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LEWIS
AND
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LLP
LAWYERS

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner

Arizona Corporation Commission
DOCKETED

MAY 17 2001

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

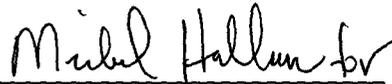
Docket No. T-00000A-97-0238

NOTICE OF FILING PREFILED DIRECT TESTIMONY OF
DON PRICE
ON BEHALF OF WORLD COM, INC.

WorldCom, Inc. ("WCOM") hereby files the testimony of Don Price in the
above-referenced matter.

1 DATED this 17th day of May, 2001.

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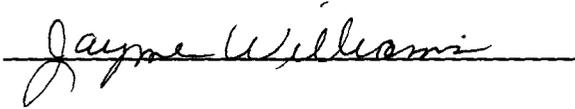
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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST]
COMMUNICATIONS, INC.'S]
COMPLIANCE WITH SECTION 271]
OF TELECOMMUNICATIONS ACT]
OF 1996]

DOCKET NO. T-00000A-97-238

DIRECT TESTIMONY OF

DON PRICE

RE: PUBLIC INTEREST

WORLDCOM, INC.

MAY 17, 2001

DIRECT TESTIMONY OF DON PRICE
ON BEHALF OF
WORLD.COM, INC.

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Don Price. My business address is 701 Brazos, Suite 600,
3 Austin, Texas 78701.

4

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

6 A. I am employed by WorldCom in the Western Region Public Policy group
7 as Senior Regional Manager, Competition Policy. In that capacity, I have
8 broad responsibilities in the development and coordination of MCI's
9 regulatory and public policy initiatives in a number of states including the
10 Qwest states, the Southwestern Bell states, California (Pacific Bell),
11 Nevada (Nevada Bell), and the Ameritech states.

12

13 Q. HAVE YOU PREVIOUSLY TESTIFIED?

14 A. Yes, I have. I have not, however, previously testified before the Arizona
15 Corporation Commission.

16

17 Q. HAVE YOU PREPARED A SCHEDULE OF YOUR PROFESSIONAL
18 AND ACADEMIC QUALIFICATIONS?

19 A. Yes. Attached to this testimony as Attachment 1 is a schedule providing
20 my academic background, work experience, and the proceedings in which
21 I have previously presented testimony. As detailed in that attachment, my

1 experience in telecommunications spans more than 22 years, including
2 five years in the employ of an incumbent local exchange carrier, three
3 years on the staff of the Public Utility Commission of Texas, and more
4 than 14 years with WorldCom (by way of MCI). Beginning in 1993 with
5 MCI's acquisition of Western Union Access Transmission Services, my
6 responsibilities in the state regulatory department have focused on public
7 policy issues relating to competition in local exchange telecommunications
8 markets. Until the passage by Congress of the 1996 Act, I was closely
9 involved with MCI's advocacy in the states urging the elimination of legal
10 and economic barriers to entry into local telecommunications markets.
11 Subsequent to passage of the Act, my responsibilities have included
12 direct participation in the development and implementation of the
13 company's policy positions on key topics such as interconnection and
14 unbundled network elements, both as to terms and conditions and pricing.
15 I have testified on related public policy issues in arbitration proceedings in
16 Texas, North Carolina, Florida, Georgia, California, Louisiana, and
17 Tennessee.

18
19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 **A.** The purpose of my testimony is to present to the Commission a
21 discussion of the public interest issues raised by Qwest's request to be
22 permitted entry into the Arizona long distance market. First, I will discuss
23 the concept of the "public interest" and explain its importance in this

1 context. Second, my testimony will discuss why the state is in a preferred
2 position to assess the public interest in the context of a 271 application.
3 Third, I will discuss why pricing issues under §252(d)(1) of the Act
4 represent a critical component of a public interest consideration. Fourth, I
5 will present evidence that Qwest continues to behave as a monopoly and
6 to demonstrate a monopoly mindset, and will discuss the implications of
7 such behavior on this Commission's consideration of the public interest.
8 Fifth, my testimony discusses the inherent problems in attempting to
9 regulate good behavior and why structural separation of Qwest's
10 monopoly and competitive components is ideally suited to the task of
11 preventing abuses of monopoly power as Qwest is permitted to operate in
12 competitive markets. Sixth, I discuss some of the key regulatory tools the
13 Commission absolutely must "get right" if it chooses a regulatory over a
14 structural approach to dealing with continuing monopoly power.

15
16 **I. The Public Interest**

17
18 **Q. WHAT IS THE PUBLIC INTEREST?**

19 **A.** The public interest is the balance which regulators seek to achieve
20 between the various interests as they decide complex public policy issues.
21 For example, an electric utility may have a need to augment transmission
22 capacity to a given area requiring additional high-voltage transmission
23 lines into that area. The various private interests here would include the

1 economic interests of the property owners whose property would be
2 impacted by the transmission line, the economic interest of the utility in
3 trying to route the new transmission line without undue expense, the
4 aesthetic interest of persons who would see the transmission facility, and
5 the health and safety issues associated with the proximity of the
6 transmission line to schools, parks, libraries, hospitals, and other such
7 public locations. As this example shows, there is no formula for
8 quantifying the public interest. Rather, the public interest requires the
9 decision-maker to qualitatively assess the pros and cons from varying
10 perspectives in an effort to achieve a balance among the varying
11 interests. The balancing of even more complex issues is required as
12 regulators grapple with competitive issues such as are presented today in
13 the telecommunications industry.

14
15 **Q. IS ACHIEVING THE PUBLIC INTEREST THE BASIS FOR**
16 **REGULATION OF CERTAIN FIRMS?**

17 **A.** Yes. Our society is one that typically prefers free markets over centrally-
18 controlled markets such as existed in the Soviet Union. There are good
19 reasons for such a preference. Competitive markets are much better at
20 allocating society's resources and in meeting consumers' needs. This is
21 because firms in competitive markets strive to distinguish themselves from
22 their competitors so as to earn a higher profit for their investors relative to
23 the rest of the firms operating in that market. Such efforts typically take

1 one of two forms. One is for the firm to introduce efficiencies in the
2 means of production, yielding cost savings it can pass on to customers in
3 the form of lower prices.¹ The second way in which a firm may seek to
4 distinguish itself from its competitors is by introducing innovative products
5 or services which differentiate the firm from others in that market. In
6 either case, the motive of obtaining greater profits for the firm's investors
7 is the stimulus for innovation.

8 A firm that operates without competition has no such incentive to
9 seek cost savings in production, because there are no constraints on the
10 prices it can charge for its products. Market forces by definition cannot
11 restrain the firm's profits. Likewise, such a firm -- whether it operates only
12 in retail markets, wholesale markets, or both -- has no incentive to
13 introduce innovative products or services to stimulate profits, because it
14 has no need to differentiate itself in a market where it stands alone.²
15 Economists refer to this type of situation as a "market failure." It is only in
16 such instances that our society has imposed regulation of such a firm as a
17 government imposed reaction to this "failure" of the market to deliver
18 goods and services to consumers.

¹ The advantage from the introduction of such efficiencies is typically short-lived, as other firms seek to erase or minimize the temporary disadvantage by following the market leader.

² For example, prior to the introduction of competition for customer premises equipment in telecommunications, consumers had few choices in terms of style, colors, or features in their telephone sets. Because it would not have increased earnings, the Bell System had no incentive to introduce new styles or colors of phones. Similarly, consumer features were introduced on a timetable which suited Bell System's management, rather than the desires of consumers. It is widely recognized that the pace of such introduction by monopolies is far slower than the pace in competitive markets where firms have an obvious profit motive to be the first to market with such innovations.

1 Our belief in free markets over centrally-controlled markets was
2 articulated succinctly by President Bush's recent appointment to the
3 Federal Energy Regulatory Commission, Pat Wood, who stated:

4 On our best days as regulators, we cannot deliver benefits to
5 customers as well as a functional market can. But the market
6 must work right first.³

7 Unlike the markets for consumer products such as toothpaste,
8 apparel, consumer electronics, automobile tires, and so on, there is no
9 "functional market" for local telecommunications goods and services.⁴
10 Rather, the telecommunications market in the U.S. has been a monopoly
11 for virtually all of the more than 130 years since the telephone was
12 introduced. It has been only during the past 17 years that competition has
13 begun to exist for certain telecommunications services. The competition
14 that does exist today is due almost entirely to the 1984 divestiture which
15 resolved the U.S. government's massive antitrust case against the Bell
16 System.

17 Policy-makers have limited options in the absence of a "functional
18 market." One option is simply to accept the fact of a market failure and
19 engage in traditional regulation. That option is not consistent with the
20 public policy exemplified in the 1996 Act, however, which is to encourage
21 the historic local telecommunications monopolies -- including Qwest -- to
22 open their local markets to competition in exchange for the legal right to

³ "Two Named to Energy Panel; Bush Picks Texan, Pennsylvanian to Fill FERC Vacancies,"
Washington Post, March 28, 2001.

⁴ As discussed in more detail below, vibrant competition exists in other telecommunications
markets, such as interLATA long distance and customer premises equipment.

1 enter the competitive long distance market in their service territories. This
2 policy, however, presents a number of difficult and complex issues to
3 regulators. As relates to the public interest, regulators must not only
4 assess the competing private interests of incumbent providers and would-
5 be market entrants, they must craft regulations designed to create
6 conditions where competition in local telecommunications markets can
7 flourish, and existing competition in the long distance markets is not
8 diminished.

9
10 **Q. YOU HAVE STATED THAT REGULATION EXISTS WHERE THERE IS A**
11 **MARKET FAILURE. HOW DO REGULATORS CREATE CONDITIONS**
12 **WHERE COMPETITION CAN FLOURISH WHEN BY DEFINITION**
13 **THERE CAN BE NO "FUNCTIONAL MARKET" ABSENT**
14 **REGULATION?**

15 **A.** In the broadest terms, regulators should enact pro-competitive measures
16 to both encourage good behavior and discourage anticompetitive behavior
17 by Qwest. Such measures should seek both to neutralize the enormous
18 advantages that Qwest possesses in the local market by virtue of its
19 market power, and to ensure that Qwest does not use that market power
20 to monopolize downstream markets such as broadband and long
21 distance.

22
23 **Q. WHAT DO YOU MEAN BY THE PHRASE "MARKET POWER?"**

1 **A.** By the term "market power," I mean that Qwest has the ability with respect
2 to various telecommunications services to control the market prices for
3 those services. Also, Qwest has the ability to foreclose competitive entry
4 by other firms for the provision of competing services.⁵ In its service
5 territories in Arizona, Qwest's undeniable market power exists by virtue of
6 its control of local bottleneck facilities. Qwest has enjoyed a preferred
7 status as a provider of telecommunications services in Arizona. For most
8 of its existence, it has operated with the protection of a state-authorized
9 monopoly, such that no competitor could even obtain the legal right to
10 operate in competition with Qwest. In addition, Qwest enjoyed the
11 prerogative of financing the construction of its ubiquitous network over a
12 period of decades with captive ratepayer funds.⁶

13

14 **Q.** **YOU STATED ABOVE THAT THE COMMISSION SHOULD ENACT**
15 **REGULATIONS WHICH PROVIDE INCENTIVES FOR QWEST TO**
16 **BEHAVE IN WAYS THAT FACILITATE COMPETITION IN THE**
17 **ARIZONA TELECOMMUNICATIONS MARKETS. WOULD YOU**
18 **ELABORATE ON THE RELATIONSHIP OF THIS GOAL TO THE**
19 **PUBLIC INTEREST?**

⁵ As the Court noted in its landmark opinion approving the consent decree presented to resolve the Justice Department's antitrust action against AT&T, "as defined by the Supreme Court, monopoly power is "the power to control prices or exclude competition.'" *US v. American Tel & Tel*, 552 F. Supp. 131 (1982), at 171, citing *US v. Grinnell Corp*, and *US v. duPont & Co*. In my testimony, I will use the term "market power" to mean the same thing.

⁶ I will address below in more detail why Qwest's situation -- with an already-constructed, ubiquitous network worth billions of dollars funded with virtually no risk to its shareholders -- provides it a huge competitive advantage over its potential CLEC competitors.

1 **A.** Yes. As previously noted, our society is predicated on a preference for
2 free markets over centrally controlled markets. But as Pat Wood's earlier
3 statement notes, the market must first "work right." With this in mind, we
4 can examine what reasonably would be expected of Qwest in terms of its
5 behavior in a "free" market. Like any for-profit concern, Qwest possesses
6 a natural incentive to manage its operations in a way that provides the
7 highest financial return to its investors. But because of its control of
8 bottleneck facilities on which its would-be competitors in both the local
9 and long distance markets must rely, it has both the incentive and the
10 ability to exploit such control, always ensuring a competitive advantage
11 over its competitors. If Qwest were allowed to act on this normal incentive
12 and exploit its undeniable market power, the competitive process would
13 suffer irreversible damage. Such a result would not be in the public
14 interest.

15 Adopting regulations to limit Qwest's ability to exercise its market
16 power to the detriment of the competitive process likely would trigger a
17 claim by Qwest that it is harmed by such regulations. In such a situation,
18 the Commission must consider whether the public interest is better served
19 by facilitating the development of competition in Arizona's
20 telecommunications markets even though Qwest's private business
21 interest is diminished. That is, the Commission must prioritize the pros
22 and cons of the potential benefits to consumers of a more competitive
23 marketplace versus alleged harm to Qwest. The fundamental public

1 interest challenge is how to weigh the competing private interests of
2 incumbent versus would-be competitor in the larger context of the overall
3 benefits to the competitive process which is the best way to ensure that
4 customers obtain the best possible services at the lowest prices.

5
6 **Q. WHY IS IT NOT A REASONABLE PUBLIC POLICY MEASURE TO**
7 **SIMPLY ELIMINATE ALL REGULATION OF ALL PROVIDERS AND**
8 **LET THE MARKET DECIDE THE WINNERS AND LOSERS?**

9 **A.** As noted above, regulation is exercised in instances where one provider
10 has market power and the market cannot "self regulate." The market
11 power Qwest possesses in the local telecommunications market means
12 that the market simply cannot "work right," and elimination of all
13 regulations would simply free Qwest to exercise its market power to the
14 detriment of both consumers and the competitive process. The public
15 interest considerations the Commission is making in this proceeding
16 involve two different but related questions. One is whether the market for
17 local telecommunications services has been sufficiently open to permit
18 new entrants (CLECs) a meaningful opportunity to compete for both
19 traditional voice services and emerging broadband offerings. The other is
20 what is the likely impact of Qwest's entry into a market for long distance
21 telecommunications services that is already subject to robust competition.

