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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATION, INC., A COLORADO CORPORATION, FOR A HEARING TO DETERMINE THE EARNINGS OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON AND TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN

Docket No. T-01051B-99-0105

COX'S NOTICE OF FILING TESTIMONY

Cox Arizona Telcom, L.L.C., through its undersigned counsel, hereby gives notice of filing the testimony of Dr. Frank R. Collins regarding the proposed Settlement Agreement, a copy of which is attached hereto.

November 13, 2000.

COX ARIZONA TELCOM, L.L.C.

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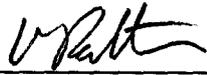
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

IN THE MATTER OF THE APPLICATION  
OF US WEST COMMUNICATION, INC., A  
COLORADO CORPORATION, FOR A  
HEARING TO DETERMINE THE  
EARNINGS OF THE COMPANY FOR  
RATEMAKING PURPOSES, TO FIX A JUST  
AND REASONABLE RATE OF RETURN  
THEREON AND TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN

Docket No. T-01051B-99-0105

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**TESTIMONY OF  
DR. FRANCIS R. COLLINS  
ON BEHALF OF  
COX ARIZONA TELCOM, L.L.C.  
REGARDING PROPOSED SETTLEMENT AGREEMENT**

**NOVEMBER 13, 2000**

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1 **I. INTRODUCTION OF WITNESS**

2 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

3 A. My name is Francis R. Collins and my business address is P.O. Box 272, Newton,  
4 MA 02459.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

6 A. I am employed by CCL Corporation, a company that provides public policy,  
7 technical, and economic counsel in the fields of telecommunications and cable  
8 television. I am the president of CCL Corporation.

9 **Q. DR. COLLINS, ON WHOSE BEHALF ARE YOU APPEARING IN THIS  
10 PROCEEDING?**

11 A. My testimony is presented on behalf of Cox Arizona Telcom, L.L.C. ("Cox"),  
12 which is a facilities-based provider of local telecommunications services in  
13 Arizona.

14 **II. QUALIFICATIONS OF WITNESS**

15 **Q. DID YOU FILE TESTIMONY IN THIS DOCKET PREVIOUSLY AND  
16 SUBMIT YOUR QUALIFICATIONS AT THAT TIME?**

17 A. Yes. I filed both Direct and Surrebuttal Testimony and submitted qualifications  
18 with the Direct Testimony.

19 **III. PURPOSE OF TESTIMONY**

20 **Q. DR. COLLINS, WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. My testimony addresses the proposed Settlement Agreement's potential adverse  
22 impact on telecommunications competition in Arizona. Two of the fundamental  
23 concerns in the proposed Settlement Agreement are: (i) a provision which would

1 allow anti-competitive spot/zone-based flexible pricing, even in areas where there  
2 is little, if any, competition and (ii) TSLRIC price floors that could lead to  
3 predatory pricing and cross-subsidization. Both provisions could act to stifle  
4 emerging competition. I also am concerned about the process used to develop an  
5 alternative form of regulation. Here it is done through a settlement agreement  
6 arising from a rate case without the full participation by affected parties from the  
7 beginning. There are other issues of importance as well and these are discussed in  
8 the testimony below.

#### 9 IV. SUMMARY OF TESTIMONY

10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. To put my testimony in the proper context, I incorporate my prior Direct and  
12 Surrebuttal Testimony in this Docket by reference. In that testimony, I addressed  
13 Qwest's testimony from three witnesses concerning the existence of competition  
14 in Arizona. The Qwest testimony of Mr. Teitzel was supported by a collection of  
15 anecdotal documents which revealed only that competitive carriers have entered  
16 the telecommunication services marketplace in the Phoenix and Tucson areas and  
17 were marketing their services – it did not prove that real competition exists. In  
18 fact, Mr. Teitzel provided information that showed a reasonable level of  
19 competition did not and does not exist. The testimony of Dr. Wilcox and Mr.  
20 Allcott regarding the existence of true competition for services drew upon the  
21 testimony of Mr. Teitzel and did not add any new substance or support to claims  
22 of competition.

