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June 13, 2012 – VIA OVERNIGHT MAIL

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

claim of confidentiality
 notice of intent
 request for confidentiality
 filed by OPC

For DN 03871-12, which
is in locked storage. You must be
authorized to view this DN.-CLK

Re: Docket No. 090538-TP
Amended Complaint of Qwest Communications Company, LLC, Against
MCImetro Transmission Services LLC (d/b/a Verizon Access Transmission
Services; XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite
Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communi-
cations, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay,
Inc.; Bullseye Telecom, Inc.; Deltacom, Inc.; Ernest Communications, Inc.; Flatel,
Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC;
Paetec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC;
Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination

Dear Ms. Cole:

Please find enclosed the original and 15 copies of the Direct Testimony of Peter H. Reynolds on behalf of Verizon Access Transmission Services for filing in the above matter. Also enclosed are an original and 15 copies of a Request for Confidential Classification in connection with Mr. Reynolds' testimony.

Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please call me at 678-259-1657.

Sincerely,

Dulaney L. O'Roark III

Enclosures

COM _____
APA _____
ECR _____
GCL 13
RAD 1
SRC _____
ADM _____
OPC _____
CLK 1

03871-12-03

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail(*) and/or overnight mail (**) on June 14, 2012 to:

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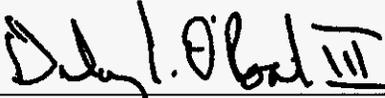
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By:


Dulaney O'Roark III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest)
Communications Company, LLC, Against)
MCImetro Transmission Services LLC (d/b/a)
Verizon Access Transmission Services); XO)
Communications Services, Inc.; tw telecom)
of florida, l.p.; Granite Telecommunications,)
LLC; Cox Florida Telcom, L.P.; Broadwing)
Communications, LLC; Access Point, Inc.;)
Birch Communications, Inc.; Budget Prepay,)
Inc.; Bullseye Telecom, Inc.; Deltacom, Inc.;)
Ernest Communications, Inc.; Flatel, Inc.;)
Lightyear Network Solutions, LLC; Navigator)
Telecommunications, LLC; Paetec)
Communications, Inc.; STS Telecom, LLC;)
US LEC of Florida, LLC; Windstream Nuvox,)
Inc.; and John Does 1 through 50, For)
unlawful discrimination)
_____)

Docket No. 090538-TP
Filed: June 14, 2012

**VERIZON ACCESS TRANSMISSION SERVICES' REQUEST FOR
CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER**

Pursuant to Commission Rule 25-22.006, F.A.C., Verizon Access Transmission Services ("Verizon") seeks confidential classification and a protective order for information contained in Exhibits PHR-2, PHR-10, PHR-11 and PHR-12 to the Direct Testimony of Peter H. Reynolds being filed on behalf of Verizon in this proceeding on June 14, 2012.

All of the information for which Verizon seeks confidential treatment falls within Florida Statutes section 364.183(3), which defines "proprietary confidential business information" as:

[i]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative

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body, or private agreement that provides that the information will not be released to the public.

Florida Statutes section 364.183(3)(a) expressly provides that "trade secrets" fall within the definition of "proprietary confidential business information." Florida Statutes section 364.183(3)(e) provides further that "proprietary confidential business information" includes "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information."

Three of the exhibits identified above (PHR-10, PHR-11 and PHR-12) contain information that the complainant, Qwest Communications Company LLC ("QCC") produced in response to discovery requests in this proceeding. QCC alleged that the information contained in its responses is "confidential," and produced the information and documents pursuant to the protective order entered in this case. It is Verizon's understanding that the documents contained in Exhibit PHR-11 were filed by QCC on a "confidential" basis with the Commission, and that QCC subsequently marked them as "confidential" when it produced them in this case.

Exhibit PHR-2 contains a settlement agreement that includes confidential information and trade secrets. The settlement agreement contains confidentiality provisions that preclude its disclosure to third parties, and was accorded confidential treatment by the United States Bankruptcy Court that approved the settlement. The Court's order approving the settlement agreement necessarily encompassed the confidentiality provisions contained therein. The bankruptcy court has not issued any subsequent order modifying those provisions. The settlement agreement contains detailed financial terms, including the amounts of payments made and credits issued, which reveal how the settling parties resolved their respective competing claims during

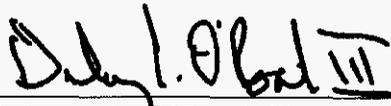
the bankruptcy process. The settlement agreement also explains how the parties resolved their differences over the payment of switch access charges for certain traffic. It was common practice in the WorldCom bankruptcy proceeding to treat as confidential the financial terms of settlements with the company's numerous creditors, including QCC; as such, the separate settlement agreement between QCC, Qwest and WorldCom also contained confidentiality terms. For these reasons, those settlement agreements have not been publicly disclosed, and Verizon restricts access to them only to those of its employees that have a need to know the terms. If competitors were able to acquire this detailed and sensitive information regarding Verizon, they could more easily develop marketing and other business strategies to ensure success in competing with Verizon. This would afford them an unfair advantage while severely jeopardizing Verizon's competitive position. In a competitive business, any knowledge obtained about a competitor can be used to the detriment of the entity to which it pertains, often in ways that cannot be fully anticipated. This unfair advantage skews the operation of the market, to the ultimate detriment of the telecommunications consumer. Accordingly, Verizon respectfully requests that the Commission classify the information in Exhibit PHR-2 as confidential.

For the reasons stated above, and based on QCC's characterization of information and documents provided by it as confidential, Verizon requests that the Commission classify the information in the four exhibits listed above as confidential, and enter an appropriate protective order.

While a ruling on this request is pending, Verizon understands that the information at issue is exempt from Florida Statutes section 119.07(1) and Staff will accord it the stringent protection from disclosure required by Rule 25-22.006(3)(d).

A highlighted copy of the confidential information is attached as Exhibit A. Two redacted copies of the confidential information are attached as Exhibit B. A detailed justification of the confidentiality of the information at issue is attached as Exhibit C.

Respectfully submitted on June 14, 2012.

By: 
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Email: de.oroark@verizon.com

Attorney for Verizon Access
Transmission Services

DOCKET NO. 090538-TP

AT&T SETTLEMENT
AGREEMENT

EXHIBIT PHR-2 –

TOTAL OF 26 PAGES

REDACTED

ENTIRE DOCUMENT IS
CONFIDENTIAL

COM	_____
APA	_____
ECR	_____
CEL	_____
EAD	_____
SRC	_____
ADM	_____
OPC	_____
CLK	_____

COMMUNICATIONS
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QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION
SERVICES'SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT
REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 8

MCImetro Interrogatory No. 29:

Please provide the number of local exchange customers and subscriber lines that QCC had in Florida as of December 31, 2003; December 31, 2004; December 31, 2005; and December 31, 2006.

RESPONSE: QCC objects to this Interrogatory on the basis that is not reasonably calculated to lead to the discovery of admissible evidence. As an IXC, similarly situated to AT&T with regard to MCI's provision of intrastate switched access in Florida, QCC was entitled to non-discriminatory rate treatment for that service. The total number of local exchange customers and subscriber lines are not explicit or implicit prerequisites for obtaining non-discriminatory rate treatment. Without waiver of its objections, QCC responds as follows.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

Respondents: QCC Legal;

Marsha Dodd, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

CONFIDENTIAL

DOCKET NO. 090538-TP

QCC RESPONSE TO

TIME WARNER

POD NO. 4

EXHIBIT PHR-11 –

TOTAL OF 15 PAGES

ENTIRE DOCUMENT IS

CONFIDENTIAL

QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION
SERVICES'SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT
REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 5

MCImetro Interrogatory No. 26:

The spreadsheet attached to QCC's Supplemental Response to MCImetro Interrogatory No. 17 contains a column titled "Usage Billed Amt." Did QCC pay MCImetro each of the amounts shown in that column? If your response is other than an unqualified "yes,"

- a) please identify each amount shown in that column that QCC did not pay;
- b) explain why QCC did not pay each amount that QCC identified in its response to subparagraph (a) above; and
- c) state what amount (if any) QCC paid instead.

RESPONSE: QCC objects to this Interrogatory on the basis that it seeks information already in MCI's possession or control. Without waiver of its objections, QCC responds as follows.

[BEGIN CONFIDENTIAL]

[END

CONFIDENTIAL]

Respondent: Julie Tammen
TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

CONFIDENTIAL

EXHIBIT C

CONFIDENTIAL INFORMATION	LINE(S)/COLUMN(S)	REASON
<p>Direct Testimony of Peter Reynolds:</p> <p>Exhibit PHR-2 – 26 pages</p>	<p>Entire document</p>	<p>The settlement agreement includes confidentiality provisions that preclude public disclosure. The agreement, including its confidentiality provisions, was approved by the U.S. Bankruptcy Court, and there has been no subsequent order negating those terms. The agreement includes confidential financial terms that reflect the parties' resolution of conflicting claims, and are commercially sensitive; disclosure would harm Verizon's business and unfairly benefit its competitors.</p>
<p>Exhibit PHR-10</p>	<p>All highlighted text</p>	<p>Qwest has claimed confidentiality with respect to its response to Verizon's data request, and Verizon accordingly has treated that information in accordance with Qwest's claim.</p>
<p>Exhibit PHR-11 – 15 pages</p>	<p>Entire document</p>	<p>Qwest has claimed confidentiality with respect to its responses to annual "Competitive Local Exchange Carrier (CLEC) Data Requests" issued by the Florida Public Service Commission, and Verizon accordingly has treated that information in accordance with Qwest's claim.</p>

Exhibit PHR-12	All highlighted text	Qwest has claimed confidentiality with respect to its response to Verizon's data request, and Verizon accordingly has treated that information in accordance with Qwest's claim.
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DIRECT TESTIMONY OF PETER H. REYNOLDS

ON BEHALF OF

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC
d/b/a VERIZON ACCESS TRANSMISSION SERVICES

COM 5 testimony only
 APA _____
 ECR _____
 GCI 8 testimony
 RAD 1
 SRC _____
 ADM _____
 OPC _____
 CLK _____
 ct/Rep 1 testimony only

JUNE 14, 2012

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 FPSC-COMMISSION CLERK

1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Peter H. Reynolds. My business address is 22001 Loudoun County
4 Parkway, Ashburn, Virginia 20147.

5

6 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

7 A. I am employed by Verizon Services Organization, Inc. In this position, I
8 support primarily the activities of the Verizon Enterprise business unit which
9 provides various communications services to carrier, commercial and
10 government entities through several operating companies, including MCImetro
11 Access Transmission Services LLC d/b/a Verizon Access Transmission
12 Services ("MCImetro" or "Verizon Access"), one of the respondents in this
13 proceeding.

14

15 My current position is Director, Carrier Contract Management. In this capacity,
16 I am responsible for 1) vendor and contract management for a wide range of
17 telecommunications service providers; 2) overseeing local interconnection
18 agreements that Verizon Access has or requires with other carriers, and 3)
19 project management of various initiatives to enhance the efficiency of
20 Verizon's purchases from and relationships with other carriers.

21

22 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

23 A. I was awarded a Bachelor of Science degree in economics from Florida State
24 University in 1982. I did post-graduate work in economics and public policy at
25 the same university.

1 Q. PLEASE DESCRIBE YOUR RELEVANT TELECOMMUNICATIONS
2 WORK EXPERIENCE.

3 A. I began my career in telecommunications in 1984 as a member of the staff of
4 the Florida Public Service Commission. From mid-1986 to the end of 1988, I
5 worked for Sprint in regulatory affairs, dealing mainly with access charge and
6 interexchange competition issues. I subsequently was employed by another
7 interexchange carrier, SouthernNet, and assumed responsibility for that carrier's
8 tariffs and regulatory affairs, as well as aspects of vendor management.
9 SouthernNet later became Telecom*USA, which was acquired by MCI in late
10 1991. At the time of the acquisition, I held the position of Director, Regulatory
11 Affairs and Tariffs. With MCI, I moved into vendor and carrier management
12 functions, but remained involved in aspects of policy development with a focus
13 on cost and service enablement. MCI merged with Verizon in early 2006, after
14 which I assumed my current responsibilities, under several functional
15 realignments that were undertaken by Verizon.

16
17 Q. HAVE YOU APPEARED OR FILED TESTIMONY IN CASES BEFORE
18 ANY STATE REGULATORY COMMISSIONS?

19 A. Yes. I have appeared and testified before public service or public utilities
20 commissions in Alabama, Colorado, Georgia, Kentucky, Louisiana, North
21 Carolina, and South Carolina.

22
23 **II. CORPORATE BACKGROUND**

24 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

25 A. I am testifying on behalf of MCImetro, also known as Verizon Access, one of

1 the respondents in this proceeding. Because most of the events I will discuss
2 occurred between five and eight years ago, and because my company has
3 undergone significant organizational changes in the intervening years, it may be
4 helpful to describe the entities that I will be referring to during my testimony.

5
6 Verizon Access is a competitive local exchange carrier ("CLEC"). It is
7 authorized to provide local exchange services to residential and business
8 customers throughout the continental United States. Its affiliate, MCI
9 Communications Services, Inc., is an interexchange carrier ("IXC"). It
10 provides, among other things, a variety of long distance voice and data services
11 throughout the United States, as well as internationally. Both companies are
12 authorized to operate in Florida, and both have been providing communication
13 services to residential and business customers in the state for more than a
14 decade. Both of these companies were subsidiaries of WorldCom, Inc. when
15 WorldCom filed for bankruptcy in 2002. I will describe WorldCom Inc.'s
16 bankruptcy proceeding in more detail below. As it emerged from bankruptcy,
17 the parent company changed its name from WorldCom to MCI, Inc. In January
18 2006, MCI, Inc. merged with Verizon Communications Inc. ("Verizon"). Since
19 then, MCImetro and MCI Communications Services, Inc. have been indirect
20 subsidiaries of Verizon. Today, MCImetro provides services under the name
21 Verizon Access, and MCI Communications Services operates under the name
22 Verizon Business Services.

23
24 **III. SUMMARY AND PURPOSE OF TESTIMONY**

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

2 A. The purpose of my testimony is to urge the Commission to dismiss or deny the
3 complaint of Qwest Communications Company LLC ("QCC") against Verizon
4 Access. In support of this position, I will respond to QCC's contention that
5 MCImetro entered into an agreement to provide switched access service to
6 AT&T in a manner that unreasonably discriminated against QCC. That
7 agreement was entered into more than eight years ago, expired on January 27,
8 2007, and is no longer in effect. The agreement was one of two identical,
9 reciprocal agreements in which the CLEC affiliates of MCI and AT&T agreed
10 to provide the other company's IXC affiliates switched access service on the
11 same rates, terms and conditions anywhere in the country where they provided
12 local service.

13
14 I will explain the circumstances and context in which MCImetro entered into
15 that reciprocal agreement as part of the resolution of numerous disputes in the
16 federal bankruptcy proceeding of its former corporate parent, WorldCom, Inc.
17 During the WorldCom bankruptcy, MCI also entered into a separate and
18 different business agreement with QCC and its parent company. I will explain
19 that because of the much more limited nature of QCC's CLEC services and
20 operations, both in Florida and nationally, QCC could not have entered into an
21 agreement similar to the reciprocal nationwide agreement that MCImetro and
22 AT&T entered into.

23 Because of significant differences between QCC's business and service
24 offerings and the services and business operations of AT&T, QCC was not
25 similarly situated to AT&T. Simply put, QCC would not have been able to

1 enter into a business arrangement with MCImetro that was comparable to the
2 agreement that MCImetro had with AT&T. QCC could not have provided
3 MCI's IXC affiliate with benefits that were equivalent to those MCI obtained
4 through its contractual arrangement with AT&T. This is because QCC did not
5 provide and has not provided switched access services in Florida or anywhere
6 else in the United States. Therefore, it could not have entered into a reciprocal
7 agreement with MCI to provide switched access services to MCI's IXC
8 affiliates. Although it was aware of the existence of the MCImetro-AT&T
9 agreement as early as 2004, QCC never approached Verizon Access to discuss
10 entering into a similar (or even different) arrangement for switched access
11 service while that agreement was in effect.

12
13 Verizon Access has not unreasonably discriminated against QCC or treated it
14 unfairly. On the contrary, during the period the MCImetro-AT&T contract was
15 in effect, MCImetro charged QCC the switched access rates contained in
16 MCImetro's intrastate price list on file with this Commission.

17
18 I have organized my testimony so as to address in order the list of issues set
19 forth in the Prehearing Officer's Order Establishing Procedure, issued February
20 2, 2011.

21 **IV. ISSUES DESIGNATED FOR HEARING**

22 **ISSUE 1. For conduct occurring prior to July 1, 2011, does the Florida Public**
23 **Service Commission have jurisdiction over:**

24 **(a) Qwest's First Claim for Relief alleging violation of 364.08(1) and**
25 **364.10(1), Florida Statutes (F.S.) (2010);**

1 (b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2),
2 F.S. (2010);

3 (c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2),
4 F.S. (2010)?

5

6 **Q. DO YOU HAVE AN OPINION ON THE NATURE AND EXTENT OF**
7 **THE COMMISSION'S JURISDICTION OVER QCC'S CLAIMS FOR**
8 **RELIEF?**

9 A. I am not an attorney, so I will not comment on these legal questions. However,
10 I understand that these issues will be addressed by counsel in our post-hearing
11 briefs. With respect to the first four issues identified for resolution in this case,
12 I would point out that QCC's Third Claim for Relief does not name MCImetro
13 and does not include any allegations specifically directed to MCImetro.
14 Accordingly, my testimony should not be construed as addressing that
15 particular claim in QCC's complaint.

16

17 **ISSUE 2. For conduct occurring on or after July 1, 2011, does the Florida Public**
18 **Service Commission have jurisdiction over:**

19 (a) Qwest's First Claim for Relief alleging violation of 364.08(1) and
20 364.10(1), F.S. (2010);

21 (b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2),
22 F.S. (2010);

23 c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and
24 (2), F.S. (2010)?

25

1 Q. DO YOU HAVE ANY VIEWS REGARDING THE COMMISSION'S
2 JURISDICTION OVER CONDUCT OCCURRING AFTER JULY 1,
3 2011?

4 A. To the extent Issue 2 raises legal questions, I will not directly address them.
5 However, I would point out that because Verizon Access's contract at issue
6 expired in January 2007, it does not appear that these questions relate to QCC's
7 complaint against Verizon Access.
8

9 **ISSUE 3. Which party has (a) the burden to establish the Commission's subject**
10 **matter jurisdiction, if any, over Qwest's First, Second, and Third Claims for**
11 **Relief, as pled in Qwest's Amended Complaint, and (b) the burden to establish the**
12 **factual and legal basis for each of these three claims?**

13
14 Q. DO YOU HAVE A COMMENT AS TO WHICH PARTY HAS THE
15 BURDEN OF ESTABLISHING THE MATTERS LISTED IN ISSUE 3?

16 A. I am not an attorney, so I cannot fully address these questions, which will be
17 treated in Verizon's brief. Nevertheless, in my experience, the party that files a
18 complaint ordinarily has the burden of proving the necessary elements of its
19 case.
20

21 **ISSUE 4. Does Qwest have standing to bring a complaint based on the claims**
22 **made and remedies sought in (a) Qwest's First Claim for Relief; (b) Qwest's**
23 **Second Claim for Relief; (c) Qwest's Third Claim for relief?**

24
25 Q. DO YOU HAVE AN OPINION ON QUESTIONS INVOLVING QCC'S

1 **STANDING?**

2 A. This is a legal question that is more appropriately addressed by counsel in post-
3 hearing briefs.

4

5 **ISSUE 5. Has the CLEC engaged in unreasonable rate discrimination, as alleged**
6 **in Qwest's First Claim for Relief, with regard to its provision of intrastate**
7 **switched access?**

8

9 **Q. DID MCIMETRO ENGAGE IN UNREASONABLE RATE**
10 **DISCRIMINATION AGAINST QCC IN ITS PROVISION OF**
11 **INTRASTATE SWITCHED ACCESS SERVICE IN FLORIDA?**

12 A. No. QCC acknowledges in its Complaint that Verizon Access has billed QCC
13 the rates set forth in Verizon Access's price list for intrastate switched access
14 services in Florida. Amended Complaint at ¶10 a. i. During the period of time
15 pertinent to QCC's complaint, MCImetro billed QCC the proper rates and did
16 not engage in unreasonable rate discrimination against QCC by entering into a
17 switched access agreement with AT&T. To address this more fully, I will
18 describe MCImetro's contract at issue, explain its genesis, and show that QCC
19 was not under like circumstances and similarly situated to AT&T at the time
20 and, therefore, was not qualified or able to enter into an identical agreement.

21

22 **A. Description of the Contract and Explanation of How It Came Into Being**

23

24 **Q. PLEASE IDENTIFY THE CONTRACT THAT IS THE BASIS OF**
25 **QCC'S COMPLAINT AGAINST MCIMETRO.**

1 A. My understanding is that QCC's complaint addresses an agreement entered into
2 by MCImetro and AT&T on January 27, 2004. As I will explain, this was one
3 of two identical switched access agreements that were entered into at the same
4 time by the CLEC and IXC affiliates of MCI and AT&T.

5
6 **Q. IS THE JANUARY 2004 SWITCHED ACCESS AGREEMENT STILL IN**
7 **EFFECT?**

8 A. No. The agreement specified a two-year term but was subsequently extended
9 for one additional year. The agreement expired by its terms on January 27,
10 2007, and ceased to have any effect as of that time. Since then, Verizon Access
11 has billed AT&T the intrastate switched access rates in its Florida price list.

12
13 **Q. PLEASE DESCRIBE HOW THE AGREEMENT CAME INTO BEING.**

14 A. On July 21, 2002 and November 8, 2002, WorldCom, Inc., and most of its
15 domestic subsidiaries, including MCImetro (collectively, "WorldCom")
16 initiated proceedings under the United States Bankruptcy Code. During the
17 next two years, WorldCom endeavored to resolve the claims of literally
18 thousands of creditors and to restructure its business so that it could emerge
19 from the bankruptcy process as a financially viable entity. While I am not an
20 attorney or an expert in bankruptcy law, I was involved in negotiating and
21 resolving the claims of some of WorldCom's creditors. Because those
22 agreements were required to be approved by the bankruptcy court, I became
23 generally aware of the process and am familiar with the specific agreements and
24 approvals that I will be discussing. Among WorldCom's large creditors at the

1 time were AT&T and Qwest and their respective affiliates.¹ WorldCom
2 negotiated and entered into settlement agreements that resolved numerous
3 claims and disputes between itself and those companies, as well as with many
4 other creditors. The switched access agreement with AT&T was one
5 component of one such settlement agreement.

6

7 **Q. PLEASE EXPLAIN THE NATURE OF THE DISPUTES BETWEEN**
8 **WORLDCOM AND AT&T THAT WERE RESOLVED DURING THE**
9 **WORLDCOM BANKRUPTCY.**

10 A. At the time of WorldCom's bankruptcy filing, there were numerous complex
11 commercial disputes between WorldCom and AT&T that spanned several
12 years. These longstanding disputes and their resolution are described generally
13 in a motion that was submitted to the federal bankruptcy court on February 23,
14 2004, and is included as an exhibit to my testimony.² This motion was a public
15 filing. As indicated on the second page of the motion, the combined amount of
16 WorldCom's and AT&T's respective claims against one another exceeded \$300
17 million. In addition to numerous contractual and commercial disputes, there
18 were significant legal disputes between the parties, including those that were
19 the subject of a then-pending federal court lawsuit.

¹ In 2004, QCC was a subsidiary of Qwest Communications International Inc. ("Qwest"). Qwest was purchased by CenturyLink in 2011, long after the contract at issue had expired.

² See Exhibit PHR-1 to my testimony, which contains the "Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation" ("Debtors' Settlement Motion"), *In re WorldCom, Inc.*, United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 02-13533 (AJG), filed on February 23, 2004. Also included in the exhibit are the following documents filed with the bankruptcy court on February 23, 2004: Declaration of Alfredo R. Perez in Support of Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation; and an Affidavit of Service.

1 **Q. HOW DID THE PARTIES RESOLVE THESE DISPUTES?**

2 A. WorldCom and AT&T successfully negotiated a resolution of their various
3 legal, contractual and other disputes, and entered into a Settlement Agreement
4 dated February 23, 2004.³ Because the Settlement Agreement specified certain
5 payment and credit amounts, it is a confidential document. Nevertheless, most
6 of its key provisions (excluding the financial terms) were disclosed in the
7 Debtors' Settlement Motion that was filed as a public document with the
8 bankruptcy court. *See* Exhibit PHR-1, Debtors' Settlement Motion at ¶8. The
9 Settlement Agreement effectively resolved the two companies' outstanding
10 contractual, legal and financial claims and disputes. To accomplish this, both
11 parties had to make a number of compromises. The Settlement Agreement
12 provided for the termination of all pending litigation, the issuance of credits,
13 certain payments, and the release of various claims. In addition, the Debtors'
14 Settlement Motion stated that "The Debtors and AT&T will enter into new 2-
15 year bi-lateral switched access contracts ('the 2004 Contracts') which will
16 become effective as of January 27, 2004." *See id.*, at ¶8h. Because the two
17 2004 contracts were included as an exhibit to the Settlement Agreement,⁴ they
18 are covered by the confidentiality provisions in the Settlement Agreement.

19

20 **Q. PLEASE DESCRIBE THE SWITCHED ACCESS CONTRACTS THAT**
21 **WERE ENTERED INTO AS PART OF THE BANKRUPTCY**
22 **SETTLEMENT AGREEMENT.**

23 A. There were two separate switched access agreements that were virtually
24 identical. The only material difference is that the names of the parties differed

³ A copy of the Settlement Agreement is attached as CONFIDENTIAL Exhibit PHR-2.

⁴ *See* Exhibit PHR-2 (Exhibit A to the Settlement Agreement).

1 in the two documents. One agreement was between MCI and AT&T Corp. It
2 covered the provision of switched access service by AT&T's CLEC affiliates to
3 interexchange carriers affiliated with MCI. The second agreement was between
4 MCImetro and AT&T. This latter agreement is the focus of QCC's complaint
5 here. I will refer to both of these agreements as the "2004 Contracts."

6
7 Under the twin agreements, each company's CLEC affiliates agreed to charge
8 the other company's IXC affiliates a single, uniform rate for switched access
9 service provided anywhere in the country that the CLEC offered local exchange
10 service. The contract rate applied to all interexchange calls regardless of
11 jurisdiction (both interstate and intrastate) that were originated by or terminated
12 to all of the CLECs' customers, including both residential and business
13 customers. The agreements were bilateral and reciprocal, meaning that each
14 company mutually agreed to provide switched access service to the other
15 company on the same terms.

16
17 The agreements were national in scope and were intended to operate
18 nationwide, without any geographical limitation on where switched access
19 service would be offered. WorldCom and AT&T each had subsidiaries and
20 affiliates that operated as CLECs and IXCs, and the agreements applied to all of
21 these entities. During the relevant time period (2004 through January 2007),
22 each company's respective CLECs operated in each of the "Lower 48" states
23 (including Florida) and the District of Columbia. Under the *2004 Contracts*,
24 each company's CLECs offered to provide switched access service to the other
25 company's IXCs "within each geographic area" in which the CLEC directly or

1 through an affiliate provided local exchange services. In other words, the
2 parties anticipated that each company's CLECs would charge the other
3 company's IXCs the same rate for switched access service throughout their
4 respective service areas anywhere in the "Lower 48" states.

5 Because the companies provided local exchange service through various means,
6 the agreement also specified that the rates in the contracts applied to all types of
7 access traffic, whether provided over the CLECs' own facilities or over UNE-P
8 arrangements. UNE-P is shorthand for the service delivery method previously
9 known as the Unbundled Network Platform, in which a CLEC leased network
10 facilities from an incumbent local exchange carrier.

11
12 **Q. DESCRIBE THE RECIPROCAL NATURE OF THE MCIMETRO-
13 AT&T ARRANGEMENT.**

14 A. One of the more significant disputes between WorldCom and AT&T during the
15 former entity's bankruptcy proceeding involved conflicting interpretations
16 about how much the companies should charge each other for switched access
17 service provided over UNE-P. The parties resolved this and related disputes
18 and claims by agreeing that each company's CLEC affiliates would charge the
19 other company's IXC affiliates a single, uniform rate for switched access
20 service provided anywhere in the country where the CLEC provided local
21 exchange service, irrespective of the service delivery method used to provide
22 service (*i.e.*, including switched access service over UNE-P).⁵ Thus, reciprocity
23 of the agreements was key to resolving a major dispute that had plagued the
24 parties, and provided a reasonable basis for a mutual business arrangement on a

⁵ See Exhibit PHR-2 (2004 Contracts) at §§2, 3A and 6 and Schedule A.

1 going-forward basis. To accomplish this, the rates, terms, and conditions of the
2 twin contracts were identical in every respect, except as to the names of the
3 purchaser and seller.

4
5 Under the dual contracts, the parties' CLEC affiliates assumed the identical
6 obligations and responsibilities, and their affiliated IXCs received similar
7 mutual benefits (by obtaining service from the other company's CLECs on the
8 same terms and conditions). The parties' commitment to provide switched
9 access service *to each other* on similar terms throughout the United States was
10 an essential element of their agreement. As I will explain later, the mutual,
11 bilateral nature of the agreements undercuts QCC's contention that those
12 contracts subjected QCC to unreasonable discrimination.

13
14 **Q. WAS QCC A PARTY TO THE WORLDCOM BANKRUPTCY**
15 **PROCEEDING?**

16 A. Yes, as a major creditor, Qwest and its affiliates, including QCC, had a
17 substantial interest in the WorldCom bankruptcy proceeding. Qwest retained
18 an experienced law firm to represent it in the proceeding, and also assigned at
19 least two in-house bankruptcy attorneys to the matter.

20
21 **Q. DID THE BANKRUPTCY COURT APPROVE THE SETTLEMENT**
22 **AGREEMENT?**

23 A. Yes. Following notice to all the parties, including QCC's attorneys, the
24 bankruptcy court held a public hearing on the Debtors' Settlement Motion on
25 March 2, 2004. Afterwards, the judge issued an order approving the Settlement

1 Agreement.⁶ In doing so, the bankruptcy court judge observed that the
2 Settlement Agreement was the product of “good-faith, arm’s length
3 negotiations between the parties.” See Exhibit PHR-3, Order Approving
4 Settlement at 2. The judge also found that the Settlement Agreement was “fair
5 and within the range of reasonableness” and that “the relief requested ...
6 represents an exercise of the Debtors’ sound business judgment, [and] is in the
7 best interests of the Debtors, their estates, and their creditors.” *Id.* Based on
8 these conclusions, the court “ORDERED that the terms and conditions of the
9 settlement and the Settlement Agreement are hereby authorized and approved,
10 and the Debtors are authorized to implement the Settlement Agreement...”. *Id.*
11 Because the switched access agreements were included as Exhibit A to the
12 Settlement Agreement, the court’s order approving the Settlement Agreement
13 included its approval of those agreements as well.

14
15 **Q. WAS THE BANKRUPTCY COURT’S APPROVAL PROCESS PUBLIC?**

16 A. Yes. As I have explained, WorldCom filed a motion with the bankruptcy court
17 seeking approval of its Settlement Agreement with AT&T. In its Settlement
18 Motion, WorldCom clearly disclosed the existence of the two switched access
19 agreements. The Debtors’ Settlement Motion and related pleadings were
20 publicly filed and served on all parties, including QCC.⁷ All parties to the

⁶ See Exhibit PHR-3 (Order Pursuant to Bankruptcy Rule 9019 Approving Debtors’ Settlement and Compromise of Certain Matters with AT&T Corporation, *In re WorldCom, Inc.*, United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 02-13533 [AJG], issued March 2, 2004) (“Order Approving Settlement”).

⁷ See Exhibits PHR-1 (Affidavit of Service) and PHR-4 (Notice of Electronic Filing, U.S. Bankruptcy Court, Southern District of New York) (“Notice of Electronic Filing”), reflecting that the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation filed February 23,

1 proceeding were also notified that the court would hold a hearing to consider
2 WorldCom's motion. The hearing took place on March 2, 2004, and was
3 public. Following the hearing, the judge issued an order approving the
4 Settlement Agreement.

5
6 **Q. DID QCC OBJECT TO THE APPROVAL OF THE SETTLEMENT**
7 **AGREEMENT?**

8 A. No, it did not. As parties to the WorldCom bankruptcy proceeding, QCC and
9 Qwest were served with the Debtors' Settlement Motion and related documents.
10 The Settlement Motion informed parties of the basic terms of the WorldCom-
11 AT&T Settlement Agreement, including the existence of the two new bilateral
12 switched access agreements. Along with other parties, QCC was informed of
13 the upcoming hearing at which the bankruptcy court would consider the motion
14 and the relief requested. The court permitted parties to file responses or
15 objections, but QCC did not file or voice any objections to the motion or the
16 relief that WorldCom requested. This is so despite the fact that Qwest had
17 previously demonstrated its familiarity with the process for filing objections in
18 the proceeding and invoked its right to request the bankruptcy court to require
19 WorldCom to provide additional information that Qwest deemed necessary to a
20 proper review of a motion for relief.⁸

21
22 **Q. WHY DID WORLDCOM ENTER INTO THESE AGREEMENTS?**

2004, was electronically mailed to David J. Mark of Katten Muchin Zavis Rosenman, one of the attorneys representing Qwest in the proceeding.

⁸ See Exhibit PHR-5 ("Limited Objection of Qwest Corporation to Debtors' Motions Pursuant to Section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 for Approval of Rejection of 973, 186 and 432 Individual Service Orders," filed July 31, 2003).