22

1 **II. States and the Public Interest**

2

3 **Q. ARE STATE REGULATORS UNIQUELY POSITIONED TO CONSIDER**
4 **PUBLIC INTEREST ISSUES?**

5 **A.** Yes, they are. This fact was recognized by Congress in passing the
6 Communications Act of 1934, and underscored in the 1996 amendments
7 to the Act. For example, Section 251(d) of the Act contains limitations on
8 the FCC's authority to preclude certain state regulations, orders, or
9 policies that are consistent with the Act's requirements. Even more
10 directly related to the purpose of this proceeding, the Act specifically
11 requires the FCC to consult with the State in considering a Bell
12 Company's application for authority to provide long distances services
13 within its service territory pursuant to §271 of the Act.

14 The states are uniquely positioned to consider public interest
15 issues because this is where the proverbial rubber meets the road. This
16 Commission has not merely observed from afar the implementation of the
17 Act's market-opening provisions, but actively has been involved at every
18 step of the process. From reviewing negotiated interconnection
19 agreements, to arbitrating complex policy issues on which the CLEC and
20 Qwest could not reach agreement, establishing prices for unbundled
21 network elements, and resolving disputes over interpretations of language
22 in interconnection agreements, the Commission regularly has grappled
23 with difficult issues of importance to the consumers of Arizona. Such
24 extensive "on-the-job training" establishes this Commission as the most

1 qualified body to consider issues of the public interest as it impacts
2 Arizonans.

3 Perhaps even more importantly, in recent comments before an
4 American Bar Association antitrust enforcement panel, the Chair of the
5 FCC signaled that he will not be as aggressive in enforcing the public
6 interest standard, which is part of the FCC's review of ILECs' 271
7 applications before that agency.⁷ Arizona consumers must therefore look
8 to this Commission for leadership in making sure that Qwest's entry into
9 the long distance market serves the public interest in this State.

10
11 **Q. WHAT IS THE KEY ISSUE FOR THE COMMISSION TO CONSIDER IN**
12 **ASSESSING THE PUBLIC INTEREST IMPLICATIONS OF QWEST'S**
13 **ENTRY INTO THE ARIZONA LONG DISTANCE MARKET?**

14 **A.** It is the question of timing of that entry. Obviously, there are risks
15 associated with allowing Qwest into the long distance market either too
16 early or too late. As I discuss throughout my testimony, there are a
17 number of reasons why the risk to the public interest is immeasurably
18 greater if Qwest is permitted into the long distance market earlier rather
19 than later.

20
21 **Q. WHAT POLICY RESULT IS INDICATED BY THE REWARD**
22 **STRUCTURE SET OUT IN THE ACT?**

1 A. Congress clearly recognized the inherent risk to consumers and to
2 competition if Qwest is allowed to enter the long distance market
3 prematurely; i.e., before Qwest's local market is irreversibly open to
4 competition.

5

6 Q. **WHAT ARE THE RISKS TO ARIZONANS IF THE COMMISSION GETS**
7 **THE TIMING WRONG?**

8 A. The history of telecommunications regulation in the U.S. in the 20th
9 Century reveals the undeniable difficulties associated with opening up
10 previously monopolized markets to competition. At the turn of the century,
11 the Bell System refused to interconnect its long distance facilities with the
12 local networks operated by the independent (i.e., non-Bell affiliate)
13 companies until threatened with prosecution under the nation's antitrust
14 laws. The threat of anti-trust action led to a commitment by the Bell
15 System to interconnect its long distance network with both unaffiliated and
16 affiliated local telephone companies; a commitment known as the
17 Kingsbury Commitment, which was entered in 1913. A subsequent anti-
18 trust suit brought by the Justice Department in 1949⁸ ended with the entry
19 of a meaningless consent decree that did not correct the alleged anti-
20 competitive activities. The effectiveness of that resolution and the FCC's

⁷ Wall Street Journal, May 1, 2001, "Politics & Policy: Powell Quickly Marks Agency as His Own" by Yochi J. Dreazen

⁸ The government's complaint alleged that the Bell System "had monopolized and conspired to restrain trade in the manufacture, distribution, sale, and installation of telephones, telephone apparatus, equipment, materials, and supplies, in violation of sections 1, 2, and 3 of the Sherman

1 later efforts to deal with anticompetitive actions by the Bell System in the
2 1970s was described by Judge Harold Greene⁹ as follows:

3 The efforts of various arms of government to introduce true
4 competition into the telecommunications industry have been ...
5 feeble. The anti-trust suit brought by the Department of Justice
6 in 1949 ended in 1956 with a consent decree which imposed
7 injunctive relief that was patently inadequate. It took from 1968
8 when the *Carterfone* decision was handed down by the FCC to
9 1978 when the United States Court of Appeals decided
10 *Execunet II* to establish even the very principle of competition so
11 that it was beyond dispute by [the Bell System].¹⁰

12 Because Qwest continues to possess market power,¹¹ and for the reasons
13 discussed below, there is significant risk that Qwest could exercise its
14 market power in such a way as to re-monopolize certain
15 telecommunications markets. The significant barriers to entry in the
16 consumer market should be of particular concern to the Commission. As
17 the FCC noted:

18 ...BOC entry into the long distance market would be
19 anticompetitive unless the BOCs' market power in the local
20 market was first demonstrably eroded by eliminating barriers to
21 local competition.¹²

Act...." *US v. American Tel. and Tel.*, 552 F. Supp. 131 (1982) (hereinafter referenced as "AT&T"), at 135-136.

⁹ Judge Greene oversaw the anti-trust action brought by the Justice Department against the Bell System in 1974 which was resolved by the 1984 divestiture of the Bell Operating Companies from AT&T.

¹⁰ *AT&T* at 170

¹¹ The source of Qwest's market power is its control over a ubiquitous telecommunications network throughout its operating territory. As noted in the FCC's Local Competition Order, "An incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches trunking and loops to serve its customers." (FCC Order 96-325 in CC Docket 96-98, released August 8, 1996, at ¶ 10)

¹² *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order in CC Docket No. 97-137, Order FCC 97-298, released August 19, 1997, at 18.

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Q. IS IT TRUE THEN THAT THIS COMMISSION'S ONLY TASK IS TO ASSESS THE CURRENT STATE OF QWEST'S EFFORTS TO OPEN ITS LOCAL MARKETS TO COMPETITION?

A. No. The public interest requires that the Commission look not only at Qwest's prior actions, but also must make every effort to anticipate the impact of those actions in the future. This notion was described by the FCC in the following manner:

While BOC entry into the long distance market could have procompetitive effects, whether such benefits are sustainable will depend on whether the BOC's local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis.¹³

As this passage indicates, the FCC disagrees with the conclusion presented by Qwest's witness, Mr. Teitzel, that the public interest test has no independent significance from the so-called "checklist."

Q. WHAT SORTS OF PROSPECTS FOR FUTURE COMPETITION EXIST THAT THE COMMISSION MIGHT ANTICIPATE AS IT WEIGHS THE PUBLIC INTEREST ASPECTS OF QWEST'S ENTRY INTO THE ARIZONA LONG DISTANCE MARKET?

¹³ Id., at 390.

1 A. There are several facts indicating that the prospects for a vibrant
2 competitive marketplace for a variety of telecommunications services in
3 Arizona are shaky, at best.

4 First, the Commission need look only to the speed with which
5 Verizon and SBC have captured long distance market share in New York
6 and Texas. In less than one year, both Bell Companies were able to vault
7 from the position of new entrant to that of second-largest carrier in their
8 respective states.¹⁴ While such a result might be taken as indicative of
9 their marketing prowess, I believe it demonstrates something quite
10 different. One must remember that it took ten years following the
11 implementation of "equal access"¹⁵ for MCI to achieve a 20% share of the
12 long distance market. The fact that the Verizon and SBC Bell Companies
13 were able to capture long distance market share so quickly reveals a
14 critical difference between the long distance and the local markets for
15 telecommunications services; namely, that it is far easier for a provider of
16 ubiquitous local services to garner long distance market share than for a
17 provider of long distance services to capture local market share. The
18 reason for this is easy to see. Qwest almost instantly can change a

¹⁴ See, e.g., Telecommunications Reports Daily, April 17, 2001, quoting Maura Breen, president of Verizon Long Distance, on the fact that Verizon captured 20% of the New York long distance market within 12 months. See also, SBC press release dated April 23, 2001, noting that it had won 2.2 million long distance customers in Texas, Oklahoma, and Kansas in less than one year; www.sbc.com/news_center/.

¹⁵ "Equal access" is a term describing the network interconnections non-AT&T long distance companies were finally able to obtain as a condition of the consent decree settling the government's 1974 anti-trust case against the Bell System. The term means network interconnection equal in quality to the interconnections the Bell Companies had historically provided to AT&T. Equal access was implemented on a phased basis beginning in 1984, and was largely completed by 1986.

1 customer's long distance provider using electronic processes triggered
2 with a few keystrokes on a computer terminal. On the other hand,
3 converting a customer's local service from one carrier to another requires
4 numerous steps by both carriers, which steps must be coordinated and
5 which because the ILECs have not implemented electronic means of
6 handling such processes, require significantly more than a few seconds to
7 execute. For example, the intervals offered by the ILECs to accomplish a
8 simple single-line conversion is between 3-5 days. Until the ILECs
9 implement electronic processes to accomplish local conversions, their
10 ability rapidly to capture long distance market share will be immeasurably
11 greater than IXCs' ability to capture local market share.

12 Second, the Commission can open the business section of the
13 newspaper on any given day and read about yet another CLEC that has
14 declared bankruptcy or is otherwise in dire financial straits. A recent
15 report on the status of local competition by the Association for Local
16 Telecommunications Services (ALTS)¹⁶ described the CLECs' dismal
17 financial picture. Of the 36 publicly traded CLECs tracked for the report,
18 three-fourths of the CLECs (27) saw their market capitalization drop by
19 more than 70% in the year ending February 2001. Equally stunning is the
20 fact that only **one** of the CLECs actually experienced a **positive** 52-week
21 change in its market capitalization. Quite simply, it is ludicrous to portray
22 the CLEC industry as comprising significant competitive challenges to

¹⁶ *The State of Local Competition 2001*, ALTS report issued February 2001, at 22.

1 Qwest's monopoly in the provision of local services in the broad consumer
2 market over the long term. According to its most recent ARMIS report to
3 the FCC, Qwest's Arizona revenues for 2000 totaled \$1.7 Billion.¹⁷ The
4 enormous revenue stream Qwest obtains from consumers captured as
5 part of its historic monopoly provides it with a huge advantage over its
6 would-be competitors, most of whom are reeling under massive debt
7 loads. Closely related to the problems facing the CLECs is the decline in
8 the financial standing of the major long-distance companies. Concerns
9 over shrinkage in the traditional voice long distance business has caused
10 the shares of AT&T, Sprint, and WorldCom to drop significantly. Indeed,
11 all three companies have lost between 55% and 69% of their market
12 capitalization over the past year. The financial picture for the Bell
13 Companies is quite rosy by comparison. Even though the overall stock
14 market anxiety has impacted their share prices, the reduction is nowhere
15 as pronounced as the CLECs and IXCs. As the chart on Attachment 2
16 shows, compared to the share prices of AT&T, Sprint, and WorldCom
17 which as discussed above are only about one-half year ago price levels,
18 Qwest's shares are virtually even with year ago levels.

19 Third, there is a tremendous difference in the situation facing a new
20 entrant in the Arizona local telecommunications market and the situation
21 Qwest historically experienced. Qwest entered the market free from any
22 competitive threat by virtue of its government-protected monopoly.

¹⁷ See ARMIS 43-01 report, Table 1: Cost and Revenue table. The intrastate portion of Qwest's revenues was reported at \$1.18 Billion.

1 Perhaps even more important is that Qwest was assured the recovery of
2 its costs and a return on its invested capital. Qwest's situation can be
3 likened to that of an army occupying a town that has been vacated by the
4 enemy, whereas a CLEC faces what could charitably be described as
5 "fierce opposition" by an entrenched enemy who has no incentive or
6 intention of giving up even a single building -- much less the entire town.
7 As the Commission gazes into its crystal ball and seeks to anticipate the
8 future of telecommunications competition in Arizona, it should take into
9 account this sharp disparity between the circumstances of the new market
10 entrants and Qwest as the established local service provider.
11 Recognizing the extent of this disparity also provides insight to the
12 question of why more competition has not yet developed in Arizona,
13 because unlike the historic monopoly, entrants can scarcely afford to
14 enter markets unprofitably.

15 Fourth, the evidence is clear that the Commission should not look
16 to other Bell Companies as a likely source of broad-based competition for
17 Qwest. Rather than competing with each other, the Bell Companies have
18 merely acted to consolidate their geographic monopolies. Bell Atlantic
19 acquired the New York/New England Bell Company known as NYNEX,
20 and then swallowed up GTE to become Verizon. Southwestern Bell
21 acquired Pacific Bell and Nevada Bell to become SBC, and then gobbled
22 up Ameritech -- the Bell Company serving the mid-west. In the case of
23 SBC's acquisition of Ameritech, SBC committed to entering a number of

1 local telecommunications markets outside of its service territories.
2 Notwithstanding the big splash SBC made in the press when it announced
3 entry into several out-of-region markets, recent reports reveal that SBC is
4 significantly scaling back its efforts to compete with its sister Bell
5 Companies such as Qwest. An article in the San Antonio Express-News
6 on March 8, 2001 reported confirmation by an SBC spokeswoman that
7 SBC had "laid off an unspecified number of workers in the seven markets
8 into which [SBC] already expanded," and had "shuttered a 400-employee
9 call center in Tampa, Fl." A Network World article dated March 5, 2001
10 noted that "in New York and Long Island, where SBC says it turned up
11 CLEC service against Verizon late last year, large companies with sister
12 offices in SBC's native territories -- exactly the type of businesses the
13 carrier said it would go after -- remain unaware of SBC's market entry."
14 The article further states that "users and independent competitive local
15 exchange carriers call SBC's effort virtually invisible." By virtue of their
16 decades of experience in providing local services, the ILECs represent the
17 most formidable potential competitors to each other. Given this, the
18 Commission should take careful note that the ILECs expressly have
19 chosen not to compete in each others' territory, but rather have focused
20 their attention on their own territories where they have the ability to exploit
21 their market power.¹⁸

¹⁸ See, "Sitting Pretty: How Baby Bells May Conquer Their World," New York Times, April 22, 2001, by Seth Schiesel. "Some experts had thought that the Bells would invade one another's territories. That did not happen because the Bells knew better than anyone that profits rested on network ownership, and they do not own significant networks in the other companies' territories."

1 Fifth, the Commission should take note of the regulatory tools at its
2 disposal to check competitive abuses and/or exercise of market power in
3 the Arizona consumer market for telecommunications. So-called pricing
4 flexibility plans have had the result of effectively deregulating Qwest
5 before any competitive alternatives in the market could act as a check on
6 its market power. Thus, consumers face the prospect of having neither
7 regulatory protection from, nor competitive alternatives to, the monopoly
8 provider of local telecommunications services.