23 My Direct and Surrebuttal Testimony proved that competition for local  
24 exchange telephone services has not yet arrived in Arizona at any significant level.  
25 Moreover, I explained that the claimed revenue losses by Qwest, even at a small  
26 level of competition, were predominantly revenue transfers from Qwest retail to  
27 Qwest wholesale products. Specifically, at the time of my testimony, competitors

1 had achieved less than a 3% market penetration of the total number of access lines  
2 in Arizona. Of this 3% market penetration, slightly more than one third of the loss  
3 has been a transfer from retail to wholesale products in the Phoenix area and just  
4 over half of the loss in the Tucson area has been an intra-Qwest service transfer.  
5 This leaves a *de minimus* market share loss (around 2%) by Qwest in which Qwest  
6 had not realized this revenue transfer and in which Qwest actually lost all of its  
7 revenue. This minute percentage represents revenue loss market penetration.

8 Qwest also had identified a number of wire centers in the Phoenix and/or  
9 Tucson area which it claimed were fully competitive for business and residence  
10 services and for which it requested pricing flexibility through designation of a  
11 "competitive zone." My previous testimony demonstrated that the market penetra-  
12 tion in those areas also was *de minimus* and that pricing flexibility could be used  
13 to chill competition in those fledgling market areas.

14 With that background, Cox has several significant concerns with the  
15 proposed Settlement Agreement. First, the Settlement Agreement's pricing  
16 flexibility must be considered in the context of the market conditions provided  
17 above. The Settlement Agreement now attempts to accomplish by fiat what could  
18 not be accomplished by a compelling showing of facts. The proposed Price Cap  
19 Plan provides that "[n]ew services and packages in Basket 3 may be offered to  
20 selected customer groups based on their purchasing patterns or geographic  
21 location, for example." This provision substitutes "spot" pricing and "customer  
22 specific pricing" (with or without the presence of competition) for the "competi-  
23 tive zone" proposal had Qwest requested in its previous filings. Moreover, the  
24 Settlement Agreement has no express requirement to find the existence of  
25 competition for those new services and packages before they are allowed flexible  
26 pricing in a potentially vary narrow market. That is, the Settlement Agreement  
27 proposes flexible pricing independent of the existence of a suitable level of

1 competition. That situation, from a competitive viewpoint, is even more onerous,  
2 biased, and chilling of competition than the “competitive zone” proposal.

3 Second, the Settlement Agreement proposes to establish price caps and  
4 price floors for different baskets of services. Generally, price caps are intended to  
5 mitigate cross subsidization and price floors are intended to mitigate predatory  
6 pricing. However, the price floor for all Qwest services is set at the TSLRIC and  
7 this presents a major problem. The Qwest services are provided through the  
8 combination of network elements that provide the technological basis for the  
9 service offering. The Commission’s imputation rule (A.A.C. R14-2-1310.C)  
10 implies that the cost of these network elements must be imputed when considering  
11 the base (TSLRIC) cost of the service. Competitive neutrality demands that the  
12 cost of the service should be the same whether it is provided by Qwest or by a new  
13 market entrant using the same unbundled network elements (UNEs) to formulate  
14 the service. Therefore, the imputed aggregate cost of the UNEs should match the  
15 TSLRICs. That should be the price floor. But that is not what the Settlement  
16 Agreement provides.

17 Moreover, setting aside the impropriety of TSLRIC as a price floor, the  
18 Commission (or any Qwest competitor) is not in a position to know if Qwest is  
19 complying with the proposed price floor. In order to determine Qwest’s  
20 compliance with the Settlement Agreement’s prices-floor, it is necessary to know  
21 what the TSLRIC for each service and package is. In fact, it appears the  
22 Commission Staff does not believe there are approved TSLRICs for all the  
23 services under consideration [see Staff Response to Cox Data Requests 1-012,  
24 1-013 (Tab A)] and, therefore, there is no visible benchmark. Qwest also has  
25 refused to agree not to recover the unassigned shared family costs and unrecovered  
26 direct costs that normally would be assigned to a service priced at TSLRIC, from  
27 other services. [See Qwest Response to Cox Data Request 1-008 (Tab B)] This

1 indicates that the Settlement Agreement, as currently structured, has opened the  
2 door to cross subsidization.