1 A. The Settlement Agreement with AT&T represented one aspect of WorldCom's
2 concerted effort to resolve countless issues and settle numerous claims in its
3 bankruptcy proceeding. To reach closure, the settlement with AT&T involved
4 numerous compromises by both sides. The agreement contained several forms
5 of consideration that were designed to resolve the parties' respective debts,
6 claims and obligations through the bankruptcy process. These included
7 payments and the issuance of credits by one company to the other, and the
8 cessation of litigation. The reciprocal switched access agreements I described
9 earlier were another component of this comprehensive settlement. Several
10 months after concluding its settlement with AT&T, MCI was able to
11 successfully emerge from the Chapter 11 process.

12
13 **Q. DURING ITS BANKRUPTCY PROCESS, DID WORLDCOM ALSO**
14 **ENTER INTO A SETTLEMENT AGREEMENT WITH QCC AND**
15 **QWEST TO RESOLVE THE COMPANIES' RESPECTIVE CLAIMS**
16 **AND DISPUTES?**

17 A. Yes. During the time leading up to the WorldCom bankruptcy, there were also
18 a number of financial, contractual and operational disputes between WorldCom
19 and Qwest and QCC. (For simplicity, and for purposes of this and my response
20 to the next question, I will refer to both companies as "Qwest".) This complex
21 series of claims and disputes was described generally in a document the
22 companies filed with the bankruptcy court.⁹ As explained in that document, the

⁹ See Exhibit PHR-6 (Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with Qwest Corporation and Qwest Communications Corporation, *In re WorldCom, Inc.*, United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 02-13533 [AJG], filed August 18, 2003) ("Motion").

1 amount of the parties' claims was substantial: Qwest's claims totaled more
2 than \$151 million, while WorldCom asserted that Qwest owed it more than
3 \$125 million. *See* Exhibit PHR-6, Motion at ¶¶ 6-8.

4
5 WorldCom and Qwest diligently negotiated and entered into a settlement
6 agreement in a process similar to that described above with regard to AT&T.
7 As a result of those negotiations, compromises and settlements with Qwest, the
8 two companies "reconciled and resolved all such claims and disputes." *Id.* at
9 ¶10. The settlement agreement provided for the payment of certain amounts;
10 the issuance of credits and various set-offs; the resolution of certain commercial
11 disputes and the status of specific contracts; and a process for negotiating
12 various business, operational and billing issues. *Id.* at ¶12. As with
13 WorldCom's settlement with AT&T, the actual settlement agreement was
14 considered confidential, but the pertinent terms (other than financial details)
15 were described in the publicly filed motion seeking approval of the settlement.
16 Also similar to WorldCom's settlement with AT&T, the bankruptcy court
17 reviewed the WorldCom-Qwest settlement agreement in a public hearing, after
18 which it approved the settlement.¹⁰

19
20 **Q. WERE WORLDCOM'S SETTLEMENT AGREEMENTS WITH AT&T**
21 **AND QWEST IDENTICAL?**

22 **A.** No. During the course of WorldCom's bankruptcy proceeding, WorldCom and
23 its subsidiaries, including MCImetro, had different financial, commercial,

¹⁰ *See* Exhibit PHR-7 (Order Approving Settlement and Compromise of Certain Matters with Qwest Corporation and Qwest Communications Corporation, *In re WorldCom, Inc.*, United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 02-13533 [AJG], issued August 26, 2003).

1 contractual and legal disputes with AT&T and Qwest. The companies'
2 respective monetary claims were also different (as was the case with other
3 creditors). In each instance, the companies approached the negotiations and
4 resolved their differences based on the specific issues, claims and disputes that
5 existed between the companies. Ultimately, the companies entered into
6 different mutually acceptable settlement agreements that resolved issues related
7 to the corporate reorganization of WorldCom. In each case, the parties resolved
8 their competing claims in a manner that was appropriate based on the specific
9 facts and matters in dispute. In each instance, the court responsible for
10 overseeing WorldCom's bankruptcy process found that the settlement
11 agreement represented an exercise of WorldCom's sound business judgment
12 and was in the best interests of the company. And, the court approved and
13 authorized WorldCom to implement both of the settlement agreements.

14
15 B. **QCC Was Not Similarly Situated to AT&T for Purposes of**
16 **Entering Into an Identical Switched Access Agreement**

17
18 Q. **WHAT IS THE NATURE OF QCC'S COMPLAINT AGAINST**
19 **MCIMETRO?**

20 A. QCC admits in its complaint that, under Florida law, a telecommunications
21 company may enter into a contract to provide switched access service to a
22 customer on terms that deviate from the carrier's tariffs or price lists. Amended
23 Complaint at ¶¶5, 12. QCC goes on to claim that a telecommunications
24 company must make the terms of such contracts "available to other *similarly-*
25 *situated carriers* on a non-discriminatory basis." *Id.* (emphasis added). It also

1 contends that a carrier is prohibited from “extending to another [entity] any
2 advantage of contract or agreement” that is “not regularly and uniformly
3 extended to all persons *under like circumstances* for like or substantially similar
4 service.” *Id.* (emphasis added).

5
6 As I understand QCC’s allegations (and as Verizon’s lawyers will discuss in its
7 brief), to establish unreasonable discrimination, QCC must show that it was
8 “under like circumstances” and similarly situated to the contracting parties. As
9 I will show, this was not the case with respect to the *2004 Contracts*. Based on
10 its complaint, QCC’s theory appears to be that it should have been entitled
11 unilaterally to obtain the same switched access rate that AT&T received under
12 the January 2004 MCImetro-AT&T switched access agreement. This would
13 only make sense if QCC were able to enter into an identical contract. However,
14 QCC was not “under like circumstances” and similarly situated to the
15 contracting parties and, thus, could not have done so.

16
17 **Q. DID QCC EXPLAIN IN ITS COMPLAINT HOW IT IS “UNDER LIKE**
18 **CIRCUMSTANCES” AND SIMILARLY-SITUATED TO AT&T IN THE**
19 **CONTEXT OF AT&T’S AGREEMENT WITH MCIMETRO?**

20 **A.** No. QCC’s complaint includes only a blanket statement that “QCC is an IXC
21 under like circumstances to, and receiving like or substantially similar service
22 as” AT&T, the IXC that was a party to MCImetro’s contract at issue. Amended
23 Complaint at ¶10a ii. However, the complaint sets forth no specific facts to
24 demonstrate that QCC was “under like circumstances” or “similarly-situated” to
25 AT&T in January 2004, such that it could have entered into an identical

1 reciprocal switched access agreement with MCI.

2

3 **Q. WAS QCC SIMILARLY SITUATED TO AT&T SUCH THAT IT**
4 **WOULD HAVE BEEN ABLE TO ENTER INTO THE SAME**
5 **RECIPROCAL SWITCHED ACCESS AGREEMENT THAT EXISTED**
6 **BETWEEN MCIMETRO AND AT&T?**

7 A. No, it was not. As I stated earlier, the *2004 Contracts* approved by the
8 bankruptcy court were one component of a comprehensive settlement of all
9 claims between AT&T and WorldCom. To be entitled to the same reciprocal
10 deal, QCC would have been required to provide switched access service to
11 MCImetro's IXC affiliate at the same rates, terms and conditions. While QCC
12 operates both as a CLEC and IXC, it does not provide and did not previously
13 provide switched access services in Florida, or anywhere else in the United
14 States. Moreover, QCC does not have a switched access tariff or price list in
15 Florida authorizing it to provide switched access service. Therefore, QCC
16 could not have entered into a reciprocal agreement to provide switched access
17 services to MCImetro's IXC affiliates, which was an essential element of the
18 bilateral agreement between MCImetro and AT&T. Accordingly, QCC was not
19 similarly situated to AT&T and MCImetro when the two companies entered
20 into the *2004 Contracts* or afterward, and MCImetro's switched access
21 agreement with AT&T did not unreasonably discriminate against QCC.

22

23 **Q. PLEASE DESCRIBE THE LIMITED NATURE OF QCC'S CLEC**
24 **SERVICE OFFERINGS AND EXPLAIN HOW IT WAS NOT "UNDER**
25 **LIKE CIRCUMSTANCES" RELATIVE TO AT&T.**

- 1 A. In response to a series of data requests, QCC admitted that it:
- 2 • does not provide switched access service in Florida,
 - 3 • did not provide switched access service in Florida at any time between
 - 4 November 2002 and February 2007;
 - 5 • did not provide switched access service in any other state between the
 - 6 years 2004 and 2007; and
 - 7 • does not have a tariff or price list authorizing it to provide switched
 - 8 access service in Florida.¹¹

9

10 QCC also admitted in discovery that while the *2004 Contracts* were in effect,

11 unlike AT&T and MCImetro, QCC, as a CLEC:

- 12 • did not provide local exchange service using its own facilities, including
- 13 its own end-office switches, in Florida;
- 14 • did not provide competitive local exchange service in Florida by using
- 15 unbundled network elements obtained from other carriers;
- 16 • provided local service only by reselling the service of an incumbent
- 17 local exchange carrier;¹² and
- 18 • did not provide local exchange service to any residential customers in
- 19 Florida.¹³

20 QCC also provided information in discovery which demonstrates that, in

21 contrast to AT&T and MCImetro, it had only a marginal CLEC business.

22 During the years the *2004 Contracts* were in effect, QCC had only a relatively

¹¹ See Exhibit PHR-8 (QCC's Response to MCI Interrogatory No. 5, and Supplemental Response to MCI Interrogatory No. 7).

¹² See Exhibit PHR-9 (QCC's Responses to MCI Interrogatory Nos. 4 f and 24).

¹³ See Exhibit PHR-9 (QCC's Response to MCI Interrogatory No. 4 e).

1 small base of local exchange customers and access lines in Florida.¹⁴ This was
2 confirmed by QCC's representations in regulatory filings it made during that
3 time frame, in which QCC reported each year on the state of its local exchange
4 business.¹⁵

5
6 **Q. HOW IS THE LIMITED NATURE OF QCC'S SERVICE OFFERINGS**
7 **RELEVANT TO THE QUESTION OF WHETHER QCC WAS**
8 **SIMILARLY SITUATED AND THUS ELIGIBLE TO OBTAIN THE**
9 **SAME DEAL CONTAINED IN THE 2004 CONTRACTS?**

10 A. A critical aspect of the January 2004 agreements between MCI and AT&T, and
11 a key benefit to MCI, was their reciprocal, bilateral nature. The negotiated
12 settlement agreement was explicitly conditioned on both parties' CLEC
13 affiliates' reciprocal provision of switched access service to the other
14 company's IXC affiliates anywhere in the country where the CLECs provided
15 local exchange service. QCC, however, did not (and still does not) provide
16 switched access service. Accordingly, QCC was neither operationally nor
17 legally able to offer MCI service on similar terms, and it could not have entered
18 into an identical agreement and fulfill the same obligations that AT&T had
19 committed to perform.

20

¹⁴ See Exhibit PHR-10 (QCC's CONFIDENTIAL Response to MCI Interrogatory No. 29).

¹⁵ See Exhibit PHR-11 (QCC's CONFIDENTIAL Response to tw telecom of florida, llp POD 01-04) at e.g., QCC POD 002104 (Response to Nos. 2 and 4), 002106 (Response to No. 10), 002134 (Response to Nos. 7 and 9) and 002075 (Response to Nos. 7b and 9).

1 In addition to having only a handful of local service customers, QCC served
2 those customers only by reselling the local exchange service of the incumbent
3 local exchange carrier.¹⁶ As I understand the FCC's regulatory regime for
4 CLECs, resellers are not permitted to charge IXCs for switched access.¹⁷ Thus,
5 given the manner in which QCC had chosen to offer local exchange service,
6 QCC was not able to provide switched access service to MCI's IXCs at the
7 time, nor did it have a tariff or price list authorizing it to do so. As a result,
8 QCC would not have been able to provide MCI's IXCs with the same benefits
9 that MCI obtained under its long-since expired agreements with AT&T.

10
11 QCC's minimal presence as a CLEC in Florida also distinguishes QCC from
12 AT&T and MCI. Unlike QCC, both of those companies provided services to
13 both residential and commercial customers.¹⁸ In addition, at the time of their
14 agreement, MCI and AT&T were exchanging roughly the same amount of
15 traffic on a nationwide basis. In these circumstances, it would have made no
16 business sense for MCImetro to have entered into a contract with QCC and
17 agreed to charge QCC the switched access rate in the *2004 Contracts* on all of
18 QCC's interexchange traffic without also obtaining a commensurate benefit,
19 specifically, paying a low switched access rate on a similar amount of
20 interexchange traffic carried by its IXC affiliates. QCC's tiny (and shrinking)
21 base of local exchange customers could not realistically have generated a

¹⁶ See Exhibit PHR-9 (QCC's Responses to MCI Interrogatory Nos. 4 g and 24).

¹⁷ Rather, switched access charges are billed and collected by the underlying local exchange carrier that (1) terminates interexchange calls delivered to it by IXCs and (2) routes interexchange calls originated by its local service customers to the appropriate IXCs.

¹⁸ In 2004, MCImetro had tens of thousands of local exchange customers in Florida; as a CLEC, it had many hundreds of times more customers than QCC.

1 significant amount of switched access traffic (either on calls originated by or
2 terminated to those few customers) to have made such a “bilateral” agreement
3 worthwhile. As a result, discounting the switched access charges associated
4 with those traffic volumes (even assuming QCC could have billed for switched
5 access, which it could not) would not have been of any value to MCI at the
6 time. MCI simply would not have unilaterally agreed to accept reduced
7 revenues (by lowering the access rates it charged QCC) without receiving any
8 mutual benefit as the payor of switched access charges.

9
10 **Q. COULD QCC HAVE ENTERED INTO A SIMILAR RECIPROCAL**
11 **AGREEMENT TO PROVIDE MCIMETRO’S IXC AFFILIATES**
12 **SWITCHED ACCESS SERVICE ON THE SAME BASIS?**

13 A. No, it could not. While the MCI-AT&T agreements were in effect, QCC did
14 not provide switched access service in Florida or anywhere else in the country.
15 Because QCC had no switched access tariff or price list and was not
16 operationally capable of providing switched access service to MCI’s
17 interexchange carrier affiliates, it was not in any position to enter into a mutual,
18 reciprocal arrangement on equivalent terms. QCC could not have provided
19 MCI metro’s IXC affiliates with the same reciprocal rates, terms and conditions
20 because it does not and did not provide switched access service in Florida.
21 Thus, QCC could not have provided MCI with the same benefits that it
22 obtained through its reciprocal switched access agreements with AT&T, either
23 nationally (which was the basis of the agreement)¹⁹ or locally in Florida.

¹⁹ As I understand it, QCC does not operate as a CLEC in all states, especially in the 14-state region where its affiliate, Qwest (now CenturyLink), is the primary incumbent local exchange carrier. Thus, QCC would not have been able to provide the MCI IXC affiliates any benefits of reduced switched access rates in nearly thirty percent of the states.

1 Q. DO YOU HAVE ANY FINAL COMMENTS ON WHY QCC'S CLAIM
2 OF "UNREASONABLE DISCRIMINATION" IS NOT VALID?

3 A. Yes. As I understand QCC's request for relief, it wants to obtain the benefits of
4 the January 2004 switched access agreement without incurring any of the
5 corresponding obligations to provide switched access service to MCI on
6 identical, uniform terms nationwide. But that concept is fundamentally
7 contrary to the bilateral, reciprocal approach embraced by MCI and AT&T.
8 Those two companies agreed to provide switched access service *to each other*.
9 If QCC wants the "same" deal, it must be able to show that it could have met
10 the agreement's explicit terms. However, I have seen nothing indicating that
11 QCC is willing and was able to accept the fundamental element of mutuality
12 that was central to the original parties' agreement. Under QCC's theory,
13 MCImetro would be obligated to provide QCC with switched access service
14 under the rate, terms and conditions in the *2004 Contracts*, but its IXC affiliates
15 would not receive any of the corresponding benefits. But that approach is not
16 the agreement that MCImetro and AT&T entered into more than eight years
17 ago.

18
19 I am confident that, during the WorldCom bankruptcy, MCImetro would not
20 have entered into a "settlement" that resulted in a *unilateral* switched access
21 rate reduction for a single creditor – in this case, QCC -- without obtaining in
22 exchange a reciprocal access rate reduction on comparable amounts of
23 interexchange traffic for its IXC affiliates. In short, QCC's circumstances were
24 different and it was not similarly situated to AT&T for purposes of entering into
25 the same type of agreement that AT&T entered into with MCI. The one-sided

1 arrangement that QCC now suggests would not have been fair, reasonable, an
2 exercise of sound business judgment, and in MCI's best interests, in the words
3 of the bankruptcy court.
4

5 **ISSUE 6. Did the CLEC abide by its Price List in connection with its pricing of**
6 **intrastate switched access service? If not, was such conduct unlawful as**
7 **alleged in Qwest's Second Claim for Relief?**
8

9 **Q. WHAT RATES HAS MCIMETRO CHARGED QCC FOR SWITCHED**
10 **ACCESS SERVICE IN FLORIDA?**

11 A. During the period of time the *2004 Contracts* were in effect (as well as since
12 then), MCImetro charged QCC the switched access rates in its intrastate price
13 list on file with this Commission. QCC, in turn, paid the amounts that it was
14 billed by MCImetro, except in a few cases. There was no agreement between
15 MCImetro and QCC that would have provided a basis for MCImetro to have
16 charged QCC rates different than those in MCImetro's price list.
17

18 Between 2004 and 2006, QCC disputed MCImetro's switched access bills on
19 only a handful of occasions; in nearly all cases, the amounts at issue were
20 trivial.²⁰ It is not clear from QCC's responses to Verizon Access's data
21 requests whether the disputes alleged the improper application of intrastate
22 switched access rates or whether they were based on some other grounds. In
23 any event, according to QCC, in only one instance did resolution of the dispute
24 involve an amount greater than \$3,500. Leaving aside those few disputes, there

²⁰ See Exhibit PHR-12 (QCC's CONFIDENTIAL Response to MCImetro Interrogatory No. 26).

1 does not appear to be any disagreement that MCImetro routinely billed QCC in
2 accordance with its Florida price list.

3

4 **Q. WHAT RATES HAS MCIMETRO CHARGED AT&T FOR SWITCHED**
5 **ACCESS SERVICE IN FLORIDA?**

6 A. From January 27, 2004 until January 27, 2007, MCImetro charged AT&T the
7 rate for switched access in the parties' January 2004 contract. Since the
8 January 2004 contract expired, MCImetro has billed AT&T the rates in its
9 Florida price list.

10

11 **Q. WERE CLECS REQUIRED TO FILE SWITCHED ACCESS PRICE**
12 **LISTS OR PROHIBITED FROM ENTERING INTO CONTRACTS**
13 **WITH SWITCHED ACCESS RATES DIFFERENT THAN THOSE IN**
14 **THEIR PRICE LISTS?**

15 A. No. QCC has acknowledged that CLECs may but are not required to file price
16 lists for intrastate switched access services. Amended Complaint at ¶15. QCC
17 also admits that CLECs may enter into contracts to provide switched access
18 service to a customer on terms that deviate from the carrier's tariffs or price
19 lists. *Id.* at ¶¶5, 12. Given the permissive nature of the Commission's
20 regulatory regime relating to switched access price lists and contracts, it does
21 not appear to me, as a lay person, that MCImetro could have "violated Florida
22 law" by entering into a switched access agreement with AT&T, as alleged by
23 QCC in its Second Claim for Relief.

24

25

1 **ISSUE 7. Did the CLEC abide by its Price List by offering the terms of off-Price**
2 **List agreements to other similarly-situated customers? If not, was such conduct**
3 **unlawful, as alleged in Qwest's Third Claim for Relief?**

4
5 **Q. IS QCC'S THIRD CLAIM FOR RELIEF AIMED AT MCIMETRO?**

6 A. No. QCC's Third Claim for Relief (Amended Complaint at ¶¶17-19) names
7 certain respondents, but not MCImetro. Nor does that claim contain any
8 allegations specifically addressing MCImetro's conduct. Accordingly, this
9 issue does not appear to apply to MCImetro. Nevertheless, the question
10 appears to assume that a CLEC may have an affirmative obligation to
11 proactively identify other carriers that potentially may be similarly situated to
12 the entity with which the CLEC has entered into a contract, and to affirmatively
13 make a similar contract offer to such other carriers. I am not aware of any such
14 requirement.

15
16 **ISSUE 8. Are Qwest's claims barred or limited, in whole or in party, by:**

- 17 a) the statute of limitations;
- 18 b) Ch. 2011-36, Laws of Florida;
- 19 c) terms of a CLEC's price list;
- 20 d) waiver, laches, or estoppel;
- 21 e) the filed rate doctrine;
- 22 f) the prohibition against retroactive ratemaking;
- 23 g) the intent, pricing, terms or circumstances of any separate service
- 24 agreements between Qwest and any CLEC;
- 25 h) any other affirmative defenses pled or any other reasons?

1 **Q. HAS VERIZON ACCESS RAISED ANY AFFIRMATIVE DEFENSES?**

2 A. Yes. Verizon's brief will address more fully the reasons why Qwest's claims
3 are barred, but I will highlight two reasons in the list here: (1) the statute of
4 limitations as a bar to some or all of QCC's claims against MCImetro, and (2)
5 QCC's failure to comply with the dispute provisions of MCImetro's price list.a)

6 **Statute of Limitations**

7 **Q. DOES THE STATUTE OF LIMITATIONS APPLY TO QCC'S**
8 **COMPLAINT?**

9 A. Yes. QCC stated in discovery that "the applicable statute of limitations can be
10 found in Ch. 95, Florida Statutes, and case law interpreting and applying the
11 statutory provisions."²¹ Because I am not a lawyer, I will not discuss the
12 particular provisions of the statute. However, I will provide a chronology of
13 events to assist the Commission in applying the statute of limitations to the
14 facts of QCC's complaint against MCImetro. It is my understanding that the
15 statute of limitations period that applies to QCC's claims against MCImetro is
16 four years.

17
18 At one end of the timeline is December 11, 2009, the date on which QCC filed
19 its original complaint in Florida, naming MCImetro as a respondent. This was
20 almost six years after January 27, 2004, the date on which the
21 MCImetro/AT&T contract took effect. In between those two dates, there were
22 a number of occasions on which QCC was made aware of the existence,
23 substance and actual terms of that agreement, but took no affirmative action to
24 discuss or negotiate a similar contract with MCImetro. In fact, the first contact

²¹ Exhibit PHR-13 (QCC's Response to Broadwing Communications, LLC's Interrogatory No. 18). QCC subsequently modified its response in an attempt to make it less categorical.

1 made by QCC did not take place until *more than one year after the contract*
2 *expired.*

3

4 **Q. WHEN WAS QCC FIRST INFORMED OF THE EXISTENCE OF THE**
5 **MCIMETRO-AT&T SWITCHED ACCESS AGREEMENTS?**

6 A. QCC was first made aware of the WorldCom-AT&T Settlement Agreement,
7 including the reciprocal switched access agreements, on or about February 23,
8 2004, when it was served with relevant documents in the WorldCom
9 bankruptcy proceeding. On that day, WorldCom filed a motion with the
10 bankruptcy court, describing the general terms and disclosing that the two
11 parties were “enter[ing] into new 2-year bilateral switched access contracts
12 (‘the 2004 Contracts’) which will become effective as of January 27, 2004.”²²
13 That motion was served on more than 350 parties and creditors, including
14 Qwest and QCC, on February 23, 2004.²³

15

16 Because Qwest and its affiliates were major creditors of WorldCom, and had a
17 substantial interest in its bankruptcy proceeding, Qwest hired an experienced
18 law firm, Katten Muchin Zavis Rosenman, to represent it in the WorldCom
19 bankruptcy proceeding. David J. Mark, an attorney in the firm, entered his
20 appearance in the case on behalf of QCC and other Qwest entities on July 24,
21 2002, and asked to be served copies of all pleadings, motions and notices in the

²² See Exhibit PHR-1; see also pages 10-11, *supra*.

²³ See Exhibit PHR-1 (Affidavit of Service, showing that Harvey Goldstein, of Katten Muchin Zavis Rosenman, the law firm representing Qwest and QCC was served).

1 case "by mail or otherwise."²⁴ Jeff Friedman, a partner in the law firm, was
2 primarily responsible for representing Qwest in the proceeding; Serena Parker
3 also appeared on papers filed by Qwest, and QCC has stated that other
4 attorneys in the firm may also have worked on the case on its behalf.²⁵ In
5 addition, QCC assigned at least two in-house bankruptcy attorneys to the
6 WorldCom Bankruptcy case. *Id.*

7
8 As the court records show, Qwest and QCC were given notice of the
9 substantive pleadings relating to the WorldCom/AT&T settlement agreement.²⁶
10 The court also solicited comments and offered parties the opportunity to
11 participate in the court's hearing on the two companies' Settlement
12 Agreement.²⁷ Given that the settlement was between QCC's two largest
13 competitors, this was not a "run-of-the-mill" or routine procedural filing, but a
14 significant development in the bankruptcy process.

15
16 **Q. WHEN AND HOW ELSE DID QCC LEARN OF THE EXISTENCE AND**
17 **NATURE OF THE 2004 SWITCHED ACCESS AGREEMENT**
18 **BETWEEN MCIMETRO AND AT&T?**
19

²⁴ See Exhibit PHR-14 (Notice of Appearance and Request for Service filed by David J. Marks on behalf of Qwest Communications Corporation, Qwest Corporation and Qwest Services Corporation).

²⁵ See Exhibit PHR-15 (QCC's Response to MCI Interrogatory No. 23).

²⁶ See note 24 *supra*; see also Exhibit PHR-4 (Notice of Electronic Filing of the Motion to Approve the Debtors' Motion Seeking Approval of a Settlement with AT&T was electronically mailed to Jeff J. Friedman and David J. Mark of the Katten Muchin Zavis Rosenman firm).

²⁷ See Exhibit PHR-16 (Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation, issued February 23, 2004).

1 A. QCC acknowledges in its complaint that, “[b]eginning in June 2004,” the
2 Minnesota Public Utilities Commission (“MN PUC”) “conducted a series of
3 investigations” into switched access agreements between various CLECs and
4 IXCs in response to several complaints brought by the Minnesota Department
5 of Commerce (“MN DOC”). Amended Complaint at ¶¶8-9. The MN PUC first
6 announced the investigation by publishing, on July 20, 2004, the agenda for an
7 upcoming Commission meeting where the complaint case was to be
8 addressed.²⁸ Qwest was on the service list to receive the meeting agenda, and
9 because Qwest was a party to three cases on the Commission’s agenda that day,
10 it is fair to assume that one or more of its representatives attended the
11 Commission’s meeting where the matters were discussed.

12
13 QCC and Qwest began actively participating in the MN PUC switched access
14 complaint cases the following year. On April 25, 2005, the MN DOC filed
15 comments in Minnesota PUC Docket C-04-235. By way of background, it
16 explained that 1) MCImetro and AT&T had entered into a contract to provide
17 switched access service, 2) the contract offered service at non-tariffed rates, 3)
18 the contract rates were lower than those in MCImetro’s tariff, 4) neither the
19 contract nor the contract rates had been filed with or approved by the PUC, and
20 5) other IXCs had not received the same rates.²⁹ The MN DOC also reported
21 that nearly all of the parties (including MCImetro) had entered into a stipulation
22 and settlement agreement, which was pending before the Commission for
23 approval.

²⁸ See Exhibit PHR-17 (Commission Meeting, Thursday July 22, 2004, Telecommunications Agenda).

²⁹ See Exhibit PHR-18 (Additional Comments on Department Complaint and Request for Commission Action, Docket Nos. P442, *et al.*, filed April 25, 2005) at 2-4.

1 In QCC's companion complaint case in Colorado, one of its company witnesses
2 testified that this announcement of the settlement agreement in Minnesota was
3 "the triggering point," indicating to QCC that it had "a specific interest" in the
4 switched access complaint case.³⁰ With specific reference to the MCImetro-
5 AT&T agreement, the QCC witness admitted that "we first discovered it, in the
6 April 2005 time frame."³¹ Qwest immediately asked to be placed on the
7 official service list of the MN PUC proceeding.³² On July 7, 2005, the MN
8 PUC approved the settlement agreement and dismissed the complaint against
9 all CLECs (including MCImetro), except AT&T.³³ The Commission's order
10 pointed out that CLECs had entered into "multi-state" contracts that contained
11 "rate[s] applicable "in other jurisdictions," but that the settlement only
12 addressed Minnesota-specific issues.³⁴

13
14 Relying on information in the MN DOC's earlier submissions, Qwest filed
15 comments with the MN PUC on August 24, 2005, in which it described an
16 alleged "illegal" "secret agreement" between AT&T and MCI in which one
17 carrier provided the other a rate for switched access that was lower than the
18 CLEC's tariff rate. Qwest also acknowledged that "AT&T and MCI had
19 'reciprocal agreements' whereby each company's CLEC operations provided

³⁰ *Qwest Communications Corp. v. MCImetro, et al.*, Colorado Public Utilities Commission Docket No. 08F-259T, (Cross-examination of Ms. Lisa Hensley Eckert), July 27, 2010 Transcript at 108:18 – 109:1.

³¹ *Id.*, July 27, 2010 Transcript at 80:10-16.

³² See Exhibit PHR-19.

³³ See Exhibit PHR-20 (Order Approving Stipulations, Dismissing Various Complaints, and Providing for Response to Additional Complaint, Docket Nos. P-442, *et al.*, issued July 7, 2005).

³⁴ *Id.*, Order at 4, Finding I 5 (emphasis added).

1 the other company's IXC operations with lower than tariffed intrastate switched
2 access rates." QCC claimed that the parties' pricing arrangement could "harm
3 competitors such as Qwest" and put QCC "at a severe competitive
4 disadvantage."³⁵

5
6 On October 27, 2005, the MN DOC filed an amended complaint against AT&T
7 and served it on QCC. That complaint again recited essential details of the two
8 contracts between AT&T and MCI whereby each company's CLEC agreed to
9 provide intrastate switched access service at a certain price to the other
10 company's IXC affiliates. The DOC explained that the terms of the two
11 agreements were "nearly identical, except the purchaser and seller were
12 reversed." The DOC reported that the agreements became effective in January
13 2004 and had a two-year term.³⁶

14
15 QCC and Qwest petitioned to intervene in the proceeding, alleging that the
16 contract at issue was unlawful, that QCC was "directly affected by the issues"
17 in the case, and that QCC had "a substantial interest in the ultimate outcome."³⁷
18 In comments filed soon thereafter, QCC described "a broad-scale scheme by
19 AT&T ... to pay access rates that were below CLECs' tariffed rates." QCC
20 stated that "[a]s part of a broad-scale scheme," MCI "obtained a corresponding
21 or 'reciprocal' deal for itself from AT&T's CLEC." QCC alleged that the

³⁵ See Exhibit PHR-21 (Qwest's Comments, MPUC Docket Nos.P442, *et al.*, filed Aug. 24, 2005) at 1, 4-5.

³⁶ See Exhibit PHR-22 (Amended Verified Complaint, MN PUC Docket No. P442, *et al.*, filed Oct. 27, 2005) at 8-9.

³⁷ See Exhibit PHR-23 (Qwest Corporation's Petition to Intervene, filed February 27, 2006) at 1.

1 contractual arrangement appeared to be unlawful and unreasonably
2 discriminatory.³⁸ QCC continued to actively participate in all phases of the MN
3 PUC's case, including evidentiary hearings and post-hearing briefing, over the
4 following year.

5
6 Through its participation in the MN PUC's switched access proceedings and
7 review of the MN DOC's filings, Qwest gained significant knowledge about the
8 existence, nature and terms of the MCImetro-AT&T switched access
9 agreements, as evidenced by its own regulatory filings made in 2005 and 2006.

10
11 **Q. DID QCC OBTAIN COPIES OF THE MCIMETRO-AT&T**
12 **AGREEMENTS AROUND THAT TIME?**

13 A. Yes. On April 7, 2006, QCC issued information requests in the MN-PUC
14 proceeding. Based on its understanding that the 2004 Contracts were not
15 confined to Minnesota, QCC requested records and data documenting the usage
16 of switched access "*in every jurisdiction affected by*" the MCI/AT&T
17 agreements. (Emphasis added.) After signing a protective order in the case,
18 QCC's attorneys were provided the two reciprocal 2004 Contracts on May 3,
19 2006, and July 3, 2006.

20
21 **Q. AFTER THE BANKRUPTCY COURT APPROVED THE WORLDCOM-**
22 **AT&T SETTLEMENT AGREEMENT, DID QCC APPROACH**
23 **MCIMETRO TO DISCUSS A POSSIBLE SWITCHED ACCESS**
24 **AGREEMENT?**

³⁸ See Exhibit PHR-24 (Qwest's Reply to the Motion of the Dept. of Commerce for Summary Disposition, filed April 17, 2006) at 1-2, 5-6.

1 A. No. QCC was a party to WorldCom's bankruptcy proceeding and was made
2 aware of the WorldCom-AT&T Settlement Agreement on or about February
3 23, 2004. It was also made aware of the existence of the switched access
4 agreements that were included in the parties' Settlement Agreement. QCC,
5 however, did not request a copy of the agreement from MCImetro, nor did it
6 approach MCImetro or make any inquiries related to the switched access
7 agreement, either then or later. Nor did QCC ask MCImetro to discuss possible
8 arrangements or agreements involving the provision of switched access service.

