  
17 prefiled exhibits, which have been marked on the  
18 Comprehensive Exhibit List as hearing exhibits 37 and 39  
19 through 57.

20          **CHAIRMAN BRISÉ:** Okay. 37, 39 through 57?

21          **MR. SHERR:** Yes. Yes. Thank you.

22          **CHAIRMAN BRISÉ:** Okay. Seeing no objections,  
23 we will move in Exhibits 37, 39 through 57.

24          **MR. SHERR:** Thank you. Mr. Chairman.

25                 (Exhibits 37 and 39 through 57 admitted into

1 the record.)

2 **CHAIRMAN BRISÉ:** We're not quite done with you  
3 yet, Mr. Easton.

4 All right. Were we seeking to move in any  
5 other exhibits, Qwest, at this time?

6 **MR. SHERR:** Not with regard to Mr. Easton.  
7 Thank you.

8 **CHAIRMAN BRISÉ:** Okay. Bullseye?

9 **MR. KLEIN:** Bullseye would move in  
10 Exhibits 83 and 84 that I believe were moved in by  
11 stipulation.

12 **MR. SHERR:** I don't believe copies of those  
13 have yet been provided, so --

14 **MR. KLEIN:** Subject to completion of the, of  
15 the exhibit attachments, which I would suggest at this  
16 time we just mark as a separate exhibit.

17 **CHAIRMAN BRISÉ:** Okay. So we will move in 83.  
18 And we will move in 84, understanding that it is  
19 specifically to page 3, and we will deal with the other  
20 attachments as, as a separate exhibit.

21 **MR. KLEIN:** Thank you, Mr. Chairman.

22 **MR. SHERR:** And, Mr. Chairman, those will  
23 however -- those will be admitted into the record;  
24 correct?

25 **CHAIRMAN BRISÉ:** Yes.

1           **MR. SHERR:** Okay. Thank you.

2           **CHAIRMAN BRISÉ:** 83 and 84 will be moved into  
3 the record at this time.

4           (Exhibits 83 and 84 admitted into the record.)

5           I think we have two other exhibits, 85 and 86.

6           **MR. KLEIN:** Yes. I would also move in 85.

7           **CHAIRMAN BRISÉ:** Which was the interrogatory  
8 18, 21, and 22. Okay. So we will move into the record  
9 85 and 86 as well, seeing no objections.

10          **MR. SHERR:** Our intention was to move Exhibit  
11 86 into the record after Dr. Weisman testifies, the last  
12 of the Qwest witnesses, if that's convenient.

13          **CHAIRMAN BRISÉ:** Okay. We can accommodate  
14 that.

15          **MR. SHERR:** Okay. Thank you.

16          (Exhibit 85 admitted into the record.)

17          **CHAIRMAN BRISÉ:** Okay. So we have moved into  
18 the record 37, 39 through 57, 83, 84 and 85.

19                 Is there anything else for Mr. Easton? Okay.  
20 Seeing nothing else --

21          **MS. TAN:** Chairman, I just wanted to make sure  
22 that 83 will be late-filed because we're still waiting  
23 for that from the parties?

24          **CHAIRMAN BRISÉ:** No. That's going to be --  
25 the other attachments are going to be a separate



1 exhibit.

2 **MS. TAN:** Including his confidential then?

3 **MR. SHERR:** Well, if I -- sorry.

4 **CHAIRMAN BRISÉ:** The confidential page 3 is  
5 Exhibit 84.

6 **MS. TAN:** But it's my understanding there were  
7 additional confidential attachments that were also to be  
8 submitted.

9 **CHAIRMAN BRISÉ:** Right. And those will be a  
10 separate exhibit.

11 **MR. SHERR:** Just for clarification though, 83,  
12 there are also additional public attachments to our,  
13 those discovery responses. So there was a, just to be  
14 clear, there was a short response, which is the document  
15 I believe you have in the red folder here which has been  
16 provided, but then there was a, there were a number of  
17 confidential exhibits. Those are what we've been  
18 talking about that need to be provided. And then there  
19 was also a number of public documents. All of that  
20 comprises Qwest's response to these discovery responses.  
21 So there may be two more exhibits is another way to put  
22 it.

23 **CHAIRMAN BRISÉ:** Okay. Understood.

24 **MR. SHERR:** Thank you.

25 **CHAIRMAN BRISÉ:** Thank you. All right.

1                   **MR. SHERR:** Thank you, Mr. Easton.

2                   **CHAIRMAN BRISÉ:** Okay. At this time we will  
3 excuse Mr. Easton.

4                   **MR. SHERR:** Thank you.

5                   **CHAIRMAN BRISÉ:** All right. It is noon. We  
6 will break for lunch. We'll see you back here at  
7 1:00 p.m.

8                   (Recess taken.)

9                   (Transcript continues in sequence in Volume  
10 2.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25


1 STATE OF FLORIDA )  
2 COUNTY OF LEON ) : CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, RPR, CRR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes  
12 of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties,  
15 nor am I a relative or employee of any of the parties'  
16 attorneys or counsel connected with the action, nor am  
17 I financially interested in the action.

18 DATED THIS 9<sup>th</sup> day of November,  
19 2002.

20  
21   
22 LINDA BOLES, RPR, CRR  
23 FPSC Official Commission Reporter  
24 (850) 413-6734  
25