3 Third, the Settlement Agreement provision concerning “packages of  
4 services” is flawed. The Settlement Agreement provides that Basket-1 (non-  
5 competitive) services can be combined with Basket-3 (fully competitive) services  
6 to form service packages. When doing so, Qwest can price the package of  
7 services at any level above the TSLRIC (presumably aggregate TSLRIC of the  
8 components) of the package. Cox’s position is that the Basket-1 services should  
9 carry their Basket-1 price into the Basket 3 package and not their TSLRIC. The  
10 Settlement Agreement contains that requirement only for 1FR service in Basket 1  
11 but does not appear to do so for any other Basket-1 service.

12 Fourth, Cox has a concern about the “Support and Defend” provision in the  
13 Settlement Agreement in that it is so ambiguous as to not be enforceable. In  
14 addition, the degree to which financial and other resources must be provided to  
15 support this provision simply cannot be ascertained and accrued to meet potential  
16 obligations.

17 Fifth, Cox has a concern about the reduction in intra-state switched access  
18 charges of \$5 million dollars in the second and third years of the plan with a  
19 concomitant increase in Basket-3 revenues. The Staff has explained that the goal  
20 is to bring intrastate access charges in line with inter-state access charges.  
21 However, a recent FCC filing by Qwest has realigned inter-state access charges by  
22 unbundling Signaling System Seven services and removing their rates from the  
23 switching costs. This move alone has increased Cox’s operating costs in Arizona  
24 by approximately one million dollars a year. Cox believes the nexus between this  
25 Qwest FCC filing and the Settlement Agreement access charge provisions should  
26 be clarified.

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**V. RECOMMENDATIONS FOR MODIFICATION  
OF THE SETTLEMENT AGREEMENT**

**Q. DR. COLLINS, WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION FOR MODIFICATION OF THE SETTLEMENT AGREEMENT?**

A. First, Qwest has failed to demonstrate that the Arizona telecommunications market has robust competition and has, in fact, provided evidence that significant competition does not exist. Therefore, the Commission should not approve any provision in the Settlement Agreement that provides for flexible pricing without Qwest having to meet the current standards set forth in A.A.C. R14-2-1108.

Second, if there is to be flexible pricing, the Commission should provide a visible reference for the price floors, which as detailed below does not now exist. The Commission should require the establishment of a measurable floor price that, at a minimum, is the sum of the attributed UNE prices for all UNEs that constitute the service as well as a mark-up of 18% (the resale discount) which represents the service marketing cost. Certainly, there should be no downward pricing flexibility for services currently priced at or below cost.

Third, the Commission should require that service packages which combine Basket-1 (non-competitive) services with Basket-3 (competitive) services carry with them their Basket-1 retail price. To do otherwise defeats the "stand alone" provision for Basket-1 services which is in the Settlement Agreement.

Fourth, the Commission should require the establishment of a fourth service basket for services which have emerging competition, but are not yet fully competitive – that is, competition which is robust, is provided by financially strong competitors, and whose aggregate penetration exceeds 15% of the market share.



1 non-competitive services generally enter a period of being partially competitive  
2 before being fully competitive and there should be a "basket" for such services.

3 Cox has a concern about the "service package" provisions in the Settlement  
4 Agreement.

5 Cox has a significant concern about the Settlement Agreement's provision  
6 for "spot" pricing in general and specifically when allowed in the absence of  
7 demonstrated and robust competition.

8 Cox is concerned that the Settlement Agreement provides the opportunity  
9 for cross subsidization and predatory below cost pricing because of the manner in  
10 which the price floor is established and the manner in which packages of services  
11 are allowed.

12 Cox has a concern about the reduction in intra-state switched access  
13 charges of \$5 million dollars in the second and third years of the plan with a  
14 concomitant increase in Basket-3 revenues.

15 Cox has a concern about the "Support and Defend" provision in the  
16 Settlement Agreement.

17 These concerns are more fully spelled out below.

18 **Q. DO YOU HAVE CONCERNS ABOUT THE PROCESS UNDERLYING**  
19 **THE SETTLEMENT AGREEMENT?**

20 A. Cox believes the process of this Docket is unusual and inappropriate. The title of  
21 a docket generally indicates the content of the docket. In this instance it would be  
22 to "determine the earnings of the Company, the fair market value of the company  
23 for ratemaking purposes, to fix a just and reasonable rate of return thereon, and to  
24 approve rate schedules designed to develop such a return." However, from the  
25 outset, the Docket *also* raised the issue of zone-based flexible pricing. As a result,  
26 the Docket proceeded to accomplish what the title suggested *plus* shifting rate  
27 schedules that were dependent on the existence of alleged competition. However,  
28 with the advent of the Settlement Agreement, the Docket changed from a revenue