9
10 **Q. GIVEN THE ABOVE, WHAT IMAGE IS THE COMMISSION LIKELY TO**
11 **SEE IN ITS CRYSTAL BALL?**

12 **A.** The image that is likely to be observed is the same image that existed in
13 the 1970s, when the Arizona market for broad-based consumer
14 telecommunications services was dominated by a single, vertically
15 integrated firm providing both local and long-distance telecommunications
16 services. Unlike the situation that existed in the 1970s, however, such a
17 provider will be subject to, at best, minimal regulatory oversight. Perhaps
18 even more distressing is the likely prospect that Qwest will have leveraged
19 its monopoly over last-mile facilities to become the dominant provider of
20 broadband services in the consumer market. Said differently, a likely
21 scenario is that of a market where consumers have only one choice: an
22 unregulated, integrated firm providing local, long-distance, and
23 broadband/internet services. The strong likelihood of this scenario should

1 be of grave concern as this Commission assesses the public interest
2 implications of Qwest's proposal to enter the long distance market in
3 Arizona.

4
5 **III. Pricing of Network Elements and the Public Interest**

6
7 **Q. EXPLAIN HOW THE PRICING OF NETWORK ELEMENTS RELATES**
8 **TO THE COMMISSION'S CONSIDERATION OF THE PUBLIC**
9 **INTEREST?**

10 **A.** The significance of the pricing of network elements was explained by the
11 FCC in its Local Competition Order,¹⁹ as follows:

12 ...the removal of statutory and regulatory barriers to entry into
13 the local exchange and exchange access markets, while a
14 necessary precondition to competition, is not sufficient to ensure
15 that competition will supplant monopolies. An incumbent LEC's
16 existing infrastructure enables it to serve new customers at a
17 much lower incremental cost than a facilities-based entrant that
18 must install its own switches, trunking and loops to serve its
19 customers. [...] Because an incumbent LEC currently serves
20 virtually all subscribers in its local serving area, an incumbent
21 LEC has little economic incentive to assist new entrants in their
22 efforts to secure a greater share of that market. An incumbent
23 LEC also has the ability to act on its incentive to discourage
24 entry and robust competition by not interconnecting its network
25 with the new entrant's network or by insisting on
26 supracompetitive prices or other unreasonable conditions for
27 terminating calls from the entrant's customers to the incumbent
28 LEC's subscribers.²⁰

¹⁹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order in CC Docket No. 96-98, FCC Order No. 96-325, released August 8, 1996.

²⁰ *Id.*, at § 10.

1 Congress addressed these problems in the 1996 Act by
2 mandating that the most significant economic impediments to
3 efficient entry into the monopolized local market must be
4 removed. The incumbent LECs have economies of density,
5 connectivity, and scale; traditionally, these have been viewed as
6 creating a natural monopoly. As we pointed out in the NPRM,
7 the local competition provisions of the Act require that these
8 economies be shared with entrants. We believe they should be
9 shared in such a way that permits the incumbent LECs to
10 maintain operating efficiency to further fair competition, and to
11 enable the entrants to share the economic benefits of that
12 efficiency in the form of cost-based prices.²¹

13 Thus, a significant barrier to entry into the local telecommunications
14 market would exist absent the CLECs' legal and practical ability to lease
15 components of the incumbents' networks at prices based on forward-
16 looking economic costs.

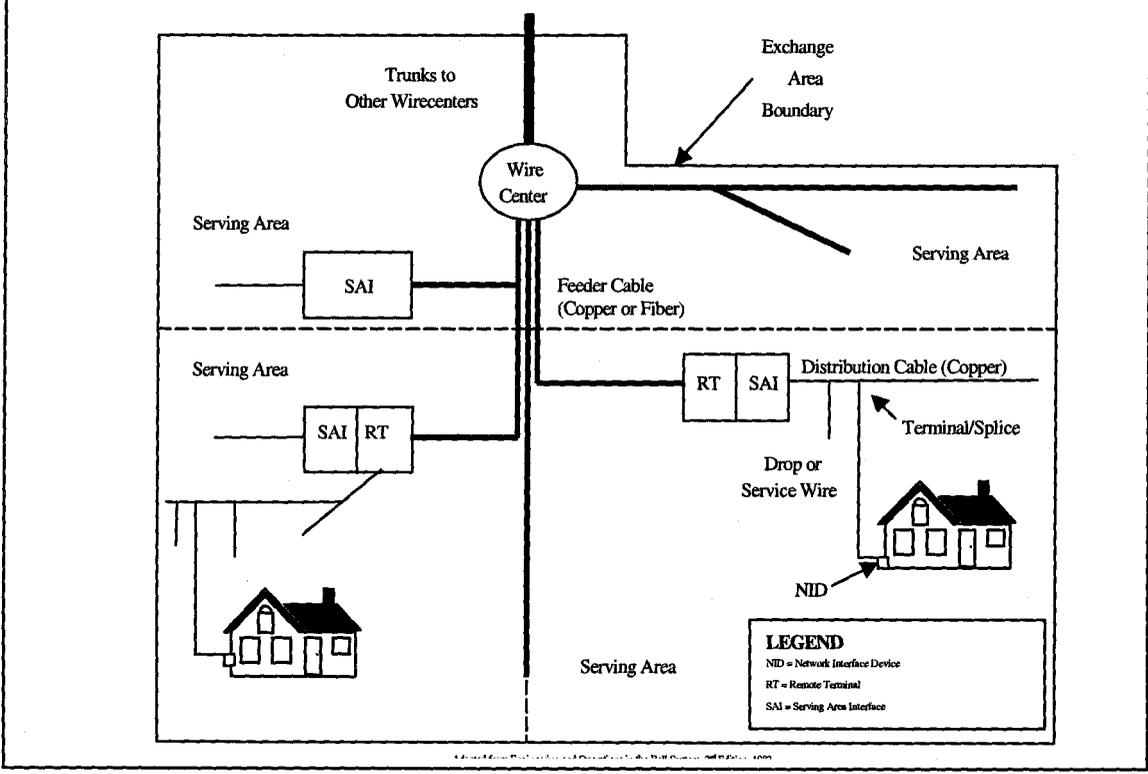
17
18 **Q. PLEASE ELABORATE.**

19 **A.** To explain the relationship between UNE prices and the public interest, I
20 must first provide an overview of telecommunications networks and the
21 related economics.

22 At the most simplistic level, telecommunications networks are
23 comprised of 1) loop plant that is used to connect customers' premises
24 with 2) switches which are joined together by 3) interoffice transport. The
25 diagram below depicts a typical "exchange" served by a single switch
26 where the loop plant connects the various buildings to the "wire center" --
27 which is where the switch is typically located. The "trunks" represent the
28 connections to other wire centers/switches.

²¹ Id., at § 11. Emphasis added.

Overview of Network



2

3 As discussed above, as a result of its historic monopoly in the provision of
 4 local telecommunications services, Qwest operates a loop network
 5 connecting virtually **every home and building** in its service territory. The
 6 fact of this existing, ubiquitous network represents a strategic asset of
 7 enormous competitive value.

8 A CLEC wishing to compete with Qwest for local
 9 telecommunications services on a broad scale -- or an IXC competing with
 10 Qwest in the long distance market -- must have an ability to quickly

1 connect subscribers to its network regardless of where the subscriber's
2 premises are located. The CLEC's choice is either to construct its own
3 facilities or lease facilities from Qwest.²² A CLEC opting for the first
4 choice faces a massively expensive and lengthy task of obtaining financial
5 backing, obtaining municipal franchise authority, securing rights-of-way,
6 and ordering and placing such facilities in the ground. Although this
7 process can be described in a few words, each of the aforementioned
8 steps represents a massive undertaking in and of itself. An example
9 would be the matter of obtaining capital funding. Based on the most
10 recent ARMIS report to the FCC, Qwest's loop plant in Arizona represents
11 a \$3,500,000,000.00 asset. Should a CLEC attempt to replicate Qwest's
12 ubiquitous loop plant at today's materials and labor cost, the amount of
13 necessary investment would likely be far greater. There is the significant
14 question of how the CLEC could obtain such massive funding given that it
15 will have to compete head-to-head with Qwest for each and every
16 customer -- unlike Qwest whose network was constructed while it had a
17 protected monopoly.²³

18 I discussed above how the process of converting local customers
19 from one carrier to another is much more difficult than changing a
20 customer's long distance carrier. That fact is of critical importance in this

²² Similarly, the choice for the IXC is to try and find an alternative provider of local facilities or to lease facilities from Qwest.

²³ Recall the earlier military analogy in which the CLEC is in the role of trying to "take" the market on a building by building basis, in contrast with Qwest who simply marched in and occupied the market without opposition.

1 context, as the Commission should note that it took nearly ten years for
2 MCI to gain 20% of the long distance market from AT&T following
3 divestiture in 1984. In short, investors understandably would be quite
4 hesitant to fund a total replication of Qwest's loop plant if the best a CLEC
5 could hope to achieve over a ten year period was a 15% market share.
6 Such hesitation easily can be explained. Assuming the CLEC requires an
7 investment equal to Qwest's \$3.5 billion, the investor must assess the
8 CLEC's ability to finance that massive debt load (as well as the CLEC's
9 internal operations) with only a fraction of Qwest's customer base. The
10 math simply doesn't work. Economists refer to such a scenario as a
11 barrier to entry, because of the fact that entry into the market would
12 require enormous sunk costs.²⁴ And even assuming the CLEC could vault
13 such a massive financial hurdle, the CLEC could not possibly complete
14 the other tasks of obtaining franchise authority and rights-of-way in every
15 city, town, and village, securing the necessary materials and equipment,
16 and performing such a Herculean construction job in less than ten years.²⁵

17 The CLEC's other option is to lease loop facilities from Qwest.
18 Unlike the construction option described above, this option presents the
19 obvious advantage of being immediately available, and does not require

²⁴ Economists use the term "sunk costs" to refer to costs that, once they are incurred, cannot be recovered. The costs to a CLEC of installing "last mile" facilities to reach thousands of customers would be "sunk," because such facilities could not be moved elsewhere when demand fails to materialize.

²⁵ The Commission should recall that Qwest's construction activities in any given year impact only a mere fraction of its total loop plant, unlike the task the CLEC would face. Also, the Commission should not lose sight of the fact that during the entire period of CLEC construction, Qwest would continue to enjoy the inflow of copious revenues from its still-captive customer base.

1 the CLEC to prove up an impossible financial picture to obtain investment
2 capital. Nonetheless, the lease option presents a variety of undesirable
3 prospects to the CLEC, the foremost of which is that the CLEC is
4 dependent upon its main competitor for a key input to the services it
5 wishes to offer to customers. Understandably, no CLEC wishes to place
6 its ability to meet its customers' needs in the hands of its chief
7 competitor.²⁶ The lease option²⁷ places the CLEC at the mercy of its main
8 competitor both for the price it must pay to utilize the facilities and for the
9 terms and conditions under which it has access to and can utilize the
10 leased facilities. Without question, Qwest has no incentive to price such
11 facilities in a manner that would permit the CLEC to pose a real
12 competitive threat to Qwest, particularly because Qwest knows full well
13 that construction of a duplicative network is not a viable alternative to the
14 CLEC.

15
16 **Q. DID CONGRESS RECOGNIZE THE EXISTENCE OF HIGH ENTRY**
17 **BARRIERS INTO THE LOCAL TELECOMMUNICATIONS MARKET IN**
18 **THE 1996 AMENDMENTS TO THE ACT?**

19 **A.** Yes. It noted that competitors could not possibly enter markets rapidly if
20 they were forced to build duplicative networks "because the investment

²⁶ See below discussion of Qwest's performance in providing special access to WorldCom.

²⁷ I am referring here to the CLECs right to use elements of Qwest's network on an unbundled basis pursuant to §251(c)(3) of the Act.

1 necessary is so significant.”²⁸ It further recognized that the overall pro-
2 competitive objectives of the Act would be frustrated if the rates the Bell
3 Companies were allowed to charge for the use of their existing network
4 (unbundled elements) were not set appropriately, and therefore required
5 that rates for the leasing of network elements be “just, reasonable, and
6 nondiscriminatory” and “based on the cost ... of providing” the network
7 element.²⁹ Congress clearly recognized the incentive and the ability of the
8 incumbent Bell Companies to preclude market entry by manipulating the
9 prices charged for the use of portions of their existing, ubiquitous
10 networks.

11 A strong indication of the incentives discussed above is the fact
12 that the incumbent Bell Companies have mounted every possible legal
13 challenge to the implementation of reasonable cost-based prices. Those
14 challenges have taken the form of appeals of both the FCC’s and of
15 virtually every state’s pricing rulings at federal district courts across the
16 nation. The rulings by some of these district courts have been taken up
17 by at least two of the U.S. Courts of Appeals, and the question of the
18 FCC’s pricing rules for unbundled network elements is pending before the
19 U.S. Supreme Court. Qwest has done its part to challenge this
20 Commission’s efforts to set pro-competitive pricing. In 1997 in Arizona,
21 Qwest appealed portions of the Commission’s Order setting wholesale
22 prices and approving MCI’s interconnection agreement in the United

²⁸ H.R. Conf. Rep. No. 104-458, at 148 (1996)

1 States District Court for the District of Arizona (CIV97-1856 PHX ROS).
2 District Court Judge Panner remanded several of Qwest's challenges to
3 the Commission for reconsideration, dismissed without prejudice as
4 unripe several of Qwest's challenges, and dismissed with prejudice the
5 remaining challenges. Qwest's appeal of Judge Panner's decision is
6 currently pending before the Ninth Circuit.

7 In addition to the interconnection litigation in federal court, Qwest
8 appealed the Commission's orders granting local certificates to each of
9 the CLECs. On March 27, 1997, Qwest filed a complaint in Maricopa
10 County Superior Court (CV 97-05564) seeking to set aside MCI's
11 certificate and claiming that the Commission's order violated the Arizona
12 Constitution for failing to determine the fair value of the property used by
13 MCI in the state. Qwest further complained that the Commission's order
14 violated Qwest's equal protection rights. The court consolidated several
15 of the CC&N appeals into one proceeding. The Superior Court granted
16 the CLECs' joint motion for summary judgment, which Qwest appealed.

17 Finally, on February 7, 1996, Qwest filed a complaint in Maricopa
18 County Superior Court (CV 96-03355) to set aside the telecommunication
19 competitive rules promulgated by the Commission. The Superior Court
20 upheld the rules and Qwest appealed. On May 18, 1999, the Arizona
21 Court of Appeals upheld the rules, although it required that some of the
22 competitive rules be approved by the Arizona Attorney General. Qwest

²⁹ 47 U.S.C. §§251(c)(3), 252(d)(1).

1 appealed the decision. The Arizona Supreme Court denied review on April
2 18, 2000.