9
10 **Q. WHILE QCC WAS ENGAGED IN THE SUBSEQUENT MINNESOTA**
11 **PUC PROCEEDINGS, DID IT APPROACH MCIMETRO AND**
12 **INQUIRE ABOUT ENTERING INTO A SIMILAR SWITCHED**
13 **ACCESS AGREEMENT?**

14 A. No, it did not. In the two years following the bankruptcy court's approval of
15 the settlement agreement, QCC learned many more details about the terms of
16 the MCImetro-AT&T switched access contract through its involvement in the
17 MN PUC's complaint proceedings. Despite its knowledge of the MCImetro-
18 AT&T agreement, QCC never approached MCImetro to explore whether it
19 might be eligible and entitled to enter into a similar business arrangement. It
20 certainly would have been easy for it to do so. QCC is a major customer of
21 Verizon's wholesale services. Over the years, QCC has purchased substantial
22 amounts of voice and data, intraLATA and interexchange services from
23 Verizon, as well as its predecessors (the former MCI companies). Because of
24 this long-standing customer-supplier relationship, Verizon's wholesale sales
25 organization has over time assigned different account managers to handle

1 QCC's accounts, orders, and the like. In addition, individuals in my
2 organization and I have negotiated and entered into a number of commercial
3 arrangements with QCC and its affiliates over the years.

4
5 If QCC had a business interest in entering into an agreement with MCImetro for
6 the provision of switched access services, QCC could have contacted its
7 account team or its other business contacts in MCI's sales or carrier relations
8 groups to inquire about the agreement and explore whether it might be eligible
9 for a similar arrangement. This would be the customary manner to inquire
10 about such a business matter. Based on a long pattern of dealing with our
11 company, QCC certainly knew who those individuals are and who it could have
12 contacted for such a purpose. At no time during that period, however, did QCC
13 approach MCImetro through customary business channels and request a full
14 copy of the agreement or to discuss the potential for entering into a similar type
15 of agreement.

16
17 **Q. HAS QCC INQUIRED ABOUT THE MCIMETRO-AT&T**
18 **AGREEMENT SINCE IT EXPIRED?**

19 **A.** The only communication relating to this topic of which I am aware that Verizon
20 received from Qwest occurred more than a year *after* the MCImetro-AT&T
21 agreement expired and was no longer in effect. Even then, it is clear from the
22 circumstances that the attempted outreach did not reflect a good faith, business-
23 oriented request on behalf of QCC.

24
25 Specifically, on February 25, 2008, Verizon received what was obviously a

1 generic form letter. See Exhibit PHR-25. The letter was signed by Charles
2 Galvin Jr., of Qwest Communications, but did not identify Mr. Galvin's title,
3 position or role in the organization, nor is such information known to me. The
4 caption included an "Announcement Date," a title ("General Notification"), and
5 a "Document Number --
6 GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc." I have since been
7 informed that QCC sent virtually identical letters to about 90 CLECs. Rather
8 than refer to Verizon Access by name, the General Notification requested that
9 "<Company>" provide information about its compensation arrangements with
10 other carriers, and requested copies of "any and all agreements you have" to
11 provide switched access service at off-tariffed rates. The General Notification
12 also asked that "you" provide intrastate switched access services to QCC at the
13 lowest rates upon which the company provides the same services to AT&T or
14 any other interexchange carrier. QCC asked that responses be provided to
15 Candace A. Mowers, an individual who I later learned is not employed in an
16 actual business unit, but in QCC's Public Policy organization.

17
18 As I explained earlier, Verizon and QCC have established working
19 relationships through which the companies engage in numerous ongoing
20 business transactions. In my experience, individuals in QCC's Public Policy
21 organization do not ordinarily negotiate and enter into intercarrier business
22 arrangements on behalf of QCC, nor are they the individuals with whom
23 Verizon interacts to transact business. In fact, the generic form letter appeared
24 to be a legal demand letter and an informal attempt at discovery. It did not
25 appear to represent a bona fide effort to engage in reasonable business

1 discussions or a good-faith request for information that would facilitate such
2 discussions. Leaving aside the likelihood that the form letters were designed by
3 QCC's public policy group as a means of engaging in informal discovery, in the
4 case of Verizon Access, there was in fact nothing for the company to provide
5 QCC at the time the letter was received. This is because, by February 2008,
6 when it received the letter, Verizon Access did not have any agreement to sell
7 intrastate switched access service in Florida at rates other than those in its price
8 list.

9
10 Thus, at no time did QCC's business personnel ever seek to engage MCImetro
11 in any discussions about the prospect of a switched access agreement or to
12 communicate any concerns that they may have had with the terms of
13 MCImetro's now-expired agreement with AT&T.

14
15 **c) QCC Did Not Follow the Dispute Procedures in MCImetro's Price List**

16 **Q. PLEASE DESCRIBE THE PROCEDURES IN MCIMETRO'S PRICE**
17 **LIST THAT AN ACCESS CUSTOMER IS REQUIRED TO FOLLOW IN**
18 **ORDER TO INITIATE A BILLING DISPUTE.**

19 **A.** Section 2.5.2.6 of Verizon Access's F.P.S.C. Price List No. 1 provides as
20 follows:

21 Billing Dispute: The customer shall notify the Company of any
22 disputed items on an invoice within 90 days of receipt of the
23 invoice. If the Customer and the Company are unable to resolve
24 the dispute to their mutual satisfaction, the Customer may file a
25 complaint with the Florida Public Service Commission in

1 accordance with the Commission's rules of procedure. If the
2 customer disputes a bill, the Customer must document its claim to
3 the Company in writing. For purposes of this tariff, the dispute
4 date is the date on which the Customer presents sufficient
5 documentation to support a claim.

6
7 Section 2.5.2.6.1 of Verizon Access's price list explains the types of
8 documentation that are needed to substantiate a customer's billing dispute.
9 Such information includes "[t]he nature of the dispute," including for example,
10 the "alleged incorrect rate" and "the basis for the Customer's belief that the bill
11 is incorrect."

12
13 **Q. WAS QCC AWARE OF THESE PROCEDURES?**

14 A. Apparently so. As I indicated earlier, QCC claimed that it disputed
15 MCImetro's switched access invoices on seven occasions between 2004 and
16 2006. See Exhibit PHR-12 (QCC's CONFIDENTIAL Response to MCImetro
17 Interrogatory No. 26).

18
19 **Q. DID QCC FOLLOW THE PROCEDURES IN MCIMETRO'S FLORIDA
20 PRICE LIST FOR DISPUTING THE SWITCHED ACCESS RATES
21 THAT MCIMETRO BILLED IT?**

22 A. No. There is no indication that any of the disputes referred to by QCC in its
23 discovery response involved a claim that MCImetro did not bill the rates in its
24 intrastate price list. More important, at no time after January 2004 did QCC
25 dispute any of MCImetro's invoices on the basis that MCImetro should have
26 charged QCC rates other than those in its price list, in particular, the rate set

1 forth in MCImetro's January 2004 agreement with AT&T. QCC has not
2 provided any evidence that it notified MCImetro of any dispute regarding the
3 level of the switched access rates MCImetro billed it "within 90 days of
4 receipt" of any invoice it received while the *2004 Contracts* were in effect.
5 Accordingly, QCC did not comply with the requirements of MCImetro's price
6 list. In addition, MCImetro's price list provides that a customer may file a
7 complaint with the Commission only if the parties "are unable to resolve the
8 dispute to their mutual satisfaction." It was improper, and contrary to the
9 provisions of the price list, for QCC to have filed its complaint here without
10 first notifying MCImetro of a billing dispute and attempting to resolve the
11 matter in accordance with the process described in MCImetro's price list.

12
13 **Q. WHAT CONCLUSION DO YOU DRAW FROM THESE FACTS?**

14 A. QCC's belated attempt to challenge the rates MCImetro charged it by filing a
15 complaint well over two years after the *2004 Contracts* expired is inconsistent
16 with the procedures in MCImetro's price list. It is important to understand that
17 the price list describes the responsibilities and obligations of both the carrier
18 and its access customers, including QCC. Billing dispute provisions in price
19 lists are intended to facilitate prompt resolution of possible billing errors.
20 QCC's failure to timely dispute MCImetro's switched access charges in Florida
21 defeats that purpose. Moreover, QCC's failure to follow the billing dispute
22 procedures in MCImetro's price list cannot be excused on grounds of
23 ignorance, both because QCC invoked its dispute rights on other occasions, and
24 given its awareness of MCImetro's switched access agreement with AT&T. It
25 is somewhat ironic that QCC, which is asking the Commission to ensure

1 compliance with the CLECs' price lists, is, at the same time, seeking to be
2 absolved for its failure to properly follow the billing dispute procedures in
3 MCImetro's price list. If QCC wanted to complain about the rates it was
4 charged, it had ample opportunity to do so. MCImetro is entitled to rely on
5 reasonable provisions in its price list. QCC's failure to follow the specified
6 procedures should preclude it from belatedly circumventing those procedures
7 and pursuing its dispute through different, unauthorized means.

8
9 **ISSUE 9 a) If the Commission finds in favor of Qwest on (a) Qwest's First Claim**
10 **for Relief alleging violation of 364.08(1) and 364.10(1), F.S. (2010); (b) Qwest's**
11 **Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010); and/or**
12 **(c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2), F.S.**
13 **(2010), what remedies, if any, does the Commission have the authority to award**
14 **Qwest?**

15
16 **Q. ARE ANY REMEDIES APPROPRIATE IN THIS CASE?**

17 **A.** As I have explained, MCImetro complied with its Florida price list at all times
18 by charging QCC the switched access rates contained therein. Furthermore,
19 MCImetro did not unreasonably discriminate against QCC with respect to the
20 rates it charged QCC for switched access service in Florida or by entering into
21 the *2004 Contracts*. Finally, QCC's Third Claim for Relief does not apply to
22 MCImetro. Thus, regardless of any authority the Commission may have to
23 award remedies to a deserving plaintiff (a legal issue more appropriately treated
24 in briefs), QCC is not entitled to any relief, as to MCImetro, in this proceeding.

25

1 **ISSUE 9 b) If the Commission finds a violation or violations of law as alleged by**
2 **Qwest and has authority to award remedies to Qwest per the preceding issue, for**
3 **each claim:**

4 (i) **If applicable, how should the amount of any relief be**
5 **calculated and when and how should it be paid?**

6 (ii) **Should the Commission award any other remedies?**
7

8 **Q. DO YOU HAVE ANY COMMENT AT THIS TIME REGARDING THE**
9 **NATURE AND AMOUNT OF ANY RELIEF THAT QCC SHOULD BE**
10 **AWARDED?**

11 A. I assume that QCC will describe in its own testimony the amount of any relief it
12 is seeking, and the remedies it would like the Commission to award.
13 Accordingly, I will defer addressing this issue until I have an opportunity to
14 review QCC's claims and calculations. However, it should be clear from my
15 prior discussion that I do not believe QCC can prevail in its complaint against
16 Verizon Access or that it is entitled to any relief in this proceeding.
17

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

19 A. Yes.
20
21
22
23
24
25

Will Request Hearing Date and Time: February 2, 2004 at 10:00 a.m.
Will Request Objections Date and Time: February 1, 2004 at 12:00 p.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
WORLDCOM, INC., <u>et al.</u> ,	:
	:
	:
	:
	:
Debtors.	:
-----X	

Chapter 11 Case No.
02-13533 (AJG)

(Jointly Administered)

**MOTION OF THE DEBTORS PURSUANT
TO BANKRUPTCY RULE 9019 SEEKING APPROVAL
OF A SETTLEMENT AND COMPROMISE OF CERTAIN
MATTERS WITH AT&T CORPORATION**

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "WorldCom" or the "Debtors"), respectfully represent:

Background

1. On July 21, 2002 (the "Commencement Date") and November 8, 2002, WorldCom, Inc. and certain of its direct and indirect subsidiaries commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By Orders, dated July 22, 2002 and November 12, 2002, the Debtors' chapter 11 cases were consolidated for procedural purposes. During the chapter 11 cases, the Debtors have

operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 29, 2002, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee"). On October 31, 2003, this Court entered an order confirming the Debtors' Modified Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Plan").

Jurisdiction

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background Regarding the Parties' Relationship

3. AT&T Corp., on behalf of itself and all of its affiliates (individually and collectively, "AT&T") and the Debtors (collectively, the "Parties") were as of the Commencement Date, and continue as of the date hereof, to be parties to various contracts and arrangements with each other pursuant to which they provide services and furnish facilities to one another, including, without limitation, agreements and arrangements pursuant to which each party has provided switched access service to the other (all such agreements and arrangements, collectively the "Executory Contracts"). As of the date hereof, there were amounts owing, or claimed to be owing, by the Debtors to AT&T and by AT&T to the Debtors for services and facilities provided and furnished pursuant to the Executory Contracts. As of the date hereof, on account of the Executory Contracts, the Debtors owe AT&T in excess of \$100 million, and AT&T owes the Debtors approximately \$220 million. Most of these amounts are disputed by the Parties.

In addition, there are disputes among the Parties relating to the assumption of Executory Contracts and cure costs related thereto.

4. There is also a significant contractual dispute between AT&T and the Debtors arising over the provision of switched access relating to certain "UNE-P" services prior to January 26, 2004 (the "UNEP Dispute").

5. In addition to the commercial disputes detailed above, there are significant legal disputes between the Parties. On September 2, 2003, AT&T commenced an action, *AT&T Corp. v. MCI, Inc. f/k/a WorldCom, Inc. et. al.*, Civil Action No. 03-1114-A, against MCI and others in the United States District Court for the Eastern District of Virginia asserting, *inter alia*, racketeering and fraud claims against MCI, seeking monetary damages and injunctive relief (the "Virginia Action"). The Debtors have disputed the facts and legal arguments set forth in the Virginia Action. In addition, on September 24, 2003, the Debtors filed with this Court the Debtors' Motion for Sanctions and Order Adjudging AT&T Corp. in Contempt of Court (the "Contempt Motion"), wherein the Debtors asserted, *inter alia*, that (i) the commencement of the Virginia Action is proscribed by the automatic stay imposed by section 362(a) of the Bankruptcy Code, (ii) the allegations set forth in the Virginia Action are based on primarily prepetition actions, and (iii) AT&T was required to seek the permission of the Bankruptcy Court prior to filing the Virginia Action. AT&T disputes the facts and legal arguments set forth in the Contempt Motion. On October 30, 2003, this Court entered an order under the discretionary stay provision 28 U.S.C. § 959(b) staying the Virginia Action pending further consideration (the "Discretionary Stay Order").

6. The Debtors also have potential preference actions and claims against AT&T.

The Negotiations

7. The Parties have diligently and in good faith sought to reconcile their competing contractual claims and debts, as well as the legal disputes between them. As a result of such efforts, the Parties have reconciled and resolved all such competing claims, debts and actions pursuant to the terms of the settlement.

The Settlement Agreement

8. On February 23, 2004, (the "Settlement Date"), the Parties entered into a settlement agreement (the "Settlement Agreement")¹ to resolve the foregoing disputes, including the UNEP Dispute, the Virginia Action, the Contempt Motion, the claims arising from the Executory Contracts, and the potential preference action. In summary, the Parties have agreed as follows:²

- a. The Settlement Agreement will be effective on the date that an order (the "Approval Order") of this Court becomes final and non-appealable (the "Settlement Effective Date");
- b. On the Settlement Effective Date, except as provided below, AT&T (as defined above), on behalf of itself, its successors and assigns, shall be deemed to have released, remised and forever discharged each of the Debtors and their non-debtor affiliates, and their officers, directors, employees, shareholders, agents, representatives, successors and assigns, in their capacity as such, from any and all claims, demands, obligations, actions, causes of action, or damages, including contract and lease rejection damages (collectively, the "Claims"), whether known or unknown, foreseen

¹ The Settlement Agreement contains substantial proprietary and confidential information, as well as provisions imposing confidentiality and non-disclosure obligations. Accordingly, the Debtors have not attached the Settlement Agreement to this Motion.

² To the extent that there are any inconsistencies between the summary description of the Settlement Agreement contained herein and the terms and conditions of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall in all respects control.

or unforeseen, fixed or contingent, matured or unmatured, liquidated or unliquidated, under any legal theory, including without limitation under contract, tort or otherwise, arising from the beginning of time through the Settlement Effective Date, including without limitation the Virginia Action; *provided, however,* notwithstanding anything to the contrary contained herein, nothing in this Settlement Agreement shall release, remise or discharge any Claim by AT&T arising under the Settlement Agreement; *provided, further, however,* that any Claim for services that were not invoiced as of October 10, 2003 which would be invoiced after October 10, 2003 in the ordinary course of business is not released and shall be invoiced and paid in the ordinary course as if the Settlement Agreement and plan of reorganization had not occurred; *provided further,* that nothing herein releases any Claims that AT&T collects solely in its capacity as agent for non-affiliated third parties;

- c. On the Settlement Effective Date, except as provided below, each of the Debtors and their non-debtor affiliates, on behalf of themselves, their successors and assigns, shall be deemed to have released, remised and forever discharged AT&T (as defined above) and its officers, directors, employees, shareholders, agents, representatives, successors and assigns, in their capacity as such, from any and all Claims, including any claims arising from the Contempt Motion, whether known or unknown, foreseen or unforeseen, fixed or contingent, matured or unmatured, liquidated or unliquidated, under any legal theory, including without limitation under contract, tort or otherwise, arising from the beginning of time through the Settlement Effective Date; *provided, however,* notwithstanding anything to the contrary contained herein, nothing in this Settlement Agreement shall release, remise or discharge any Claims by any of the Debtors arising under the Settlement Agreement; *provided, further, however,* that any Claim for services that were not invoiced as of October 10, 2003 which would be invoiced after October 10, 2003 in the ordinary course of business is not released and shall be invoiced and paid in the ordinary course as if the Settlement Agreement and plan of reorganization had not occurred;
- d. AT&T agrees and acknowledges that no cure payment is due on account of any Executory Contract assumed by the Debtors or to be assumed by the Debtors;
- e. On the Settlement Effective Date, each of the Debtors, on behalf of itself and its estates in bankruptcy, will be deemed to have released, remised and forever discharged any and all Claims against AT&T under Chapter 5 of the Bankruptcy Code, including

without limitation any and all Claims arising under Sections 542, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code for turnover or to avoid or recover any prepetition or postpetition transfers or obligations;

- f. Within three (3) business days after the Settlement Effective Date, AT&T will dismiss the Virginia Action with prejudice;
- g. Within three (3) business days after the Settlement Effective Date, the Debtors will dismiss with prejudice the Contempt Motion. Further, the discretionary stay imposed by the Discretionary Stay Order shall terminate on the Settlement Effective Date by entry of the order approving this motion;
- h. In order to reconcile and resolve the UNEP Dispute, the Parties have agreed, effective on the Settlement Effective Date, to the following:
 - For invoices rendered during the period October 10, 2003 through February 10, 2004, AT&T and the Debtors agree that all "UNE-P" delivered switched access will be charged and paid in accordance with the contract rates set forth in the National Services Agreement (as amended) between MCI Metro Access Transmission Services, Inc. and AT&T Communications, Inc. dated November 1, 1996 (the "NSA") or the Switched Access Services Agreement (as amended) between AT&T Corp. and MCI WorldCom Network Services, Inc. dated July 23, 1998 (the "SASA"). To the extent that switched access services were provided for the period October 10, 2003 through February 10, 2004 but were not invoiced during such period, such services will be invoiced and paid at the rates set forth in the 2004 Contracts (as defined below).
 - To the extent there was any overpayment or overbilling from October 10, 2003 through February 10, 2004 by either party in connection with switched access services delivered by UNE-P access lines, where such billings or payments were made at per minutes of use rates exceeding the rates set forth in the NSA or the SASA, a credit in the amount of the overpayment will be issued as soon as practicable after the Settlement Effective Date, but in no event later than 60 days after the Settlement Effective Date. To the extent that switched access services were provided for the period October 10, 2003 through February 10, 2004 but were not invoiced during such period, such services will be invoiced

and paid at the rates set forth in the 2004 Contracts (as defined below).

- The Debtors and AT&T will enter into new 2-year bi-lateral switched access contracts (the “2004 Contracts”) which will become effective as of January 27, 2004.
- In connection with the 2004 Contracts, AT&T will pay the Debtors a one-time non-recurring charge of \$3,000,000, to be paid on the third business day after the Settlement Effective Date.
- All switched access relating to “UNE-P” services provided after January 26, 2004 will be invoiced and billed in accordance with the rates set forth in the 2004 Contracts.

Relief Requested

9. By this Motion, the Debtors respectfully request entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) approving the Settlement Agreement in its entirety, and (b) authorizing the Parties to enter into and implement the Settlement Agreement in accordance with the intent of the Parties.

Basis for Relief Requested

Standard for Approving the Agreement

10. This Court may authorize the Debtors to enter into the Settlement Agreement with AT&T pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

11. Bankruptcy Rule 9019 governs the procedural requirements to be followed before a settlement may be approved. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.” Fed. R. Bankr. P. 9019(a). Settlements and compromises are “a normal part of the process of reorganization.” *Protective Comm. for*

Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 428 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)).

12. To approve a compromise and settlement under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable, and in the best interests of the debtor's estate. See, e.g., *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id.* at 122. The court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the bankruptcy court may exercise its discretion "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41 (Bankr. S.D.N.Y. 1998); see also *Shugrue*, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

13. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); see also *Purofied Down Prods.*, 150 B.R. at 522 ("the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation").

14. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors:

- (i) the probability of success in the litigation;
- (ii) the difficulties associated with collection;
- (iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and
- (iv) the paramount interests of creditors.

See, e.g., In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992).

15. “The ‘reasonableness’ of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not of fraud or collusions [sic].” *Ionosphere Clubs*, 156 B.R. at 428.

Basis for Approving the Agreement

16. The Debtors submit that the proposed Settlement Agreement is the product of extensive, arm’s length negotiations, is fair and reasonable under the circumstances, and in no way unjustly enriches any of the Parties. The Debtors submit that the Settlement Agreement is in the best interest of the Debtors, their estates and creditors.

17. The Parties’ differences are complex, involving commercial and legal disputes dating back to 1998. For example, the UNEP Dispute arises from the Parties’ differing interpretation of switched access agreements between the Parties, the resolution of which, absent settlement, would have involved substantial litigation or arbitration. Such litigation or arbitration would have been lengthy and costly and the Debtors determined that their chance of success on the merits was uncertain in light of the Parties’ past practices and the possible contractual interpretations. The Settlement Agreement provides for the resolution of this issue as to the Parties’ historical practices,

as well as their future relationship. Moreover, the 2004 Agreements entered into by the Parties as an element of the resolution of the UNEP Dispute are for rates that are beneficial to the Debtors and provide guaranteed access revenue payments.

18. Likewise, the litigation of the Virginia Action and the related Contempt Motion would have been vigorously contested by the Parties. AT&T alleged in the Virginia Action that the Debtors' call-routing practices were fraudulent and sought monetary damages as well as injunctive relief. The Debtors maintain that their call-routing practices are and were proper and legal in all respects. Moreover, the Debtors alleged in the Contempt Motion that the commencement of the Virginia Action violated the automatic stay imposed by the Bankruptcy Code. AT&T disputes the allegations in the Contempt Motion. On October 30, 2003, this Court stayed the Virginia Action pending further order. While the Debtors believe that they are likely to prevail on a trial of these issues if the Court were to lift the stay, the risks associated with a potential loss are far-reaching.

19. Because of the scope of the Debtors' interaction with AT&T and the highly regulated field in which many of the disputes arise, the Debtors face a complex and costly process to resolve the disputed accounts receivable and accounts payable. Some of the issues may require use of dispute resolution procedures before regulatory agencies at the state and federal level -- procedures that, even in only one jurisdiction, often take years to complete.

20. Litigation and administrative proceedings to resolve the numerous disputes between the Parties would be costly, time consuming, and distracting to management and employees alike. In short, the opportunity to settle all matters between

the Parties on favorable terms and to continue uninterrupted services has high value for the Debtors. The Debtors estimate that the global settlement will result in significant savings to the Debtors inasmuch as the approval of the Settlement Agreement and authorization of the Parties to enter into and implement it would eliminate the attendant risk of litigation and the expenditure of time it would consume. Approval of the Settlement Agreement would also create operational stability and avoid potential service disruption. Creditors as well as the Debtors' customers are the direct beneficiaries of such settlement.

21. The settlement is the product of extensive, arms' length, good faith negotiations between the Parties. The settlement falls well within the range of reasonableness. Additionally, the settlement provides substantial benefits to the Debtors and their estates without the need for protracted litigation and insures uninterrupted service. Accordingly, the Debtors believe that the settlement is appropriate in light of the relevant factors and should be approved.

Memorandum of Law

22. This Motion does not raise any novel issues of law, and, accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted in support of the Motion.

Notice

23. Notice of this Motion has been provided in accordance with the First Amended Case Management Order dated December 23, 2002. The Debtors submit that no other or further notice need be provided.

24. No previous motion or application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order granting
the relief requested herein and such other and further relief as is just.

Dated: New York, New York
February 23, 2004

/s/ Alfredo R. Pérez

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		x	Chapter 11 Case No.
In re	:	:	02-13533(AJG)
	:	:	
WORLDCOM, INC., <u>et al.</u> ,	:	:	(Jointly Administered)
	:	:	
	:	:	
Debtors.	:	:	
<hr/>		x	

**DECLARATION OF ALFREDO R. PEREZ IN SUPPORT OF
ORDER FIXING DATE, TIME AND PLACE OF HEARING TO
CONSIDER THE MOTION OF THE DEBTORS' PURSUANT TO
BANKRUPTCY RULE 9019 SEEKING APPROVAL OF A SETTLEMENT AND
COMPROMISE OF CERTAIN MATTERS WITH AT&T CORPORATION**

ALFREDO R. PEREZ hereby declares pursuant to section 1746 of title 28
of the United States Code:

1. I am a member of the law firm of Weil, Gotshal & Manges LLP,
located at 700 Louisiana, Suite 1600, Houston, Texas 77002, attorneys for the above-
captioned debtors and debtors in possession (the "Debtors").

2. I am making this declaration in support of the Debtors' request for
an order fixing date, time and place (the "Scheduling Order") of a hearing to consider the
Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a
Settlement and Compromise of Certain Matters with AT&T Corporation, dated February

23, 2004 (docket no. 10910) (the "Motion"). A copy of the proposed Scheduling Order is attached hereto.

3. I am aware of the facts and circumstances relating to the Motion. The facts set forth herein are based upon personal knowledge or information provided to me by the Debtors.

4. Pursuant to the Motion, the Debtors are seeking orders pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") approving certain settlement agreements and authorizing the Debtors to enter into and implement such settlement agreements in accordance with the terms provided therein.

5. The settlement agreement benefits the Debtors in a number of ways, specifically by: (a) resolving one of the largest remaining claims in the case, and (b) resolving certain prepetition and postpetition disputes between parties without the need for protracted litigation. Approval of the settlement agreement represents a benefit to the Debtors, their estates and creditors. Accordingly, the Debtors believe it is imperative that the Motion be heard on an expedited basis in order that such benefits may be realized as quickly as possible.

6.. The First Amended Case Management Order, dated December 23, 2002, requires the Debtors to notice the Motion for hearing on the next Hearing Date (as defined therein) that is a least ten (10) days after such Motion is filed with the Court. However, the Debtors are requesting that the Court enter in order shortening the notice period for the hearing to consider the Motion and scheduling the hearing on March 2, 2004.

7. The Creditors' Committee does not oppose this Motion.

8. No previous motion for the relief requested herein has been made to this or any other court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
February 23, 2004

/s/ Alfredo R. Pérez
Alfredo R. Pérez

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11 Case No.
	:	
WORLD COM, INC., et al.,	:	02-13533 (AJG)
	:	
Debtors	:	Jointly Administered
	:	
-----X		

AFFIDAVIT OF SERVICE

State of Texas

County of Harris

Gayle E. Mitchel, being duly sworn, hereby deposes and says:

1. I am over 18 years of age and am not a party to the above-captioned proceedings. I am employed by Weil, Gotshal & Manges LLP, having offices at 700 Louisiana, Suite 1600, Houston, Texas 77002.

2. On or before February 23, 2004, I caused true and correct copies of:

- Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation, filed at docket no. 10905 and refiled at 10910 solely to correct requested hearing and objection dates on title page, and
- Declaration of Alfredo R. Pérez in Support of Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors' Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation, filed at docket no. 10913, and

- Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation, filed at docket no. 10918, to be served by first class mail or electronic delivery on the parties indicated on the service list attached hereto at the addresses shown thereon.

Sworn to before me this
24th day of February 2004

/s/ Gayle E. Mitchel
Gayle E. Mitchel

/s/ Virginia L. Thomas
Notary Public, State of Texas

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Via Federal Express

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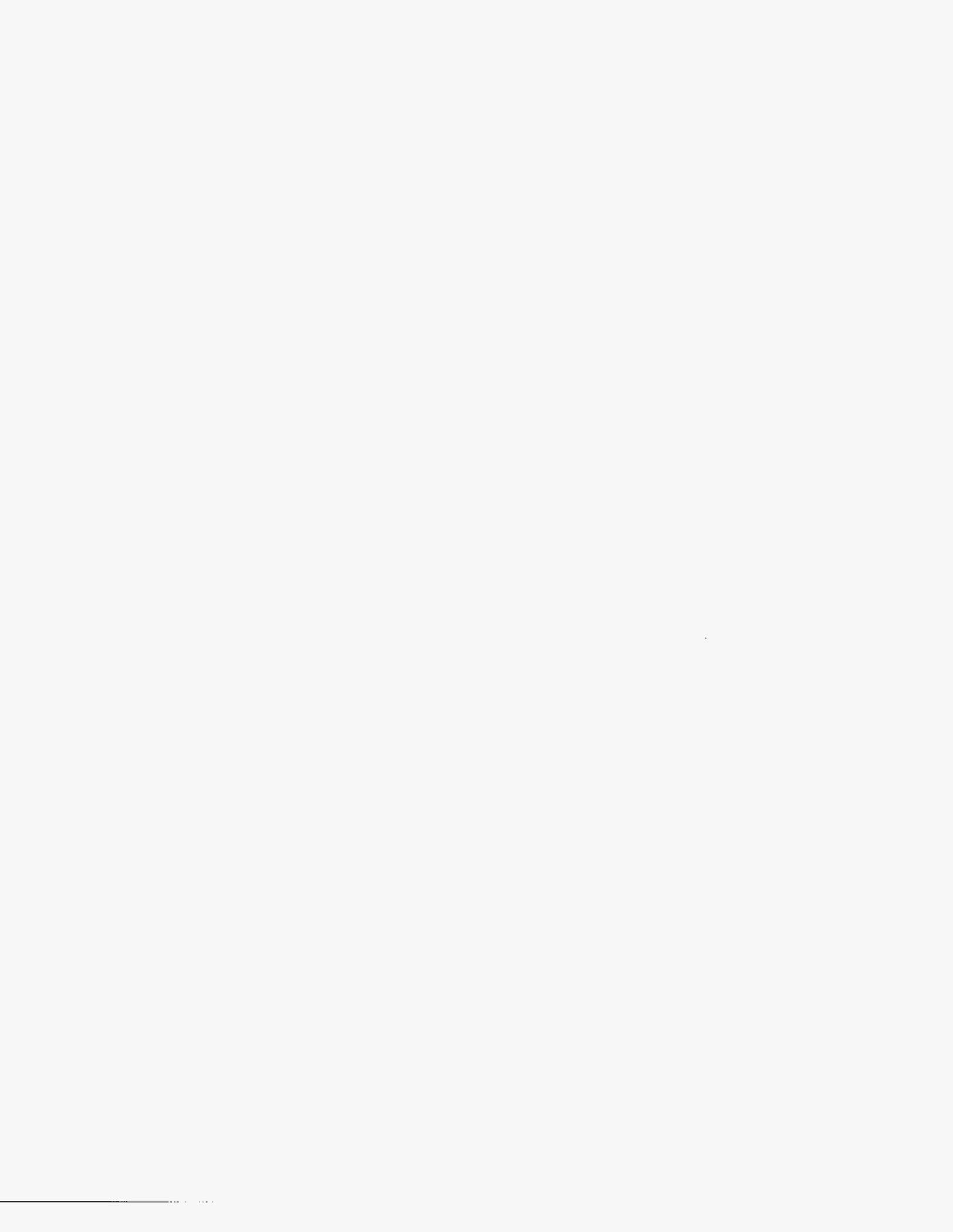
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AT&T SETTLEMENT

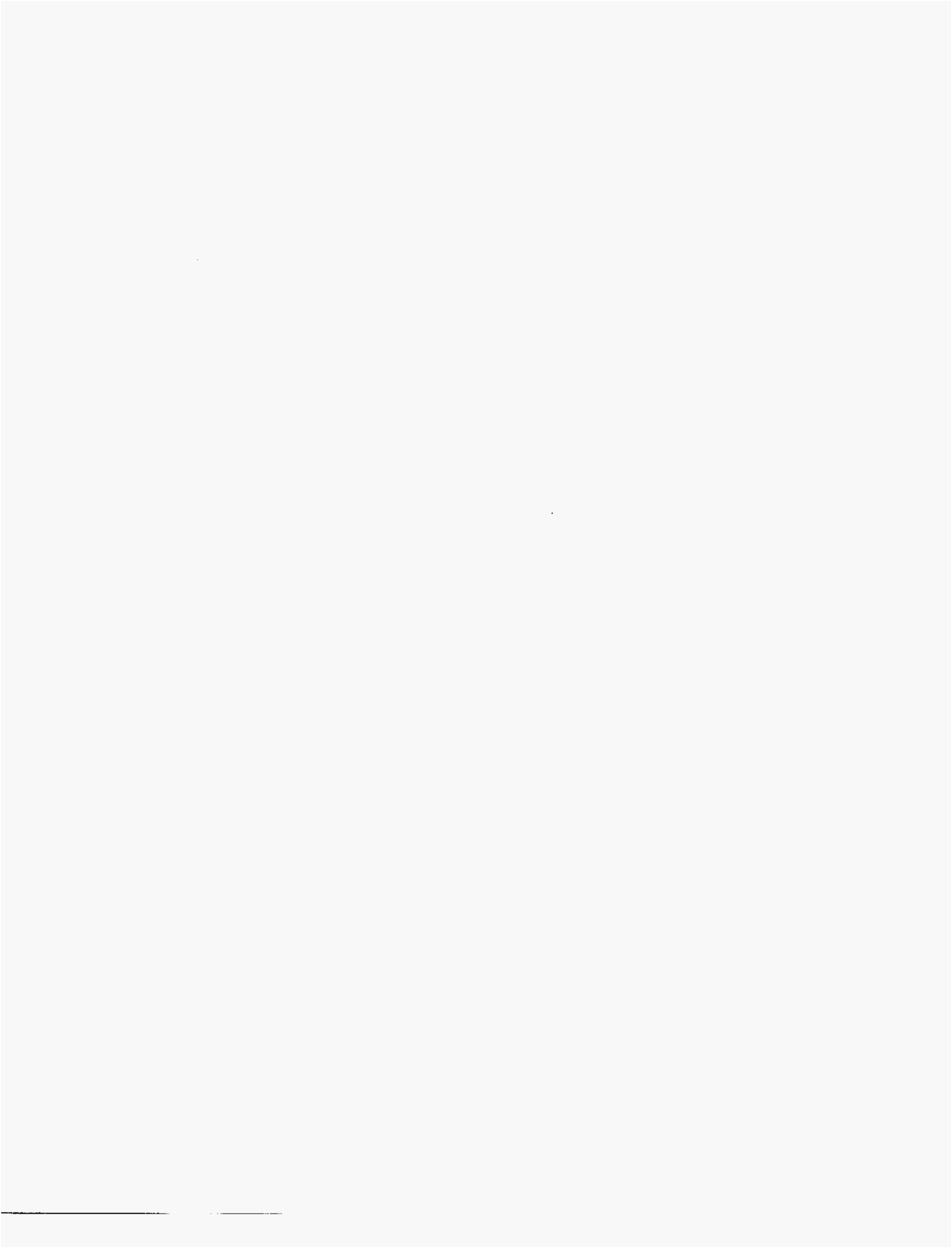
AGREEMENT

EXHIBIT PHR-2 –

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	:	
	:	
WORLDCOM, INC., <u>et al.</u>,	:	Chapter 11 Case No.
	:	02-13533 (AJG)
	:	
	:	(Jointly Administered)
Debtors.	:	

**ORDER PURSUANT TO BANKRUPTCY RULE 9019
APPROVING DEBTORS' SETTLEMENT AND COMPROMISE
OF CERTAIN MATTERS WITH AT&T CORPORATION**

A hearing having been held on March 2, 2004 (the "Hearing") to consider the motion (the "Motion") of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement and compromise of certain matters with AT&T Corp. and its subsidiaries and affiliates (individually and collectively, "AT&T"), on the terms and subject to the conditions set forth in that certain Settlement Agreement by and between the Debtors and AT&T, entered into as of February 23, 2004 (the "Settlement Agreement"), as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion having been provided in accordance with the Order of this Court, dated December 23, 2002, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion, the papers in support thereof, and the responses thereto (if any); and upon the record of the Hearing, the Motion, and all of the proceedings had before the Court; and

the Court having found and determined that the Settlement Agreement is the product of good-faith, arm's length negotiations between the parties and is fair and within the range of reasonableness and that the relief requested in the Motion represents an exercise of the Debtors' sound business judgment, is in the best interests of the Debtors, their estates, and their creditors, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that the terms and conditions of the settlement and the Settlement Agreement are hereby authorized and approved, and the Debtors are authorized to implement the Settlement Agreement; and it is further

ORDERED that the Debtors and AT&T are authorized to execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and to perform any and all obligations contemplated therein immediately upon entry of this Order; and it is further

ORDERED that the discretionary stay imposed by this Court by order dated October 30, 2003, to stay the action titled *AT&T Corp. v. MCI, Inc. f/k/a WorldCom, Inc. et. al.*, Civil Action No. 03-1114-A, pending in the United States District Court for the Eastern District of Virginia is terminated as of the date that this order becomes final and non-appealable; and it is further

ORDERED that the automatic stay imposed by operation of section 362(a) of the Bankruptcy Code is hereby modified, and the Debtors and AT&T are authorized,

to make the payments and effect the setoffs provided for in the Settlement Agreement;
and it is further

ORDERED that this Court shall retain jurisdiction over any and all
disputes arising under or otherwise relating to the construction, performance, and
enforcement of the terms of this Order and the terms and conditions of the Settlement
Agreement; and it is further

ORDERED that the requirement under Rule 9013-1(b) of the Local
Bankruptcy Rules for the Southern District of New York for the filing of a memorandum
of law is waived.