1 requirement, fair return, and rate design (with variable rates) approach to the  
2 introduction of an alternative regulation docket, combined with revenue require-  
3 ment, fair return, rate design with spot varying rates, and quality of service. The  
4 outcome of the new direction is now based on negotiations between the Staff and  
5 Qwest with a virtual take it or leave it choice for the other Parties. This has clearly  
6 been a process different from the usual forms of due process with which dockets  
7 generally are conducted. Indeed, alternative forms of regulation typically are  
8 processed in a separate docket and result in a plan that is much more detailed than  
9 the six-page Price Cap Plan here. These dockets also provide an opportunity for  
10 competitors and consumers to participate fully from the beginning. This is  
11 particularly important because the competitive landscape will be significantly  
12 modified by an alternative form of regulation.

13 That being said, and with the intent of being constructive, Cox will present  
14 Cox's concerns with – and proposed modifications to – the proposed Settlement  
15 Agreement as set forth above and presented in more detail below.

16 **VII. SPECIFIC CONCERNS WITH THE**  
17 **SETTLEMENT AGREEMENT**

18 **Q. DR. COLLINS, WHAT IS COX'S CONCERN WITH THE ABSENCE OF A**  
19 **BASKET FOR SERVICES FOR WHICH COMPETITION IS EMERGING.**

20 **A.** The existence of only two baskets for non-wholesale services in the Settlement  
21 Agreement is not granular enough. It implies that services can go from being fully  
22 non-competitive to fully competitive in one jump. This means that the service  
23 under consideration will be in the non-competitive basket (Basket 1) for a period  
24 wherein it truly has a level of competition, or will be prematurely treated as a fully  
25 competitive service before its time. That is, under any effective price cap regime,  
26 non-competitive services continue to require close regulatory oversight over both  
27 how high prices can be raised (to protect consumers), and over how low prices can

1 be set (to protect the competitive market from prevent predatory pricing). Once a  
2 service becomes fully competitive, price ceiling controls can be substantially  
3 relaxed because competitive forces will determine how high the incumbent can  
4 raise prices. For example, if the incumbent attempts to raise prices too high,  
5 customers will choose lower-priced competitive alternatives. However, even in a  
6 fully competitive marketplace, predatory pricing must continue to be a regulatory  
7 concern with companies like Qwest that retain significant market power.

8 Nevertheless, there remains a need for a "transitional mechanism" for  
9 handling services that are no longer monopoly/non-competitive services, but are  
10 not yet fully competitive, either. Specifically, if full pricing flexibility is permitted  
11 for services that are only partially competitive, the incumbent will be free to price  
12 those services well-above costs without concern that competitors will challenge  
13 those prices. In Cox's view, a greater degree of granularity in measuring the  
14 presence of competition with respect to a specific service is required so that this  
15 problem is avoided. This has been done in other alternate regulation plans.

16 This greater degree of granularity can be accomplished by creating an  
17 "Emerging Competition" basket. Services would transfer into this basket upon  
18 experiencing a market share competitive penetration of 15%, which is not yet fully  
19 competitive but is on the right track.

20 **Q. YOU INDICATED THAT COX HAS A CONCERN ABOUT THE**  
21 **"SERVICE PACKAGE" PROVISIONS IN THE SETTLEMENT AGREE-**  
22 **MENT. WHAT IS THAT CONCERN?**

23 **A.** Cox believes that the provisions concerning service packages is flawed. The  
24 proposed Settlement Agreement provides that Basket-1 (non-competitive) services  
25 can be combined with Basket-3 (fully competitive) services to form service  
26 packages. When doing so, Qwest can price the package of services at any level  
27 above the TSLRIC (presumably aggregate TSLRIC of the components, although

1 that is not clear by the terms of the Price Cap Plan) of the package. Cox believes  
2 that the Basket-1 services should carry their Basket-1 price into the Basket 3  
3 package and not their TSLRIC. The Settlement Agreement provides for that  
4 instance when the Basket-1, 1FR service is included as part of a package, but not  
5 for other Basket-1 services.