3 In short, Qwest and its sister Bell Companies have attacked the
4 notion of reasonable, nondiscriminatory, cost-based pricing of the
5 components of its network in every possible venue.³⁰

6
7 **Q. HOW DOES THIS RELATE TO THE QUESTION OF THIS**
8 **COMMISSION'S CONSIDERATION OF THE PUBLIC INTEREST?**

9 **A.** This Commission represents the judge and jury as to whether Qwest will
10 be able to require its would-be competitors to pay unreasonable prices for
11 components of its network necessary to provide competitive alternatives
12 to Qwest's local services in Arizona, or conversely, whether the rates
13 Qwest charges for the use of those components will stimulate broad-
14 based entry and provide true competitive alternatives to the State's
15 consumers.

16
17 **Q. HOW CAN THE COMMISSION ENSURE THAT THE PRICES FOR**
18 **UNBUNDLED ELEMENTS OF QUEST'S NETWORK HAVE THE**
19 **INTENDED PRO-COMPETITIVE EFFECTS?**

20 **A.** There is no simple answer to this, in large part because of the fact that
21 costing proceedings typically produce widely differing recommendations

³⁰ As the above discussion demonstrates, Qwest has also attacked other pro-competitive decisions by this Commission, including CLECs' legal right to compete for local telecommunications services.

1 as to what constitutes the "right answer" for any given element. Most of
2 such differing recommendations arise out of the fact that numerous
3 assumptions are required to estimate the "cost" of any network element.
4 In the area of switching equipment for example, Qwest is able to obtain a
5 sizeable discount off its vendors' "list prices" as a result of the substantial
6 buying power it has as a purchaser of switches across its 14-state region.
7 The magnitude of that discount has an obvious impact on the accuracy of
8 estimations of the cost of various switching components, and Qwest has
9 two significant reasons to not disclose the actual amount of its vendor
10 discount. One reason is the competitive sensitivity of such information.
11 The second is the incentive described previously; i.e., that Qwest has
12 absolutely no reason to reveal the size of that discount to this Commission
13 and its competitors because such information would compromise Qwest's
14 competitive advantage relative to the CLECs.

15 Another example of the difficulty in discovering the "right answer" is
16 in the area of what are termed "fill factors" for loop facilities. As a brief
17 explanation, fill factors are required in estimating the cost of loop facilities
18 because of the way such facilities are engineered and constructed. The
19 costing of loop facilities must take into account both demand and what is
20 called "breakage."³¹ As with the vendor discount described relative to
21 estimating the cost of switching, Qwest's obvious incentive is to estimate
22 loop costs with the lowest possible fill factor. As an example, we will

1 assume that Qwest's loop costs are based on a fill factor of 50% -- a
2 figure I consider excessively low. This means that for every pair the
3 CLEC leases, Qwest is compensated for engineering and construction of
4 2 pairs. Qwest would effectively then have a "free" copper pair for every
5 pair the CLEC purchases, and that "free" pair can be used to generate
6 revenues from services sold to its retail customers. These examples
7 demonstrate that the Commission's decisions on seemingly arcane issues
8 can have a significant impact on the development of competition in
9 Arizona's telecommunications markets.

10
11 **Q. ARE THERE OTHER EXAMPLES OF FACTORS FOR WHICH**
12 **EXPERTS WILL LIKELY OFFER WIDELY DIFFERING**
13 **RECOMMENDATIONS?**

14 **A.** Yes. The above examples relate to the first step in the estimation of
15 costs, which is the investment per unit of plant. Once that investment
16 figure has been determined, there are numerous factors such as labor
17 rates, the cost of capital, and depreciation rates, all of which are needed
18 to transform the investment figure into a monthly cost. Each of these
19 factors, as well as many others, such as trench sharing and placement
20 costs, can be manipulated by Qwest to its competitive advantage.

21

³¹ Breakage is the term used to describe the likelihood that a given copper pair in a cable will be unusable. Because of breakage, loop facilities are engineered for a greater number of pairs than is required to serve the demand.

1 Q. WITH ALL OF THE ABOVE IN MIND, HOW SHOULD THE
2 COMMISSION ASSESS SUCH A WIDE RANGE OF
3 RECOMMENDATIONS IN SETTING PRICES FOR NETWORK
4 ELEMENTS?

5 A. First and foremost the Commission must remember that Congress' intent
6 in allowing CLECs to lease components of the incumbents' networks at
7 reasonable and cost-based rates was to remove the huge barrier to entry
8 represented by the massive capital costs necessary to replicate ILECs'
9 networks I discussed above. Congress expected that CLECs would lease
10 facilities in order to compete with the incumbents, and the likelihood of
11 such competition with the incumbent is increased as UNE rates are
12 lower.³² Thus, a principled basis for the setting of UNE rates is that such
13 rates must be no higher than necessary to compensate the incumbent for
14 the function it is providing and earn a return on its investment. Anything
15 above such a minimum price will frustrate Congress' intent by creating
16 rather than removing a barrier to entry.

17
18 Q. DO YOU HAVE FURTHER COMMENTS ON THE IMPORTANCE OF
19 UNE PRICING?

20 A. The pricing of UNEs is one of the most important tools available to
21 regulators to effectively open the ILECs' local markets for competitive

³² Recall that CLECs simply cannot enter markets unprofitably.

1 entry.³³ Access to UNEs at cost-based prices that encourage entry is the
2 best way the Commission can neutralize the barrier to entry that exists by
3 virtue of Qwest's ubiquitous, pre-existing network already paid for by its
4 captive ratepayers. Beyond the issue of UNE pricing is another price-
5 related issue this Commission should consider in its public interest
6 analysis; namely, the Qwest's ability to engage in an anticompetitive price
7 squeeze against other long distance carriers unless its switched and
8 special access charges are reduced to levels reflecting their economic
9 costs. The issue is simple. When Qwest is permitted to compete for
10 customers' long distance services, it will provide those services using the
11 same components of its network used by other carriers. The cost to
12 Qwest for the use of its network is its economic cost.³⁴ But the cost to
13 other carriers is the access rates charged by Qwest. To the extent that
14 Qwest's access rates exceed the economic costs of the network
15 components, Qwest will enjoy an artificial, but powerful, price advantage
16 over other long distance carriers. Such an advantage would operate to
17 the detriment of Arizona consumers and the competitive process because
18 Qwest could compete with other carriers on price even if it were the less
19 efficient service provider.

20

³³ Of course, even the best pricing decision can be neutralized by allowing the ILEC to impose anti-competitive terms and conditions on CLECs for the use of the UNE(s).

³⁴ This is true even if Qwest were required to "impute" its switched or special access rates to its retail long distance pricing. An imputation requirement simply results in a "right-pocket, left-pocket" transaction within the corporate family without real financial significance, and thus does nothing to prevent an anticompetitive price squeeze.

1 **IV. Qwest's Behavior Indicates a Continuing Monopoly Mind-Set**

2
3 **Q. WHAT ARE THE PUBLIC INTEREST IMPLICATIONS OF QWEST'S**
4 **BEHAVIOR TOWARD CLECS SEEKING TO ENTER LOCAL**
5 **MARKETS?**

6 **A.** As noted earlier in my testimony, Qwest is a for profit entity and by virtue
7 of that fact it possesses a natural incentive to manage its operations in a
8 way which provides the highest financial return to its investors: after all
9 Qwest management has a fiduciary obligation to do so. But because it
10 controls bottleneck facilities on which its competitors must rely, Qwest has
11 both the incentive and the ability to exploit such control in a way that
12 provides it with a competitive advantage over its competitors. Allowing
13 Qwest to act on this normal incentive and exploit its undeniable market
14 power would cause irreversible damage to the competitive process to the
15 detriment of Arizona consumers and to the public interest. Evidence of
16 Qwest's treatment of its would-be competitors in the market for local
17 telecommunications services is of critical relevance as this Commission
18 considers the public interest implications of Qwest's entry into the Arizona
19 long distance market.

20
21 **Q. WHAT IS QWEST'S "TRACK RECORD" IN DEALING FAIRLY WITH**
22 **OTHER CARRIERS?**

23 **A.** The track record amassed over the years since the passage of the 1996
24 Act is of a Qwest which continues to behave as a monopoly and exhibit a

1 monopoly mindset. This monopoly mindset was satirized a number of
2 years ago by Lilly Tomlin's famous telephone operator character, who
3 stated: "we don't care. We don't have to. We're the Phone Company."
4 As discussed above, when a firm is "the only game in town," its profitability
5 is not contingent on its successes in meeting (much less, exceeding)
6 customers' expectations. As a result, it has no incentive to distinguish
7 itself in the wholesale market by such acts as providing innovative
8 services, superior customer service, or reducing costs so as to be price
9 competitive. The question is whether Qwest is a firm which, by its actions,
10 demonstrates to its customers that it recognizes them as valued
11 customers, or whether it is a firm with a "we don't care; we don't have to"
12 attitude.

13
14 **Q. WHAT EXAMPLES EXIST OF QWEST'S CONTINUING MONOPOLY**
15 **MINDSET?**

16 **A.** Some examples include a Qwest which:

- 17 - ignores critical planning information provided by CLECs that
18 Qwest itself has demanded that CLECs furnish
- 19 - unreasonably discriminates against other carriers by giving
20 preference to its retail operations
- 21 - dictates new processes and procedures to its carrier
22 customers rather than consulting with them
- 23 - fails to recognize terms and conditions in existing
24 interconnection agreements

25 Even though many of the examples below were ultimately resolved, the
26 fact that Qwest took such positions required WorldCom and other CLECs

1 to expend management and regulatory resources to achieve resolution.
2 Such behavior by Qwest has the effect of raising the CLECs' costs of
3 entry -- contrary to Congress intent to lower legal and economic barriers to
4 entry in passing the Act. Furthermore, Qwest's behavior indicates the
5 difficulty of anticipating each and every possible way Qwest might act to
6 thwart competitors' efforts to enter its local markets.³⁵

7
8 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY QWEST IGNORING**
9 **CRITICAL PLANNING INFORMATION THAT QWEST HAS DEMANDED**
10 **BE PROVIDED BY CLECS.**

11 **A.** Qwest has consistently required CLECs to furnish forecasts of future
12 interconnection trunk demand levels even before CLECs had historical
13 information on which to base such forecasts. As the Washington
14 Commission determined in a complaint filed by WorldCom against Qwest,
15 Qwest routinely ignored the very forecast information it demanded that
16 CLECs furnish.³⁶ The result of ignoring the required forecast information
17 was a Qwest facilities shortage which limited WorldCom's ability to obtain
18 interconnection trunks on a timely basis but which had little if any impact

³⁵ See discussion below in Section V of my testimony regarding the historic difficulties regulators have experienced trying to prevent discriminatory and anticompetitive acts by the Bell System.

³⁶ See, *MCImetro Access Transmission Services, Inc. v. U S West Communications Inc.*, Washington Utilities and Transportation Commission Docket No. UT-971063, Commission Decision and Final Order Denying Petition to Reopen, Modifying Initial Order, in Part, and Affirming, in Part, issued February, 1999, Finding of Fact 205: "US West failed to disclose that its processes did not accept CLEC forecasts at the same time that it required MCImetro to submit forecasts as a precondition to provisioning facilities."

1 on Qwest's retail operations.³⁷ While Qwest has withdrawn its forecasting
2 requirements in its SGAT in Arizona, Colorado and Washington on the
3 basis that forecasts are not useful in network planning, Qwest continues
4 to justify poor wholesale provisioning performance on the lack of
5 forecasts. Just two weeks ago, in a Minnesota proceeding to address the
6 need for Qwest wholesale service quality standards, Qwest objected to
7 the Minnesota Commission imposing standards for timely installations of
8 unbundled loops and other local facilities, absent CLEC forecasts.³⁸
9 WorldCom and the other CLEC participants testified that they do routinely
10 provide forecasts to Qwest for collocations and for unbundled and line-
11 shared loops in the "hopes that it will provide Qwest with the data to
12 improve their performance."³⁹ CLEC concern over Qwest's forecasting
13 requirement related to Qwest's ability to "game the system" by unilaterally
14 determining what level of forecast is adequate. CLECs testified that they
15 do provide forecasts, but forecasts should not be a condition of standards
16 and remedies for Qwest's performance.⁴⁰ WorldCom and the other
17 participating CLECs also objected to Qwest's forecasting requirement as
18 discriminatory, since Qwest's retail tariffs do not require customers to
19 forecast demand before they are entitled to service at a standard interval

³⁷ Id., Finding of Fact 244: "Capacity problems at local tandem switches have a relatively minimal impact on US West."

³⁸ The Facilitation in the Matter of Qwest Wholesale Service Quality Standards, Minnesota PUC Docket No. P-421/M-00-849, TR at Vol 1-25-29.

³⁹ TR at Vol 1- 165.

⁴⁰ Id., at 154-179.

1 or one interval over another.⁴¹ In direct contradiction to its argument that
2 forecasting should be required before imposition of standards and
3 penalties, in response to questions posed by the Minnesota Commission
4 staff, Qwest admitted that CLECs that provide forecasts do not get better
5 performance from Qwest.⁴² Qwest routinely disregards their forecasts.⁴³

6 The effect of Qwest's behavior was to "[subject] MCImetro to an
7 undue disadvantage and [grant] to itself an unreasonable preference,"⁴⁴
8 the textbook definition of anticompetitive behavior. Qwest's actions
9 requiring CLECs to furnish information that it then failed to use in its
10 planning processes had the effect of driving up CLECs' costs to compete
11 with Qwest in the local telecommunications marketplace.⁴⁵ Whether or
12 not Qwest's purpose in imposing the forecast requirement was to drive up
13 its competitors' cost, the effect was the same.

14 In Minnesota, Qwest continues to routinely request forecasts from
15 competitive carriers for unbundled loops and other services. Qwest uses
16 the absence of forecasts as a reason to excuse reporting to the
17 Minnesota Public Utilities Commission on its provisioning performance for
18 non-forecasting carriers. Such reporting and payment of penalties for

⁴¹ TR at Vol 2-59.

⁴² Id., at 248-49.

⁴³ TR at Vol 1-162-165.

⁴⁴ Washington Order, Conclusion of Law 265.

⁴⁵ This effect was achieved because Qwest's requirements meant that CLECs had to utilize their personnel in ways that had nothing to do with providing service to their customers, but had everything to do with filling out meaningless forms for Qwest.

1 poor performance are required under Qwest's merger agreement in
2 Minnesota.