Dated: New York, New York
March 2, 2004

s/ Arthur J. Gonzalez
United States Bankruptcy Judge

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Case Name: WorldCom, Inc.
Case Number: 02-13533-ajg
Document Number: 10905

Docket Text:

Motion to Approve *Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement
and Compromise of Certain Matters with AT&T Corporation* filed by Alfredo R. Perez on behalf of WorldCom,
Inc.. with hearing to be held on 3/2/2004 at 10:00 AM at Courtroom 523 (AJG) Responses due by 3/1/2004,
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

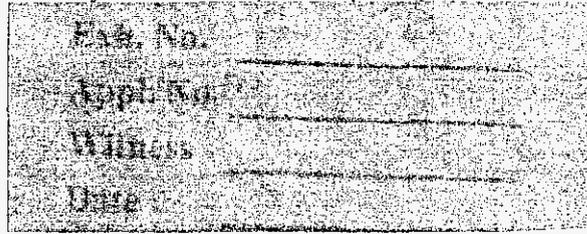
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	:
In re	: Chapter 11
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WORLDCOM, INC., et al.,	: Case No. 02-13533 (AJG)
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Debtors.	: (Jointly Administered)
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**LIMITED OBJECTION OF QWEST CORPORATION TO DEBTORS'
MOTIONS PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 6006 FOR APPROVAL OF
REJECTION OF 973, 186 AND 432 INDIVIDUAL SERVICE ORDERS**

TO: THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE

Qwest Corporation ("Qwest") hereby objects to: (1) the Motion of the Debtors Pursuant to Section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 for Approval of Rejection of 973 Individual Service Orders dated June 25, 2003 (the "June 25th Motion"); (2) the Motion of the Debtors Pursuant to Section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 for Approval of Rejection of 186 Individual Service Orders dated June 27, 2003 (the "June 27th Motion"); and (3) Motion of the Debtors Pursuant to Section 365(a) of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy for Approval of Rejection of 432 Individual Service Orders dated July 3, 2003 (the "July 3rd Motion") and represents as follows:

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ATTACHMENT B

1. WorldCom, Inc. and its affiliated debtor subsidiaries (collectively, "WorldCom") seek to reject numerous service orders for circuits provided to WorldCom by Qwest (the "Qwest Circuits") pursuant to the June 25th Motion, the June 27th Motion and the July 3rd Motion.

The June 25th Motion

2. Qwest objects to the June 25th Motion to the extent that Qwest's records indicate that the following Qwest Circuits do not appear to be WorldCom accounts and thus cannot be rejected by WorldCom:

74.HCGL.000588..MS
74.HCGL.000585..MS
74.HCGL.000589..MS
74.HCGL.000590..MS
74.HCGL.000591..MS
74.HCGL.000592..MS
74.HCGL.000586..MS

3. To the extent that WorldCom wishes to provide for the rejection of these circuits in the event Qwest's records turn out to be incorrect, Qwest has no objection. Qwest reserves its rights to file a claim for rejection damages should Qwest subsequently conclude that any of the foregoing circuits do belong to WorldCom.

The June 27th Motion

4. Qwest objects to the June 27th Motion to the extent that WorldCom has not adequately identified the Qwest Circuits listed below. At a minimum, WorldCom must provide the BANs (billing account numbers) for these circuits in order for Qwest to locate them. Without that information, Qwest cannot determine (a) whether it has any grounds to object to the rejection of these circuits; or (b) the amount of its rejection claims:

64.HFGA.000100
47.HFGC.000017.IOR
47.HFGS.000006.IOR
24.HCGL.002557..MS

5. To the extent WorldCom is unable to provide further identifying information, Qwest requests an extension of time to file claims with respect to these Circuits until it can determine its rights with respect to the underlying tariffs.

The July 3rd Motion

6. Qwest objects to the July 3rd Motion to the extent that WorldCom has not adequately identified the following Qwest Circuits. At a minimum, WorldCom must provide the BANs for these circuits in order for Qwest to locate them. Without that information, Qwest cannot determine (a) whether it has any grounds to object to the rejection of these circuits; or (b) the amount of its rejection claims:

11.HCGL.96099..MS	74.HCGL.146257..PN
11.HCGL.96100..MS	74.HCGL.153630..PN
11.HCGL.96101..MS	54.HCGL.000724..MS
11.HCGL.96104..MS	54.HCGL.000748..MS
11.HCGL.96105..MS	54.HCGL.000749..MS
11.HCGL.96106..MS	54.HCGL.000750..MS
11.HCGL.96109..MS	54.HCGL.000751..MS
11.HCGL.96110..MS	54.HCGL.000752..MS
11.HCGL.96111..MS	54.HCGL.000753..MS
11.HCGL.96275..PN	54.HCGL.000754..MS
11.HCGL.96276..PN	54.HCGL.000756..MS
11.HCGL.96277..PN	54.HCGL.000757..MS
54.HCGL.001434..PN	54.HCGL.000758..MS
72.HCGL.161267..PN	54.HCGL.000759..MS
72.HCGL.162146..PN	54.HCGL.000760..MS
72.HCGL.162147..PN	54.HCGL.000761..MS

7. To the extent WorldCom is unable to provide further identifying information, Qwest requests an extension of time to file claims with respect to these Circuits until it can determine its rights with respect to the underlying tariffs.

8. Qwest further objects to the July 3rd Motion to the extent that Qwest's records indicate that the following Qwest Circuits do not appear to belong to WorldCom and thus cannot be rejected by WorldCom:

51.HCGL.97017..NW
62.HCGL.95121..NW
62.HCGL.95122..NW
24.HCGL.001822..MS
24.HCGL.001823..MS
76.HCGL.16485.NW
76.HCGL.16486.NW

9. To the extent that WorldCom wishes to provide for the rejection of the circuits identified in the preceding paragraph in the event Qwest's records turn out to be incorrect, Qwest has no objection. Qwest reserves its rights to file a claim for rejection damages should Qwest subsequently conclude that any of the foregoing circuits do belong to WorldCom.

WHEREFORE, Qwest requests: (1) that any order approving the June 25th, June 27th and July 3rd Motions be denied to the extent that WorldCom seeks to reject Qwest Circuits that are not WorldCom accounts; (2) that the Court require WorldCom to provide additional identifying information for the circuits identified in Paragraphs 3 and 4 above; and (3) that the Court grant such other and further relief as is just.

Dated: New York, New York
July 31, 2003

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: : Chapter 11
: :
WORLD COM, INC., et al, : Case No. 02-13533 (AJG)
: :
Debtors. :
: :
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CERTIFICATE OF SERVICE

I, Merritt A. Pardini, an attorney duly admitted to practice before this Court and the courts of the State of New York, hereby certify that on the 31st day of July, 2003, I caused to be served, a true and correct copy of the

LIMITED OBJECTION OF QWEST CORPORATION TO DEBTORS' MOTIONS
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 6006 FOR APPROVAL OF REJECTION OF 973, 186 AND 432 INDIVIDUAL
SERVICE ORDERS

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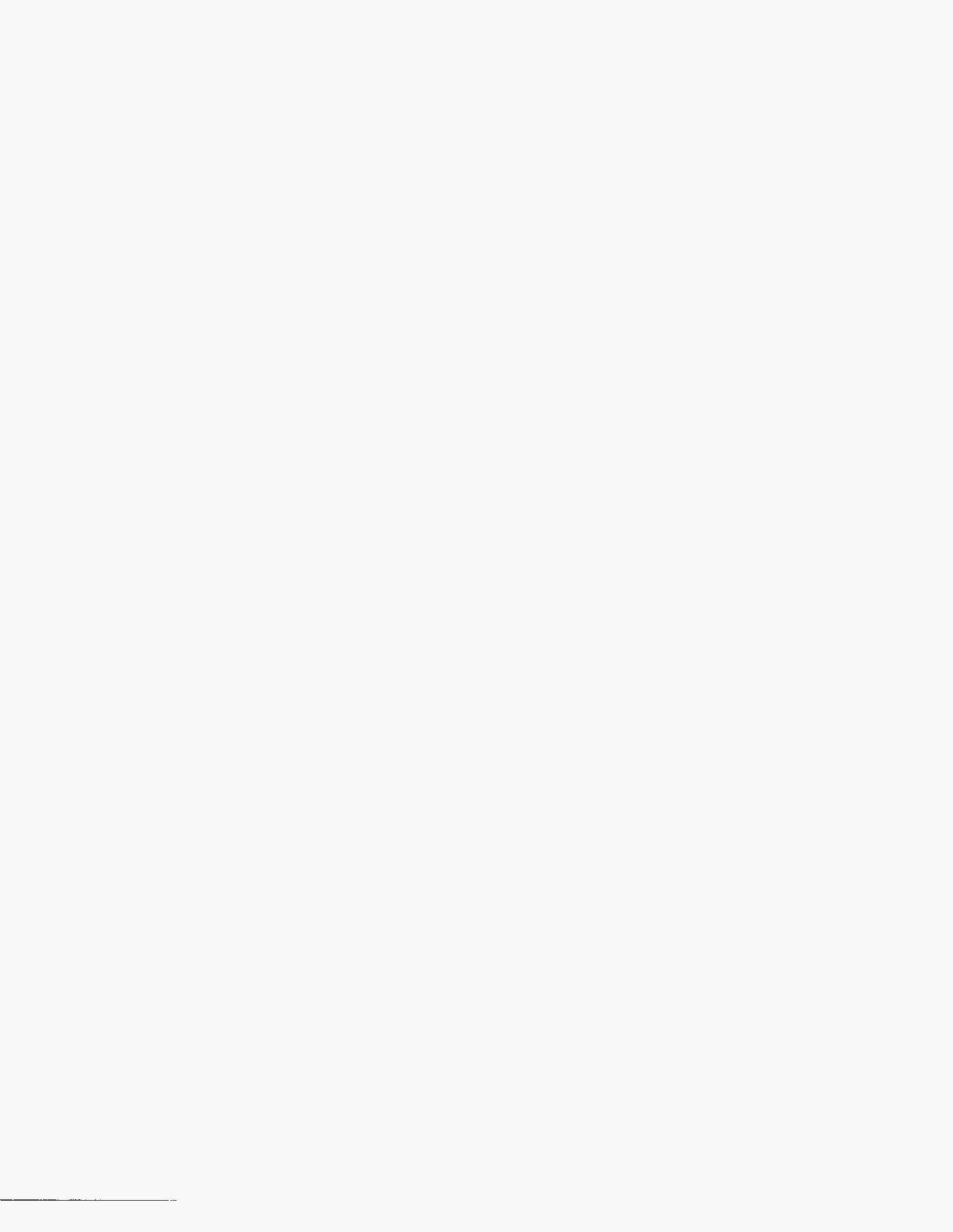
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Hearing Date: Will Request August 26, 2003 at 10:00 a.m.
Objection Deadline: Will Request August 25, 2003 at 12:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	:
	:
WORLDCOM, INC., <u>et al.</u> ,	:
	:
	:
Debtors.	:
-----X	

Chapter 11 Case No.
02-13533 (AJG)
(Jointly Administered)

MOTION OF THE DEBTORS PURSUANT
TO BANKRUPTCY RULE 9019 SEEKING APPROVAL
OF A SETTLEMENT AND COMPROMISE OF CERTAIN
MATTERS WITH QWEST CORPORATION AND QWEST
COMMUNICATIONS CORPORATION

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

WorldCom, Inc. and certain of its direct and indirect subsidiaries, as
debtors and debtors in possession (collectively, "WorldCom" or the "Debtors"),
respectfully represent:

Background

1. On July 21, 2002 (the "Commencement Date") and November 8,
2002, WorldCom, Inc. and certain of its direct and indirect subsidiaries commenced cases
under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By
Orders dated July 22, 2002 and November 12, 2002, the Debtors' chapter 11 cases have
been consolidated for procedural purposes only and are being jointly administered. The

Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On July 29, 2002, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the statutory committee of unsecured creditors (the "Committee").

2. WorldCom, Inc., one of the Debtors in the above captioned cases, together with approximately 200 direct and indirect domestic subsidiaries and 200 non-debtor foreign affiliates (collectively, the "Company"), is one of the world's preeminent global communications companies that provides a broad range of communication services in over 200 countries on six continents. The Company is also the second largest carrier of consumer and small business long distance telecommunications services in the United States, providing a broad range of retail and wholesale communications services, including long distance voice and data communications, consumer local voice communications, wireless messaging and voice services, private line services, and dial-up Internet access services.

3. For the year ended December 31, 2001, WorldCom recorded revenue of more than \$30 billion.¹ As of March 31, 2002, WorldCom's books and records reflected liabilities totaling approximately \$41 billion. As of June 30, 2002, WorldCom employed more than 63,900 individuals, of which approximately 57,700 were full-time employees and approximately 6,200 were part-time employees.

¹ The amounts in this paragraph are stated on a consolidated basis, including Debtors and non-debtor domestic subsidiaries only. WorldCom, Inc. has announced its intention to restate the financial statements for 2000, 2001 and the first quarter of 2002.

Jurisdiction

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background Regarding the Parties' Relationship

5. Qwest Communications Corporation ("QCC") and Qwest Corporation ("QC"), on behalf of themselves and all of their affiliates (individually and collectively, "Qwest") and the Debtors (collectively, the "Parties") were as of the Commencement Date and continue to be parties to various contracts and arrangements with each other pursuant to which they provide services and furnish facilities to one another, including, without limitation, (a) various interconnection agreements and arrangements provided under tariffs pursuant to which each party has made access to its network available to the other, and (b) a billing and collection agreement pursuant to which QC has purchased accounts receivable of the Debtors and provided billing services for the Debtors (all such agreements and arrangements, collectively, the "Executory Contracts"). Pursuant to section 365 of the Bankruptcy Code, the Debtors have assumed, and cured defaults under, certain of the Executory Contracts and has rejected certain other Executory Contracts (the "Rejected Executory Contracts"). There remain still other Executory Contracts that WorldCom so far has neither assumed nor rejected.

6. On or about January 20, 2003, Qwest filed proofs of claim (the "Proofs of Claim") in the Chapter 11 Cases of certain of the Debtors, asserting claims against the Debtors arising prior to the Commencement Date totaling \$151,630,212.63, plus other amounts described in the attachments thereto, including contingent and unliquidated amounts relating to the possible rejection of the Executory Contracts.

7. Qwest asserts claims for the claims listed in the Proofs of Claim, which include, but are not limited to, (i) overpayment of reciprocal compensation pursuant to interconnection agreements between the parties, (ii) setoff rights related to and against Purchase of Accounts Receivable ("PARs") pursuant to the billing and collection agreement between the Debtors and QC, (iii) approximately \$9 million for an alleged misrepresentation to Qwest of value associated with a retroactive credit to Qwest for re-rating certain circuits, (iv) claims that certain purchases made by Qwest between July 1, 2001 and June 30, 2003 should have been counted toward the minimum purchase commitment and (as to purchases between January 1, 2002 and June 30, 2003) re-rated at pricing in the Digital Services Agreement dated June 29, 2001 (the "DSA") between Qwest Communications Corporation and MCI WorldCom Communications, Inc. (the "DSA Claim"), (v) approximately \$4.3 million of PIU charges, and (vi) approximately \$34.5 million in unpaid termination liability under previous agreements between the parties related to the provision of COBRA and PRI services for dial access (collectively, the "Qwest Claims").

8. The Debtors assert Qwest owes them in excess of \$125,000,000 in connection with certain claims against Qwest arising prior to the Commencement Date, including, but not limited to, (i) approximately \$75 million in PARs under the billing and collection agreement, (ii) approximately \$30 million for a SS7 overcharge, (iii) approximately \$1.8 million for damages to the Debtors' equipment caused by a Qwest HVAC system, and (iv) claims for reciprocal compensation under the billing and collection agreements (collectively, the "MCI Claims").

9. In addition to disputes concerning monies owed by and to each of the Parties, there also exist certain commercial issues between the Parties affecting the cost of doing business.

The Negotiations

10. The Parties have diligently sought to reconcile their competing prepetition claims and debts, as well as the disputes between them regarding the competing amounts each claimed the other owed as of the Commencement Date. As a result of such efforts, the Parties have reconciled and resolved all such competing claims and debts pursuant to the terms of the settlement.

11. The Parties have also addressed and resolved certain commercial disputes and the status of certain remaining executory contracts.

The Settlement Agreement

12. On August 14, 2003, (the "Settlement Date"), the Parties entered into a settlement agreement (the "Settlement Agreement")¹ to resolve the foregoing disputes. In summary, the Parties have agreed as follows:²

- a. The Settlement Agreement shall be effective on the later of entry of the Approval Order and the occurrence of the effective date of the Plan (the "Settlement Effective Date");
- b. On the Settlement Effective Date (a) WorldCom will pay to Qwest in cash \$17 million (the "Settlement Payment"), subject to certain adjustments; (b) WorldCom will credit QCC with \$4 million towards satisfaction of its minimum purchase commitments under the DSA; and (c) Qwest and WorldCom shall be deemed to have

¹ The Settlement Agreement contains substantial proprietary and confidential information, as well as provisions imposing confidentiality and non-disclosure obligations. Accordingly, the Debtors have not attached the Settlement Agreement to this Motion.

² To the extent that there are any inconsistencies between the summary description of the Settlement Agreement contained herein and the terms and conditions of the Settlement Agreement, the terms and conditions of the Settlement Agreement shall in all respects control.

setoff the remainder of the MCI Claims and Qwest Claims against one another;

- c. Other than the rejection of additional circuits in the Debtors' ordinary course of business (subject to Qwest's rights under section 365 of the Bankruptcy Code to object to any rejection), the Debtors shall not reject any material Executory Contract subsequent to the Settlement Date;
- d. On the Settlement Effective Date, the Debtors will be deemed to have assumed all of the Executory Contracts except for any Executory Contract that the Debtors have rejected by Court order prior to the Settlement Effective Date;
- e. The Parties will retain any and all rights and rights to payment of any and all amounts arising postpetition except for DSA Claim and the CompuServe Claim;
- f. Qwest and the Debtors will grant each other releases for any amounts owed prepetition, except for (i) claims arising under the settlement, and (ii) any claims arising postpetition (except the CompuServe Claim);
- g. The Debtors will be deemed to have released all claims against the Qwest arising under chapter 5 of the Bankruptcy Code;
- h. Qwest will retain the right to assert further rejection damage claims as set forth in the Settlement Agreement, in addition to the pending rejection claims, to the extent that the Debtors reject any of the remaining Executory Contracts, but the Parties agree to seek in good faith to resolve any disputes over the validity and amount of any such rejection damage claim;
- i. Subject to an order approving this Motion by August 27, 2003, Qwest will not object to confirmation of the Debtors' proposed Plan or to any approvals from regulatory agencies that WorldCom seeks to obtain before the effective date of the Plan (and that are, in fact, obtained before such effective date) and that are, in accordance with the terms of the Plan, required for such Plan to go effective; and
- j. The Parties further agree to negotiate regarding business issues relating to network grooming, billing and payment procedures and message waiting indicator.

Relief Requested

13. By this Motion, the Debtors respectfully request entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 362 of the Bankruptcy Code (a) approving the Settlement Agreement in its entirety, and (b) authorizing the Parties to enter into and implement the Settlement Agreement, including payment of and setoff of agreed amounts in accordance with the intent of the Parties.

Basis for Relief Requested

Standard for Approving the Agreement

14. This Court may authorize the Debtors to enter into the Settlement Agreement with Qwest pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

15. Bankruptcy Rule 9019 governs the procedural requirements to be followed before a settlement may be approved. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise and settlement.” Fed. R. Bankr. P. 9019(a). Settlements and compromises are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)).

16. To approve a compromise and settlement under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable, and in the best interests of the debtor’s estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). The decision to approve a particular settlement lies within the sound discretion of

the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id.* at 122. The court may consider the opinions of the trustee or debtor in possession that the settlement is fair and reasonable. *Id.*; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). In addition, the bankruptcy court may exercise its discretion “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41 (Bankr. S.D.N.Y. 1998); *see also Shugrue*, 165 B.R. at 123 (“the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above”).

17. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *see also Purofied Down Prods.*, 150 B.R. at 522 (“the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation”).

18. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors:

- (i) the probability of success in the litigation;
- (ii) the difficulties associated with collection;
- (iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and
- (iv) the paramount interests of creditors.

See, e.g., In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992).

19. “The ‘reasonableness’ of a settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to

which the settlement is truly the product of 'arms-length' bargaining, and not of fraud or collusions [sic]." *Ionosphere Clubs*, 156 B.R. at 428.

Basis for Approving the Agreement

20. The Debtors submit that the proposed Settlement Agreement is fair and reasonable under the circumstances and in no way unjustly enriches any of the Parties. The Debtors submit that the Settlement Agreement is in the best interest of the Debtors, their estates and creditors.

21. The Parties' differences are complex, involving both pre-bankruptcy disagreements and disputes arising from the intersection of bankruptcy and telecommunications law. The bankruptcy issues arise primarily from (i) differing positions on which telecommunications transactions between the Parties constitute executory contracts for purposes of assumption and cure, and (ii) the effect of substantive consolidation (as set forth in the Debtors' proposed Plan) on the mutuality of debts between Qwest and separate Debtor entities.

22. WorldCom asserts that many usage-sensitive services Qwest provides to the Debtors do not arise from "executory contracts" as that term is used in section 365 of the Bankruptcy Code, but are more in the nature of open accounts not governed by such section. The same holds true for certain very short-term non-usage-based services. The terms of the proposed Plan incorporate WorldCom's understanding by providing that such services are not executory contracts and thus require no cure. Qwest urges that all of the services it provides to the Debtors are under executory contracts.

23. Further, the Debtors' proposed Plan provides for substantive consolidation of Debtor entities. Because of the significant debts that Qwest owes to the various Debtors, Qwest asserts that substantive consolidation has the effect of making any debt between it and any Debtor entity mutual for setoff purposes under section 553 of the Bankruptcy Code. The Debtors maintain that while the Plan preserves creditors' rights to setoff, such rights arose prior to commencement of the bankruptcy case under non-bankruptcy law, and it is the law under which a setoff right arises that delimits its scope. Qwest argues to the contrary.

24. While the Debtors believe that they would prevail on a trial of any of these issues, the risks associated with losing are far reaching.

25. Because of the geographic scope of the Debtors' interaction with Qwest and the highly regulated field from which many of the disputes arise, the Debtors face complex and expensive fights to resolve them. Some of the issues may require use of dispute resolution procedures before regulatory agencies at the state and federal level: procedures that, even in only one jurisdiction, often take years to complete. Moreover, the bankruptcy issues involve the complicated areas of executory contracts and substantive consolidation. Given the business pressures WorldCom confronts to quickly emerge from bankruptcy, time is a major consideration. Litigation and administrative proceedings would be costly, time consuming, and distracting to management and employees alike.

26. In short, the opportunity to settle almost all matters between the Parties on favorable terms and to continue uninterrupted services has high value for the Debtors. Approval of the Settlement Agreement and authorization of the Parties to enter

into and implement it would eliminate the attendant risk of litigation and the expenditure of time it would consume. Creditors as well as the Debtors' customers are the direct beneficiaries of such settlement.

27. The settlement is the product of extensive, arms' length, good faith negotiations between the Parties. The Debtors expect the goodwill resulting from the compromise and settlement will benefit them as the Parties continue to negotiate outstanding issues. The settlement falls well within the range of reasonableness. Additionally, the settlement provides substantial benefits to the Debtors and their estates without the need for protracted litigation and insures uninterrupted service. Accordingly, the Debtors believe that the settlement is appropriate in light of the relevant factors and should be approved.

Memorandum of Law

28. This Motion does not raise any novel issues of law, and, accordingly, the Debtors respectfully request that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted in support of the Motion.

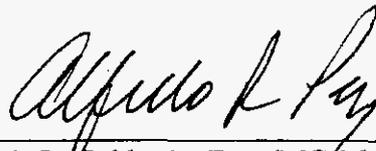
Notice

29. Notice of this Motion has been provided in accordance with the First Amended Case Management Order dated December 23, 2002. The Debtors submit that no other or further notice need be provided.

30. No previous motion or application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just.

Dated: New York, New York
August 18, 2003



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Attorneys for Debtors and
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11 Case No.
WORLDCOM, INC., <u>et al.</u> ,	:	02-13533 (AJG)
	:	
	:	(Jointly Administered)
Debtors.	:	

**ORDER APPROVING SETTLEMENT AND
COMPROMISE OF CERTAIN MATTERS WITH QWEST
CORPORATION AND QWEST COMMUNICATIONS CORPORATION**

A hearing having been held on August 26, 2003 (the "Hearing") to consider the motion (the "Motion") of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement and compromise of certain matters with Qwest Corporation and Qwest Communications Corporation, and their subsidiaries and affiliates (individually and collectively, "Qwest"), as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion having been provided in accordance with the Order of this Court, dated December 23, 2002, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion, the papers in support thereof, and the responses thereto; and upon the record of the Hearing, the Motion, and all of the proceedings had before the Court; and the Court having found and determined that the relief requested in the Motion represents an exercise of the Debtors' sound business judgment, is in the best interests of the Debtors, their estates, and their creditors, and that the legal and factual bases set forth

in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that the terms and conditions of the settlement and the Settlement Agreement are hereby authorized and approved, and the Debtors are authorized to implement the Settlement Agreement; and it is further

ORDERED that the Debtors are authorized to execute, deliver, implement, and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Settlement Agreement and to perform any and all obligations contemplated therein immediately upon entry of this Order; and it is further

ORDERED that the automatic stay created by operation of section 362(a) of the Bankruptcy Code is hereby modified, and the Parties are authorized, to make the payments and effect the setoffs provided for in the Settlement Agreement. To the extent provided in the settlement agreement, this Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the construction, performance, and enforcement of the terms of this Order ; and it is further

ORDERED that the requirement under Rule 9013-1(b) of the Local
Bankruptcy Rules for the Southern District of New York for the filing of a memorandum
of law is waived.

Dated: New York, New York
August 26, 2003

/s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO
MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS
TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23)
AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 10

MCI Interrogatory No. 5:

Please state whether QCC or any of its affiliates provided switched access service in Florida at any time between November 2002 and February 2007.

QCC objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. When, in and what manner, QCC received and utilized service authority to provide regulated service in Florida bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC. QCC further objects to this Request to the extent it seeks information regarding any affiliate of QCC. Without waiver of its objections, QCC responds as follows.

No.

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

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND SUPPLEMENTAL
RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON
ACCESS TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 7, 11)
DOCKET NO. 090538-TP
PAGE 3

INTERROGATORIES

MCI Interrogatory No. 7:

Identify each state in which QCC or any of its CLEC affiliates provided switched access service between January 2004 and January 2007.

INITIAL RESPONSE: QCC objects to this Request on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. QCC's provision of service in other states bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC in Florida. QCC further objects to this Request to the extent it seeks information regarding any affiliate of QCC. Without waiver of its objections, QCC responds as follows.

See QCC's response to MCI Interrogatory No. 5.

Respondents: QCC Legal;

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

SUPPLEMENTAL RESPONSE: Without waiver of its objections, QCC supplements its response as follows.

QCC did not provide switched access between the years 2004 and 2007. However, QCC was certificated to provide local exchange service in nearly every state (including Florida) during that period. Had it been presented with the same "bilateral" discount arrangement as MCI provided to AT&T, QCC could have easily rolled out switched access tariffs and price lists in Florida and other states. QCC was deprived of that opportunity, and was deprived of even the opportunity to consider whether to offer switched access (assuming that was even a legitimate prerequisite for the discount afforded by MCI to AT&T), by MCI's intentionally secretive conduct.

Respondents: QCC Legal;

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

QWEST COMMUNICATIONS COMPANY, LLC'S OBJECTIONS AND RESPONSE TO
MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS
TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23)
AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 7

MCI Interrogatory No. 4:

If the answer to MCI metro Interrogatory 3 above is in the affirmative,

- a. Please state the date on which QCC obtained a certificate of authority to provide service as a CLEC in Florida.**

QCC objects to this Request on the basis that it seeks information in the public domain and on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. When, in and what manner, QCC received and utilized service authority to provide regulated service in Florida bears no connection to determining whether MCI engaged in unreasonable rate discrimination with regard to its provision of intrastate switched access to QCC. Without waiver of its objections, QCC responds as follows.

QCC's certificate of authority to provide service as a CLEC in Florida was issued on March 3, 1999.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

- b. Please state the date on which QCC began providing service as a CLEC in Florida.**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Based on its reasonable investigation, QCC believes that it first began providing CLEC service in Florida in 1999, although a precise date (month and day) could not be ascertained.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

- c. Does QCC have a tariff or price list to provide competitive local exchange services in Florida?**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

As of December 14, 2009, Qwest no longer files tariffs with the Florida Public Service Commission for its detariffed local services. Qwest's Local Exchange services can be found in its Local Exchange Services Catalog No. 1 at http://tariffs.qwest.com:8000/Q_Tariffs/FL/index.htm

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO
MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS
TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23)
AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 8

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

- d. If the answer to subpart c is in the affirmative, please state the date on which QCC first filed a tariff or price list to provide competitive local exchange services in Florida.**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

QCC FPSC Price List No. 1, as of June 17, 2002, which replaced and canceled LCI International Telecom Corp.'s (LCI) Local Exchange Service Florida Price List No. 1. LCI's local exchange price list was issued in 1999.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

- e. During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service to residential customers in Florida?**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

No.

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

- f. During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service using its own facilities, including its own end-office switch or switches, in Florida?**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

No.