6 The Settlement Agreement requires that Basket-1 services which are  
7 combined with Basket-3 services also be available as stand alone Basket-1  
8 services but is silent as to any price differential which would be allowed. That is,  
9 a Basket-1 service (other than 1FR) could carry a TSLRIC price in the package  
10 and a higher retail price as a stand-alone service. This invites opportunities for  
11 pricing mischief. In the instance of the 1FR service, Qwest has claimed that its  
12 price is below TSLRIC and this brings its current price into question, particularly  
13 when packaged with Basket-3 services.

14 The Staff, on the other hand, has indicated that it believes the 1FR is priced  
15 at or above TSLRIC, yet Staff was unable to provide TSLRICs when asked to do  
16 so in data requests. [See ACC Staff Responses to Cox Data Request Nos. 1-12  
17 and 1-13, attached at Tab A]

18 **Q. DR. COLLINS, YOU INDICATED THAT ONE OF COX'S GENERAL**  
19 **CONCERNS WAS THE EXISTENCE OF A "SPOT PRICING" PROVI-**  
20 **SION IN THE SETTLEMENT AGREEMENT. WHAT ARE THE**  
21 **SPECIFICS UNDERLYING THIS CONCERN?**

22 **A.** In Cox's view it is clear that the Settlement Agreement attempts to accomplish by  
23 fiat what could not be accomplished by a compelling showing of facts in Qwest's  
24 initial and subsequent filings. The Price Cap Plan provides that –

25 “[n]ew services and packages in Basket 3 may be offered to  
26 selected customer groups based on their purchasing patterns or  
27 geographic location, for example.”

1 This provision substitutes “spot” pricing and “customer specific pricing” (with or  
2 without the presence of competition) for the “competitive wire center” criteria  
3 Qwest requested in its previous filings. That results in flexible pricing  
4 *independent* of the existence of a suitable level of competition – a situation which,  
5 from a competitive viewpoint, is even more onerous, biased, and chilling of  
6 competition.

7 Of equal concern is that the proposed Settlement Agreement provides no  
8 clear standard for approval of a new service or package, particularly if it is a  
9 “spot” pricing proposal. Although the Price Cap Plan contemplates that new  
10 services and packages are subject to review and approval by the Commission  
11 (Section 4(a)), the need for consideration of competitive impact and the  
12 appropriateness of flexible pricing are not spelled out. Indeed, Qwest could offer  
13 a new package of services (one that could include 1FR, for example) in a narrow  
14 geographic area, but it would not have to meet Rule 1108 standards (nor would  
15 competition necessarily have to exist) for Qwest to gain flexible pricing. This  
16 possibility is much worse than the flexible pricing process proposed by  
17 Proposition 108, which was overwhelmingly rejected by the voters, or the  
18 “competitive zone” proposal, which at least required some competition in an area  
19 before flexible pricing.

20 In fact, A.A.C. R14-2-1108 provides Qwest with the appropriate freedom to  
21 modify their service offerings and their price structures to gain appropriate pricing  
22 flexibility without chilling emerging competition. It is unclear to me why Qwest  
23 could not use this pathway to achieve the end rather than to attempt yet another  
24 end run on the Commission’s rules.

25 In sum, the Commission should reject the Settlement Agreement provision  
26 that would allow new services or packages to be offered to selected customer  
27 groups based on geographic location or purchaser patterns. This provision is rife

1 with potential abuse that could devastate competition. Moreover, as currently  
2 stated, it is too vague and ambiguous, which only exacerbates the potential abuse.

3 **Q. WHAT IS COX'S CONCERN ABOUT THE PRICE FLOOR BEING SET**  
4 **AT TSLRIC?**

5 A. Services that are priced at TSLRIC simply do not recover all of their costs. When  
6 the price for a service is set at TSLRIC, that price does not recover the associated  
7 and attributable shared cost of the family of services of which the service in  
8 question is a member. It is a characteristic of a TSLRIC determination that if one,  
9 some or all of the services in the family – in the aggregate – recover the TSLRIC  
10 plus shared cost, then there is no economic theory opportunity to observe cross  
11 subsidization within the family.