3
4 **Q. IS THIS WHAT YOU MEANT WHEN YOU STATED EARLIER THAT**
5 **QWEST HAS UNREASONABLY DISCRIMINATED AGAINST OTHER**
6 **CARRIERS BY GIVING PREFERENCE TO ITS RETAIL OPERATIONS?**

7 **A.** The interconnection facilities situation in Washington to which I referred
8 above is one example. Other examples were found by the Minnesota
9 Public Utilities Commission, which concluded that US West had
10 "discriminated (vis a vis itself) against MCI[metro]" in several areas,
11 including network capacity and forecasting, provisioning intervals and
12 delivery of facilities, denying MCImetro's request to have certain test
13 orders worked, and US West's performance in working requests for
14 interim number portability for MCImetro's customers.⁴⁶

15 Yet another example of such treatment can be found in Qwest's
16 efforts to prevent its intra-LATA toll customers in Colorado from freely
17 changing carriers when intra-LATA pre-subscription was rolled out. Qwest
18 unilaterally, and without notice, instituted "PIC freezes"⁴⁷ on more than
19 208,000 customers, requiring that Qwest's IXC competitors go through

⁴⁶ See, *In the Matter of a Complaint of MCImetro Access Transmission Services, Inc. Against U S West Communications, Inc. for Anticompetitive Conduct*, Minnesota PUC Docket No. P-421/C-97-1348.

⁴⁷ The term "PIC" refers to a given customer's "primary interexchange carrier," i.e., the carrier whose network is reached when the customer places long distance calls by dialing 1+the area code and number. By "PIC freeze," I mean an indication on the customer's service order record for Qwest to refuse an interexchange carrier's request to have the PIC change worked via the normal automated processes.

1 additional and unnecessary steps before they could win customers away
2 from Qwest in what had previously been Qwest's monopoly intraLATA toll
3 market. The Colorado Public Utilities Commission found that
4 implementation of these unilateral PIC freezes was anti-competitive.⁴⁸

5
6 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY QWEST DICTATING NEW**
7 **PROCESSES AND PROCEDURES TO ITS CARRIER CUSTOMERS**
8 **RATHER THAN CONSULTING WITH THEM.**

9 **A.** Qwest's practice in issuing policy letters is effectively a dictatorial process
10 rather than one that evidences a spirit of cooperation with its wholesale
11 customers. As opposed to demonstrating an attitude that its customers
12 can provide valuable input to Qwest's development of new procedures
13 and processes, its practice demonstrates the sort of "we don't care; we
14 don't have to" mindset noted above. In competitive markets, providers
15 may seek to distinguish themselves from other providers by focusing on
16 customer services closely tailored to their customers' specific needs.
17 Qwest's policy letters practice show an inability either to grasp the concept
18 of a true service orientation or to recognize the potential value of its
19 wholesale customers' input into its processes.

20 This failure by Qwest to grasp the integral nature of its role as both
21 a wholesale supplier to other carriers and a retail provider in the
22 telecommunications market was highlighted by Qwest's comments in a

⁴⁸ See, *MCIWorldCom vs. U S WEST*, Decision No. C00-513, in Colorado Docket No. 99K-193T, at para. B.4, adopted April 26, 2000.

1 recent Colorado workshop on UNE loops. During the workshop, one
2 CLEC noted that Qwest had not been at all helpful in exploring unbundled
3 network alternatives, stating:

4 I want you to know though that through numerous meetings with
5 Qwest and mediation and negotiation and lawsuits, we have
6 indicated to them that we needed 6,000 - 6.500 lines in our
7 switch to be at a break even -- to even make it. And yet we've
8 talked about that fact over and over again, yet we've never been
9 offered any other alternatives to get these unbundled loops
10 ported over.⁴⁹

11
12 Another CLEC representative, agreeing that Qwest could be more helpful
13 in explaining alternative that are available to CLECs, stated:

14 What I'm saying when I walk into Nordstrom's, I'm their
15 customer. When I call your account representative, I'm your
16 customer.⁵⁰

17
18 In response, Qwest's attorney replied:

19 That is a retail customer.⁵¹

20
21 This exchange clearly demonstrates a Qwest whose mindset is that it is
22 appropriate to treat retail customers differently than the way it treats its
23 wholesale customers. So long as Qwest continues its tradition of placing
24 on its wholesale customers unreasonable demands for information from
25 its wholesale customers that it willfully ignores to its customers' detriment

⁴⁹ Comments of Mr. Potter of Sunwest in Colorado 271 workshop, April 17, 2001; Transcript at 232.

⁵⁰ Id., at 246-247.

⁵¹ Id.

1 in the market, and providing preferential treatment to its retail operations,
2 it constitutes strong evidence of a continuing monopoly mindset by Qwest
3 and a disdain of the value of its wholesale customers as partners.
4

5 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY YOUR STATEMENT THAT**
6 **QWEST FAILS TO RECOGNIZE TERMS AND CONDITIONS IN**
7 **EXISTING INTERCONNECTION AGREEMENTS.**

8 **A.** Over the past year, Qwest has mounted an aggressive campaign to obtain
9 regulatory endorsement of statements of generally available terms and
10 conditions ("SGATs") in each of the states where it operates.
11 Notwithstanding the fact that several states have allowed such SGATs to
12 go into effect, WorldCom's recent experiences with Qwest personnel
13 indicate that the terms and conditions of its SGAT, as opposed to our
14 existing interconnection agreement, governs its obligations toward
15 WorldCom. Such attempts to force a "one size fits all" process on its
16 wholesale customers means that Qwest is ignoring terms and conditions
17 negotiated in good faith and/or imposed through a lawful arbitration
18 process in the state, evidencing a monopoly mindset.
19

20 **Q. YOU HAVE REPEATEDLY REFERRED TO QWEST'S MONOPOLY**
21 **MINDSET. WHAT IS THE SIGNIFICANCE OF SUCH A MINDSET TO**
22 **THE PUBLIC INTEREST ISSUE BEING CONSIDERED IN THIS**
23 **PROCEEDING?**

1 A. I stated early in my testimony that addressing the public interest requires
2 regulators essentially to look into a crystal ball and seek to anticipate the
3 future based on the facts before them. Qwest's historic pattern of treating
4 its wholesale customers as second class citizens can hardly be reconciled
5 with the notion that Qwest's local telecommunications market in Arizona is
6 irreversibly open to competition. The image that appears in the crystal
7 ball is of a Qwest continuing to exercise a tight grip on the Arizona local
8 telecommunications market. Furthermore, it is an image of a Qwest that
9 will utilize its market power in local telecommunications to disadvantage
10 competitors in both the emerging broadband market and in the already
11 competitive long distance market.

12 For Qwest to demonstrate to this Commission that its market is
13 open, it must do so on the basis of more than mere promises that future
14 behavior will be different than in the past. Indeed, the Commission should
15 require strict proof by Qwest that it has fulfilled any and all such promises.

16 When Southwestern Bell was before the Public Utility Commission
17 of Texas seeking its endorsement of 271 relief, that Commission explicitly
18 recognized the value of having more than mere promises as evidence of
19 whether its market was open to competition. The Texas Commission's
20 June 1, 1998 recommendation stated in pertinent part that:

- 21 - SWBT needs to show this Commission and participants
22 during the collaborative process by its actions that its
23 corporate attitude has changed and that it has begun to treat
24 CLECs like its customers;
- 25 - SWBT needs to establish better communication between its
26 upper management, including its policy group, and its

- 1 account representatives. As a first step, SWBT shall develop
2 policy manuals for its account representatives and put in
3 place a system, such as email notifications, to
4 communication decisions by the policy group to account
5 representatives and questions or comments back to the
6 policy group;
- 7 - SWBT needs to establish consistent policies used by all
8 SWBT employees in responding to issues raised by CLECs.
9 Toward that end SWBT shall establish an interdepartmental
10 group whose responsibility is trouble-shooting for CLECs
11 engaged in interconnection, purchase of UNEs, and resale.
12 This group shall be headed by an executive of SWBT with
13 the final decision making power;
- 14 - SWBT needs to establish a system for providing financial or
15 other incentives to [Local Service Center] personnel based
16 upon CLEC satisfaction;
- 17 - SWBT needs to commit to resolving problem issues with
18 CLECs in a manner that will give CLECs a meaningful
19 opportunity to compete;
- 20 - SWBT shall draft a comprehensive manual for CLECs to
21 ensure the timely provision of all aspects of interconnection,
22 provision of UNEs and resale. The manual shall be written in
23 a fashion that clearly delineates parties' responsibilities, the
24 procedures for obtaining technical and other practical
25 information, and the timelines for accomplishing the various
26 steps in interconnection, purchase of UNEs, and resale. The
27 manual should also set forth SWBT's policy with regard to a
28 CLEC's ability to adopt an approved interconnection
29 agreement pursuant to Section 252(i) (this process will be
30 referred to as the "MFN" process);
- 31 - SWBT needs to treat CLECs at parity with the way it treats
32 itself or its unregulated affiliates;
- 33 - SWBT needs to show proof that it has made all the changes
34 it agreed to make during the process of the Commission's
35 271 hearing, all of which have been detailed in the record;
- 36 - SWBT needs to establish that its interconnection agreements
37 are binding and are available on a nondiscriminatory basis to
38 all CLECs;

- 1 - SWBT needs to establish that it is following all Commission
2 orders referenced in this recommendation and that it intends
3 to follow future directives of this Commission;
- 4 - SWBT needs to establish its commitment to offering the
5 terms of current interconnection agreements during any
6 period of renegotiation, even if the negotiations extend
7 beyond the original term of the interconnection agreements;
- 8 - Commission staff, SWBT, and the participants need to
9 establish adequate performance monitoring (including
10 performance standards, reporting requirements, and
11 enforcement mechanisms) during the collaborative process
12 that will allow self-policing of the interconnection agreements
13 after SWBT has been allowed to enter the long distance
14 market; and
- 15 - SWBT shall not use customer proprietary network
16 information to "winback" customers lost to competitors.

17

18 **Q. HAS QWEST PROVIDED EVIDENCE THAT IT IS EVEN REMOTELY**
19 **CLOSE TO MEETING ALL OF THE PUBLIC INTEREST OBLIGATIONS**
20 **SET OUT BY THE PUC OF TEXAS?**

21 **A.** No. Absent a strong stance by this Commission, Qwest has no incentive
22 to promise anything beyond a bare minimum set of commitments toward
23 opening its markets. Like SWBT,

- 24 - Qwest must demonstrate in the collaborative process by its
25 actions that its corporate attitude has changed and that it will
26 treat CLECs like its customers and not unilaterally change
27 documents referenced in its SGAT and that its behavior does
28 not reflect the statements of its attorney that it need not treat
29 wholesale customers like retail customers;
- 30 - Qwest needs to establish better communication between its
31 upper management, including its policy group, and its
32 account representatives as is evidenced by the testimony of
33 numerous CLECs about the lack of knowledge Qwest
34 account teams have about Qwest "new" policies and the
35 inability of account team representatives to adequately

1 address CLEC problems and Qwest's habit of issuing
2 product notifications that contradict interconnection
3 agreements and even provisions in Qwest's proposed SGAT.
4 Only recently has Qwest agreed to communicate its legal
5 obligations to all appropriate personnel so that account
6 teams and other internal personnel know what Qwest is
7 obligated to perform for wholesale customers under its
8 SGAT.

- 9 - Qwest should establish an interdepartmental group whose
10 responsibility is trouble-shooting for CLECs engaged in
11 interconnection, purchase of UNEs, and resale. This group
12 should be headed by an executive of Qwest with the final
13 decision making power;
- 14 - Qwest needs to establish a system for providing financial or
15 other incentives to Local Service Center personnel based
16 upon CLEC satisfaction;
- 17 - Qwest needs to commit to resolving problem issues with
18 CLECs in a manner that will give CLECs a meaningful
19 opportunity to compete. Qwest must recognize that its
20 wholesale customers are as important as retail customers;
- 21 - Qwest needs to establish that it is following all Commission
22 orders referenced in this recommendation and that it intends
23 to follow future directives of this Commission; and
- 24 - Qwest should not be permitted to attempt to "winback"
25 customers lost to competitors when a CLEC customer
26 inadvertently or mistakenly calls Qwest.

27
28 I see this as very much akin to what a young child does at the dinner table
29 when she wants to jump directly to dessert without having to eat her
30 broccoli. Most of us can relate to the situation where the child says to the
31 parent "how about if I eat 2 more bites?" Obviously, the notion is to get
32 the reward with the least amount of undesirable effort. Whether the goal
33 is avoiding having to eat an undesirable vegetable or avoiding having to
34 open up a previously monopolized market, the incentive is clear: do

1 absolutely no more than is required to get to dessert. Moreover, even if
2 Qwest makes promises, mere promises are insufficient to demonstrate
3 that Qwest will meet its public interest obligations.
4

5 **Q. YOU HAVE MENTIONED SEVERAL EXAMPLES OF BEHAVIOR BY**
6 **QWEST THAT SHOULD BE INTERPRETED AS EVIDENCE THAT ITS**
7 **MARKETS ARE NOT YET IRREVERSIBLY OPEN. IS THERE OTHER**
8 **EVIDENCE THIS COMMISSION SHOULD CONSIDER AS IT TRIES TO**
9 **ANTICIPATE QWEST'S FUTURE BEHAVIOR IF IT WERE ALLOWED**
10 **INTO THE LONG DISTANCE MARKET?**

11 **A.** Yes. Timely and accurate special access provisioning by Qwest is
12 absolutely vital to the long-term viability of competitors in Arizona. As
13 shown below, Qwest's provisioning of special access services to CLECs
14 and IXCs should be examined by this Commission as an indicator of what
15 is to come when Qwest enters the long distance market.
16

17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY "SPECIAL ACCESS" AND**
18 **WHY THAT IS RELEVANT TO THE SUBJECT OF THIS PROCEEDING?**

19 **A.** Special access is a service Qwest historically has provided to IXCs, which
20 involves the use of Qwest's last mile loop and transport facilities for direct
21 connections between an IXC's network and its customer's premises.⁵²

⁵² CLECs also sometimes use special access rather than unbundled elements for use in connecting their customers' premises with their local switches, for a variety of reasons. For purposes of this testimony, however, my focus will be on the traditional usage of special access because of its importance to the question of Qwest's ability to discriminate against other long

1 Special access facilities allow Arizona business customers with large call
2 volumes to bypass the switched network and move their traffic, including
3 high-speed data and broadband traffic, directly from their location to their
4 long-distance carrier's point of presence ("POP"). Thus, when WorldCom
5 wins a new business long-distance customer, it offers as part of its service
6 the connection between WorldCom's POP and the customer's building.
7 WorldCom and other IXCs are dependent on Qwest to provide special
8 access facilities for connections to Arizona business customers. Critically,
9 however, once Qwest is allowed to compete for the customers' retail long
10 distance business, it will not only be WorldCom's retail competitor, but
11 also WorldCom's wholesale supplier.⁵³

12
13 **Q. WHAT HAS BEEN WORLDCOM'S EXPERIENCE WITH QWEST AS A**
14 **WHOLESALE SUPPLIER OF SPECIAL ACCESS?**

15 **A.** Qwest's performance in provisioning special access to competitive
16 carriers was extremely poor in 2000. This has had serious impacts on not
17 just WorldCom and other IXCs who depend on access services furnished

distance carriers once it has obtained the legal right to provide retail long distance services within its service territories.