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO
MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS
TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23)
AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 9

Respondent: Sharon Alvarado, CenturyLink Tariff Manager
1801 California Street, 10th Floor
Denver, CO 80202

- g. **During the period between November 2002 and February 1, 2007, did QCC provide competitive local exchange service in Florida by reselling the service of one or more local exchange carriers or by using unbundled network elements that it obtained from one or more local exchange carriers, either pursuant to agreement or tariff?**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Yes.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

- h. **If the answer to subpart g above is in the affirmative, please identify each local exchange carrier whose services QCC resold or from which QCC obtained unbundled network elements in Florida.**

See QCC's objections to MCI Interrogatory No. 4(a). Without waiver of its objections, QCC responds as follows.

Bell South.

Respondent: Roberta Pollard, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION
SERVICES' SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT
REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 3

INTERROGATORIES

MCImetro Interrogatory No. 24

During the period between January 2004 and February 1, 2007, did QCC provide competitive local exchange service in Florida by using unbundled network elements that it obtained from one or more local exchange carriers, either pursuant to agreement or tariff?

RESPONSE: QCC objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. As an IXC, similarly situated to AT&T with regard to MCI's provision of intrastate switched access in Florida, QCC was entitled to non-discriminatory rate treatment for that service. The provision of UNE-based local services is not an explicit or implicit prerequisite for obtaining non-discriminatory rate treatment. Without waiver of its objections, QCC responds as follows.

No. While QCC (as a certificated CLEC) had the authority to provide competitive local exchange service in Florida between January 2004 and February 1, 2007 by using unbundled network elements, it did not so. Had MCI made QCC aware of the availability of the discount arrangement provided to AT&T, QCC could have made different business decisions regarding the type of services it chose to offer in Florida. In any event, it is not clear that the provision of UNE-based local exchange services would have been required.

Respondents: QCC Legal;

Marsha Dodd, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION
SERVICES'SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT
REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 8

MCImetro Interrogatory No. 29:

Please provide the number of local exchange customers and subscriber lines that QCC had in Florida as of December 31, 2003; December 31, 2004; December 31, 2005; and December 31, 2006.

RESPONSE: QCC objects to this Interrogatory on the basis that is not reasonably calculated to lead to the discovery of admissible evidence. As an IXC, similarly situated to AT&T with regard to MCI's provision of intrastate switched access in Florida, QCC was entitled to non-discriminatory rate treatment for that service. The total number of local exchange customers and subscriber lines are not explicit or implicit prerequisites for obtaining non-discriminatory rate treatment. Without waiver of its objections, QCC responds as follows.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]

Respondents: QCC Legal;

Marsha Dodd, QCC Provisioning Supervisor
4650 Lakehurst Ct.
Dublin, Ohio 43016-3252

CONFIDENTIAL

DOCKET NO. 090538-TP

QCC RESPONSE TO

TIME WARNER

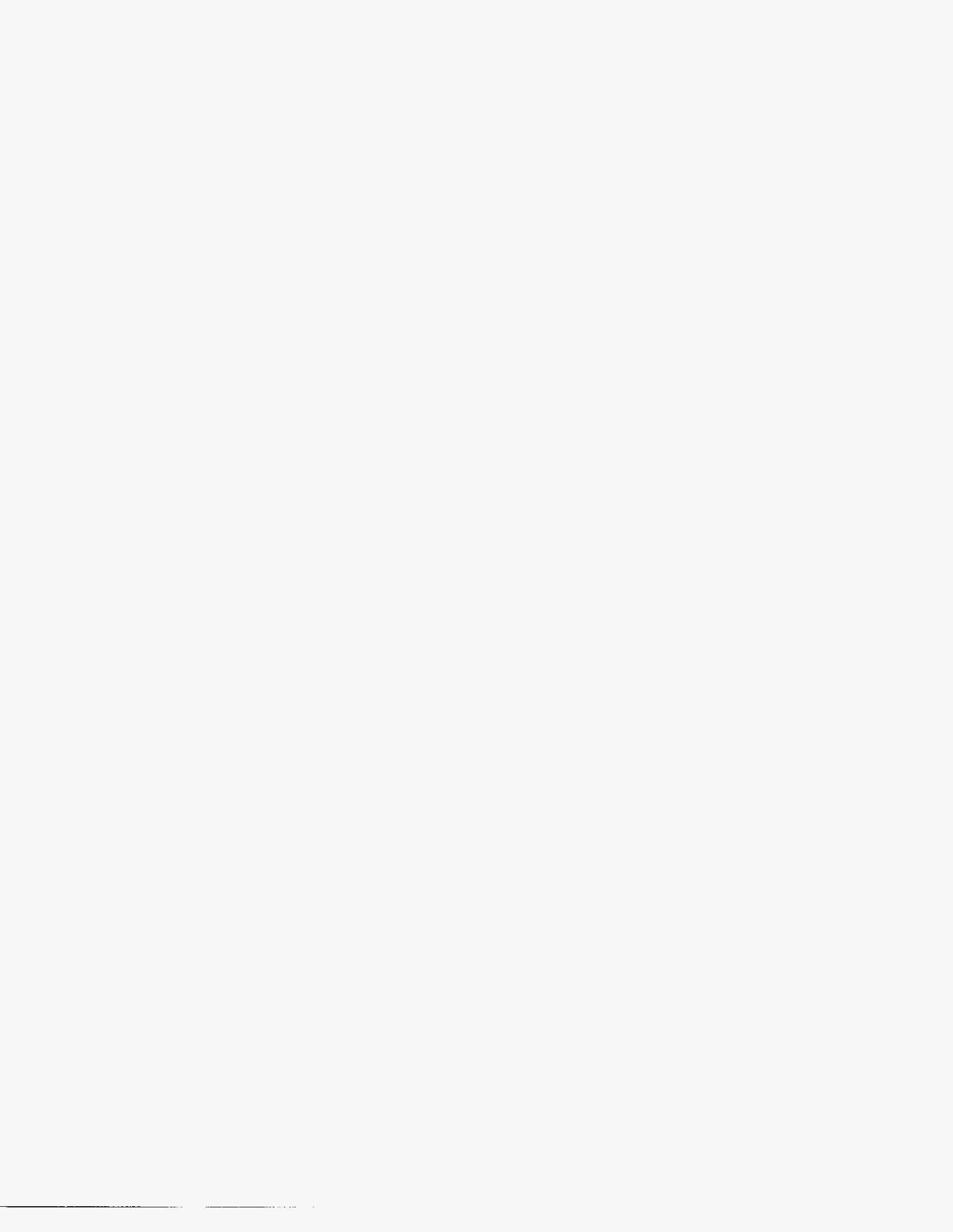
POD NO. 4

EXHIBIT PHR-11 –

TOTAL OF 15 PAGES

ENTIRE DOCUMENT IS

CONFIDENTIAL



QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE TO MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC D/B/A VERIZON ACCESS TRANSMISSION
SERVICES' SECOND SET OF INTERROGATORIES (NOS. 24-34) AND DOCUMENT
REQUESTS (NOS. 6-10)
DOCKET NO. 090538-TP
PAGE 5

MCImetro Interrogatory No. 26:

The spreadsheet attached to QCC's Supplemental Response to MCImetro Interrogatory No. 17 contains a column titled "Usage Billed Amt." Did QCC pay MCImetro each of the amounts shown in that column? If your response is other than an unqualified "yes,"

- a) please identify each amount shown in that column that QCC did not pay;
- b) explain why QCC did not pay each amount that QCC identified in its response to subparagraph (a) above; and
- c) state what amount (if any) QCC paid instead.

RESPONSE: QCC objects to this Interrogatory on the basis that it seeks information already in MCI's possession or control. Without waiver of its objections, QCC responds as follows.

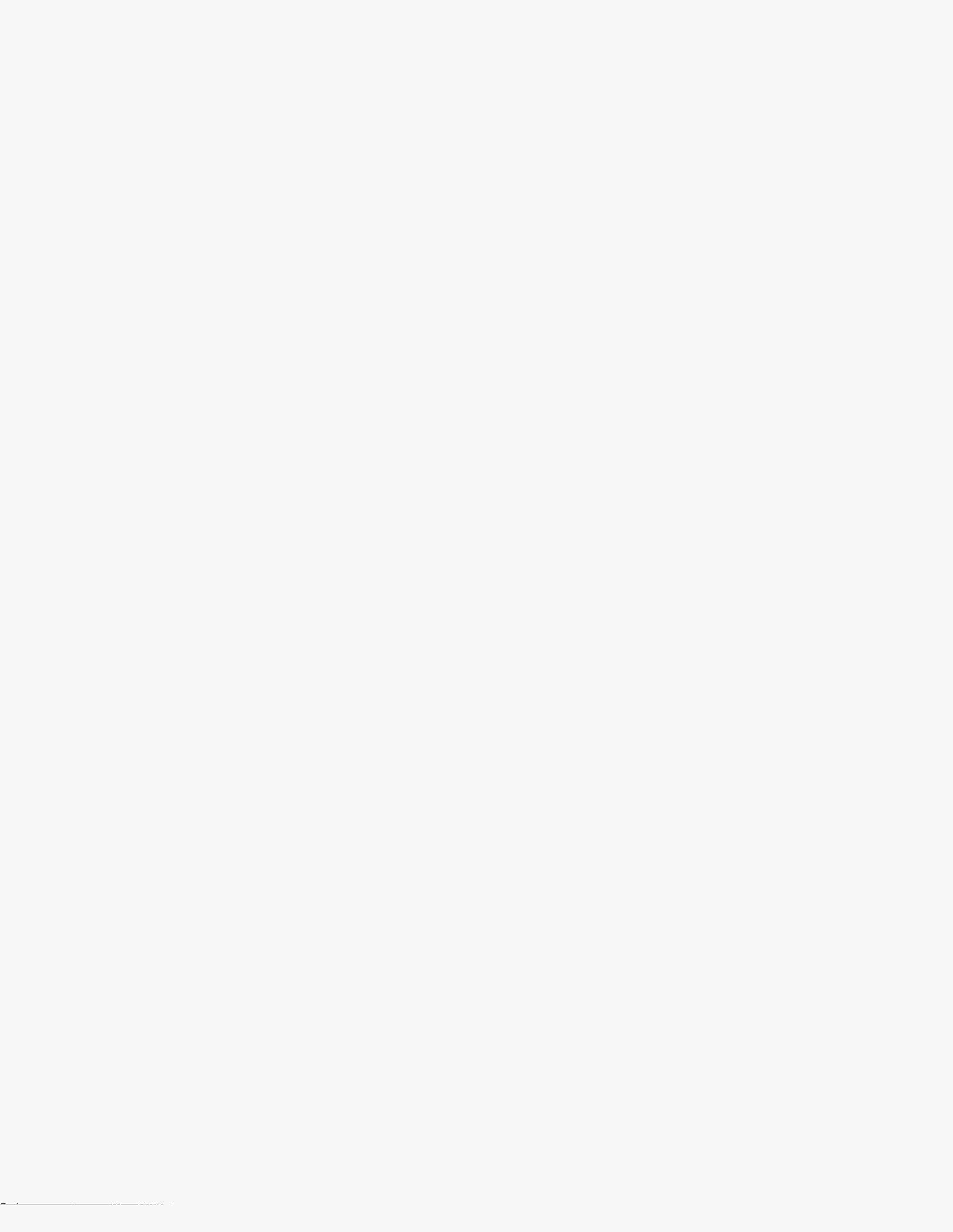
[BEGIN CONFIDENTIAL]

[END]

CONFIDENTIAL]

Respondent: Julie Tammen
TEOCO Corporation
10955 Lowell, Ste 705
Overland Park, KS 66210

CONFIDENTIAL



QWEST COMMUNICATIONS COMPANY, LLC'S REPSONSE TO BROADWING
COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES (NOS. 1 - 18) SECOND
DOCUMENT REQUESTS (NOS. 4- 21) AND FIRST REQUEST FOR ADMISSIONS (NOS. 1-4)
DOCKET NO. 090538-TP
PAGE 24

Broadwing Interrogatory No. 18

QCC's response to Staff's Interrogatory No. 23 states, in part, that "QCC received a public copy of the Granite-AT&T agreement in late June, 2006, well within the applicable statute of limitations relating to QCC's FPSC cause of action." Please identify the "applicable statute of limitations" referenced in QCC's response.

QCC objects to this Request on the basis that it calls for a legal conclusion.

Without waiver of its objections, QCC responds as follows the applicable statute of limitations can be found in Ch. 95, Florida Statutes, and case law interpreting and applying the statutory provisions.



David J. Mark (DM-9548)
KATTEN MUCHIN ZAVIS ROSENMAN
575 Madison Avenue
New York, New York 10022
(212) 940-8800

Attorneys for Qwest Communications Corporation,
Qwest Corporation and Qwest Services Corporation

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re :
: Chapter 11
WORLDCOM, INC. et. al., :
: Case No. 02-13533 (AJG)
: :
Debtors. : (Jointly Administered)
-----X

NOTICE OF APPEARANCE AND REQUEST FOR SERVICE

PLEASE TAKE NOTICE that Qwest Communications Corporation, Qwest Corporation and Qwest Services Corporation ("Qwest"), creditors herein, appear in the above-captioned chapter 11 case pursuant to section 1109(b) of the Bankruptcy Code and Bankruptcy Rules 2002 and 9010, and request that copies of all pleadings in this case including all papers, reports, pleadings, motions and applications (including notices thereof), petitions, disclosure statements, plans of reorganization and answering or reply papers filed in the above-captioned case, by mail or otherwise, be served on:

David J. Mark, Esq.
Katten Muchin Zavis Rosenman
575 Madison Avenue
New York, NY 10022-2585

This Notice of Appearance shall not be deemed or construed to be a waiver by Qwest (1) to have final orders in noncore matters entered only after de novo review by a District Judge, (2) to trial by jury in any proceeding so triable in this case or any case, controversy, or proceeding related to this case, (3) to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or (4) of any other rights, claims, actions, defenses, setoffs, or recoupments to which Qwest is or may be entitled, in law or in equity, all of which rights, claims, actions, defenses, setoffs, and recoupments Qwest expressly reserves.

Dated: New York, New York
July 24, 2002

KATTEN MUCHIN ZAVIS ROSENMAN

Attorneys for Qwest Communications Corporation,
Qwest Corporation and Qwest Services Corporation

By /S/ David J. Mark
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New York, New York 10004

Lisa M. Golden, Esq.
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300 Garden City Plaza
Garden City, New York 11530

CERTIFICATE OF SERVICE

I, David J. Mark, hereby certify that on the 24th day of July, 2002, I caused true and correct copies of the attached NOTICE OF APPEARANCE AND REQUEST FOR SERVICE to be served upon the persons or entities set forth on the attached Service List by first-class mail, postage prepaid.

/S/ David J. Mark

David J. Mark

QWEST COMMUNICATIONS COMPANY, LLC's OBJECTIONS AND RESPONSE TO
MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS
TRANSMISSION SERVICES' FIRST SET OF INTERROGATORIES (NOS. 1-23)
AND FIRST SET OF DOCUMENT REQUESTS (NOS. 1-5)
DOCKET NO. 090538-TP
PAGE 32

MCI Interrogatory No. 23:

Please identify, and provide the last known business address for, each attorney, including in-house and outside counsel, that was assigned to or represented QCC and its affiliates, including Qwest Corporation, in the WorldCom Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York, Case No. 02-13533 (AJG).

QCC objects to the request on the basis that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. QCC further objects to the request to the extent that it seeks information in the public domain and already in MCI's possession or control. Without waiver of its objections, QCC objects as follows.

Jane Frey was lead in-house bankruptcy counsel at the time the WorldCom bankruptcy case was filed. She is no longer employed by CenturyLink. Her last known business address was 1801 California, Denver, CO 80202. Jeff McAnallen was also employed by Qwest as in-house bankruptcy counsel at the time the WorldCom bankruptcy case was filed. He may or may not have been assigned to work on the case. He is no longer employed by CenturyLink. His last known business address was 1801 California, Denver, CO 80202. Other in-house Qwest attorneys may have been assigned to work on the WorldCom bankruptcy case.

Katten Muchin Rosenman (or its predecessor) was Qwest's lead outside bankruptcy counsel in the WorldCom bankruptcy. Jeff Friedman, a partner at the firm, was primarily responsible for the matter. Other attorneys in the firm may have worked on the case on behalf of Qwest. Mr. Friedman's last known business address was 525 Madison Avenue, New York, New York 10022. The firm's contact information can be found at www.kattenlaw.com.

Other attorneys may have entered an appearance on Qwest's behalf in the WorldCom bankruptcy; if so, that information is publicly available in bankruptcy court records.

In the parallel Colorado PUC proceeding, MCI asked QCC to admit that it received a copy of WorldCom's notice of settlement with AT&T. A component of that settlement was the secret switched access ICB agreement at issue in this case. Despite reasonable investigation, QCC could not affirmatively confirm that it had received notice of such settlement, although it did not deny so either. Attached to this response is QCC's response to MCI's Colorado PUC request for admission.

Respondent: QCC Legal

Docket No#090538-TP
QCC Response to MCI ROG #23

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08F-259T

QWEST COMMUNICATIONS COMPANY, LLC,

Complainant

v.

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC, XO COMMUNICATIONS SERVICES, INC., TIME WARNER TELECOM OF COLORADO, L.L.C., GRANITE TELECOMMUNICATIONS, INC., ESCHELON TELECOM, INC., ARIZONA DIALTONE, INC., ACN COMMUNICATIONS SERVICES, BULLSEYE TELECOM, INC., COMTEL TELECOM ASSETS LP, ERNEST COMMUNICATIONS, INC., LEVEL 3 COMMUNICATIONS, LLC, AND LIBERTY BELL TELECOM, LLC AND JOHN DOES 1-50 (CLECs WHOSE TRUE NAMES ARE UNKNOWN),

Respondents

**QWEST COMMUNICATIONS COMPANY, LLC's
SUPPLEMENTAL RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES,
LLC's FIRST SET OF REQUESTS FOR ADMISSION, REQUEST NO. 2**

Qwest Communications Company, LLC ("QCC"), by and through its undersigned counsel, submits its attached Supplemental Response to MCIMetro Access Transmission Services, LLC's First Set of Requests for Admission, Request No. 2.

Dated this 11th day of December 2009.

QWEST COMMUNICATIONS COMPANY, LLC

By: Richard Corbetta
Richard L. Corbetta, Reg. No. 20766
Dufford & Brown
1700 Broadway, Suite 2100
Denver, Colorado 80290-2101
Telephone: 303.837.6357
Facsimile: 303.832.3804
Email: rcorbetta@duffordbrown.com

Adam L. Sherr
Corporate Counsel
Qwest
1600 Seventh Avenue, Room 1506
Seattle, Washington 98101
Telephone: 206.398.2507
Facsimile: 206.343.4040
Email: Adam.Sherr@qwest.com

Attorneys for Qwest Communications Company, LLC

Colorado
Docket No. 08F-259T
MCImetro 1st Admissions -002 Supp 1

INTERVENOR: MCImetro Access Transmission Services, L.L.C ("MCImetro")

REQUEST NO: 002 Supp 1

Admit that on or before February 23, 2004, either QCC or its attorneys in the WorldCom Bankruptcy Case were served copies of the (i) Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation; (ii) Notice of Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation; (iii) Declaration of Alfredo R. Perez in Support of Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters, and (iv) Order Fixing Date, Time and Place of Hearing to Consider the Motion of the Debtors Pursuant to Bankruptcy Rule 9019 Seeking Approval of a Settlement and Compromise of Certain Matters with AT&T Corporation filed in the WorldCom Bankruptcy Case filed in the WorldCom Bankruptcy Case on February 23, 2004. Copies of the pleadings referenced in this request for admission together with the Affidavit of Service are attached hereto as Exhibit B.

If denied, state in detail the reasons for QCC's denial.

RESPONSE:

QCC objects to this request on the grounds that responding would be unduly burdensome and, further, on the grounds that the request is not reasonably calculated to lead to the discovery of admissible evidence. Without waiver of its objections, QCC responds as follows:

QCC is without information to reasonably answer this request. One of the QCC in-house bankruptcy attorneys primarily responsible for the WorldCom Bankruptcy Case is no longer employed by QCC. The other QCC in-house attorney primarily responsible for the WorldCom Bankruptcy Case has no records in her possession, custody, or control that would indicate whether or not she actually and contemporaneously received a copy of the subject materials. QCC's records concerning the WorldCom Bankruptcy Case are archived and it would be unreasonably burdensome for QCC to excavate and analyze those documents in attempt to confirm actual contemporaneous receipt of the subject documents when weighed against the irrelevance of the subject matter.

The Exhibits included with MCImetro's First Set of Request for Admissions underscore the difficulty of recalling or recreating specific events, remote in time, in the extraordinarily complex WorldCom Bankruptcy Case. The Notice of Appearance and Request for Service filed on behalf of QCC by its outside counsel (Exhibit A to the Request) was filed by David J. Mark of Katten Muchin Zavis Rosenman in New York. Neither his name nor anyone else at his law firm appears on the

Affidavit of Service (Exhibit B to the Request) affirming service of the documents identified in Request for Admission 02-002. Katten Muchin Zavis Rosenman is no longer employed as bankruptcy counsel by QCC and Mr. Mark is no longer employed by that firm. No one within QCC is named on the Affidavit of Service. Andrew Sherman (whose email address is highlighted on Exhibit B to the Request) was not QCC bankruptcy counsel in the WorldCom Bankruptcy Case in 2004 and, in fact, performed for QCC only limited post-confirmation legal services in connection with the WorldCom Bankruptcy Case beginning in 2006. It appears that MCImetro's own records indicate that QCC was not served with the documents identified in Request for Admission 02-002.

After a reasonable search, QCC is unable to admit or deny whether it actually and contemporaneously received the documents identified in Request for Admission 02-002 and, therefore, denies the Request.

Respondent: Legal

SUPPLEMENTAL RESPONSE SERVED DECEMBER 11, 2009:

Subject to, and notwithstanding its objections or its reasonably diligent efforts to date, QCC has further researched its response to this Request and still lacks sufficient information or knowledge at this time to admit or deny "that on or about February 23, 2004, either QCC or its attorneys in the WorldCom Bankruptcy Case were served copies of the" documents identified in Request for Admission 02-002 although it notes it also has not located any documents or information at this time which would call into question the authenticity of those documents. This includes the Notice of Electronic Filing associated with the WorldCom Bankruptcy Case that included the names and email addresses of Messrs. Mark and Friedman provided by MCI subsequent to QCC's initial response to this Request.

Subsequent to its initial response to this Request, QCC has undertaken the following steps. QCC has interviewed Qwest's lead in-house bankruptcy counsel Jane Frey and Jeff Friedman of Katten Muchin Rosenman ("Katten"), one of QCC's outside bankruptcy attorneys in 2004. Neither Ms. Frey nor Mr. Friedman can recall receiving or reviewing the referenced pleadings. Neither currently has paper copies of the referenced pleadings. Given the volume of pleadings in the WorldCom Bankruptcy Case, neither Qwest nor Katten maintained a complete paper file to include all pleadings and orders filed in that case. Neither Qwest nor Katten maintain an archive that would include paper copies of pleadings filed in the WorldCom Bankruptcy Case. QCC was able to locate (through electronic key word searching) nine boxes of archived documents possibly related to the WorldCom Bankruptcy Case. Ms. Frey personally reviewed the files contained in the nine boxes and could not locate the referenced pleadings. There may be other documents on Qwest premises or within Qwest's control related to the WorldCom Bankruptcy Case but, at present, Qwest has no way of locating such documents to the extent they exist.

Both Ms. Frey and Mr. Friedman reviewed their desktop email files and could

not locate the referenced pleadings. Qwest obtained all of Ms. Frey's archived emails from 2004 to the extent available (i.e., not all of Ms. Frey's 2004 emails could be located). Ms. Frey personally reviewed her archived emails so obtained and could not locate the referenced pleadings. Katten's policies and procedures, if any, with respect to its archived emails, if any such archive exists, is unknown.

To the extent QCC locates any further relevant information it will supplement this response accordingly.

Respondent: Legal

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors and Debtors In Possession
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Marcia L. Goldstein, Esq. (MG 2606)
Lori R. Fife, Esq. (LF 2839)
Alfredo R. Perez, Esq. (admitted *Pro Hac Vice*)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		x	Chapter 11 Case No.
In re	:	:	02-13533(AJG)
	:	:	
WORLDCOM, INC., et al.,	:	:	(Jointly Administered)
	:	:	
	:	:	
	:	:	
	:	:	
Debtors.	:	:	
<hr/>		x	

**ORDER FIXING DATE, TIME AND PLACE OF HEARING TO
CONSIDER THE MOTION OF THE DEBTORS PURSUANT TO BANKRUPTCY
RULE 9019 SEEKING APPROVAL OF A SETTLEMENT AND COMPROMISE
OF CERTAIN MATTERS WITH AT&T CORPORATION**

Upon the Motion, dated February 23, 2004, (the "Motion"), of WorldCom, Inc. and certain of its direct and indirect subsidiaries, as debtors and debtors in possession, (collectively, "WorldCom" or the "Debtors"), seeking entry of orders to compromise certain controversies, pursuant to Bankruptcy Rule 9019, more particularly set forth in the above-captioned Motion; and upon the Declaration of Alfredo R. Pérez, a member of Weil, Gotshal & Manges LLP, attorneys for the Debtors, certifying the necessity for relief on an expedited basis; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED that a hearing to consider the relief requested in the Motion and entry of the proposed order associated therewith shall be held before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004, on March 2, 2004 at 10:00 a.m., or as soon thereafter as counsel may be heard; and it is further

ORDERED that on or before February 23, 2004, the Debtors shall serve a copy of this Order and the Motion pursuant to the Case Management Order, dated December 23, 2002, and such service shall be deemed good and sufficient service and notice of this Order, the Motion, the Hearing and all proceedings to be held thereon; and it is further

ORDERED that responses or objections to the Motion and entry of the proposed Order associated therewith, if any, must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov), by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format, (with a hard-copy delivered directly to Chambers), and shall be served in accordance with General Order M-242 upon (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attention: Marcia L. Goldstein, Esq. and Lori R. Fife, Esq.; (ii) Weil, Gotshal & Manges LLP, 700 Louisiana,

Suite 1600, Houston, Texas 77002, Attention: Alfredo R. Pérez, Esq.; (iii); the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Mary Elizabeth Tom, Esq.; (iv) Kelly Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attention: Mark R. Sommerstine, Esq.; (v) Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Washington, DC 20036, Attention: Richard Thornburgh, Esq.; (vi) Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022, Attention: Douglas Bartner, Esq. and Marc B. Hankin, Esq.; and (vii) Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attention: Amy R. Wolf, Esq., and shall be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York, in each case so as to be received no later than March 1, 2004 at 12:00 noon, (New York City Time).

Dated: New York, New York
February 23, 2004

s/ Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

ADDENDUM

- *6. P-421/C-02-1597 **Desktop Media, Inc.;**
 Qwest Corporation

In the Matter of the Complaint of Desktop Media, Inc. Against Qwest Corporation
Regarding Interconnection Terms:

Should the Commission approve the settlement agreement? (PUC: O'Grady)

SECOND ADDENDUM

- *7. P-442,5798,5340,5826, **AT&T Communications of the Midwest, Inc.;**
5025,5643,443,5323 **Arizona Dialtone, Inc.;**
5668,466/C-04-235 **Eschelon Telecom of Minnesota, Inc.;**
 Focal Communications Corporation of Minnesota;
 Global Crossing Telecommunications, Inc.;
 Integra Telecom of Minnesota, Inc.;
 MCI WorldCom Network Services, Inc.;
 McLeodUSA Telecommunications Services, Inc.;
 NorthStar Access, L.L.C.;
 Sprint Communications Company L.P.

In the Matter of DOC Investigation into Many Companies' Negotiated Contracts for
Switched Access Services.

Consideration of proposed protective agreement. (PUC: Moy)

This document can be made available in alternative formats (i.e., large print or audio tape) by
calling 651-297-4596 (voice) or 1-800-627-3529 (TTY relay service).

7/20/04

Page 1

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7/20/04

Page 2

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4-25-05 mr
MINN. PUBLIC UTILITIES COMMISSION

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
651.296.4026 FAX 651.297.1959 TTY 651.297.3067

April 25, 2005

**PUBLIC DOCUMENT
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Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: Additional Comments on Department Complaint and Request for Commission Action,
Docket No. P442,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235

Dear Dr. Haar:

BACKGROUND

On June 16, 2004, the Minnesota Department of Commerce (Department) filed a Complaint and Request for Commission Action with the Minnesota Public Utilities Commission (Commission) describing several special agreements for the provision of switched access services at rates that were different than the tariffed rates. These agreements involved the following carriers: Arizona Dialtone, Eschelon Telecom, Focal Communications, Integra, McLeodUSA, NorthStar Access, AT&T Communications of the Midwest, Sprint Communications, MCI Worldcom, and Global Crossing.

On August 19, 2004, reply comments were filed by the following parties: Eschelon Telecom, Integra, McLeodUSA, NorthStar Access, AT&T Communications of the Midwest, Sprint Communications, MCI Worldcom, and Global Crossing.

On September 9, 2004, the Department filed a reply to the comments submitted by the other parties on August 19, 2004.

On September 2, 2004, the Department issued an information request to AT&T Communications of the Midwest, Sprint Communications Company, MCI WorldCom Network Services, and Global Crossing Telecommunications asking the companies to file copies of all agreements, besides those already identified in the current complaint, that included charges for intrastate access services.

During September and October, 2004, AT&T Communications of the Midwest, Sprint Communications Company, MCI WorldCom Network Services, and Global Crossing Telecommunications submitted to the Department copies of additional agreements that were responsive to the Department's September 2, 2004 information request (i.e., the Second Group of Agreements).

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April 25, 2005
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On March 30, 2005, a Stipulation and Agreement was filed by the Minnesota Department of Commerce and the following other telecommunications carriers to partially resolve issues raised in the current case: Arizona Dialtone, Inc., Eschelon Telecom, of Minnesota, Inc., Focal Communications Corporation of Minnesota, Global Crossing Telecommunications, Integra Telecom of Minnesota, Inc., McLeodUSA Telecommunications Services, Inc., XO Communications, Inc., NOS Communications, Inc., and Sprint Communications Company, LP.

On April 4, 2005, the Department filed additional comments with the Commission.

DEPARTMENT COMMENTS

A. ADDITIONAL UNFILED AGREEMENTS

The following agreements for the provision of intrastate switched access services at untariffed rates were obtained by the Department during September and October 2004 and have not previously been provided to the Commission:¹

- (i) KMC Telecom, LLC (the competitive local exchange carrier, CLEC) and Sprint Communications Company, LP (the interexchange carrier, IXC),
- (ii) MCImetro Access Transmission Services, LLC (the CLEC) and AT&T Corp. on behalf of its subsidiary AT&T Communications of the Midwest, Inc. (the IXC), and
- (iii) AT&T Communications of the Midwest, Inc. (CLEC) and MCI's various IXC subsidiaries operating in Minnesota, including: Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom Communications, Inc., TTI National, Inc.

These contracts, which were part of the Second Group of Agreements, have not previously been filed with the Commission, and are filed herewith as Trade Secret Attachments B, C and P.

¹ The following agreements were included with the June 16, 2004 Complaint filed by the Department and are the subject of the March 30, 2005 Stipulation filed with the Commission: Arizona Dialtone, Inc. (CLEC) and AT&T Communications of the Midwest, Inc., (IXC), Eschelon Telecom, Inc. (CLEC) and AT&T (IXC), Eschelon (CLEC) and Sprint Communications Company, LP (IXC), Eschelon (CLEC) Global Crossing Telecommunications, Inc. (IXC), Focal Communications Corp. (CLEC) and AT&T (IXC), Focal (CLEC) and Sprint (IXC), Integra Telecom, Inc. (CLEC) and AT&T (IXC), Integra (CLEC) and Sprint (IXC), McLeodUSA Telecommunications Services, Inc. (CLEC) and AT&T (IXC), McLeod (CLEC) and MCI WorldCom Network Services, Inc. (IXC), and Northstar Access, LLC (IXC) and AT&T (IXC). On April 4, 2005, the Department filed comments with the Commission, which included that following agreements that had also been the subject of the March 30, 2005 Stipulation that had been filed with the Commission: NOS Communications, Inc. (CLEC) and AT&T (IXC) and XO Communications Services, Inc. (CLEC) and AT&T (IXC).

Burl W. Haar
April 25, 2005
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B. ADDITIONAL STIPULATION EXECUTION PAGES

On April 4, 2005, MCI, Inc. signed the Stipulation and Agreement on behalf of itself and its subsidiaries. A copy of the signature page from MCI is attached to these comments as Attachment D.

On April 19, 2005, KMC Telecom, Inc. signed the Stipulation and Agreement. A copy of the signature page for KMC is attached to these comments as Attachment E.

On April 20, 2005, NorthStar Access, LLC signed a separate Stipulation and Agreement with the Department. A separate Stipulation and Agreement was appropriate since the March 30, 2005 Stipulation and Agreement did not fit the circumstances associated with the contract between NorthStar Access, LLC and AT&T. A copy of the Stipulation and Agreement for NorthStar, including the signature page signed by Northstar and the Department, is attached to these comments as Attachment F.²

If the Commission approves the settlement offered by the settling parties, MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom Communications, Inc., TTI National, Inc., NorthStar Access, LLC, and KMC Telecom III, LLC will not be involved in further investigation of these issues, assuming that these companies have submitted copies of all such contracts for switched access services to the Department.