12 This failure to recover all of a services cost is the reason the FCC  
13 abandoned the TSLRIC methodology in its UNE pricing order and required  
14 TELRIC pricing. The TSLRIC concept is not appropriate to use in doing cost  
15 studies in an emerging competitive environment because it, in practice, allows for  
16 cross subsidization within services in the service family to the extent of some or  
17 all of the shared cost. It is a concept that historically never achieved the desired  
18 regulatory result of the elimination of cross subsidies. Additionally, Cox asked  
19 Qwest in discovery if Qwest would agree not to recover the unassigned shared  
20 family costs and unrecovered direct costs that normally would be assigned to a  
21 service (but had not been so assigned due to TSLRIC prices) from other services.  
22 Qwest indicated that they would not agree. [See Qwest Response to Cox Data  
23 Request No. 1-008 (attached at Tab B)] Thus, the door to cross subsidization has  
24 been opened by the proposed Settlement Agreement.

25 In today's world of emerging telecommunications competition, encouraged  
26 by Congress' and the FCC's mandate to state commissions to create a  
27 competitively neutral environment, it is clear that the price floor of a service

1 should be the full cost incurred in providing the service. Here, that price is the  
2 sum of the imputed TELRIC costs for the UNEs which technologically allow the  
3 service; any appropriately assigned balance of joint/shared cost; an appropriate  
4 amount of assignable common cost; and any specific cost to market the service.  
5 Failure to include any of these cost components on a service basis – while Qwest  
6 recovers its total costs in its total revenue – implies cross subsidization is taking  
7 place in some manner. That is not proper and it hurts competition. Therefore,  
8 Cox urges the Commission to modify the price floor for Qwest's services.

9 **Q. DO YOU HAVE OTHER CONCERNS WITH THE TSLRIC PRICE**  
10 **FLOOR?**

11 A. A settlement agreement that is not enforceable is a flawed agreement. To be  
12 enforceable, the terms of the agreement must be capable of being judged as to the  
13 degree to which they are met by the parties. In this instance the entire price floor  
14 concept has no metric for determining whether or not it is being met. To assess  
15 the potential enforceability, Cox asked Commission Staff the following data  
16 requests and received the following responses (Staff's Responses are attached at  
17 Tab A):

18 COX 1-12: For each of the services or package of services in  
19 Baskets 1, 2 and 3, state the TSLRIC price floor under  
20 the Price Cap Plan. For each service or package of  
21 services, please identify the (a) service or package of  
22 services, (b) the TSLRIC for that service or package of  
23 services, (c) documentary support in filings in this  
24 docket for the TSLRIC, and (d) other documentation  
25 showing how the TSLRIC was calculated.

26 RESPONSE: Please see the tariff for all services or packages  
27 offered by Qwest. The price of each existing service or  
28 basket of services has been previously approved by the  
29 Commission. In considering the pricing, whether in a  
30 rate case or in an initial tariff, the Commission  
31 determined the rate to be above TSLRIC. No separate  
32 examination of the TSLRIC for each service has been  
33 undertaken in connection with this Agreement. As new  
34 services have been introduced, Staff has reviewed cost  
35 support information to determine whether the proposed  
36 rates exceed the cost of providing the service.

1 COX 1-13: Does the Staff have the Commission approved  
2 TSLRIC price floors for the services in the Settlement  
3 Agreement that the Staff has requested the Parties to  
4 approve? If so what is the source of that information  
5 and please provide copies of it.

6 RESPONSE: No. See response to 1 – 12

7 The only conclusion that can be drawn from these responses is that, in Staff's  
8 view, the basic information to determine the price floors does not exist. Therefore,  
9 the Settlement Agreement's price floor is not capable of being enforced and Cox  
10 cannot support this provision of the Agreement.