⁵³ As the FCC has frequently recognized, when an incumbent carrier is a retail competitor as well as a wholesale supplier of the inputs other carriers need to provide their own retail service, the incumbent has the "incentive and the potential ability to unfairly act to the detriment of their . . . competitors and to act in other anticompetitive ways." *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 F.C.C.Rcd.20,541, paragraph 14; see also, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499, paragraph 307 (1996) (explaining that "incumbent LECs have little incentive to . . . provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete").

1 by Qwest, but more importantly, also the end user customers served by
2 the IXCs. Qwest's poor performance reflects an obvious shift in corporate
3 focus away from access services it provides as a wholesaler to the retail
4 (and thus higher revenue) data and broadband services. Its performance
5 also indicates Qwest's apparent recognition that its wholesale customers
6 lack alternative suppliers for these services, and its seeming disregard for
7 the needs of its wholesale purchasers. Absent a demonstrated change in
8 its behavior, Qwest's performance as a provider of special access strongly
9 suggests that allowing Qwest to compete for customers' long distance
10 business in Arizona would not be in the public interest. Rather, the public
11 interest will only be served if the Commission addresses special access
12 as part of its 271 public interest analysis and seeks to ensure that Qwest
13 does not utilize its control over such last mile facilities to its competitive
14 and strategic advantage.⁵⁴

15
16 **Q. YOU HAVE STATED THAT QWEST'S POOR PROVISIONING RECORD**
17 **DEMONSTRATES A MONOPOLISTIC MINDSET. AREN'T THERE**
18 **COMPETITIVE, ALTERNATIVE PROVIDERS FROM WHICH**
19 **WHOLESALE CUSTOMERS CAN PURCHASE SPECIAL ACCESS?**

20 **A.** For the most part, no. WorldCom and other long-distance carriers rely
21 almost totally on Qwest to provide special access services for the

⁵⁴ Including special access facilities in a performance assurance plan would be one way to provide appropriate incentives preventing Qwest from exercising control over its network in such an anticompetitive manner. See, e.g., *The Facilitation in the Matter of Qwest Wholesale*

1 connections between the IXCs and their long distance customers. An
2 excellent example of this can be seen by examining the development of
3 facilities competition in the Los Angeles area -- surely one of the largest
4 and most competitive markets. Even taking into account the massive
5 capital outlays by competitive carriers over the past decade, SBC
6 submitted to the FCC information showing that competitive carriers *in the*
7 *aggregate* have constructed transport facilities to only slightly more than
8 1/5th of the ILECs' wire centers in the Los Angeles MSA.⁵⁵ Competitive
9 alternatives to the ILECs' special access services are quite clearly limited,
10 and IXCs must therefore in the vast majority of instances rely on the
11 ILECs for such services to reach their customers.

12 WorldCom alone pays millions of dollars per year to Qwest for
13 access services in Arizona. Thus, when Qwest's performance is poor,
14 that fact provides a strong incentive for WorldCom to obtain access
15 facilities from alternate providers. And in fact, on any given customer
16 order, WorldCom first looks to provide service over "on-net" facilities in its
17 own network, and then searches for facilities owned by a competitive
18 access provider ("CAP") whose rates are significantly lower than Qwest
19 and whose performance indicates that they are anxious for WorldCom's
20 business. Despite WorldCom's systematic attempts to find alternate

Standards, Minnesota PUC Docket No. P-421/M-00-849 (proceeding to develop Qwest wholesale service quality standards)

⁵⁵ See, Letter from Jeffrey A. Brueggeman, Senior Counsel, SBC, to Ms. Magalie R. Salas, Secretary, FCC, March 6, 2001, Ameritech Operating Companies, Pacific Bell Telephone Company and Southwestern Bell Telephone Company Petitions for Pricing Flexibility, CCG/DPD File Nos. 00-26, 00-23, and 00-25, Appendix C, Page 6 of 7.

1 facilities, however, it almost certainly must rely on Qwest to provision any
2 given request for special access, because even those competitive carriers
3 that have the greatest access to "lit buildings" do not reach the vast
4 majority of business customers in this State.

5
6 **Q. IN WHAT WAYS DOES QWEST'S SPECIAL ACCESS PROVISIONING**
7 **FAIL TO ACCOUNT FOR THE NEEDS OF WHOLESALE**
8 **CUSTOMERS?**

9 **A.** Although some improvements have been observed recently, Qwest's
10 performance in completing access orders generally has been
11 unreasonably slow, and the information on the status of such orders
12 Qwest provides to WorldCom and other wholesale customers is often
13 unreasonably late and unreliable. Qwest does not appear to provide
14 wholesale services in the manner of a business with competitive
15 concerns. The most serious problems WorldCom has experienced are
16 Qwest's extremely poor percent on-time performance and its practice of
17 amassing "held" orders. In WorldCom's experience, Qwest *frequently*
18 misses the target date for installation that it specifies in its Firm Order
19 Confirmation or "FOC." Qwest's target date in its FOC is not the customer
20 requested date, but the date Qwest commits to provide service.

21 Recently, pursuant to an order of the Minnesota Public Utilities
22 Commission, Qwest provided performance reports in a Minnesota public

1 proceeding.⁵⁶ Although the reports are misleading and flawed, at best
2 they demonstrate that Qwest misses its own committed installation date
3 on over 20% of WorldCom's orders, by at least two to three weeks.
4 Missing one out of every five orders is unacceptably bad performance.
5 Based on the reports provided to the Minnesota Commission, Qwest's
6 performance is worse than appears on the face of those reports. This
7 primarily is due to the fact that the reports Qwest provided in Minnesota
8 failed to comply with the explicit order of the Minnesota Commission. For
9 instance, the Minnesota Commission ordered Qwest to report on the *total*
10 number of orders submitted to Qwest for DS0, DS1 and DS3 dedicated
11 access during the reporting period (six months of data). The Missed
12 Order Report with which Qwest responded contains a column for "Number
13 of Orders" for each reported month. In response to data requests from
14 WorldCom, however, Qwest acknowledged that it ignored the Minnesota
15 Commission's order and only reported on the number of orders it
16 *completed* during the reported month. What about the orders it did not
17 complete? The report does not say anything about those orders, and thus
18 neither complied with the Commission's order nor provided an accurate
19 picture of Qwest's performance. The Missed Order Reports, contrary to
20 the Minnesota Commission's Order, do not show the backlogged orders
21 or those orders "held" by Qwest on the ground that it lacks sufficient

⁵⁶ See, In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S West Communications, Inc. Regarding Access Service, Minnesota PUC Docket No. P-421/C-99-1183, 2000 Min. PUC LEXIS 53 (August 15, 2000) (Qwest ordered to provide specific reporting

1 "facilities" or "funding" to build facilities. Qwest still has not provided
2 complete data on these, but if the held order information it did provide is
3 factored in, Qwest's 80% on-time performance goes down to around 69%
4 for the first reported month of 2000 (September). This means that in that
5 month, almost one-third of WorldCom's pending orders were delayed by
6 Qwest. Some were delayed by days, some weeks, some months. Some
7 are still pending. Of the orders it has completed, Qwest reported to the
8 Minnesota Commission an average delay of 2 to 3 weeks past the dates
9 Qwest committed to completing the installations before installation was
10 actually accomplished. This **excludes** all orders Qwest has put into "held
11 order" status, which orders are not assigned an installation date. Such
12 orders can sit for months, and are not reflected on Qwest's reports to the
13 Minnesota Commission regarding provisioning of special access for
14 WorldCom. Qwest's historic lack of facilities and resulting held orders is
15 also an issue this Commission is familiar with in Arizona.

16 In any industry where true wholesale competition exists, suppliers
17 bend over backward to provide on-time service, and to accurately report
18 on orders delayed for any reason, with an estimated delivery date.
19 Qwest's practices reflect an attitude toward its wholesale customers that is
20 diametrically opposite such a customer-focused approach.

21

regarding AT&T orders; later ordered to provide same reports with respect to WorldCom in consolidated proceeding).

1 **Q. WHY DOES QWEST DESIGNATE ORDERS AS "HELD," AND WHAT**
2 **HAPPENS TO THESE ORDERS?**

3 **A.** Qwest puts an order in "held" status when it determines that it does not
4 have sufficient facilities in place to provision the order at the requested
5 customer location, and Qwest has not allocated funds to augment its
6 facilities at the requested location. Qwest surveys its network and makes
7 decisions regarding which orders to relegate to "held order" status without
8 consulting with its IXC customers. It decides whether it wants to invest in
9 facilities (and where), as well as how much it chooses to invest. As
10 already discussed, it ignores competitive carrier forecasts about where
11 facilities may be required.

12 There may have been good reason for such unilateral decision-
13 making in the past. However, it is not appropriate for Qwest to unilaterally
14 make such decisions regarding the need for new network facilities when it
15 seeks to compete with the very carriers that rely on Qwest to provision
16 facilities for their retail services. There are inherent and anti-competitive
17 problems with Qwest dictating where new facilities will go. And not only
18 does Qwest make unilateral decisions to either increase facilities or hold
19 orders, it fails to provide to its wholesale customers prompt and accurate
20 information about held orders. On some held orders, Qwest will provide
21 an FOC with a committed install date and when the day arrives, only then
22 inform WorldCom that the order has been "held." This practice wreaks
23 havoc with WorldCom's customer relations and adversely affects

1 consumers. On other held orders, Qwest provides no FOC, and the held
2 orders simply accumulate until WorldCom demands an accounting of
3 them. Qwest held orders were a serious problem for WorldCom during
4 2000. Notwithstanding recent efforts by Qwest to reduce the number of
5 held orders, problems remain when WorldCom's customers require
6 service at a location where Qwest unilaterally determines that it has no
7 business interest in adding capacity to its facilities.

8
9 **Q. WHAT IS THE EFFECT ON WHOLESALE CUSTOMERS AND THEIR**
10 **CUSTOMERS OF QWEST'S LATE PROVISIONING AND HELD**
11 **ORDERS?**

12 **A.** Qwest's failures to meet its own target intervals for special access, and its
13 practice of holding orders for lack of funding or facilities, leave customers
14 waiting days, weeks and even months for service. This impedes the
15 ability of the Arizona businesses WorldCom serves to do business,
16 leading to potential and real losses in their revenues. It certainly hurts
17 WorldCom's revenues. To add insult to injury, customers blame
18 WorldCom for Qwest's failures. Customers need to know when they can
19 expect installation of facilities needed to turn up their service. When they
20 choose WorldCom as their carrier, they expect WorldCom to give them
21 installation dates and to meet them. If WorldCom cannot do that for
22 weeks or months after the promised date, the customers blame
23 WorldCom, not Qwest. This affects WorldCom's reputation as a provider

1 of telecommunications services of all types. When WorldCom and other
2 wholesale customers cannot provide acceptable service because of
3 Qwest constraints, that threatens the viability and development of a
4 competitive market in Arizona, and thereby compromises the ability of
5 Arizona consumers to enjoy the benefits of a vibrant competitive market
6 for a variety of telecommunications services.

7
8 **Q. WHAT IS THE PROSPECT FOR ACCESS PROVISIONING**
9 **PERFORMANCE WHEN QWEST ENTERS THE LONG DISTANCE**
10 **MARKET?**

11 **A.** Qwest's performance is likely to get much worse when Qwest is not only
12 the dominant provider of special access, but is also competing against its
13 wholesale customers to provide inter-LATA interstate long distance
14 services. It appears that the degradation of wholesale service quality over
15 the past few years came as Qwest was further positioning itself to enter
16 the inter-LATA, inter-state long-distance market, and to focus on faster-
17 growing revenue opportunities in data and broadband services. Given the
18 critical nature of access services, the necessary dependence of wholesale
19 customers on Qwest and Qwest's poor provisioning record, this
20 Commission should insist that Qwest demonstrate substantial
21 improvement in its provisioning of special access. Absent such
22 demonstrated improvements, allowing Qwest into the long distance
23 market at this time would not be in the public interest.

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Q. DOES WORLDCOM HAVE ANY RECOMMENDATIONS REGARDING SPECIAL ACCESS PROVISIONING?

A. Yes. The above discussion highlights two important issues in the context of this proceeding. One is the difficulty of obtaining accurate information on Qwest's performance as a wholesale provider to other carriers who depend on Qwest's facilities to provide services to Arizona consumers. Because it controls the information necessary to evaluate its performance, the fact that Qwest provided suspect information in reports ordered by a state regulatory commission raises serious questions about how much weight this Commission should attribute to information Qwest provides. The second issue is the absolutely critical nature of performance measures -- with microscopically specific rules as to what is measured and how it is measured. For these reasons, Qwest's performance assurance plan should include performance measures or performance indicator definitions ("PIDs") that address special access in a manner similar to the PIDs that relate to the provisioning of local wholesale services. Those performance measures should also result in the payment of penalties to incent Qwest to improve the provisioning of special access and elimination of held orders, much like the proposed Qwest performance assurance plan is intended to incent Qwest to adequately provide local wholesale services.

1 **V. Regulatory versus Structural Tools for Dealing with Market**
2 **Power**
3

4 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE TERMS REGULATORY**
5 **TOOLS AND WHY YOU CONTRAST SUCH TOOLS WITH**
6 **STRUCTURAL TOOLS.**

7 **A.** Regulatory tools typically take the form of an order by a government
8 agency requiring some action or proscribing certain behavior. As such,
9 regulatory tools are essentially the same as what attorneys refer to as
10 injunctive relief. Another way to look at regulatory tools is that they are
11 “thou shalt” and “thou shalt not.” A regulator establishes certain
12 parameters for reasonable behavior with the hope and anticipation that
13 the firm will act in accordance with the rules. Should the firm not do so,
14 the question then becomes whether the regulator effectively can enforce
15 its rules and regulations.⁵⁷

16 Structural tools are vastly different. Structural tools seek to
17 eliminate the incentive for the firm to act in a given manner, and thus get
18 at the **cause** for the undesirable behavior. Throughout my testimony I
19 have noted the natural incentive that exists in a for-profit entity such as
20 Qwest to maximize its shareholders’ return. Regulatory tools would seek
21 to identify all the means by which Qwest could act in anticompetitive and
22 discriminatory ways to ensure a higher return for its shareholders.