C. FACTUAL BASIS FOR AMENDING TARIFFED RATES TO REFLECT RATES PROPOSED IN THE STIPULATION

In order to approve the Stipulation and Agreements and the new rates set forth therein, the Commission must:

“find[] by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter”. Minn. Rule 7812.2210 subp.17E

Like the agreements previously identified in the Department's June 16, 2004 Complaint. Sprint's agreement with KMC and the two MCI agreements with AT&T contain provisions that offer switched access services at untariffed rates. As with the agreements identified in the Department's June 16, 2004 Complaint (at section IV); the KMC - Sprint, AT&T - MCI WorldCom, and MCImetro - AT&T agreements were not filed or otherwise provided to the Commission, they contain intrastate switched access rates for AT&T, MCI and Sprint that are lower than the tariffed intrastate switched access rates filed by KMC, AT&T, and MCImetro, and these contract rates were not submitted to nor otherwise approved by the Commission. The confidentiality clauses in these agreements prevented regulatory agencies such as the Department

² Please note that the NorthStar Access, LLC agreement with AT&T Corp. was discussed in the June 16, 2004 Complaint filed by the Department and a copy of the agreement was attached thereto.

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April 25, 2005
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and the Commission from reviewing the agreements for compliance with Minnesota law and the Commission's rules and orders and foreclosed the possibility that other interexchange carriers would receive the rates or terms available to AT&T, Sprint and MCI. In their annual reports for the year ending on December 31, 2002 and 2003, MCI WorldCom Communications and MCImetro Access Transmission Services [TRADE SECRET DATA HAS BEEN EXCISED] having agreements for the provision of access service at rates other than tariffed rates. In its annual report for the year ending on December 31, 2002, KMC Telecom III [TRADE SECRET DATA HAS BEEN EXCISED] having agreements for the provision of access service at rates other than tariffed rates, but the Company [TRADE SECRET DATA HAS BEEN EXCISED] in its annual report for the year ending on December 31, 2003, which was filed during the year 2004. In its annual reports for the years ending on December 31, 2002 and 2003, Sprint Communications Company admitted to having agreements for the provision of access service at rates other than tariffed rates; however, copies of the agreements were not submitted to the Department until the year 2004. A copy of the 2002 and 2003 annual reports for MCI WorldCom, MCImetro, and KMC Telecom, annual reports are attached to these comments and marked as Trade Secret Attachments G, H, I, J, and Q. A copy of the 2002 and 2003 annual reports for Sprint Communications are also attached to these comments as Attachments K and L.

AT&T Communications of the Midwest (AT&T), MCImetro, and KMC Telecom have provided the Department with no documentation showing that the lower switched access rates are appropriate in light of cost or market conditions. As with the agreements that were the subject of the Department's June 16, 2004 Complaint, the attached agreement between KMC Telecom III and Sprint Communications Company [TRADE SECRET DATA HAS BEEN EXCISED]. The agreements between AT&T and MCImetro and between AT&T and MCI WorldCom [TRADE SECRET DATA HAS BEEN EXCISED].

As explained in the Department's June 16, 2004 comments, Minnesota law requires all regulated telephone and telecommunications carriers, including CLECs and interexchange carriers, to operate in accordance with their tariffs and in accordance with the Commission rules and orders. Minn. Stat. §237.121(a)(3). In its June 16, 2004 comments, the Department explained (on page 18) the importance of enforcing the statutory tariffing requirements as follows:

The charging of untariffed rates for intrastate access service has significant implications in the marketplace for telecommunications services. If large interexchange carriers are able to exert market power to receive lower switched access rates, without a demonstration that there are cost differences, small interexchange carriers will have more difficulty competing. Also, the access rates of CLECs need to be fair since CLECs often provide both local and long distance services and high access rates harm competition. Since long distance carriers are captive customers for access services of a local service provider, particularly for the termination of traffic, there are both legal and policy reasons for access rates to be fair to all interexchange carriers.

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April 25, 2005
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The Commission needs to address the violations of the Minnesota Statutes and Rules, as they relate to the contracts for switched access services, including the attached contracts of AT&T Communications of the Midwest, MCImetro Access Transmission Services, LLC, and KMC Telecom III, as CLECs; and AT&T Communications of the Midwest, Inc., MCI WorldCom Network Services, Inc., and Sprint Communications Company, LP as IXCs; for the future application of access charges. Compliance with tariffing requirements is the appropriate solution to ensure fairness and non-discriminatory pricing for all interexchange carriers. The Department believes that the March 30, 2005 Stipulation and Agreement resolves the issues in this case as they relate to the signatories to the Stipulation and Agreement.

D. ADDITIONAL SIGNATURE PAGES FOR STIPULATION

Attached to these comments are the original copies of the signature pages filed by Focal Communications of Minnesota, NOS Communications, and Global Crossing Telecommunications (on behalf of its subsidiary Global Crossing Local Services). See Attachments M, N, and O. Photocopies of these signature pages were included with the March 30, 2005 Stipulation that was filed with the Commission.

E. REVISED ATTACHMENT A TO STIPULATION AND AGREEMENT

Attached to these comments is a revised copy of Attachment A, which was originally referenced in the March 30, 2005 Stipulation and Agreement that was filed with the Commission.

Respectfully submitted,

DIANE DIETZ
Rates Analyst
Telecommunications Division

DD/sm
Attachments

FROM MCIWORLD.COM LAW S&D PER 1199 19TH WASE D (MON) 4 4 05 14:24/ST. 14:22/NO. 4261551615 P 7

Attachment D

Dated: 9/4, 2005

MCI, Inc., on behalf of itself and its
subsidiaries

By: [Signature]

Its: VP, Litigation

GP:1697151 vi

200 S. 5th Street, Room 2200
Minneapolis, Minnesota 55402

Qwest Corporation
Law Department
(612) 672-8927-Phone
(612) 672-5911-Fax

Joan C. Peterson
c. Attorney

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April 29, 2005

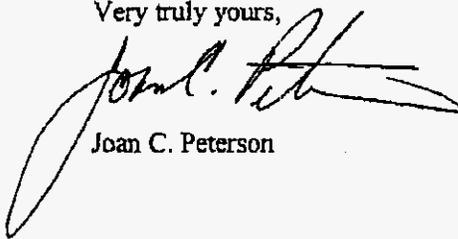
Dr. Burl W. Haar
Minnesota Public Utilities Commission
121 Seventh Place East
Suite 350
St. Paul, MN 55101-2147

Re: **In the Matter of the DOC Investigation in Many Companies Negotiated
Contracts for Switched Access Services
Docket No. P, et al./C-04-235**

Dear Dr. Haar:

This letter is to request that you add me to the official service list in the above-referenced matter. If you should have any questions, please feel free to contact me.

Very truly yours,



Joan C. Peterson

JCP/bardm

Enclosures

cc: Service List

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Negotiated Contracts for
Switched Access Services

ISSUE DATE: July 7, 2005

DOCKET NO. P-442, 5798, 5340, 5826, 5025,
5643, 443, 5323, 5668, 4661/C-04-235

ORDER APPROVING STIPULATIONS,
DISMISSING VARIOUS COMPLAINTS,
AND PROVIDING FOR RESPONSE TO
ADDITIONAL COMPLAINT

PROCEDURAL HISTORY

On June 6, 2004, the Minnesota Department of Commerce (the Department) filed its complaint in the current case, alleging that various competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) had negotiated agreements that contained untariffed rates.

On August 19, 2004, Sprint Communications Company, LP (Sprint), AT&T Communications of the Midwest, Inc. (AT&T), Eschelon Telecom of Minnesota, Inc. (Eschelon), NorthStar Access (NorthStar), MCI Worldcom Network Services (MCI) and McLeodUSA Telecommunications Services, Inc. (McLeod) filed comments arguing that the companies did not violate any laws or Orders by entering into their respective agreements.

On September 9 and 10, 2004, AT&T, the Department, Eschelon, McLeod, Focal Communications Corporation of Minnesota, Inc. (Focal), MCI and Jaguar Communications (Jaguar)¹ filed reply comments.

On November 24, 2004, the Department filed additional comments indicating that further investigation has revealed the existence of numerous additional agreements between CLECs and IXCs providing for the payment of untariffed access rates.

¹ While Jaguar Communications is not a party in this proceeding, Jaguar filed comments indicating that AT&T and Sprint have refused to pay Jaguar's tariffed access rates and instead have requested Jaguar to sign a pre-negotiated contract with non-disclosure provisions. Jaguar urged the Commission to void the negotiated agreements between the CLECs and IXCs and order the IXCs to pay the corresponding tariffed rates.



On March 30, 2005, the Department filed a Stipulation and Agreement (Stipulation) that was signed by seven [Arizona Dialtone, Inc. (Arizona Dialtone), Eschelon, Focal, Global Crossing Telecommunications (Global Crossing), Integra Telecom of Minnesota (Integra), McLeod and Sprint] of the ten parties named in the Complaint. AT&T, MCI and NorthStar did not sign the Stipulation and Agreement.

On April 4, 2005, the Department filed additional comments indicating that it has been investigating a second group of agreements involving untariffed access rates. Among agreements being investigated are agreements between AT&T as the IXC and NOS Communications, Inc. (NOS Communications) and XO Communications, Inc. (XO Communications) as CLECs. The Department stated that while NOS and XO Communications were not part of the initial complaint, they have signed the Stipulation. The Department indicated that if the Stipulation is approved, the Department will consider the investigation of NOS and XO Communications complete.

On April 4, 2005, MCI, Inc., signed the Stipulation on behalf of itself and its subsidiaries.

On April 15, 2005, the Commission sent a notice soliciting comments regarding issues raised by the March 30, 2005 Stipulation and the Department's April 4, 2005 Additional Comments.

On April 19, 2005, KMC, Telecom, Inc. signed the Stipulation.²

On April 20, 2005, NorthStar Access signed a separate Stipulation with the Department (NorthStar Stipulation), explaining that a separate stipulation was appropriate for it since the March 30, 2005 Stipulation did not fit the circumstances associated with the contract between NorthStar Access and AT&T.

On April 25, 2005, Eschelon, MCI, Focal, Integra, KMC, McLeodUSA, XO Communications and the Department filed comments recommending Commission approval of the Stipulation and dismissing the signatories to the Stipulation from the Complaint.

On April 25, 2005, AT&T filed comments opposing the approval of the Stipulation.

On April 25, 2005, the Department also filed additional comments reporting three additional agreements with untariffed access rates: 1) KMC Telecom, LLC (CLEC) and Sprint (IXC); 2) MCImetro Access Transmission Services, LLC (CLEC) and Sprint; and 3) AT&T (CLEC) and MCI's various IXC subsidiaries operating in Minnesota, including: Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.

On May 11, 2005, the Commission met to hear oral argument regarding this matter. In the course of the proceeding the Department proposed to introduce an exhibit comparing tariffed and contract rates for CLECs. The Commission agreed to accept the late-filed exhibit on the condition that AT&T be allowed an opportunity to review the exhibit and file comments before the Commission would proceed to deliberate this matter.

² KMC was not part of the initial Complaint but does have an agreement involving untariffed access rates with Sprint.

On May 20, 2005, AT&T filed comments, including a revised Confidential Exhibit A, and on May 23, 2005, replies were filed on behalf of Eschelon, Focal Communications, Inc., Integra Telecom of Minnesota, KMC Telcom, Inc., McLeod USA Telecommunications Services, Inc., and XO Communications, Inc.

The Commission met on May 24, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Proposed Stipulation and Agreement

The Stipulation and Agreement was presented as resolving all issues arising from this proceeding against any signatory with respect to switched access charges in any written agreement that has been provided to the Department. A copy of the Stipulation and Agreement is attached.³ Principal provisions of the Stipulation and Agreement may be fairly summarized as follows:⁴

1. The untariffed/unapproved access rates will be superseded by new tariffed access rates to be filed by the CLECs as described in Paragraph 1 of the Stipulation. The CLECs agreed to file new tariffed rates for intrastate switched access services pursuant to a revenue neutral formula within 20 days of the Commission's Order approving the settlement and that any discount would also be tariffed and available to all IXCs. Paragraph 1.
2. CLECs also agreed that in accordance with Minn. Rules, Part 7812.2210, subp. 5 (but only to the extent CLEC switched access rates remain regulated by the Commission and subject to a statutory tariffing requirement) that they would not offer switched access service within Minnesota on terms that are unreasonably discriminatory or contrary to their filed Minnesota tariffs and 2) that any individual case-based (ICB) pricing for switched access services would have an approved tariff pursuant to Minn. Rules, Part 7812.2210, subp. 5B. Paragraph 2.
3. The IXCs agreed to pay the tariffed rates calculated per the settlement formula and not to challenge any such rate prior to March 1, 2006. Paragraph 3.
4. IXCs further agreed not to dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under the tariff or contract. Paragraph 5.

³ Attachment A.

⁴ The approved Stipulation and Agreement has, by its approved terms, the effect of a Commission Order. Section 13. In the event of any dispute regarding the meaning and scope of any provision of the Stipulation and Agreement, the language of the Stipulation and Agreement itself shall control.

5. The Stipulation did not address the status of the untariffed/unapproved access charges and the agreement on a retroactive basis, and the parties agreed that the settlement did not invalidate or declare unreasonable any multi-state contract or tariffed rate applicable in other jurisdictions or any CLEC's tariffed intrastate switched access rates in Minnesota in effect prior to the date the Commission approves the settlement. Paragraph 4.
6. The CLECs and IXCs agreed not to initiate any further legal or regulatory action to enforce the rates set forth in the agreements at issue in the proceeding with respect to the Minnesota intrastate jurisdiction. Paragraph 6.
7. While the parties do not admit to any violation of law, the Stipulation does provide for CLECs to make payments to the State Treasury in Paragraphs 7 and 14.
8. The signatory CLECs and IXCs do not admit to any violation of state law in the Stipulation. Rather, Paragraph 13 states: "This Settlement does not imply, nor does any Party to this Settlement Agreement admit, any violation of law, rule or Commission Order. Upon its approval by the Commission, this Settlement Agreement will have the force and effect of a Commission Order."
9. Parties to the Stipulation agreed to jointly request that the Commission enter an Order approving the Settlement Agreement and dismissing with prejudice the Complaint against any party to the Agreement with respect to switched access charges in any written agreement that has been provided to the Department. Paragraph 8.
10. The Parties agreed that the settlement does not provide any third party with any remedy, right or privilege. Paragraph 11.

II. Signatories to the Stipulation

As of the date the Commission deliberated this matter, five of the six CLECs named in the Department's complaint (Arizona Dialtone, Eschelon, Focal, Integra, McLeod) and three of the four IXCs named in the complaint (Sprint, Global Crossing, and MCI, Inc. on behalf of itself and its IXC subsidiaries in Minnesota⁵) had signed the Stipulation.

The CLEC that did not sign the Stipulation (NorthStar Access) has signed a separate Stipulation with the Department, which is addressed in Section VII of this Order.

The IXC that did not sign the Stipulation is AT&T. Its objections to the Stipulation are addressed below in Section V.

In addition to the parties and agreements identified in the Department's original complaint, NOS and XO Communications (CLECs) signed the Stipulation regarding a subsequently identified untariffed rates agreements with AT&T (the IXC); KMC Telecom, LLC (a CLEC) signed the

⁵ MCI, Inc.'s IXC subsidiaries in Minnesota include Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.)

Stipulation regarding another such agreement with Sprint (the IXC); and MCImetro Access Transmission Services, LLC (a CLEC) signed the Stipulation regarding such an agreement with Sprint (the IXC).

III. Party Positions Regarding the Stipulation

On April 25, 2005, Eschelon, MCI, Focal, Integra, KMC, McLeodUSA, XO Communications and the Department filed comments recommending Commission approval of the Stipulation and dismissing the signatories to the Stipulation from the Complaint.

On the same day, AT&T filed comments opposing the approval of the Stipulation.

As of the hearing date on this matter, then, all of the companies, except AT&T, had signed the Stipulation and the Department had indicated that it would consider its investigation of the signatories to the Stipulation complete if the Stipulation was approved.

IV. Commission Analysis and Action Regarding the Stipulation

A. Summary

The Stipulation and Agreement is in the nature of a settlement. Minn. Stat. § 237.076 authorizes the Commission to accept a settlement upon a finding that it is in the public interest and is supported by substantial evidence.

Having reviewed the record and heard the parties' oral arguments on this matter, the Commission finds that the proposed Settlement is in the public interest and supported by substantial evidence. Accordingly, the Commission will approve the Settlement and require its implementation.

B. Public Interest Analysis

A significant achievement of the Settlement is that the CLECs' new tariffed rates for switched access service will be lower than the currently tariffed rates. While reducing the rates for switched access service is not the primary objective of this docket, the CLECs' new tariffed rates are for the most part significantly lower than their currently tariffed rates. As a consequence, all the IXCs operating in Minnesota except for the IXCs who have been enjoying even lower access rates due to the confidential, off-tariff agreements identified in this docket will receive the benefit of the new, lower tariffed rates achieved by this Settlement.

More importantly, the Settlement ends a period of unproductive contention between IXCs and CLECs regarding the payment of tariffed switched access rates, a period marked by the creation of untariffed switched access rate agreements identified in this docket. The Settlement creates stability regarding payment of tariffed or Commission-approved ICB rates. Highlights of that period of stability include:

- The signatory IXCs agreed to pay the tariffed rates calculated as described in the Agreement prospectively from the date the Commission approves the Settlement Agreement unless a different rate is negotiated and approved by the Commission as an ICB rate.

- The signatory IXCs agreed that, unless provided for in a carrier's tariff or contract, they would not dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under tariff or contract.
- CLECs and IXCs further agreed not to initiate any further legal or regulatory action to enforce rates set forth in the agreements at issue in this proceeding with respect to the Minnesota jurisdiction.

The settlement also promotes fair and open competition by assuring that all IXCs will have access to the same tariffed rates or, if the CLEC proposes to offer ICB rates, that those rates will be pursuant to a Commission-approved tariff that states the conditions under which the unique price is available. Such an arrangement assures that ICB rates will be fairly available to all who meet the conditions that justify the ICB rate. This promotes fair and open competition by limiting the power of the largest IXCs to disadvantage smaller IXCs by securing rates that reflect their negotiating power rather than characteristics that truly justify lower rates.

C. AT&T's Objections to the Settlement

The only IXC objecting to the Settlement is AT&T. AT&T's objections to the Commission's acceptance of the Settlement Agreement are not persuasive.

First, AT&T asserted that the rates proposed in the Settlement were not just and reasonable but provided no evidence of that except that the proposed rates would be higher than the rates AT&T and certain other IXCs had been paying pursuant to their negotiated agreements. The Commission finds, however, that the formula and the resulting revenue neutral rates achieved by the settlement are fair and reasonable. For many IXCs, the new tariffed rates will be lower than the tariffed rates they are currently paying and, moreover, they come with the pro-competition assurance that no IXC is getting a lower rate unless warranted pursuant to ICB pricing.

Second, AT&T asserted that the Settlement's proposed rates are anti-competitive and unreasonably discriminatory because the proposed access rate for terminating calls is higher than the access rate for originating calls.

The relevance of AT&T's claim is unclear. Moreover, it is factually inaccurate. For seven of the eight CLECs whose proposed rates are shown on Attachment A of the Settlement, the proposed originating and terminating rates are the same. In one instance, the proposed access rate for terminating calls is negligibly higher (\$0.00000010 higher) than the access rate for originating calls.

Third, AT&T argued that the Settlement Agreement was not in the public interest because, it asserted, the proposed tariffed access rates would result in increased long distance rates for numerous Minnesota customers.

It is not clear that there is an automatic pro-rata cause-effect relationship between switched access rates and the long distance rates AT&T charges. However, assuming that changed access rates result in some change in long distance rates, AT&T's argument ignores the fact that numerous Minnesota long distance customers may experience lower long distance rates due to the Settlement because they are customers of IXCs who have not been party to a negotiated agreement involving untariffed rates and will now be paying reduced tariff rates for switched access service.

Fourth, AT&T argued that the parties' settlement (Stipulation and Agreement) would improperly interfere with settlement agreements voluntarily entered into at arms' length by two businesses, settlements that are encouraged under Minnesota law and Commission policy. The settlement of issues achieved in the Stipulation and Agreement, however, is entitled to equal or greater deference than the settlements that AT&T refers to (between AT&T and several CLECs) since it has been submitted to the Commission, commented upon by the parties, and reviewed by the Commission.

Fifth, AT&T objected that the Settlement encourages CLECs to breach lawful and enforceable contracts.

AT&T's argument, however, is not against the Stipulation and Agreement but with the CLECs that have signed the Stipulation and Agreement. AT&T's position appears to be that the CLECs signing the Stipulation and Agreement are committed to a course of action that will breach valid and lawful contracts with IXCs and AT&T as an IXC in particular. AT&T, of course, is in no position to raise the rights that signatory IXCs may have under contracts since the signatory IXCs have agreed they will not seek to have those contracts performed. As to its own six contracts with CLECs for the provision of switched access service at untariffed rates, AT&T essentially is asking the Commission to examine and act on contract law claims that are not fully developed and for which this Commission may not be the appropriate forum.

Sixth, AT&T asserted that the Settlement violated Minnesota law by requiring CLECs and IXCs to obtain prior approval of CLEC tariffs and contracts. AT&T was apparently referring to the settlement's provisions regarding ICB pricing.⁶ In that regard, Section 2(b) of the Settlement states:

. . . if used for switched access services, [ICB pricing] will have an approved tariff on file [Bracketed material and emphasis added.]

Without needing to determine in this Order whether Minnesota law requires CLECs and IXCs to obtain prior approval of CLEC tariffs and contracts for ICB pricing, the Commission notes that the signatories' voluntary agreement to be bound by the provisions of Section 2(b) does not violate Minnesota law. AT&T cites no law prohibiting the parties from agreeing to obtain prior Commission approval of ICB tariffs and contracts. Agreement to seek prior approval of such rates does not offend the meaning or purposes of the ICB rate.

V. Department Complaint Against AT&T as an IXC

A. The Department's Complaint

In its initial complaint filed June 6, 2004, the Department asserted that four large IXCs, including AT&T, violated conditions associated with their certificates of authority by contracting with certain CLECs to pay lower, untariffed rates for switched access service. The Department stated that the Commission's October 15, 1985 Order in the 212 Docket⁷ and its November 2, 1987 Order

⁶ Settlement Paragraphs 2 (b) and 3.

⁷ See *In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate InterCity Telecommunications Services Within the State of Minnesota*, P-442, P-442, P-443, P-444, P-421, P-433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985).

in the 582 Docket⁸ established conditions associated with their certificates, including payment of switched access services at tariffed rates. The Department stated that if large IXCs are able to exert market power to receive lower switched access rates without demonstrating that there are cost differences justifying the lower rates, smaller IXCs will have more difficulty competing.

All the IXCs identified by the Department in its complaint except AT&T signed the Stipulation Agreement reviewed and approved in Section IV of this Order. As to the IXCs that signed the Stipulation, therefore, the Department's complaint will be dismissed, as provided in the Stipulation Agreement.

B. AT&T's Position

With respect to its negotiated contracts with six CLECs involving untariffed rates, AT&T objected that the Department failed to establish the existence of any legal obligation or duty requiring AT&T to purchase access services exclusively from tariffs. AT&T stated that the Department cited no requirements in AT&T's certificates or the two Orders cited (see Footnotes 6 and 7) imposing such an obligation on AT&T.

Additionally, with respect to its contract with Northstar, AT&T noted that this contract was not an agreement that established access rates varying from Northstar's tariffed Minnesota intrastate access rates. AT&T argued the Northstar contract is therefore materially different from the other contracts addressed in the complaint and should be dismissed.

AT&T asserted that none of the Department's other allegations applied to AT&T since as a customer of the CLECs' access services it had no obligation to assure that the contract rates were not unreasonably discriminatory or that the rates were offered to other similarly situated IXCs. Likewise, AT&T contended, it has no filing obligations under Minn. Rules, Part 7812.2210.

C. The Commission's Analysis and Action

Without addressing the merits of the Department's and AT&T's competing claims regarding the Department's complaint against AT&T as an IXC, the Commission finds that the principal concern inspiring the Department's complaint is addressed adequately by the Stipulation and Agreement approved in Section IV. In the Stipulation, the CLECs who have contracted with AT&T to provide switched access service at untariffed rates have agreed to discontinue that practice and to henceforward provide switched access service exclusively at tariffed rates. As a result, the Department's complaint against AT&T as an IXC is, in effect, moot. Accordingly, the Commission will not pursue this complaint further and will dismiss it.

⁸ See *In the Matter of a Summary Investigation into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota*, Docket No. P-999/CI-85-582, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND ORDER INITIATING SUMMARY INVESTIGATIONS (November 2, 1987).

VI. Department Allegations/Complaint Regarding AT&T as a CLEC

A. The Department's Allegations

In its April 25, 2005 comments, the Department charged AT&T with violating Minn. Stat. § 237.07, Minn. Stat. § 237.09, and Minn. Rules, Part 7812.2210, subd. 5. The Department cited an agreement between AT&T acting as a CLEC and MCI's subsidiaries acting as IXCs.⁹ The Department alleged that AT&T as a CLEC charged MCI subsidiaries (IXCs) untariffed switched access rates.

B. The Parties' Response

Subsequently, on March 30, 2005, the MCI subsidiaries signed the Stipulation Agreement that has been approved in this Order. AT&T, by contrast, objected that it did not have a chance to file comments objecting to the Department's allegations.

C. The Commission's Analysis and Action

Pursuant to the approved Stipulation Agreement, the Department's allegations against MCI will not proceed, but will be dismissed.

As to AT&T, the Commission finds that the Department's April 25, 2005 allegations against AT&T as a CLEC are within the Commission's jurisdiction and warrant investigation. Furthermore the Department's comments are in sufficient detail to inform AT&T regarding what is being alleged and to give it fair notice of what is to be responded to. Accordingly, the Commission will treat the Department's allegations as a complaint pursuant to Minn. Rules, Part 7812.2210, subp. 17 and allow AT&T to file an answer to that complaint within 20 days of this Order.

VII. NorthStar Stipulation

A. Background

Unlike the other contracts complained of by the Department in this matter, the contract between NorthStar (the CLEC) and AT&T (the IXC) results in lower access rates for AT&T by adjusting AT&T's Percent Interstate Usage (PIU). The PIU is a process developed to provide a surrogate means for determining the jurisdictional nature of long distance traffic where call detail is unavailable. Parties have disputes routinely regarding PIU factors and many federal access services tariffs provide a process to audit and/or resolve such disputes. The contract between NorthStar and AT&T resolved just such a dispute regarding the appropriate PIU to be applied to AT&T's long distance traffic with NorthStar in Minnesota.

⁹ The MCI subsidiaries in question are: Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom, Communications, Inc., TTI National, Inc.

B. Parties' Positions

After initially asserting that AT&T and NorthStar violated Minnesota law by agreeing to a specific PIU, the Department modified its recommendation by recommending that the Commission simply require NorthStar to submit a compliance filing estimating when it will be able to measure AT&T's actual PIU rather than using a negotiated PIU.

On April 20, 2005, NorthStar Access signed a separate Stipulation with the Department, explaining that a separate Stipulation was appropriate since the March 30, 2005 Stipulation did not fit the circumstances associated with the contract between NorthStar Access and AT&T. The Stipulation stated in relevant part:

Further Filings Required: NorthStar Access is to provide an estimated time frame stating when it will be able to recognize the jurisdiction of AT&T's interexchange traffic. Within 30 days of when the jurisdiction of traffic is known, NorthStar Access agrees to file a report with the Commission and Department on the actual jurisdiction of AT&T's traffic. NorthStar agrees, in lieu of using AT&T's declared PIU, to bill AT&T based on the actual recorded usage that identifies the jurisdiction of AT&T's traffic.

The stipulation also required NorthStar to charge only tariffed or Commission approved rates and dismissed NorthStar from the Complaint.

The Department filed comments stating that the Stipulation addressed its concerns.

C. Commission Analysis and Action

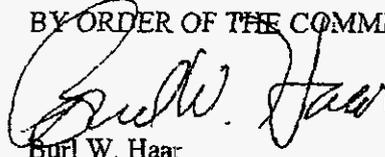
The Commission finds that the Stipulation between NorthStar and the Department is reasonable, in the public interest, and supported by substantial evidence. The Commission will, therefore, approve it and require its implementation.

ORDER

1. The Stipulation and Agreement filed March 30, 2005 in this matter is approved. Copy attached. Accordingly, the Department's complaint is dismissed as to all signatories. Parties to this document shall implement it according to its terms.
2. The Department's complaint against AT&T as an Interexchange Carrier (IXC) is dismissed.
3. Allegations by the Department against AT&T as a competitive local exchange carrier (CLEC) in comments filed April 25, 2005 are deemed to be a complaint pursuant to Minn. Rules, Part 7812.2210, subp. 17. AT&T will have 20 days from the date of this Order to file a response or answer.
4. The Stipulation between NorthStar and the Department dated April 20, 2005 is approved. Copy attached. Parties to this document shall implement it according to its terms.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(SEAL)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling 651-201-2202 (voice) or 1-800-627-3529 (TTY relay service)

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a DOC Complaint and Request For Commission Action in Regard to Negotiated Contracts for Switched Access Services	MPUC Docket No.: P442, 5798, 5340, 5826, 437, 5643, 443, 5323, 5668, 466/C-04-235
--	--

STIPULATION AND AGREEMENT

This is a Stipulation and Agreement between the Minnesota Department of Commerce and the parties who are signatories to this agreement (The Parties). The Parties have entered into this Settlement Agreement with the express intent and purpose of settling and resolving certain issues raised in this proceeding in a manner that is consistent with the public interest. By executing this Stipulation and agreement, the Parties agree to recommend acceptance of this Stipulation and Agreement without reservation, except where the Parties have agreed to reserve those rights and privileges set forth below.

This Stipulation and Agreement resolves all issues arising from this proceeding against any party to this Stipulation and Agreement with respect to switched access charges in any written agreement that has been provided to the Department of Commerce

1. **Calculation of Switched Access Rates.** Each Competitive Local Exchange Carrier (CLEC) that is a Party to this Agreement with one or more contracts containing rates for Minnesota intrastate switched access services that are different from the rates in the CLEC's intrastate access tariffs agrees to file new tariffed rates for intrastate switched access services. The new tariffed rates must be no greater than the weighted average of the current contract rates and the currently tariffed rates in effect as of January 1, 2005, using 2003 or 2004 switched access minutes. The current and proposed tariffed rates for each Party CLEC are provided in Attachment A. Each CLEC will file revised access tariffs within 20 days of the Commission's Order approving settlement. Any rate increases above the weighted averages calculated under this paragraph will require prior Commission approval if filed prior to March 1, 2006.

Each CLEC further agrees that the ratio between its originating and terminating rates in its new tariff filed under this paragraph will not exceed the ratio between Qwest's

originating and terminating intrastate blended switched access rates in Minnesota in effect as of January 1, 2005.¹

CLECs may offer a discount on switched access services for on time payment. The discount will be tariffed and available to all Interexchange Carriers (IXCs) on the same terms and conditions.

2. Tariffing of switched access rates. In accordance with MR 7812.2210, Subp. 5, but only to the extent CLEC switched access rates remain regulated by the Commission and subject to a statutory tariffing requirement, CLECs agree (a) that they will not offer switched access service within Minnesota on terms that are unreasonably discriminatory or contrary to their filed Minnesota tariffs; and (b) that ICB pricing, if used for switched access services, will have an approved tariff on file that clearly states the switched access component that is subject to ICB pricing and the conditions under which the ICB pricing is available pursuant to MR 7812.2210, subp. 5B.

3. Payment of switched access charges. IXCs that are Parties to this Settlement Agreement agree to pay the tariffed rates calculated as described in paragraph 1 above prospectively from the date the Commission approves the Settlement Agreement unless a different rate is negotiated and approved by the Commission as an ICB rate. The IXCs agree further not to challenge a CLEC's tariffed rate calculated under paragraph 1 prior to March 1, 2006, but reserve their right to challenge any rate filed or charged by a CLEC that is higher than the CLEC's tariffed rate filed under paragraph 1. This Settlement Agreement does not preclude an IXC from challenging after March 1, 2006, the weighted average rates calculated under paragraph 1 or any other tariffed rate.

4. Impact on multi-state contracts and existing tariffs. This settlement is based solely on issues raised in the Complaint that are relevant to Minnesota and does not purport to invalidate or declare unreasonable (a) any multi-state contract or tariffed rate applicable in other jurisdictions; or (b) any CLEC's tariffed intrastate switched access rates in Minnesota in effect prior to the date the Commission approves this settlement.

5. Further disputes relating to switched access rates. As of the effective date of Commission approval of this Settlement Agreement, unless provided for in a carrier's tariff or contract, IXCs agree that they will not dispute the application of any intrastate switched access rates set forth in a filed tariff or approved ICB contract by withholding, reducing or delaying payment of the amount due under tariff or contract. This agreement does not, however, preclude IXCs from withholding payment during the pendency of a billing dispute for a reason other than disagreement with the applicable filed tariff rate or ICB rate.

6. Further legal or regulatory action by CLECs and IXCs. CLECs and IXCs agree not to initiate any further legal or regulatory action to enforce the rates set forth in

¹ Qwest's current blended Minnesota blended switched access rates are \$0.0124390 for originating and \$0.0229040 for terminating.

the agreements at issue in the proceeding with respect to the Minnesota intrastate jurisdiction.

7. **Payments.** In settlement of this dispute, each CLEC with over \$500,000 in total 2003 Minnesota intrastate jurisdictional revenues agrees to pay into the State Treasury a total of \$5,000 for each contract pursuant to which the CLEC billed a Minnesota intrastate switched access rate that has not been approved by the Commission and that is different from the corresponding rate in the CLEC's Minnesota intrastate switched access tariff. Each CLEC with under \$500,000 in total 2003 Minnesota intrastate jurisdictional revenues agrees to pay into the State Treasury a total of \$400 for each contract pursuant to which the CLEC billed a Minnesota intrastate switched access rate that has not been approved by the Commission and that is different from the corresponding rate in the CLEC's Minnesota intrastate switched access tariff.