11 **Q. YOU INDICATED THAT COX HAD A CONCERN ABOUT THE**  
12 **"SUPPORT AND DEFEND" PROVISION IN THE SETTLEMENT**  
13 **AGREEMENT. WHAT IS THAT CONCERN?**

14 **A.** Cox's concern is based on the ambiguous nature of the provision as it is written  
15 and its potential for exposing carriers to unlimited financial and other resource  
16 losses. Cox asked Commission Staff for clarification, and received the following  
17 responses (Staff's Response is attached at Tab A):

18 COX 1-10: In the Section of the Agreement entitled  
19 "SUPPORT AND DEFEND" (at p. 12), it indicates that  
20 "[e]ach Party will support and defend this Agreement  
21 and any order entered by the Commission approving this  
22 Agreement before the Commission or other regulatory  
23 agency or before any court in which it may be at issue."  
24 The Staff is a Party to the Agreement. As to that  
25 participation:

- 26 a. What resources would the Staff expect to apply to such a  
27 defense.
- 28 b. Which Party would lead the support and defense team?
- 29 c. In the situation where the Parties disagreed about the  
30 nature and content of the support/defense, how would  
31 the situation be rationalized?
- 32 d. Would the resources (financial and otherwise) expected  
33 to be committed by the Staff be capped or limited in any

1 way and would those same limitations apply to the  
2 remaining Parties?

3 RESPONSE:

- 4 a. Staff would expect to devote the resources that are  
5 available and appropriate to such a defense, dependent  
6 on the nature and forum involved.
- 7 b. Staff has no reason to anticipate that a decision would be  
8 necessary as to which Party would lead a "support and  
9 defense team". The Agreement speaks for itself as to  
10 the nature and extent of the Parties' agreement. Staff  
11 would anticipate proceeding as it deemed appropriate in  
12 response to any situation which might arise.
- 13 c. Staff has no reason to anticipate that the Parties might  
14 disagree about the nature and content of the  
15 "support/defense". The Agreement speaks for itself as  
16 to the nature and extent of the Parties agreement. Staff  
17 would anticipate proceeding as it deemed appropriate in  
18 response to any situation which might arise.
- 19 d. The Agreement does not provide for a cap or limitation  
20 on resources to be committed by Staff or any remaining  
21 Parties.

22 That response did not clarify the "Support and Defend" provision. The continuing  
23 ambiguity is introduced by the response to part (b) and (c) and provided above for  
24 reference. The concern about the level of commitment of financial and other  
25 resources is introduced by the response to (d). Consequently, Cox cannot support  
26 this provision.

27 **Q. DR. COLLINS, YOU INDICATED THAT THE REDUCTION IN INTRA-**  
28 **STATE SWITCHED ACCESS CHARGES PROVIDED IN THE SETTLE-**  
29 **MENT AGREEMENT AND THE NOTION OF BRINGING THEM IN**  
30 **LINE WITH INTER-STATE ACCESS CHARGES WAS A CONCERN.**  
31 **WHAT ASPECT OF THIS PROVISION CAUSES COX THAT CONCERN?**

32 **A.** Cox has a concern about the annual \$5 million reduction in intrastate switched  
33 access charges with a concomitant increase in Basket-3 revenues. This concern is  
34 based on a lack of detail which describes the relationship, if any, between this

1 reduction and Qwest's recent inter-state access charge price elements being  
2 unbundled. Qwest (then US West Communications (USWC)) recently restruc-  
3 tured its FCC Tariff No. 5 Access Service, Section 6, Switched Access Service,  
4 and Section 20, Common Channel Signaling Network. In these sections, USWC  
5 unbundled its Signaling System Seven (SS7) call set-up function from the Local  
6 Switching Function.

7 Although Qwest indicated that the restructuring would be revenue neutral, a  
8 preliminary analysis of this USWC action by Cox indicates that it will increase  
9 Cox's operating expenses in Arizona by an amount which would range between  
10 \$0.7 million and \$1 million a year. Cox does not have the information that would  
11 be needed to determine what effect the proposed \$5.0 million dollar decrease in  
12 intra-state switched access charges with any concomitant increase in local  
13 switching, switched transport, and SS7 charges will be. Cox is concerned that  
14 these potential increased operating expenses for new market entrants will chill  
15 their entry and perhaps impact their ability to remain in the competitive market.  
16 The Commission should satisfy itself that no such mischief will take place before  
17 approving this provision of the proposed Settlement Agreement.

18 **Q. DR. COLLINS, DO YOU HAVE ANY OTHER CONCERNS OR**  
19 **PROPOSED MODIFICATIONS FOR THE PRICE CAP PLAN,**  
20 **ASSUMING THE GENERAL STRUCTURE OF THAT PLAN IS**  
21 **ADOPTED?**

22 **A.** Yes. I am concerned about the potential lack of notice to CLECs regarding:  
23 (i) pricing changes; (ii) moving services from one basket to another; or  
24 (iii) introducing new services or packages. Qwest should be required to provide  
25 notice upon any filing related to the Price Cap Plan to a Commission-maintained  
26 list of interested CLECs or other interested parties (such as consumers groups).  
27 Given the potential short-time frames for approval and the potential for

1 detrimental impacts on competition, those entities should have a full opportunity  
2 to participate in those dockets.