⁵⁷ FCC Chairman Powell has publicly stated a desire to increase that agency’s ability to levy meaningful fines on carriers, seeking an increase in the statutory limit from \$1.2 million to \$10

1 Conversely, structural tools would seek to remove incentives for such
2 behavior.

3 The best example of a structural remedy in modern
4 telecommunications is the divestiture of the Bell Operating Companies by
5 AT&T in 1984.⁵⁸ The concept underlying that structural remedy was to
6 eliminate AT&T's ability to engage in anticompetitive actions using its
7 control over the local bottleneck facilities operated by the Bell Companies.
8 Thus, AT&T divested itself of the Bell Companies so that it no longer had
9 control over the local bottleneck facilities and no financial incentive to use
10 such facilities in anticompetitive ways. As a result of that divestiture,
11 AT&T had to obtain use of those bottleneck facilities on an arms-length
12 basis, in the same manner, and at the same price, as its competitors in
13 the long distance market.

14 Instead of continuing the ineffective attempts to enjoin
15 anticompetitive behavior by AT&T, the Justice Department argued for a
16 structural solution where AT&T no longer had an incentive or ability to
17 abuse its monopoly in the local telecommunications market to
18 disadvantage competitors in the upstream long distance services market.

19 In comparing the likely benefits of such a structural approach with an
20 injunctive, or regulatory, approach, the MFJ Court stated:

million per violation of the local competition provisions of the Act. See,
www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2001/nrcc0116.html.

⁵⁸ Other examples include the Section 272 requirements of the Act and the concessions obtained by the FCC in the merger proceedings between SBC and Ameritech, and between Bell Atlantic and GTE, to provide advanced services through separate affiliates.

1 It would be difficult to formulate an order that would
2 effectively deal with all of the different kinds of anticompetitive
3 behavior that are claimed to have occurred over a considerable
4 period of time, in various geographical areas, and with respect to
5 many different subjects. There is evidence which suggests that
6 [the Bell System's] pattern during the last thirty years has been
7 to shift from one anticompetitive activity to another, as various
8 alternatives were foreclosed through the action of regulators or
9 the courts or as a result of technological development. In view
10 of this background, it is unlikely that, realistically, an injunction
11 could be drafted that would be both sufficiently detailed to bar
12 specific anticompetitive conduct yet sufficiently broad to prevent
13 the various conceivable kinds of behavior that [the Bell System]
14 might employ in the future.

15 An even more formidable obstacle is presented by the
16 question of enforcement. Two former chiefs of the FCC's
17 Common Carrier Bureau, the agency charged with regulating
18 [the Bell System], testified that the Commission is not and never
19 has been capable of effective enforcement of the laws governing
20 [the Bell System's] behavior. In their view, this inability was due
21 to structural, budgetary, and financial deficiencies within the
22 FCC as well as to the difficulty in obtaining information from [the
23 Bell System]. Whatever the true cause, it seems clear that the
24 problems of supervision by a relatively poorly-financed, poorly-
25 staffed government agency over a gigantic corporation with
26 almost unlimited resources in funds and gifted personnel are no
27 more likely to be overcome in the future than they were in the
28 past.⁵⁹

29 What this passage suggests is that, unless this Commission can impose
30 on Qwest regulations "that would be both sufficiently detailed to bar
31 specific anticompetitive conduct yet sufficiently broad to prevent the
32 various conceivable kinds of behavior that [Qwest] might employ in the
33 future," Arizona consumers will be denied the benefits of a vibrant
34 competitive market for telecommunications services of all types.
35

⁵⁹ AT&T at 168. (footnotes omitted.)

1 Q. OVER THE HISTORY OF THE U.S. TELECOMMUNICATIONS
2 INDUSTRY, CAN IT BE SAID THAT THE REGULATORY APPROACH
3 HAS BEEN A SUCCESS?

4 A. Regulation of utilities has proved successful only where competitive
5 issues were absent; i.e., where the monopoly of the utility remained intact.
6 In such instances, the focus of regulation has been to protect consumers
7 from monopoly abuses, largely through rate-of-return regulation of retail
8 rates and by enforcing terms and conditions in the utility's retail tariffs.
9 When regulation has attempted to deal with market power in the context
10 of emerging competition on the other hand, it has enjoyed marginal
11 success, at best. This point was made explicitly in the Court's decision in
12 the AT&T case:

13 The evidence adduced during the *AT & T* trial indicates that the
14 Bell System has been neither effectively regulated nor fully
15 subjected to true competition. The FCC officials themselves
16 acknowledge that their regulation has been woefully inadequate
17 to cope with a company of *AT & T*'s scope, wealth, and power.⁶⁰

18

19 Q. DO YOU HAVE EXAMPLES OF FAILURES OF THE REGULATORY
20 APPROACH?

21 A. Yes. The regulatory approach had proven "woefully inadequate" to
22 restrain discrimination by the Bell System in the areas of manufacturing
23 and sale of customer premises equipment and the provision of long
24 distance services. The complete inability of regulatory approaches to

⁶⁰ *AT&T* at 170.

1 inject competition into these markets stands in stark contrast with the
2 veritable explosion of customer choices that occurred following divestiture,
3 in both of the CPE markets and long distance services. Quite simply, the
4 pre-divestiture Bell System was able to successfully block regulatory
5 attempts to proscribe discriminatory and anti-competitive actions -- and
6 thus to spur competition -- in those key markets for more than a decade.

7 A more recent telecommunications example is the complete failure
8 of the FCC's Open Network Architecture ("ONA") concept. Until the
9 FCC's adoption of its Computer II decision, federal rules required that the
10 ILECs provide information services only through structurally separated
11 affiliates. With its ONA decision, the FCC eliminated the structural
12 separation requirement on the condition that the ILECs implement certain
13 non-structural -- i.e., regulatory -- safeguards. The centerpiece of these
14 safeguards was the requirement that the ILECs must provide to ISPs
15 access to the same network capabilities the ILECs utilize in providing
16 retail information services on a non-discriminatory basis. Unfortunately,
17 the FCC's attempt to encourage non-discriminatory behavior via the non-
18 structural ONA obligations was a total failure. The only beneficiary of
19 ONA was the ILECs, who quickly accomplished their objective of
20 marketing information services on an integrated basis with their other
21 telecommunications offerings. The intended beneficiaries of the FCC's
22 ONA approach -- the ISPs -- soon found that ONA was of no benefit
23 whatsoever. The ISPs were forced to look to second- and third-best

1 choices for the services they needed. Proof of the failure of the ONA
2 concept is that the ILECs projected only \$25 million in ONA-related
3 revenues in their 2000 tariff review plans, or only 2/100ths of 1 percent of
4 their revenues. The ONA example demonstrates yet another way in
5 which the Bell Companies have been able to thwart the effectiveness of
6 regulatory tools designed to foster competition in markets involving their
7 local networks.

8
9 **Q. ARE THERE EXAMPLES INDICATING THE SUPERIORITY OF THE**
10 **STRUCTURAL APPROACH IN DEALING WITH COMPETITIVE ISSUES**
11 **IN THE PRESENCE OF MARKET POWER?**

12 **A.** The most obvious examples are in the customer premises equipment
13 (CPE) and long distance service markets. The Bell System's historic
14 stranglehold in those markets gave rise to an old joke that a person could
15 have any type of telephone she desired, so long as it was a black, rotary-
16 dial phone. For years, the Bell System frustrated attempts to compete in
17 the CPE and long distance markets, using its bottleneck control over the
18 local telecommunications networks. Regarding the ability of government
19 regulators to resolve the problems in both the CPE and long distance
20 markets, the MFJ Court reasoned as follows:

21 The key to the Bell System's power to impede competition has
22 been its control of local telephone service. The local telephone
23 network functions as the gateway to individual telephone
24 subscribers. It must be used by long-distance carriers seeking
25 to connect one caller to another. [...] The enormous cost of the
26 wires, cables, switches, and other transmission facilities which

1 comprise that network has completely insulated it from
2 competition. Thus, access to [the Bell System's] local network is
3 crucial if long distance carriers ... are to be viable competitors.

4 [The Bell System] has allegedly used its control of this local
5 monopoly to disadvantage these competitors in two principal
6 ways. First, it has attempted to prevent competing long distance
7 carriers and competing equipment manufacturers from gaining
8 access to the local network, or to delay that access, thus placing
9 them in an inferior position vis-à-vis [the Bell System's] own
10 services. Second, it has supposedly used profits earned from
11 the monopoly local telephone operations to subsidize its long
12 distance and equipment businesses in which it was competing
13 with others.

14 For a great many years, the Federal Communications
15 Commission has struggled, largely without success, to stop
16 practices of this type through the regulatory tools at its
17 command. A lawsuit the Department of Justice brought in 1949
18 to curb similar practices ended in an ineffectual consent decree.
19 Some other remedy is plainly required; hence the divestiture of
20 the local Operating Companies from the Bell System. This
21 divestiture will sever the relationship between this local
22 monopoly and the other, competitive segments of *AT & T*, and it
23 will thus ensure -- certainly better than could any other type of
24 relief -- that the practices which allegedly have lain heavy on the
25 telecommunications industry will not recur.⁶¹

26 As opposed to the tight grip that the pre-divestiture Bell System
27 had on the CPE market, there has been an explosion in types and styles
28 of CPE since the structural separation implemented by divestiture.
29 Customers are able to purchase phones from simple, almost disposable,
30 devices to sophisticated, reasonably priced devices combining such
31 auxiliary capabilities as Caller ID and voice mail. Once a structural, rather
32 than a regulatory, approach toward competition was implemented, the
33 number of choices available to consumers exploded, and prices shifted
34 dramatically in consumers' favor.

1 Similarly, the number of competitive choices available to consumer
2 for long distance services has increased to levels unimaginable at the
3 time of divestiture. Literally hundreds of companies provide long distance
4 services in the U.S. Prices for consumer long distance services have
5 declined rapidly since divestiture, and the FCC's latest report indicates
6 AT&T's market share -- estimated at about 90% of all domestic toll
7 revenues at the time of divestiture -- has declined to about 41%. In
8 contrast with the total inability of regulation to restrain anti-competitive
9 behavior from the pre-divestiture Bell System, the effects of divestiture
10 stand as glittering examples of how structural separation can resolve the
11 aforementioned incentive of carriers such as Qwest to exploit its
12 bottleneck facilities to its own private gain and to the detriment of the
13 competitive process and the public interest.

14
15 **Q. WHAT IS THE RELEVANCE OF THIS HISTORY TO THE EXAMPLES**
16 **OF QWEST'S CONTINUING MONOPOLY MINDSET PRESENTED IN**
17 **THE PREVIOUS SECTION OF YOUR TESTIMONY?**

18 **A.** Those examples demonstrate the strength of Qwest's incentives to exploit
19 its bottleneck control over its ubiquitous network to its own competitive
20 advantage. Indeed, the history of the pre-divestiture Bell System instructs
21 that such incentives simply are too powerful to be overcome or neutralized
22 by regulatory tools, precisely the concern voiced by the Chairman of the

⁶¹ Id., at 222-223

1 House Judiciary Committee who, writing to Speaker Hastert in regard to
2 H.R. 1542, cautioned as follows:

3 The new § 251(j) contains an exemption that would eliminate
4 [the RBOCs'] obligation to provide unbundled network elements
5 and resale at wholesale rates for high speed data service.
6 These obligations on incumbent local exchange carriers allow
7 competitors the ability to provide competing local service. In
8 short, this provision allows the incumbents effectively to leverage
9 their monopoly control over the local exchange and exclude
10 competition in high speed data service. That is troublesome
11 enough, but taken together with the broad definition of high
12 speed data service -- which could include voice as well as data --
13 it represents the potential remonopolization of the industry.⁶²

14
15 **Q. TAKING ALL OF THE ABOVE INTO ACCOUNT, WHAT YOU HAVE**
16 **DESCRIBED SOUNDS LIKE A VERY INTENSIVE REGULATORY**
17 **PROCESS. AREN'T YOU IN EFFECT ASKING THIS COMMISSION TO**
18 **ENGAGE IN EVEN MORE REGULATION IN THE FACE OF WHAT IS**
19 **SUPPOSED TO BE A TREND TOWARD A MORE DE-REGULATORY**
20 **ENVIRONMENT?**

21 **A.** Quite the opposite. My testimony suggests a much more radical *de-*
22 *regulatory* approach than this Commission has previously considered.
23 By imposing an appropriate incentive structure on Qwest's wholesale
24 operation, Qwest's *retail* operation could be freed of virtually all traditional
25 regulations very quickly. That is because Qwest's retail operation would
26 have to deal with the wholesale arm in precisely the same manner as
27 would other CLECs. It would pay the same rates for use of the underlying

⁶² Letter from F. James Sensenbrenner, Jr. to Speaker Hastert dated May 1, 2001, at 8

1 network as other CLECs, and would be subject to the same terms and
2 conditions for use of that network as other CLECs. Such an approach
3 would 1) ensure that Qwest's retail operation has no artificial competitive
4 advantage over other CLECs seeking to compete in the Arizona local
5 telecommunications market, and 2) rapidly eliminate the need for
6 regulation of Qwest's retail operation. If Qwest's true objective is to avoid
7 unnecessary regulations, the approach outlined herein provides it with an
8 opportunity to achieve rapid deregulation of its retail operations.

9
10 **VI. Strong, Self- Enforcing Measures to Prevent Backsliding are**
11 **Mandatory in the Absence of Structural Remedies**

12
13 **Q. IF THE COMMISSION CHOOSES NOT TO ENDORSE THE USE OF**
14 **STRUCTURAL TOOLS TO ACCOMPLISH ITS PRO-COMPETITIVE**
15 **PUBLIC INTEREST OBJECTIVES, CAN YOU DESCRIBE THE TYPES**
16 **OF TOOLS THAT WOULD BE A SECOND-BEST APPROACH?**

17 **A.** Yes. In addition to the critical issue of pricing for unbundled network
18 elements discussed at length in section III, above, the Commission must
19 also ensure that 1) the terms and conditions for CLECs' access to UNEs
20 and UNE combinations permit economically viable access to those
21 elements, 2) operational support systems (OSSs) are available to CLECs
22 that are fully functional, stress-tested, and integratable, and 3) there exist

1 self-executing and behavior-modifying remedies for violations of the
2 competitive "rules of engagement" established by this Commission.⁶³
3

4 **Q. IS IT YOUR UNDERSTANDING THAT THE OSS ISSUES ARE BEING**
5 **ADDRESSED IN A PROCEEDING SEPARATE?**

6 **A.** Yes. My point here was to provide to the Commission a complete list of
7 the necessary regulatory tools, and I do not mean to suggest that this
8 proceeding is the place to consider issues related to Qwest's OSS.
9 Moreover, I also understand that the Commission is considering an anti-
10 backsliding" performance assurance plan ("PAP") in another phase of this
11 proceeding, and I am not suggesting that Qwest's proposed PAP be
12 addressed in this public interest workshop either. WorldCom has already
13 filed its opening brief addressing Qwest's proposed PAP and continues to
14 address the deficiencies of Qwest's proposed PAP in the other phase of
15 these proceedings.