8. **Dismissal of Complaint.** The Department of Commerce and other Parties to this Settlement Agreement will jointly request that the Commission enter an order approving the Settlement Agreement, and dismissing with prejudice the Complaint against any party to this Settlement Agreement with respect to switched access charges in any written agreement that has been provided to the Department of Commerce. The Parties will be bound by the terms of the Settlement Agreement, which shall be subject to the Commission's and Department's regulatory authority as defined by law. This Settlement Agreement does not preclude the Commission or the Department from undertaking investigations related to compliance with the Settlement Agreement or with applicable statutes, rules, or Commission Orders.

9. **Scope of Agreement.** The Settlement Agreement constitutes the entire agreement pertaining to the subject matter of the agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, concerning the subject matter hereof, except as explicitly stated in the Settlement Agreement. This Settlement Agreement is subject to approval by the Commission, and shall be of no effect unless the material terms of this Settlement Agreement are approved by the Commission.

10. **Amendments.** The Settlement Agreement may be amended only by a written instrument signed by all Parties to the agreement and approved by the Commission.

11. **Third Party Rights.** Except as may be specifically set forth in this Settlement Agreement, the Agreement does not provide and shall not be construed to provide any third party with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

12. **Counterparts to Agreement.** The Settlement Agreement may be executed in two or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effective, subject to Commission approval, on the latest date signed.

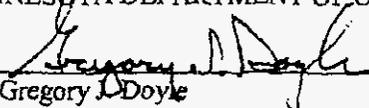
13. **Reservations.** This Settlement does not imply, nor does any Party to this Settlement Agreement admit, any violation of law, rule or Commission Order. Upon its approval by the Commission, this Settlement Agreement will have the force and effect of a Commission Order.

14. **Penalty relating to Docket No. P5323/NA-96-193.** In settlement of the Department's allegation concerning the Commission's June 25, 1996 Order in Docket No. P5323/NA-96-193 directing McLeod to file copies of contracts, including cost and rate information, for all services where individual case based pricing is used, McLeod agrees to pay into the State Treasury \$500 in addition to the other remedies stated in this Settlement Agreement.

15. **Public Document.** This Stipulation and Agreement is a public document.

Dated: 3/30, 2005

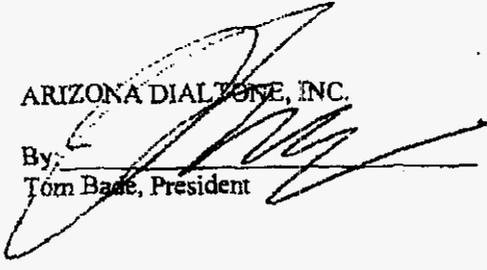
MINNESOTA DEPARTMENT OF COMMERCE

By: 
Gregory J. Doyle
Manager, Telecommunications Division

MAR 25 2005

Dated: 3/22, 2005

ARIZONA DIAL TONE, INC.

By: 
Tom Bass, President

Dated: 3/24/, 2005

ESCHELON TELECOM OF MINNESOTA, INC.

By: William D. Ahler

Its: Senior Attorney/ Director

03-29-05 04:42pm From: MOSS & BARNETT

+4800

T-641 P.02/05 P-110

Dated: March 29, 2005

FOCAL COMMUNICATIONS CORPORATION
OF MINNESOTA, INC.

By: Alan Tyschulsky

Its: Legal Counsel

03/29/2005 15:43 FAX 716 546 4387

GLOBAL CROSSING

003/003

Dated: 29 March, 2005

GLOBAL CROSSING
TELECOMMUNICATIONS

By: [Signature]

Its: VP President

03-28-05 04:42pm From: MOSS & BARNETT

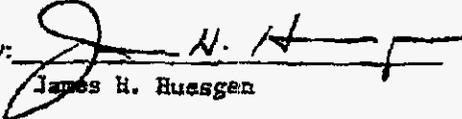
+490C

T-641 P.03/05 F-110

Dated: March 29 2005

INTEGRA TELECOM OF MINNESOTA, INC.

By:


James H. Huesgen

Its: President and Chief Financial Officer

03-29-05 04:42pm From: MOSS & BARNETT

+4803

T-641 P.04/05 F-110

Dated: March 29, 2005

MCLEODUSA TELECOMMUNICATIONS, INC.

By: Wen Zupschal

Its: Legal Counsel

002

03/29/05 17:36 FAX

Dated: March 29, 2005

NOS COMMUNICATIONS, INC

By: _____
Joseph Koppy, President



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Dated: March 30, 2005

SPRINT COMMUNICATIONS COMPANY, LP

By: Victor E. Dobras
Victor Dobras, Director - Regulatory/External
Affair

03-29-06 04:42pm From MOSS & BARNETT

+4900

T-841 P.05/06 F-110

Dated: March 29 2005

XO COMMUNICATIONS, INC.

By: Don Dyer

Its: Legal Counsel

03/29/2006 04:42:00 PM FAX TO MOSS & BARNETT

ATTACHMENT A

Comparison of the Tariffed Switched Access Rates with Proposed Switched Access Rates

CLEC	CLEC's Tariffed Switched Access Rates					Proposed IntraState Switched Access Rates				
	CCLC		local switching			CCLC		local switching		
	originating	terminating	originating	terminating	tandem switch	originating	terminating	originating	terminating	tandem switch
Anzone Diations			\$ 0.019051	\$ 0.025352				0.019050	0.0252190	
Eschelon			\$0.029567	\$0.052413			0.0218570	0.0218570		
Foca			\$0.045439	\$0.050377			0.0369960	0.0369960		
Integra			\$0.03800	\$0.03800			0.0244950	0.0244950		
McLeodUSA			\$0.025906	\$0.053322			0.0272165	0.0272165		
KMC Telecom II			\$0.025000	\$0.025000			0.0233170	0.0213170		
XO Minnesota			\$0.020424	\$0.020424	\$0.00073		0.0183370	0.0183370		
NOS Comm.			\$0.0345319	\$0.0345319			\$0.0186585	\$0.0186585		
MCInetro Access	\$0.010000	\$0.010000	\$0.007550	\$0.007550	\$0.000676					
AT&T Comm.			\$0.011336	\$0.032462	\$0.00048					

Minnesota Public Utilities Commission
 250 North Third Street, Suite 1000
 St. Paul, MN 55101
 Phone: (612) 296-3000
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 Website: www.puc.state.mn.us

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 7th day of July, 2005 she served the attached

ORDER APPROVING STIPULATIONS, DISMISSING VARIOUS COMPLAINTS, AND PROVIDING FOR RESPONSE TO ADDITIONAL COMPLAINT.

MNPUC Docket Number: P-442,5798,5340,5826,5025,5643,443,5323,5668,4661/ C-04-235

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

- Commissioners
- Carol Casebolt
- Peter Brown
- Eric Witte
- Mark Oberlander
- AG
- Roger Moy
- Mary Swoboda
- Jessie Schmoker
- Linda Chavez - DOC
- Julia Anderson - OAG
- Curt Nelson - OAG

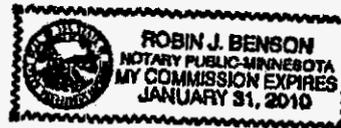
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 8 day of

July, 2005

Robin Benson
Notary Public



P-04-235 I Service List

P,etal/C-04-235

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TIMOTHY ZEAT
Z-TEL COMMUNICATIONS, INC.,
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TAMPA FL 33602



RECEIVED

AUG 24 2005

MINNESOTA PUBLIC UTILITIES COMMISSION



August 24, 2005

Eric F. Swanson
Direct Dial: (612) 604-6311
Direct Fax: (612) 604-6811
eswanson@winthrop.com

VIA MESSENGER

Dr. Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101-2147

RE: *In the Matter of Negotiated Contracts for Switched Access Services*
MPUC Docket No. P422, et al/C-04-235

Dear Dr. Haar:

Enclosed for filing are an original and 15 copies of Qwest's Comments in the above-referenced matter. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Eric F. Swanson

Eric F. Swanson *ES*

Enclosures

cc: Attached Service List

2448726v1

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner

MPUC Docket No.: P442, et al./C-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

QWEST'S COMMENTS

On April 25, 2005, the Department of Commerce ("DOC") submitted comments indicating that it had identified an agreement between AT&T as a CLEC and MCI as an DXC whereby the two companies entered into an illegal agreement related to intrastate switched access rates. The DOC alleged that this secret deal violated Minnesota law because AT&T charged untariffed access rates. On July 7, 2005, the Minnesota Public Utilities Commission ("Commission") issued its Order Approving Stipulations, Dismissing Various Complaints, And Providing For Response To Additional Complaint ("July 7 Order") that, among other things, certified the DOC's comments as an official complaint and ordered AT&T to respond. On July 27, 2005, AT&T filed a Motion to Dismiss or, in the alternative, a Motion for Definite Statement. On August 3, 2005, the Commission issued an order seeking comments on AT&T's Motion. Qwest submits these comments pursuant to that Commission Order.

Qwest opposes AT&T's Motion to Dismiss. AT&T alleges that it cannot properly defend itself without a more definite statement by the DOC as to what statutes and rules it violated. However, the issue here is clear. The DOC has "alleged that AT&T as a CLEC charged MCI

subsidiaries (EXCs) untariffed switched access rates." *July 7 Order, p. 9.* While the Department did not file a formal complaint in this matter, the Commission already properly determined that "the Department's comments are in sufficient detail to inform AT&T regarding what is being alleged and to give it fair notice of what is to be responded to." *Id.* Indeed, the DOC's comments clearly allege that AT&T entered into a secret agreement that provided one carrier with a rate for intrastate switched access that was lower than the rate in AT&T's tariff. If true, this fact would constitute a violation of Minnesota law.

Minnesota Statute section 237.035 governs telecommunications carriers such as AT&T and provides that telecommunications carriers shall comply with Minnesota Statute section 237.74. *Minn. Stat. §237.035, subd. 1(b)(2004).* Minnesota Statute section 237.74 contains an affirmative requirement that telecommunications carriers make public their rates:

Every telecommunications carrier shall elect and *keep on file with the department* either a tariff or a price list for each service *on or before* the effective date of the tariff or price, containing the rules, rates, and classifications used by it in the conduct of the telephone business, including limitations on liability. The filings are governed by chapter 13. The department shall require each telecommunications carrier to *keep open for public inspection* at designated offices so much of these rates, tariffs or price lists, and rules as the department considers necessary for public information.

Minn. Stat. §237.74, subd. 1 (2004) (emphasis supplied).

It is also clear that telecommunications carriers cannot discriminate in their pricing. Minnesota Statute section 237.74 states that "[n]o telecommunications carrier shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory." *Minn. Stat. §237.74, subd. 2 (2004).* Minnesota Statute section 237.74 further provides: "prices unique to a particular customer or group of customers may be allowed for services when differences in the cost of providing a service or a service element justify a

different price for a particular customer or group of customers. *Minn. Stat. §237.74, subd. 3 (2004).*

Minnesota Rule Part 7812.2210 also makes clear that it is impermissible for a CLEC to discriminate:

Discrimination. No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:

- A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:
 - (1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;
 - (2) provide volume or term discounts;
 - (3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices justify a different price;
 - (4) offer different prices in different geographic areas when: (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC.
- B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.
- C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.

Minnesota Rule Part 7812.2210, Subp. 5 (2005).

AT&T complains that it does not have sufficient notice of the matter against it without a formal complaint. However, Minnesota Statute section 237.74 allows a Commission investigation of violations of its provisions upon notice to the carrier:

"When the commission or the department believes that an investigation of any matter relating to any telephone service should for any reason be made, it may on its own motion investigate the service or matter upon notice to the carrier."

Minn. Stat. §237.74, subd. 4(a) (2004).

The Commission has ruled that the DOC's prior comments constitute such notice. This paragraph is distinct from the statutory requirements where a formal complaint is required where an entity other than the Department or Commission initiates an investigation:

Upon a complaint made against a telecommunications carrier by a telephone company, by another telecommunications carrier, by the governing body of a political subdivision, or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the particular telecommunications carrier, that any of the rates, tolls, tariffs or price lists, charges, or schedules is in any respect unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission, after notice to the telecommunications carrier, shall investigate the matters raised by the complaint.

Minn. Stat. §237.74, subd. 4(b) (2004).

The DOC's comments allege that AT&T entered into a secret agreement that provided certain competitors with a better price than that available in AT&T's publicly-filed rate and that AT&T has not provided sufficient justification for that discrimination. Presumably, if AT&T has information that its discrimination was "reasonable" and justified under Minnesota law, it can present that information. Fully investigating the DOC's allegation will allow AT&T the opportunity to make any such showing. Moreover, fully investigating this allegation is not just an interesting academic exercise. Charging untariffed and unapproved rates to only select market participants can materially distort the marketplace and harm competitors such as Qwest. Competition for long distance contracts is intense. If certain CLECs make available lower

access rates to some but not all competitors, competitors such as QCC can be put at a severe competitive disadvantage.¹

Even though it is not required to file a formal complaint, the DOC will produce evidence at a hearing of specific violations of law. It appears that little, if any, formal discovery has yet been conducted by the DOC. The formal discovery process may lead the DOC or others to assert allegations of violations of the above-referenced provisions or of other state laws. Nonetheless, AT&T has specific notice that the DOC believes it failed to make public its rates for switched access services. That notice is sufficient for this matter to continue.

Minnesota Rules also provide for a remedy:

If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:

- (1) change the rate, tariff, charge, schedule, or practice;
- (2) make the service reasonable, adequate, or obtainable; or
- (3) take other appropriate action.

Minnesota Rule Part 7812.2210, Subp. 17 (2005).

In addition, of course, should the Commission find that AT&T has violated the provisions of Chapter 237 or the Commission's rules, penalties against AT&T may also be appropriate.

¹ Here, as AT&T acknowledges in its Motion, AT&T and MCI had "reciprocal agreements" whereby each company's CLEC operations provided the other company's DXC operations with lower than tariffed intrastate switched access rates, *AT&T Motion, p. 2*, providing both MCI and AT&T's DXCs with a competitive advantage over companies not party to such unfiled agreements.

For the foregoing reasons, the Commission should deny AT&T's Motion to Dismiss and allow this matter to proceed. However, should the Commission believe a more definite statement of charges is appropriate, Qwest would not oppose that action.

Dated: 8-24-05

By: Eric F. Swanson
Eric F. Swanson, #188128 *JS*

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MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
Switched Access Services

(05/09/05)

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MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
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MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
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MPUC Docket No.: P442, et al./CI-04-235

In the Matter of Negotiated Contracts for
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<p>Timothy Zeat Z-Tel Communications, Inc. Suite 220 601 South Harbour Island Boulevard Tampa, FL 33602</p>	
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MINNESOTA PUBLIC UTILITIES COMMISSION

October 27, 2005

PUBLIC COPY

Dr. Burl Haar
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Re: In the matter of the Complaint of the Minnesota Department of Commerce against AT&T
Communications of the Midwest, Inc.
Docket No. P442,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235

Dear Dr. Haar:

Enclosed for filing in the above matter please find an original and six copies of the Nonpublic version of the Department of Commerce Amended Complaint and exhibits, and an original and nine copies of the Public version of the Department of Commerce Amended Complaint and exhibits.

Please do not hesitate to contact me if you have questions.

Very truly yours,

LINDA S. JENSEN
Assistant Attorney General

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(651) 297-1138 (Fax)

Enclosures

AG: #1502042~1

AFFIDAVIT OF SERVICE BY MAIL

Re: In the matter of the Complaint of the Minnesota Department of Commerce against AT&T
Communications of the Midwest, Inc.
Docket No. P442,5798,5340,5826,437,5643,443,5323,5668,466/C-04-235

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Pat Silberbauer, being first duly sworn, deposes and says that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 27th day of October, 2005, she served the attached Amended Verified Complaint, by depositing in the United States Mail at said city, a true and correct copy thereof, properly enveloped, with prepaid first class postage, and addressed to:

All persons on the attached service list

Pat Silberbauer
Pat Silberbauer

Subscribed and sworn to before me
on October 27, 2005.

Deborah A. Bastyr
Notary Public



P/C-04-235

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PUBLIC DOCUMENT TRADE SECRET DATA EXCISED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
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ST. PAUL, MINNESOTA 55101-2147

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Kenneth Nickolai	Commissioner
Phyllis Reha	Commissioner
Thomas Pugh	Commissioner

In the Matter of Negotiated Contracts)	Docket No. P442,5798,5340,5826,
for Switched Access Services)	437,5643,443,5323,5668,466/
)	C-04-235

AMENDED VERIFIED COMPLAINT

The Minnesota Department of Commerce ("Department") brings this Amended Verified Complaint before the Minnesota Public Utilities Commission (the "Commission") against AT&T Communications of the Midwest, Inc. ("AT&T"), seeking relief for AT&T's violation of its obligations under state law. The Department's investigation into AT&T, described more particularly below, establishes that AT&T's behavior violates state law. In support of this Complaint, the Department alleges:

PARTIES

1. The Department's local address in Minnesota is Golden Rule Building, 85 East 7th Place, Suite 500, St. Paul, MN 55155.

2. The Department is represented in this proceeding by its attorneys:

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Assistant Attorney General
1400 NCL Tower
445 Minnesota Street
St. Paul, Minnesota 55101-2131
(651) 282-5708 (telephone)
(651) 282-2525 (TTY)

3. Respondent AT&T is a subsidiary of AT&T Corporation, which is a New York Corporation with its principle place of business in Bedminster, New Jersey. AT&T Corporation is the holding company parent of several companies including AT&T Communications of the Midwest, Inc., which is authorized to provide interexchange service throughout Minnesota and competitive local exchange services in a number of Minnesota exchanges.

4. The Department believes that AT&T is represented in Minnesota by its attorney and outside counsel:

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Rebecca B. DeCook
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Greenwood Village, CO 80111-2800

JURISDICTION

5. Under Minn. Stat. § 216A.07, the Department is charged with investigating and enforcing Chapter 237 and Commission orders and rules promulgated pursuant to that Chapter. Under Minn. Stat. § 237.74 subd. 4, the Department and the Commission may investigate whether a telecommunication carrier's rate is unreasonably discriminatory. Under Minn. Rule 7812.2210, the Department may bring any violation of Minn. Rules Ch. 7812 before the Commission by complaint.

6. The Commission has jurisdiction over this Complaint pursuant to Minn. Stat. §§ 237.081 (Commission investigations), 237.461 (Enforcement), and 237.462 (Competitive enforcement.) The Commission has jurisdiction, under Minn. Stat. § 237.74, to investigate rate discrimination and to issue an order "requiring termination of the discrimination." The

Commission has jurisdiction under *Minn. Rules 7812.2210* to investigate price discrimination in CLECs' local services and, following the investigation, to "take appropriate action."¹ The Commission has jurisdiction under *Minn. Stat. § 237.16* to authorize an entity to furnish local service, and to prescribe the terms and conditions upon which service may be delivered, and to revoke or suspend a certificate of authority if a holder intentionally violates state laws, rules, or Commission orders, or fails to meet the conditions of the certificate. Finally, in its July 7, 2005 Order in this Docket, the Commission found that the Department's allegations against AT&T as a CLEC are within the Commission's jurisdiction and warrant investigation.

AT&T'S OBLIGATIONS

7. At all times relevant to this complaint, AT&T has been a telecommunications carrier that operated as a competitive local exchange carrier (CLEC) and intrastate interexchange carrier in Minnesota. AT&T was granted authority to provide local exchange service in a Commission Order issued on December 18, 1996 in Docket No. P442/NA-96-211. AT&T was granted authority to provide interexchange service in an Order issued on December 29, 1983 in Docket No. P442/M-83-640.

8. As a CLEC which has been granted authority by the Commission to provide local exchange service in Minnesota, AT&T has a number of legal duties set forth under Minnesota law and the Commission's rules and orders.

¹ *Minn. Rule 7812.2210* was adopted by the Commission pursuant to *Minn. Stat. § 237.16*. See *Planned Amendment of Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), Minnesota Rules Chapters 7811 and 7812, "Statement of Need and Reasonableness" ("SONAR")*, Docket No. P999/R-98-1081, August 8, 2000.

9. AT&T has the duty to maintain a comprehensive tariff that contains the rules, rates, and classifications, including all amendments thereto, that are used by AT&T in the conduct of its local business, pursuant to Minn. Rules 7812.2210, subp. 2 and 3.

10. AT&T has the duty to file copies of its tariffs and amendments thereto with the Commission and one copy each on the Department, and one copy with the Office of the Attorney General-Residential Utilities Division (OAG-RUD) pursuant to Minn. Rule 7812.2210, subp. 2 and 3.²

11. If AT&T offers individual case based (ICB) pricing, AT&T must fulfill the requirements established in Minn. Rules 7812.2210, subp. 5,³ including the requirement to file a tariff and amendments thereto in conformance with Minn. Rule 7812.2210, subp. 2 and 3.

² See also *Planned Amendment of Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), Minnesota Rules Chapters 7811 and 7812, "Statement of Need and Reasonableness" ("SONAR")*, Docket No. P999/R-98-1081, August 8, 2000, page 10. (The rulemaking for Minn. Rule 7812.2210 explained the importance of the filing requirements: "Tariffs are needed for various purposes. They provide centralized public access to information about common carrier's rates and services. Also, they memorialize and verify the legal rate for each service a common carrier offers. This facilitates enforcement of prohibitions on discrimination, as set forth in proposed part 7811-7812.2210, subp. 5.")

³ See also *Planned Amendment of Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs), Minnesota Rules Chapters 7811 and 7812, "Statement of Need and Reasonableness" ("SONAR")*, Docket No. P999/R-98-1081, August 8, 2000, page 14. (The rulemaking for Minn. Rule 7812.2210 explained that limited ICB pricing would be permitted: "To recognize such instances [when the development of a competitive market may appropriately result in pricing differences within a CLEC's service area], item A of this subpart would set forth exceptions to the general assumptions of uniform prices. The exceptions are consistent with Minn. Stat. §§ 237.14 and 237.74, which allow telecommunications providers to charge non-uniform rates under certain circumstances. . . The subpart would allow a CLEC to charge different rates under these exceptions without prior Commission approval. But other valid reasons for rate differences may arise. For those other instances, item C would allow a CLEC to petition the commission and demonstrate that it has good cause for charging different rates. The 'good cause' standard is reasonable in that it derives from Minn. Stat. §§ 237.60, subd. 3; 237.74, subd. 2; and 237.771."

12. AT&T has the duty to have its tariff on file with the Commission in accordance with the rules governing the filing of tariffs as prescribed by the Commission, pursuant to 7810.0500, subp. 1.

13. AT&T must comply with Minn. Stat. § 237.74, and AT&T may not offer intralata switched access service upon terms or rates that are unfiled or are unreasonably or unjustly discriminatory, and AT&T specifically may not provide unique pricing to a particular customer unless AT&T has first disclosed to and filed with the Department either a tariff or a price list, on or before the effective date of the tariff or price list, which contains all of the rules, rates, and classifications used by AT&T in its telephone business, including all of the rates, rules and classifications concerning a unique pricing agreement, pursuant to Minn. Stat. § 237.74.

14. AT&T must keep on file with the Department a specific rate, toll, charge or price for every noncompetitive service used by it in the conduct of the telephone business, including the noncompetitive service of intralata switched access service, pursuant to Minn. Stat. § 237.07, subd. 1.

15. AT&T may offer telecommunications service within the State only if AT&T's rates are uniform and AT&T's terms and rates are not unreasonably discriminatory, pursuant to Minn. Rule 7812.2210, subp. 5.⁴

⁴ See also *Planned Amendment of Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs)*, Minnesota Rules Chapters 7811 and 7812, "Statement of Need and Reasonableness," ("SONAR"), Docket No. P999/R-98-1081, August 8, 2000, page 14. (The rulemaking for Minn. Rule 7812.2210 explained the importance of the prohibition against unreasonable discrimination: "[T]his proposed rule would bar a CLEC from charging unreasonably discriminatory rates for telecommunications services offered within the state. This subpart is necessary to promote the state policy against discrimination that appears at Minn. Stat. §§ 237.09, subd. 1; 237.121; 237.60, subd. 3; 237.74, subd. 2 and 3; and 237.771. The "unreasonably discriminatory" standard is reasonable in that it derives from Minn. Stat. § 237.60, subd. 3 and 237.74, subd. 2. Moreover, the rule would preserve the Commission's (Footnote Continued on Next Page)

16. AT&T may not knowingly or willfully charge, demand, collect, or receive from any entity a greater or less compensation for intrastate switched access service than it charges, demands, collects, or receives from any other firm, person, or corporation for intrastate switched access service under similar circumstances, pursuant to Minn. Stat. § 237.09, subd. 1.

17. AT&T may not offer or provide intrastate switched access service to one carrier, such as MCI, on a separate, stand-alone basis unless AT&T also provides that service pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors, pursuant to Minn. Stat. § 237.09, subd. 2.

18. AT&T may not refuse to provide a service, product, or facility to a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the Commission's rules and orders, pursuant to Minn. Stat. § 237.121, subd. 4 and Minn. Rules 7812.2210, subp. 9.⁵

19. AT&T may not intentionally violate the Commission's rules or orders; nor intentionally violate any applicable state law relating to the provision of telephone or telecommunications services, or AT&T's certificate of authority may, after notice of hearing and

(Footnote Continued From Previous Page)

authority under Minn. Stat. § 237.09 to prohibit carriers from giving discriminatory preference to their own affiliates in the provision of local telephone service.")

⁵ See also *Planned Amendment of Rules Governing the Regulatory Treatment of Competitive Local Exchange Carriers (CLECs)*, Minnesota Rules Chapters 7811 and 7812, "Statement of Need and Reasonableness" ("SONAR"), Docket No. P999/R-98-1081, August 8, 2000, page 17, regarding the purpose of Minn. Stat. § 237.121 and its application to CLECs: ("The Minnesota legislature recognized that the advent of telecommunications competition prompted the need for more specific prohibitions on anti-competitive conduct, especially inter-company conduct. As a result, the legislature adopted Minn. Stat. § 237.121 ('Prohibited practices') as part of the Minnesota Telecommunications Act of 1995. . . . The proposed rule would be a reasonable way to note that CLECs are subject to the terms of this statute as well. In addition, the proposed rule is necessary to fulfill the Commission's mandate to adopt rules to 'protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition' Minn. Stat. § 237.16, subd. 8(a)(7).")

a hearing, be revoked or temporarily suspended by the Commission, in whole or in part, as set forth in Minn. Stat. § 237.16.

20. AT&T's rates, tariffs, charges, practices, acts, or omissions affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service must not be in any respect unreasonable, or unjustly discriminatory, or the Commission may issue an order that is just and reasonable, and establishes just and reasonable rates and prices for AT&T's provision of intrastate switched access services, pursuant to Minn. Stat. § 237.081 subd. 4.

21. AT&T may not knowingly or intentionally violate Minn. Stat. §§ 237.09, 237.121, and 237.16, nor any rules adopted under those sections, including Minn. Rule 7812.2210 and 7810.0500, nor any standards, limitations, or conditions established in a Commission order pursuant to those sections, as is required by Minn. Stat. § 237.462, subd. 1 (1), (2).

22. AT&T may not knowingly and intentionally violate any applicable provision of Minn. Stat. Ch. 237, nor the rules and orders of the Commission adopted under Minn. Stat. Ch. 237, or AT&T may be subject to enforcement as set forth in Minn. Stat. § 237.461, subd. 2 and 3, and shall forfeit and pay to the State a penalty, in an amount to be determined by a court, of at least \$100 and not more than \$5,000 for each day of each violation, or with respect to a knowing and intentional violation described in Minn. Stat. § 237.462, subd. 1 (1) and (2), shall forfeit and pay to the State a penalty, in an amount to be determined by a court, of at least \$100 and not more than \$55,000 for each day of each violation, or AT&T may be subject to enforcement as set forth in Minn. Stat. § 237.462, subd. 2, and shall forfeit and pay to the state a penalty, in an amount to be determined by the Commission, of at least \$100 and not more than \$10,000 for each day of each violation, or AT&T may be subject to any one or combination of criminal

prosecution, action to recover civil penalties, injunction, action to compel performance, and other appropriate action, as set forth in Minn. Stat. § 237.461 and Minn. Stat. § 237.462, subd.10 and 11.

FACTUAL BACKGROUND

23. The Department initiated an investigation in this matter to determine whether AT&T has engaged in a practice of entering into unfiled agreements that violate AT&T's obligations under Minnesota law and the Commission's Rules and Orders.

24. On June 16, 2004, the Department filed a Complaint and Request for Commission Action with the Commission in this Docket No. P442 et al/C-04-235. The Complaint and Request for Commission Action described several unfiled agreements under which several local exchange carriers provided to AT&T switched access services at rates that were different than those carriers' tariffed rates.

25. On September 2, 2004, the Department issued information requests to AT&T and MCI WorldCom Network Services (now MCI Network Services) asking the companies to disclose any other agreements they may have entered into for intrastate switched access services, other than those already provided to the Department and identified in the Complaint filed on June 16, 2004.

26. On October 19, 2004, MCI WorldCom Network Services disclosed to the Department two additional agreements with AT&T that were responsive to the Department's September 2, 2004 information request. Under the terms of one of the unfiled agreements (herein referred to as the "First Unfiled Agreement"), AT&T agreed to purchase from MCI Worldcom Communications (now MCI Communications Services) intrastate switched access at unique prices that were different from the tariffed rates of MCI Worldcom Communications. Under terms of the second newly disclosed agreement (herein referred to as the "Second Unfiled

Agreement"), AT&T (as a CLEC) agreed to provide intrastate switched access service at a unique price, other than AT&T's tariffed rate, to various MCI interexchange carrier (IXC) subsidiaries operating in Minnesota, including Brooks Fiber Communications of Minnesota, Inc., Intermedia Communications, LLC, MCI WorldCom Communications, Inc., and TTI National, Inc. (hereafter "MCI"). Neither the first Unfiled Agreement, nor the Second Unfiled Agreement nor the unique prices and terms offered thereunder were filed with the Commission, Department, or with OAG-RUD, or otherwise tariffed by AT&T. The First Unfiled Agreement and Second Unfiled Agreement were described in and attached to the Department's *Additional Comments of April 25, 2005* in this Docket, No. P442 et al./C-04-235. A true and correct copy of the Second Unfiled Agreement is also attached hereto as Exhibit I.

27. The terms of the *First Unfiled Agreement* and *Second Unfiled Agreement* were nearly identical, except the purchaser and seller were reversed. According to their respective terms, the *First Unfiled Agreement* and the *Second Unfiled Agreement* became effective on January 27, 2004 and were to remain in effect for two years.

28. Pursuant to a settlement agreement approved by the Commission in its July 7, 2005 Order in this Docket, however, MCI agreed to offer and charge all IXCs, including AT&T, a single rate, as set forth in a revised and duly filed intrastate switched access tariff, commencing on August 1, 2005 (in Docket Nos. P5321/M-05-1234, 1235) and MCI further agreed to pay AT&T's tariffed rate for intrastate switched access, instead of the untariffed rate set forth in the *Second Unfiled Agreement*, commencing on August 1, 2005. The *Second Unfiled Agreement* was in effect for 340 days in 2004 and an additional 212 days in 2005, making the effective term of the *Second Unfiled Agreement* 552 days.

29. As set forth more specifically in the following paragraphs, the Second Unfiled Agreement set out terms and conditions for the provision of intrastate switched access services by AT&T to MCI.

30. The Second Unfiled Agreement provides in Schedule A as follows:

[TRADE SECRET DATA BEGINS

TRADE SECRET DATA ENDS]

31. The Second Unfiled Agreement provides in Section 6.B as follows:

[TRADE SECRET DATA BEGINS

TRADE SECRET
DATA ENDS]

32. The switched access rate in the Second Unfiled Agreement is different than AT&T's tariffed switched access rates. AT&T's Access Services and Network Interconnection Services Rate List, Sheet 24, Sections 17.15.1 - 17.15.2, which went into effect on December 21, 2002, a true and correct copy of which is attached hereto as Exhibit 2, contains the following switched access rates:

<u>Access Rate Elements</u>	<u>Per Minute Rate</u>
Tandem Switched Transport Termination	\$0.000480
Tandem Switched Transport Facility (per mile)	\$0.000025
Originating Switching Charge	\$0.011396
Terminating Switching Charge	\$0.032462

33. The rate AT&T offered MCI under the Second Unfiled Agreement is less than [TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS] the amount that

AT&T charged for originating access under its tariff, and less than [TRADE SECRET DATA BEGINS TRADE SECRET DATA ENDS] the amount AT&T charged for terminating access under its tariff. The unique rates provided to AT&T by MCI under the First Unfiled Agreement were the same as the rates provided by AT&T to MCI under the Second Unfiled Agreement.

34. The Department is informed and believes and on this basis alleges that the acts of AT&T and the violations of Minnesota laws and rules described in this Verified Amended Complaint were knowing, intentional, and willful by AT&T.

Count 1: Violation of Minn. Rule 7812.2210, subp. 2 and 3

35. The Department is informed and believes, and on this basis alleges, that AT&T offered to MCI untariffed and unique terms and rates; that AT&T has not maintained in a comprehensive tariff that includes all amendments thereto; that AT&T has not met its filing obligations under Minn. Rule 7812.2210, subp. 2 and 3, and that AT&T has violated Minn. Rule 7812.2210.

Count 2: Violation of Minn. Rule 7810.0500, subp.1

36. AT&T has failed to have its tariff and all amendments on file with the Commission in accordance with the rules governing the filing of tariffs as prescribed by the Commission, and has thereby violated Minn. Rule 7810.0500, subp.1.

Count 3: Violation of Minn. Stat. § 237.07

37. The Department is informed and believes, and on this basis alleges, that the Second Unfiled Agreement concerns specific rates, charges and other terms, including a confidentiality provision, that are applicable to AT&T's provision of intralata switched access service to MCI; that AT&T's intralata switched access service is a non-competitive service; that AT&T did not file with the Department the specific rates, charges and other terms offered by

AT&T to MCI under the Second Unfiled Agreement; and, that AT&T has violated Minn. Stat. § 237.07, subd. 1.