3 **Q. DR. COLLINS, DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A. Yes, it does.**

A

**ARIZONA CORPORATION COMMISSION STAFF'S RESPONSES  
TO COX ARIZONA TELCOM, L.L.C.'S FIRST SET OF DATA  
REQUESTS TO ACC STAFF RE PROPOSED SETTLEMENT  
DOCKET NO. T-01051B-99-0105  
OCTOBER 27, 2000**

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Cox 1-10 In the Section of the Agreement entitled "SUPPORT AND DEFEND" (at p. 12), it indicates that "[e]ach Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue." The Staff is a Party to the Agreement. As to that participation:

- a. What resources would the Staff expect to apply to such a defense.
- b. Which Party would lead the support and defense team?
- c. In the situation where the Parties disagreed about the nature and content of the support/defense, how would the situation be rationalized?
- d. Would the resources (financial and otherwise) expected to be committed by the Staff be capped or limited in any way and would those same limitations apply to the remaining Parties?

**RESPONSE:**

- a. Staff would expect to devote the resources that are available and appropriate to such a defense, dependent on the nature and forum involved.
- b. Staff has no reason to anticipate that a decision would be necessary as to which Party would lead a "support and defense team". The Agreement speaks for itself as to the nature and extent of the Parties' agreement. Staff would anticipate proceeding as it deemed appropriate in response to any situation which might arise.
- c. Staff has no reason to anticipate that the Parties might disagree about the nature and content of the "support/defense". The Agreement speaks for itself as to the nature and extent of the Parties agreement. Staff would anticipate proceeding as it deemed appropriate in response to any situation which might arise.
- d. The Agreement does not provide for a cap or limitation on resources to be committed by Staff or any remaining Parties.

**Respondent(s): Christopher C. Kempley, Assistant Chief Counsel**

ARIZONA CORPORATION COMMISSION STAFF'S RESPONSES  
TO COX ARIZONA TELCOM, L.L.C.'S FIRST SET OF DATA  
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Cox 1-12 For each of the services or package of services in Baskets 1, 2 and 3, state the TSLRIC price floor under the Price Cap Plan. For each service or package of services, please identify the (a) service or package of services, (b) the TSLRIC for that service or package of services, (c) documentary support in filings in this docket for the TSLRIC, and (d) other documentation showing how the TSLRIC was calculated.

**RESPONSE:** Please see the tariff for all services or packages offered by Qwest. The price of each existing service or basket of services has been previously approved by the Commission. In considering the pricing, whether in a rate case or in an initial tariff, the Commission determined the rate to be above TSLRIC. No separate examination of the TSLRIC for each service has been undertaken in connection with this Agreement. As new services have been introduced, Staff has reviewed cost support information to determine whether the proposed rates exceed the cost of providing the service.

Respondent(s): William Dunkel, ACC Consultant; and  
Wilfred M. Shand, Chief Economist

ARIZONA CORPORATION COMMISSION STAFF'S RESPONSES  
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COX 1-13 Does the Staff have the Commission approved TSLRIC price floors for the services in the Settlement Agreement that the Staff has requested the Parties to approve? If so what is the source of that information and please provide copies of it.

**RESPONSE:** No. See response to 1 - 12

**Respondent(s):** William Dunkel, ACC Consultant

**B**

Arizona <sup>10/27/00</sup>  
Docket No. T-1051B-99-105  
COX 1-008

INTERVENOR: Cox Arizona Telecom

REQUEST NO: 008

Section 2-c of the Price Cap Plan provides the TSLRIC of a service as the price floor.

a. Does Qwest agree that, in doing so, it will not recover the unassigned shared family costs and unrecovered common costs.

b. Will Qwest agree not to recover the unrecovered costs of "a" above from other services?

RESPONSE:

a. No.

b. No.

Jerrold Thompson  
Executive Director- Cost Advocacy  
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Denver, CO