Count 4: Violation of Minn. Rule 7812.2210, subp. 5

38. The Department is informed and believes, and on this basis alleges, that, by knowingly or willfully offering untariffed, unfiled rates under terms of the Second Unfiled Agreement with regard to MCI, while offering, tariffed rates with regard to other IXCs, AT&T has offered telecommunications services within the state on terms and rates that are not uniform and are unreasonably discriminatory, in violation of Minn. Rule 7812.2210, subp. 5.

39. In offering to MCI, under terms of the Second Unfiled Agreement, unique, untariffed prices, AT&T failed to meet the prerequisites for a CLEC to offer unique prices to a particular customer, which prerequisites are set out in Minn. Rule 7812.2210, subp. 5.

Count 5: Violation of Minn. Stat. § 237.09

40. The Department is informed and believes, and on this basis alleges, that by knowingly or willfully offering, charging, demanding, collecting, or receiving the untariffed rates for intrastate switched access service under terms of the Second Unfiled Agreement with regard to MCI, while offering, charging, demanding, collecting, or receiving tariffed rates for intrastate switched access service with regard to other IXCs under similar circumstances, AT&T has engaged in discrimination in violation of Minn. Stat. § 237.09, subd. 1.

41. By offering or providing intrastate switched access service to MCI on a separate, stand-alone basis, while not providing that service pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors, AT&T has engaged in discrimination in violation of Minn. Stat. § 237.09, subd. 2.

Count 6: Violation of Minn. Stat. § 237.121 and Minn. Rule 7812.2210, subp. 9

42. The Department is informed and believes and on this basis alleges, that AT&T has refused to provide a service to an IXC in accordance with AT&T's applicable tariffs, price lists, and contracts and with the Commission's rules and orders, in violation of Minn. Stat. § 237.121, subd. 4 and Minn. Rule 7812.2210, subp. 9.

Count 7: Violation of Minn. Stat. § 237.74

43. The Department is informed and believes and on this basis alleges, that the practices of AT&T, and the rates, tolls, prices, tariffs, charges and other terms regarding the Second Unified Agreement are unreasonably and unjustly discriminatory, that the Commission may "terminate the discrimination" as authorized by Minn. Stat. § 237.74, subd. 4 (d) by issuing an order that:

- concludes that the tariffed rates of CLECs such as AT&T are the only valid rates and that IXCs such as MCI are liable to pay the tariffed rates of AT&T,
- concludes that AT&T may collect and receive only rates that have been tariffed or otherwise approved by the Commission;

The Department further alleges that AT&T knowingly and intentionally violated Minn. Stat. § 237.74 and that AT&T should forfeit and pay to the state treasury a penalty, in an amount to be determined by a court, of at least \$100 and not more than \$1,000 for each day of each violation of Minn. Stat. § 237.74 in a civil action brought by the Attorney General in the name of the State.

Count 8: Enforcement of § 237.081

44. The Department is informed and believes, and on this basis alleges, that AT&T's rates, tariffs, charges, practices, acts, and omissions affecting and relating to the production, transmission, delivery, or furnishing of telephone service or services in connection with telephone service are unreasonable and unjustly discriminatory practices, and that the

Commission may deem this matter an investigation under Minn. Stat. § 237.081, and issue an order under Minn. Stat. § 237.081 that is just and reasonable, and establishes just and reasonable rates and prices for AT&T's provision of intrastate switched access services, pursuant to Minn. Stat. § 237.081, subd. 4.

Count 9: Enforcement of Minn. Stat. § 237.16

45. For the intentional violation by AT&T of the Commission's rules and applicable state laws relating to the provision of telephone or telecommunications services, the Commission has the authority, if it chooses to exercise it, to revoke or temporarily suspend, in whole or in part, the certificate of authority of AT&T, pursuant to Minn. Stat. § 237.16.

Count 10: Enforcement under Minn. Stat. § 237.461

46. The Department is informed and believes, and on this basis alleges, that AT&T has knowingly and intentionally violated applicable provisions of Minn. Stat. Ch. 237 and the rules of the Commission adopted thereunder, and that the Commission should conclude that AT&T should be subject to enforcement as set forth in Minn. Stat. § 237.461, subd. 2, and should forfeit and pay to the State a penalty, in an amount to be determined by a court, of up to \$5,000 for each day of each violation, or, with respect to AT&T's knowing and intentional violations of Minn. Stat. § 237.462, subd. 1 (1) and (2), should forfeit and pay to the State a penalty, in an amount to be determined by a court, of up to \$55,000 for each day of each violation, as set forth in Minn. Stat. § 237.461, subd. 3.

Count 11: Enforcement under Minn. Stat. § 237.462

47. The Department is informed and believes, and on this basis alleges, that AT&T has knowingly or intentionally violated Minn. Stat. §§ 237.09, 237.121, and 237.16, and rules adopted under those sections, including Minn. Rule 7812.2210 and 7810.0500, and that the Commission may take action, pursuant to Minn. Stat. § 237.462, and conclude that AT&T

should forfeit and pay to the State a penalty, in an amount to be determined by the Commission, of up to \$10,000 for each day of each violation, as set forth in Minn. Stat. § 237.462, Subd. 2. The Commission must determine whether to either assess penalties pursuant to Minn. Stat. § 237.462 or to have the Attorney General seek civil penalties pursuant to Minn. Stat. § 237.461 as set forth in Minn. Stat. § 237.462, subd. 9.

RELIEF REQUESTED

Wherefore, the Department requests that the Commission investigate as appropriate the above allegations and:

48. Find that AT&T violated the Commission's rules, including Minn. Rules 7812.2210, subs. 2 and 5, by not offering, charging and collecting only tariffed rates for switched access services.

49. Find that AT&T has violated the Commission's rules, including Minn. Rule 7810.0500, subp. 1., by failing to have its tariff on file with the Commission in accordance with the rules governing the filing of tariffs as prescribed by the Commission.

50. Find that AT&T violated Minnesota law, including Minn. Stat. § 237.07, subd. 1, by providing to MCI under the Second Unfiled Agreement specific rates, charges and other terms, including a confidentiality provision, regarding AT&T's provision of intralata switched access service, a non-competitive service, and by failing to file with the Department these specific rates, charges or terms offered by AT&T to MCI.

51. Find that fair and open competition is promoted by assuring that all IXCs have access to the same tariffed rates, or if a CLEC proposes to offer unique ICB rates, that those rates will be pursuant to a filing made in compliance with Minn. Rule 7812.2210, subp. 2 and 5B, and, pursuant to Minn. Rules 7812.2210, subp. 17E, and order that all rates, terms and conditions for the provision of switched access service are to be on file in the applicable AT&T access tariff

and price list within 30 days unless the company demonstrates that it properly may charge non-uniform rates.

52. Deem this matter to be an investigation into whether the practices of AT&T and the rates and other terms provided by AT&T to MCI under the Second Unfiled Agreement are unreasonable and unjustly discriminatory under Minn. Stat. § 237.74, subd.2; find that AT&T's rates, tolls, tariffs or price lists, charges, or schedules with respect to MCI are unreasonable and unjustly discriminatory; and require "termination of the discrimination," as authorized by Minn. Stat. § 237.74, subd. 4 (d) by issuing an order that:

- concludes that the tariffed rates of CLECs such as AT&T are the only valid rates and that IXCs such as MCI are liable to pay the tariffed rates of AT&T;
- declares that AT&T may collect and receive only rates that have been tariffed or otherwise approved by the Commission;

and, further, find that AT&T knowingly and intentionally violated Minn. Stat. § 237.74 or a rule or order of the Commission adopted or issued under Minn. Stat. § 237.74; and, subject to the Commission's determination on how to proceed under Minn. Stats. §§ 237.461 and 237.462, find that AT&T should forfeit and pay to the State treasury a penalty, in an amount to be determined by a court, of at least \$100 and not more than \$1,000 for each day of each violation in a civil action brought by the Attorney General in the name of the State.

53. Find that AT&T has refused to provide a service to an IXC in accordance with AT&T's applicable tariffs, price lists, contracts, and Commission rules and orders, in violation of Minn. Stat. § 237.121, subd. 4 and Minn. Rule 7812.2210, subp. 9, and order AT&T to provide intrastate switched access service only in accordance with its tariffs, price lists, contracts, and Commission rules and orders.

54. Declare that any charges by AT&T for intrastate switched access services that are neither in AT&T's tariffs nor approved by the Commission must not be charged, collected or

received and that any contract provision regarding such services is ineffective unless such charges have been tariffed or otherwise approved by the Commission.

55. Find that a CLEC that is having its Commission-authorized access charges withheld by an IXC on the basis of a disagreement about the propriety of a tariffed local access rate has the option to: 1) petition the Commission for assistance; 2) reduce its tariffed access rates and make them available on a non-discriminatory basis to all IXCs; or 3) negotiate a unique access rate and either file a revised tariff or seek Commission approval in conformance with the procedures set forth in Minnesota Rule 7812.2210.

56. Find that AT&T engaged in discrimination by knowingly or willfully charging, demanding, collecting, and receiving the untariffed rates for intrastate switched access service under terms of the Second Unfiled Agreement with regard to MCI, while offering, charging, demanding, collecting, or receiving tariffed rates for intrastate switched access service with regard to other IXCs under similar circumstances, in violation of Minn. Stat. § 237.09, subd. 1.

57. Find that AT&T has engaged in discrimination by offering or providing to a customer intrastate switched access service on a separate, stand-alone basis, but not pursuant to tariff to all similarly situated persons, in violation of Minn. Stat. § 237.09, subd. 2.

58. Deem this matter an investigation under Minn. Stat. § 237.081, and find that AT&T's rates, tariffs, charges, practices, acts, and omissions affecting and relating to the production, transmission, delivery, or furnishing of telephone service or services in connection with telephone service are unreasonable and unjustly discriminatory, and issue an order that is just and reasonable and establishes just and reasonable rates and prices for AT&T's provision of intrastate switched access services, pursuant to Minn. Stat. § 237.081, subd. 4.

59. Find that AT&T has engaged in knowing and intentional violations of Minnesota statutes and rules for 552 days; either order AT&T to pay a penalty as authorized by Minn. Stat.

§ 237.462, subd. 1 and 2 and determine the amount of the penalty based on the factors set forth in this subdivision as authorized by Minn. Stat. § 237.462, subd. 2, or refer the matter to the Office of the Attorney General to pursue civil penalties under Minn. Stat. § 237.461.

60. Find that AT&T has knowingly and intentionally violated applicable provisions of Minn. Stat. Ch. 237 and the rules of the Commission adopted under Minn. Stat. Ch. 237, and determine that AT&T should be subject to enforcement as set forth in Minn. Stat. § 237.461, subd. 2, and should either forfeit and pay to the state a penalty, in an amount to be determined by a court, of up to \$5,000 for each day of each violation; or, with respect to AT&T's knowing and intentional violations of Minn. Stat. § 237.462, subd. 1 (1) and (2), should forfeit and pay to the state a penalty, in an amount to be determined by a court, of up to \$55,000 for each day of each violation, as set forth in Minn. Stat. § 237.461, subd. 3; or AT&T should be subject to enforcement as set forth in Minn. Stat. § 237.462, subd. 2, and shall forfeit and pay to the state a penalty, in an amount to be determined by the Commission, of at least \$100 and not more than \$10,000 for each day of each violation.

61. Find that AT&T has intentionally violated the Commission's rules and applicable state laws relating to the provision of telephone or telecommunications services, for which act(s) the Commission has authority, if it chooses to exercise it, to order the revocation or temporary suspension, in whole or in part, the certificate of authority of AT&T, as is authorized under Minn. Stat. § 237.16.

62. Grant such other further relief as the Commission may deem just and reasonable.

Dated: October 27, 2005



LINDA S. JENSEN
Assistant Attorney General
Atty. Reg. No. 0189030

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(651) 282-5708 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF COMMERCE

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party or parties on whose behalf the attached pleading is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: October 27, 2005



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Assistant Attorney General
Atty. Reg. No. 0189030

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ATTORNEYS FOR MINNESOTA
DEPARTMENT OF COMMERCE

VERIFICATION

I, GREGORY J. DOYLE, on behalf of ^{MINNESOTA} ~~THE~~ DEPARTMENT OF COMMERCE (party) respectfully declare to the court under penalty of perjury that I have read the foregoing facts contained in the attached papers, and that they are true and correct to the best of my knowledge, information, and belief.

Date: October 27, 2005

Gregory J. Doyle
signature

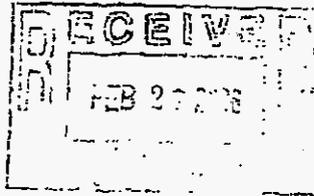
Manager Telecommunications
title

AG-#1505571-01

Qwest Corporation
Law Department
(612) 672-8927-Phone
(612) 672-8911-Fax

Joan C. Peterson
Sr. Attorney

200 South 5th Street, Room 2200
Minneapolis, Minnesota 55402



February 27, 2006

Honorable Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

**Re: In the Matter of the Complaint of the Minnesota Department
of Commerce for Commission Action Against AT&T
Regarding Negotiated Contracts for Switched Access Services
Docket No. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323,
5668, 4661/C-04-235**

Dear Judge Mihalchick:

Enclosed for filing are the following regarding the above-referenced matter:

1. Qwest Corporation's Petition to Intervene; and
2. Notice of Appearance for Joan C. Peterson.

Very truly yours,

A handwritten signature in cursive script that reads "Joan C. Peterson".

Joan C. Peterson

JCP/bardm

Enclosures

cc: Service List

8

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, MN 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Phyllis Reha	Commissioner
Kenneth A. Nickolai	Commissioner
Thomas Pugh	Commissioner

**In the Matter of the Complaint of the
Minnesota Department of Commerce
for Commission Action Against AT&T
Regarding Negotiated Contracts for
Switched Access Services**

**Docket No. P-442, 5798, 5340, 5826,
5025, 5643, 443, 5323, 5668, 4661/
C-04-235**

QWEST CORPORATION'S PETITION TO INTERVENE

Qwest Corporation and Qwest Communications Corporation ("Qwest"), pursuant to Minn. Rules, part 1400.6200, petitions the Office of Administrative Hearings for leave to intervene in this matter. In support of its Petition, Qwest states:

1. Qwest is authorized to provide intraexchange, interexchange and local exchange telecommunications services in the State of Minnesota.
2. As a competitor of AT&T in Minnesota, Qwest's business is impacted by the matters to be considered in this proceeding, i.e., AT&T's agreements with other carriers which were not filed with the Minnesota Public Utilities Commission as required by law, and whether the terms of those agreements were made available to carriers on a nondiscriminatory basis. Qwest is directly affected by the issues in this proceeding, has a substantial interest in the ultimate outcome of this proceeding and otherwise has a vital interest in the determination by the Commission of the issues identified in this proceeding.

3. Qwest's participation will be of material value to the Commission and parties in their determination of the issues involved in this proceeding, and Qwest's intervention will not unduly broaden those issues or delay the proceedings.

4. Qwest's interest will not be adequately represented by any other party to this proceeding. Accordingly, Qwest requests permission to intervene as a party to this proceeding and to participate to the full extent permitted under Minnesota rules and law.

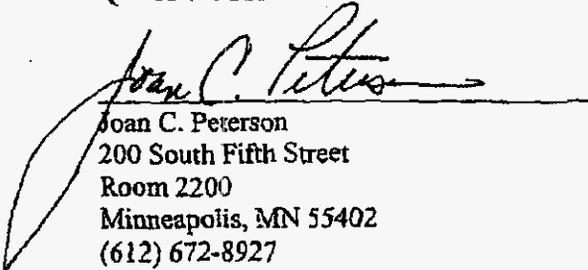
5. The names, addresses, and telephone numbers of the person to whom communications to Qwest should be sent are:

Joan C. Peterson
Qwest Corporation
200 South Fifth Street, Room 2200
Minneapolis, MN 55402
(612) 672-8927
joan.peterson@qwest.com

Jason D. Topp
Qwest Corporation
200 South Fifth Street, Room 2200
Minneapolis, MN 55402
(612) 672-8905
Jason.topp@qwest.com

Dated this 27th day of February, 2006.

QWEST CORPORATION


Joan C. Peterson
200 South Fifth Street
Room 2200
Minneapolis, MN 55402
(612) 672-8927

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, MN 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**In the Matter of the Complaint of the
Minnesota Department of Commerce
for Commission Action Against AT&T
Regarding Negotiated Contracts for
Switched Access Services**

**Docket No. P-442, 5798, 5340, 5826,
5025, 5643, 443, 5323, 5668, 4661/
C-04-235**

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite 1700, 100 Washington
Square, Minneapolis, Minnesota 55401; (612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY: Qwest Corporation

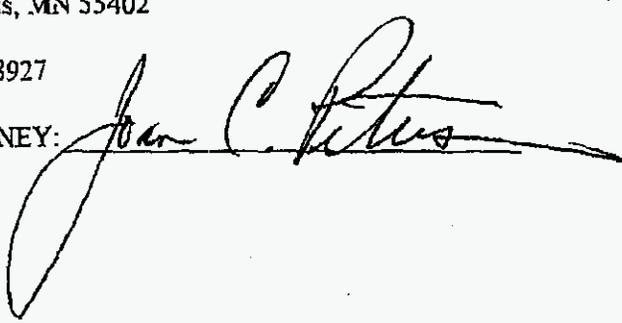
ADDRESS: 200 South Fifth Street, Room 2200
Minneapolis, MN 55402

TELEPHONE NUMBER: (612) 672-8927

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE: Joan C. Peterson

OFFICE ADDRESS: 200 South Fifth Street, Room 2200
Minneapolis, MN 55402

TELEPHONE NUMBER: (612) 672-8927

SIGNATURE OF PARTY OR ATTORNEY: 

DATE: February 27, 2006

**In the Matter of DOC Investigation in
Many Companies Negotiated Contracts
for Switched Access Services**

Docket No. P, et al/C-04-235

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
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Telephone Docketing Coordinator
Minnesota Department of Commerce
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Julia Anderson
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Wauneta Browne
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Patrick Chow
Manager-Rates and Tariffs
MCImetro Access Transmission Services
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Sandra Hofstetter
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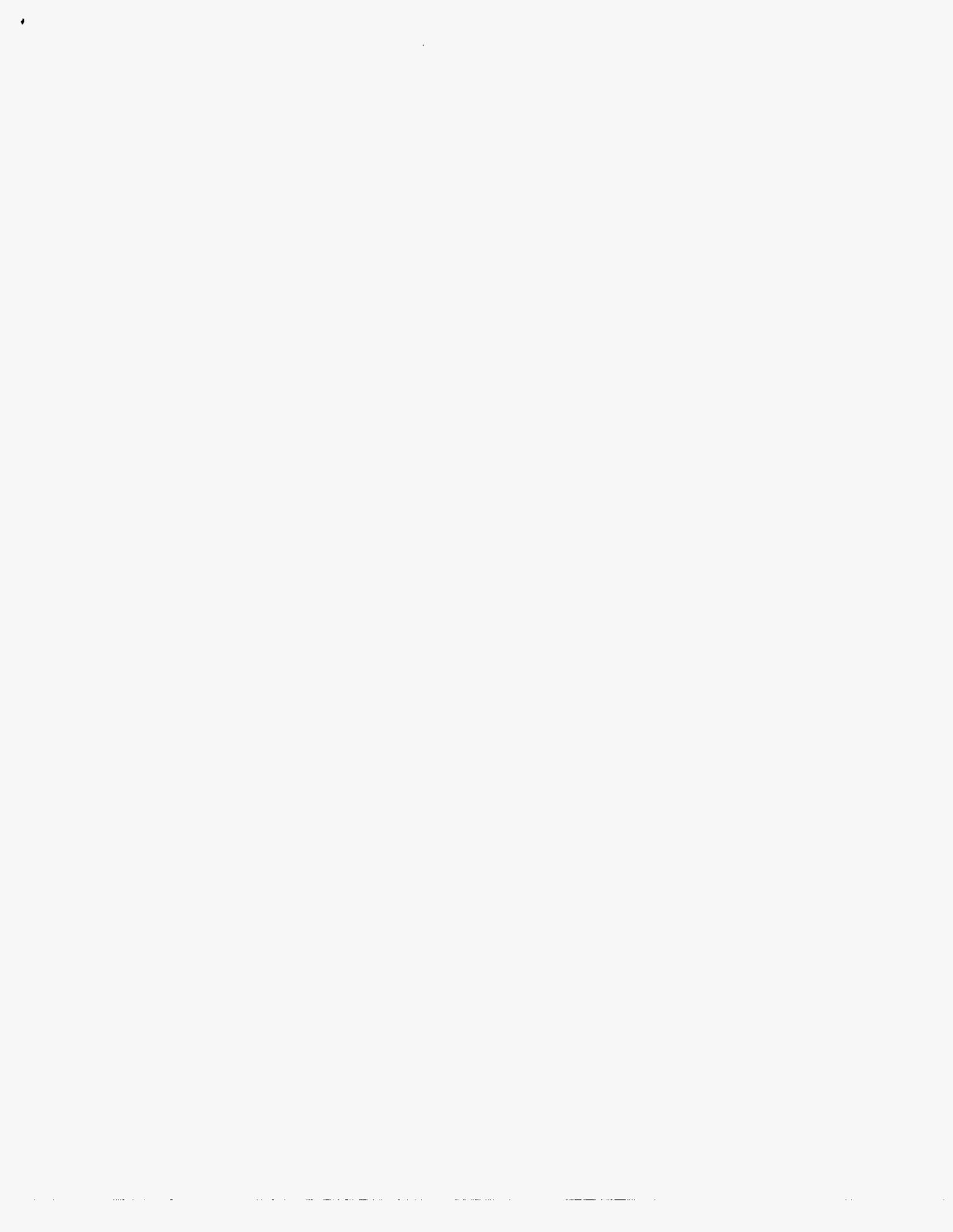
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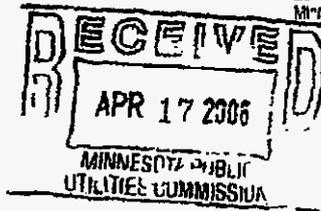
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April 17, 2006

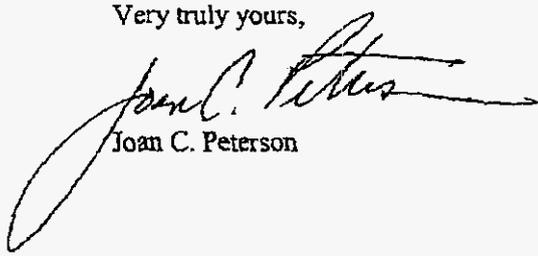
Honorable Steve M. Mihalchick
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
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**Re: In the Matter of the Complaint of the Department of Commerce Against
AT&T Regarding Negotiated Contracts for Switched Access Services
Docket Nos. P-et aL/C-04-235 and 12-2500-17084-2**

Dear Judge Mihalchick:

Enclosed for filing is Qwest's Reply to the Motion of the Department of Commerce for Summary Disposition regarding the above-referenced matter:

Very truly yours,


Joan C. Peterson

JCP/bardm

Enclosures

cc: Service List

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, MN 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Phyllis Reha	Commissioner
Kenneth A. Nickolai	Commissioner
Thomas Pugh	Commissioner

**In the Matter of the Complaint of
the Department of Commerce Against
AT&T Regarding Negotiated Contracts
for Switched Access Services**

**Docket Nos. P-442, 5798, 5340, 5826,
5025, 5643, 443, 5323, 5668, 4661/
C-04-235 and 12-2500-17084-2**

**QWEST'S REPLY TO THE MOTION OF THE DEPARTMENT OF
COMMERCE FOR SUMMARY DISPOSITION**

On October 27, 2005, the Department of Commerce ("DOC") filed its Amended Complaint and Exhibits in the above-referenced matter. AT&T filed its Answer and Affirmative Defenses on November 15, 2005. On January 24, 2006, the Minnesota Public Utilities Commission, after reviewing the DOC's Complaint and AT&T's answer, issued its Notice and Order for Hearing referring this matter to the Office of Administrative Hearings. Pursuant to the schedule set forth in the First Prehearing Order, the Department of Commerce ("DOC") submitted a Motion for Summary Disposition on March 31, 2006. Qwest files this Reply to the DOC's Motion for Summary Disposition.

The DOC's Complaint in this docket describes one aspect of a broad-scale scheme by AT&T - the nation's leading Interexchange Carrier (IXC) -- to pay access rates that were

below CLECs' tariffed rates. Many of AT&T's competitors, including Qwest, were paying the CLECs' higher tariffed rates and thus were placed at a competitive disadvantage in the marketplace. As a part of this scheme, at least one other IXC competitor - MCI, also a leading IXC - obtained a corresponding or "reciprocal" deal for itself from AT&T's CLEC. Thus, these two leading carriers had a cost advantage in the market due to their having entered into reciprocal secret deals.

In the instant complaint, the DOC alleges that AT&T's secret deal with MCI (the "Second Unfiled Agreement") violated Minnesota law because AT&T charged untariffed access rates to MCI. As the DOC points out, the affirmative duty to file rates through tariffs or price lists and the corresponding prohibitions against unreasonable discrimination appear throughout Minnesota statutes and rules. That these duties and prohibitions apply to all telecommunications carriers is clearly encompassed in Minnesota Statute section 237.74. Minnesota Statute section 237.74, subdivision 1 requires telecommunications carriers to "keep on file with the department either a tariff or a price list for each service on or before the effective date of the tariff or price, containing the rules, rates, and classifications used by it in the conduct of the telephone business, including limitations on liability."¹ Subdivision 2 of that statute clearly prohibits unreasonable price discrimination: "No telecommunications carrier shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory."²

In addition to the tariff or price list filing requirements and prohibitions against unreasonable discrimination contained in Minnesota Statute section 237.74, the Commission

¹ Minn. Stat. § 237.74, Subd. 1 (2004).

² Minn. Stat. § 237.74, Subd. 2 (2004).

adopted rules governing the obligations of telecommunications carriers who provide local service. Minnesota Rules Parts 7810, 7811 and 7812 govern the conduct of companies providing local service. As the DOC's brief describes in detail, these Rules contain numerous provisions that impose obligations on companies providing local service to file tariffs, to charge the tariffed rates and to avoid unreasonable discrimination in their rates. These statutes and rules govern AT&T as a telecommunications carrier providing local service.

The DOC's brief in support of its Motion for Summary Disposition also describes various statutes that describe the duties of "telephone companies." In its answer, AT&T appears to assert that it is not governed by the statutes where the term "telephone company" describes the obligations imposed. While it is true that AT&T is not a "telephone company" as described in Minnesota Statute section 237.01, the inquiry as to whether these statutes apply to AT&T in the current situation is not complete upon a mere reading of the definitions section of Chapter 237.

Prior to the changes in the telecommunications market in the mid-1990s, there were only two categories of providers of telecommunications services: local providers ("telephone companies") and long distance providers ("telecommunications carriers"). The Minnesota Legislature acted in 1995 to provide for competition in the provision of local exchange service. The Legislature eliminated exclusive local service territories and allowed companies to provide competitive local exchange services in what were previously exclusive service territories. The Legislature incorporated these new competitive local exchange

providers into the definition of "telecommunications carrier."³ The Legislature specifically addressed two types of telecommunications carriers that would provide local service in the new non-exclusive service territories: companies already providing local service in a different service territory⁴ and companies providing local exchange service for the first time.⁵ The Legislature then addressed, through Minnesota Statute sections 237.035 and 237.16, how these companies were to be governed in their provision of local services.⁶ Those statutory sections provide that "a telecommunication's carrier's local service is subject to this chapter" and that "telecommunications carriers shall comply with section 237.16, subdivisions 8 and 9."⁷ The Legislature also enacted a transition statute – Minnesota statute section 237.16, subd. 13 – which makes clear that local service providers are subject to all provisions of Chapter 237 until the Commission completes the process of establishing local service rules.⁸

Thus, Minnesota law is clear that companies are governed by Chapter 237 in the provision of local service whether they are "telephone companies" or "telecommunications carriers." The Commission directly addressed this issue with AT&T in its Certificate of Authority application to provide local service. AT&T had argued that it was not fully subject to the requirements of Chapter 237. The Commission disagreed with AT&T's analysis and made clear that Minnesota Statute section 237.035(e) provides that a telecommunications carrier's local service will be subject to Minn. Stat. Ch. 237, stating: "Minn. Stat. 237.035(e) provides that a telecommunications carrier's local service will be subject to Minn. Stat.

³ See Minn. Stat. § 237.01, Subd. 6 (2004).

⁴ See Minn. Stat. § 237.01, Subd. 6 (2) (2004).

⁵ See Minn. Stat. § 237.01, Subd. 6 (3) (2004).

⁶ See Minnesota Session Laws 1995, Chapter 156.

⁷ Minn. Stat. § 237.035(e)(2004).

⁸ See Minn. Stat. § 237.16, Subd. 13 (2004).

Ch. 237, with the exception of rate of return investigations and depreciation requirements."⁹ Thus, AT&T has been on notice since the granting of its Certificate of Authority that its local service tariffs were subject to Chapter 237, including requirements to file tariffs and prohibitions against unreasonable discrimination.

Qwest has reviewed the legal standards set forth by the DOC that govern this case. Qwest believes that the legal analysis contained in the DOC's Motion for Summary Disposition is clear and well-supported. The DOC's Complaint clearly alleges that AT&T entered into a secret agreement that provided one carrier with a rate for intrastate switched access that was lower than the rate in AT&T's tariff. If true, this fact would constitute a violation of Minnesota law.

At this juncture, Qwest has not seen the Second Unfiled Agreement. Qwest has recently submitted information requests to AT&T seeking access to the contracts involved in this dispute but has not yet received the replies. Thus, Qwest is not in a position to offer an opinion as to whether the relevant facts are as claimed by the DOC in its Complaint and Motion except to note that AT&T does not appear to dispute the facts in its Answer. Instead, AT&T's defense appears to be to argue that the law does not apply to AT&T. AT&T's apparent reliance on interpretation of statutes as its defense indicates that the DOC's Motion for Summary Disposition is well-founded because the determination of whether AT&T has violated Minnesota statutes and rules rests on a question of law, not a question of fact.

As an entity that provides long distance service in Minnesota, Qwest has bona fide concerns about unreasonably discriminatory rates offered by AT&T as a CLEC to other

⁹ See *In the Matter of the Application of AT&T Communications of the Midwest, Inc. for a Certificate of Authority to Provide Local Exchange Services*, Docket No. 96-211, Order Granting Certificate of Authority With Conditions, dated July 15, 1996, at page 7.

IXCs such as MCI. Qwest also has concerns about the fact that AT&T as a CLEC has apparently provided such rates to other IXCs without filing those special rates as required under Minnesota statutes and rules. In connection with its discussion of relevant statutes and rules, the Department makes reference to other dockets, cases and circumstances which appear to involve the same or similar issues with AT&T. For example, the Department describes AT&T's actions as an IXC with various CLECs, as well as actions involving AT&T's sister corporation, TCG Minnesota, Inc. at pages 9-11. The statements of Jaguar, Eschelon, PrairieWave and other CLECs indicate that AT&T engaged in a broad-scale effort to disrupt and distort competition in the telecommunications market. AT&T simply ceased making any switched access payments to CLECs who were new-entrants to the local market until the CLEC entered into a contract that gave AT&T lower prices – both retroactively and prospectively – for switched access.

The Department's motion and memorandum focus primarily upon AT&T's actions as a CLEC in relation to the Second Unfiled Agreement with MCI. As the DOC points out, the Second Unfiled Agreement is but one small aspect of AT&T's large-scale disruption of the competitive marketplace in Minnesota. The Department cites statutes and rules which plainly warrant its recommended findings in relation to the Second Unfiled Agreement, and the corresponding relief requested by the Department. It appears that the DOC would leave the designation of specific sanctions warranted by the findings and proposed relief to be determined by the Commission. Qwest concurs with the Department's approach in these respects.

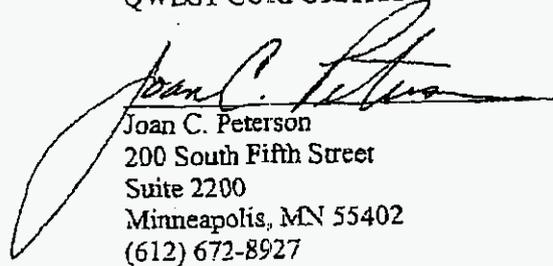
Qwest also observes that these same principles appear to have important implications relating to AT&T's actions as an IXC, but since discussion of AT&T's IXC actions are

beyond the scope of the referral in this contested case. Qwest leaves any comment regarding those matters to other relevant dockets.

Qwest supports the DOC's Motion for Summary Disposition and urges the ALJ to grant the relief requested therein.

Dated this 17th day of April, 2006.

QWEST CORPORATION



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**In the Matter of DOC Investigation in
Many Companies Negotiated Contracts for
Switched Access Services**

**Docket Nos. P, et al./C-04-235 and
12-2500-17084-2**

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February 25, 2008

Brent Hampton
VERIZON BUSINESS
6929 North Lakewood Ave
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USA

To: Brent Hampton

Announcement Date: February 25, 2008
Effective Date: N/A
Document Number: GNRL.02.25.08.B.003019.QCC_Inter_Switch_Acc_Svc
Notification Category: General Notification
Subject: QCC Intrastate Switched Access Services

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

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

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

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

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

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

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

INTRASTATE SWITCHED ACCESS

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

800/8YY DATABASE QUERIES

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

RECIPROCAL COMPENSATION

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

Ms. Mowers can be reached as follows:

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

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

Sincerely,



Charlie Galvin Jr.
Qwest Communications