16
17 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY "SELF-EXECUTING AND**
18 **BEHAVIOR-MODIFYING REMEDIES FOR VIOLATIONS OF THE**
19 **COMPETITIVE 'RULES OF ENGAGEMENT' ESTABLISHED BY THIS**
20 **COMMISSION."**

21 **A.** Simply stated, the performance assurance plan the Commission adopts
22 must have the effect of encouraging Qwest to "do the right thing" relative

⁶³ Obviously these tools do not replace the need to ensure Qwest's compliance with the "checklist

1 to its wholesale customers. To be effective, such a plan must contain
2 financial penalties at a level sufficient for Qwest to view them as
3 something other than a cost of doing business, much as FCC Chairman
4 Powell is seeking to ensure by requesting authority to levy higher
5 penalties for non-compliance. Looking at this as a "carrot and stick"
6 process, an effective plan must contain a sufficient "stick" such that
7 Qwest's financial incentives are clear -- it must treat its competitors in a
8 non-discriminatory manner that is at parity with how it deals with its own
9 retail operations.

10

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

12 **A.** Yes, it does.

13

items" required by the Act

**DON PRICE
ACADEMIC AND PROFESSIONAL QUALIFICATIONS, AND
TESTIMONY PRESENTED BEFORE
REGULATORY UTILITY COMMISSIONS**

Academic Background:

My academic background is in the social sciences. I received my Bachelor of Arts degree in Sociology from the University of Texas at Arlington May of 1977 and was awarded a Master of Arts degree in Sociology by the University of Texas at Arlington in December, 1978.

Professional Qualifications:

From January, 1979 until October, 1983, I was employed by the Southwest telephone operating company of GTE where I held several positions of increasing responsibility in Economic Planning. In those positions I became acquainted with such local exchange telephone company functions as the workings and design of the local exchange network, the network planning process, the operation of a business office, and the design and operation of large billing systems.

From November 1983 until October 1986, was employed by the Public Utility Commission of Texas. I provided analysis and expert testimony on a variety of rate design issues including setting of rates for switched and special access services, MTS (toll), WATS, EAS, and local and general exchange services. In 1986 I was promoted to Manager of Rates and Tariffs, and was directly responsible for staff analyses of rate design and tariff issues in all telecommunications proceedings before the Texas Commission.

I have been with WorldCom (formerly MCI WorldCom, and MCI Telecommunications Corporation prior to the merger) for over fourteen years, during which time all of my experience has been in the regulatory and public policy arena. In my present position as Senior Regional Manager, Competition Policy, I have broad responsibilities in developing and coordinating WorldCom's regulatory and public policy initiatives for the western portion of the company's domestic operations. Those responsibilities require that I work closely on a day-to-day basis with WorldCom's regulatory teams in both the state and federal arenas, as well as with all of the Company's business units.

While with WorldCom, I have appeared as a panelist before various professional and trade associations and public seminars, including the Texas Society of CPAs, the University of Texas Department of Electrical and Computer Engineering Telecommunications Conference, the Alabama Telephone Association, the Arkansas Telephone Association, and the National Association of Regulatory Utility Attorneys.

I have testified before a number of commissions, including the Federal Communications Commission, the Public Service Commission of Arkansas, the California Public Utilities Commission, the Public Service Commission of Florida, the Georgia Public Service Commission, the Kansas Corporation Commission, the Public Service Commission of Kentucky, the Louisiana Public Service Commission, the Missouri Public Service Commission, the North Carolina Utilities Commission, the Corporation Commission of the State of Oklahoma, the Public Service Commission of South Carolina, the Tennessee Regulatory Authority, and the Public Utility Commission of Texas. A list of those proceedings in which I have furnished testimony is provided below.

Testimony Presented:

FCC

CC Docket No. 00-4: In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas

Arkansas

Docket No. 91-051-U: IN RE IMPLEMENTATION OF TITLE IV OF THE AMERICANS WITH DISABILITIES ACT OF 1990

Docket No. 92-079-R: IN THE MATTER OF A PROCEEDING FOR THE DEVELOPMENT OF RULES AND POLICIES CONCERNING OPERATOR SERVICE PROVIDERS

California

Application 01-01-010: Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996

Florida

Docket No. 941272-TL: IN RE: SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S PETITION FOR APPROVAL OF NUMBERING PLAN AREA RELIEF FOR 305 AREA CODE

Docket No.950696-TP: IN RE: DETERMINATION OF FUNDING FOR UNIVERSAL SERVICE AND CARRIER OF LAST RESORT RESPONSIBILITIES.

Docket No. 950737-TP: IN RE: INVESTIGATION INTO TEMPORARY LOCAL TELEPHONE NUMBER PORTABILITY SOLUTION TO IMPLEMENT COMPETITION IN LOCAL EXCHANGE TELEPHONE MARKETS.

Florida (continued)

Docket No. 950984-TP: IN RE: RESOLUTION OF PETITION(S) TO ESTABLISH NON-DISCRIMINATORY RATES, TERMS, AND CONDITIONS FOR RESALE INVOLVING LOCAL EXCHANGE COMPANIES AND ALTERNATIVE LOCAL EXCHANGE COMPANIES PURSUANT TO SECTION 364.162, FLORIDA STATUTES.

Docket No. 950985-TP: IN RE: RESOLUTION OF PETITION(S) TO ESTABLISH NON-DISCRIMINATORY RATES, TERMS, AND CONDITIONS FOR INTERCONNECTION INVOLVING LOCAL EXCHANGE COMPANIES AND ALTERNATIVE LOCAL EXCHANGE COMPANIES PURSUANT TO SECTION 364.162, FLORIDA STATUTES.

Docket No. 000649-TP: IN RE: PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC AND MCI WORLDCOM COMMUNICATIONS, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Georgia

Docket No. 5548-U: IN RE: INVESTIGATION INTO THE FUNDING OF UNIVERSAL SERVICE.

Docket No. 6537-U: IN THE MATTER OF: MCIMETRO PETITION TO ESTABLISH NONDISCRIMINATORY RATES, TERMS AND CONDITIONS FOR UNBUNDLING AND RESALE OF LOCAL LOOPS.

Docket No. 11901-U: IN RE: PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC AND MCI WORLDCOM COMMUNICATIONS, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Kansas

Docket No. 190,492-U: IN THE MATTER OF A GENERAL INVESTIGATION INTO COMPETITION WITHIN THE TELECOMMUNICATIONS INDUSTRY IN THE STATE OF KANSAS

Louisiana

Docket No. U-17957: IN RE: INVESTIGATION OF OPERATING PRACTICES OF ALTERNATIVE OPERATOR SERVICES PROVIDERS TO INCLUDE RATES AND CHARGES.

Docket No. U-19806: IN RE: PETITION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., FOR REDUCED REGULATION OF INTRASTATE OPERATIONS.

Docket No. U-20237: IN RE: OBJECTIONS TO THE FILING OF REDUCED WATS SAVER SERVICE RATES, INTRALATA, STATE OF LOUISIANA.

Docket No. U-20710: IN RE: GENERIC HEARING TO CLARIFY THE PRICING/IMPUTATION STANDARD SET FORTH IN COMMISSION ORDER NO. U- 17949-N ON A PROSPECTIVE BASIS ONLY, AS THE STANDARD RELATES TO LEC COMPETITIVE TOLL OFFERINGS.

Docket No. U-20883: IN RE: THE DEVELOPMENT OF RULES AND REGULATIONS APPLICABLE TO THE ENTRY AND OPERATIONS OF, AND THE PROVIDING OF SERVICES BY, COMPETITIVE AND ALTERNATE ACCESS PROVIDERS IN THE LOCAL, INTRASTATE AND/OR INTEREXCHANGE TELECOMMUNICATIONS MARKET IN LOUISIANA. SUBDOCKET A: UNIVERSAL SERVICE.

Docket No. U-25350: IN RE: PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Missouri

Case No. TO-87-42: IN THE MATTER OF SOUTHWESTERN BELL TELEPHONE COMPANY FILING ACCESS SERVICES TARIFF REVISIONS AND WIDE AREA TELECOMMUNICATIONS SERVICE (WATS) TARIFF, INDEX, 6th REVISED SHEET, ORIGINAL SHEET 16.01.

Case No. TO-95-289, ET AL: IN THE MATTER OF AN INVESTIGATION INTO THE EXHAUSTION OF TELEPHONE NUMBERS IN THE 314 NUMBERING PLAN AREA.

Case No. TC-2000-225, et al.: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., BroadSpan Communications, Inc., d/b/a Primary Network Communications, Inc., Complainants, vs. Southwestern Bell Telephone Company, Respondent.

North Carolina

Docket No. P-100, SUB 119: IN THE MATTER OF: ASSIGNMENT OF NII DIALING CODES.

Docket No. P-141, SUB 29: IN THE MATTER OF: PETITION OF MCI TELECOMMUNICATIONS CORPORATION FOR ARBITRATION OF INTERCONNECTION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

Docket No. P-474, SUB 10: IN RE: PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

Oklahoma

Consolidated Dockets PUD NO. 000237: IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR AN ORDER APPROVING PROPOSED CHANGES AND ADDITIONS IN APPLICANTS' WIDE AREA TELECOMMUNICATIONS SERVICE PLAN TARIFF; and,

PUD NO. 000254: IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR AN ORDER APPROVING PROPOSED ADDITIONS AND CHANGES IN APPLICANTS' ACCESS SERVICE TARIFF AND WIDE AREA TELECOMMUNICATIONS SERVICE PLAN TARIFF

Consolidated Dockets PUD NO.920001335: IN THE MATTER OF THE APPLICATION OF THE OKLAHOMA RURAL TELEPHONE COALITION, GTE SOUTHWEST, INC., ALLTEL OKLAHOMA, INC., AND OKLAHOMA ALLTEL, INC. FOR AN ORDER ADOPTING THE OKLAHOMA ALTERNATIVE SETTLEMENT PLAN; and

PUD NO.920001213: IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR AN ORDER IMPLEMENTING TERMINATING ACCESS CHARGES IN LIEU OF INTRALATA TOLL AND SURCHARGE POOLS; and

PUD NO.940000051: IN RE: INQUIRY OF THE OKLAHOMA CORPORATION COMMISSION REGARDING WHETHER THE INTRALATA TOLL POOL AND SURCHARGE POOL SHOULD CONTINUE TO EXIST IN THE STATE OF OKLAHOMA

South Carolina

Docket No. 92-606-C: IN RE: N11 SERVICE CODES.

Tennessee

Docket No.93-07799: IN RE: SHOW CAUSE PROCEEDING AGAINST CERTIFIED IXCS AND LECS TO PROVIDE TOLL FREE, COUNTY-WIDE CALLING.

Docket No.93-08793: IN RE: APPLICATION OF MCI METRO ACCESS TRANSMISSION SERVICES, INC. FOR AUTHORITY TO OFFER LOCAL EXCHANGE SERVICES WITHIN TENNESSEE.

Docket No.94-00184: INQUIRY FOR TELECOMMUNICATIONS RULEMAKING REGARDING COMPETITION IN THE LOCAL EXCHANGE.

Tennessee (continued)

Docket No.95-02499: UNIVERSAL SERVICE PROCEEDING, PART 1 - COST OF UNIVERSAL SERVICE AND CURRENT SOURCES OF UNIVERSAL SERVICE SUPPORT, AND PART 2 - ALTERNATIVE UNIVERSAL SERVICE SUPPORT MECHANISMS.

Docket No. 00-00309: PETITION OF MCIMETRO ACCESS SERVICES, LLC AND BROOKS FIBER COMMUNICATIONS OF TENNESSEE, INC. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996

Texas

Docket 4992: APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST FOR A RATE/TARIFF REVISION.

Docket 5113: PETITION OF PUBLIC UTILITY COMMISSION FOR AN INQUIRY CONCERNING THE EFFECTS OF THE MODIFIED FINAL JUDGMENT AND THE ACCESS CHARGE ORDER UPON SW BELL AND THE INDEPENDENT TELEPHONE COMPANIES OF TEXAS (Phase II).

Docket 5610: APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST FOR A RATE INCREASE.

Docket 5800: APPLICATION OF AT&T COMMUNICATIONS FOR AUTHORITY TO IMPLEMENT "REACH OUT TEXAS."

Docket 5898; APPLICATION OF SAN ANGELO FOR REMOVAL OF THE EXTENDED AREA SERVICE CHARGE FROM GENERAL TELEPHONE COMPANY OF THE SOUTHWEST'S RATES IN SAN ANGELO, TEXAS.

Docket 5926: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO ESTABLISH FEATURE GROUP "E" (FGE) ACCESS SERVICE FOR RADIO AND CELLULAR COMMON CARRIERS.

Docket 5954: INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS INTO OFFERING EXTENDED AREA SERVICE IN THE CITY OF ROCKWALL.

Docket 6095: APPLICATION OF AT&T COMMUNICATION FOR A RATE INCREASE.

Texas (continued)

Docket 6200: PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Docket 6264: PETITION OF THE GENERAL COUNSEL FOR INITIATION OF AN EVIDENTIARY PROCEEDING TO ESTABLISH TELECOMMUNICATIONS SUBMARKETS.

Docket 6501: APPLICATION OF VALLEY VIEW TELEPHONE COMPANY FOR AN AMENDMENT TO CERTIFICATE OF CONVENIENCE AND NECESSITY.

Docket 6635: APPLICATION OF MUSTANG TELEPHONE COMPANY FOR AUTHORITY TO CHANGE RATES.

Docket 6740: APPLICATION OF SOUTHWEST TEXAS TELEPHONE COMPANY FOR RATE INCREASE.

Docket 6935: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO INTRODUCE MICROLINK II- PACKET SWITCHING DIGITAL SERVICE.

Docket 8730: INQUIRY OF THE GENERAL COUNSEL INTO THE MEET-POINT BILLING PRACTICES OF GTE SOUTHWEST, INC.

Docket 8218: INQUIRY OF THE GENERAL COUNSEL INTO THE WATS PRORATE CREDIT.

Docket 8585: INQUIRY OF THE GENERAL COUNSEL INTO THE REASONABLENESS OF THE RATES AND SERVICES OF SOUTHWESTERN BELL TELEPHONE COMPANY.

Docket 10127: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO REVISE SECTION 2 OF ITS INTRASTATE ACCESS SERVICE TARIFF.

Docket 11441: PETITIONS OF INFODIAL, INC., AND OTHERS FOR ASSIGNMENT OF ABBREVIATED NII DIALING CODES.

Docket 11840: JOINT PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY AND GTE SOUTHWEST, INC. TO PROVIDE EXTENDED AREA SERVICE TO CERTAIN COMMUNITIES IN THE LOWER RIO GRANDE VALLEY.

Texas (continued)

Docket 14447: PETITION OF MCI TELECOMMUNICATIONS CORPORATION FOR AN INVESTIGATION OF THE PRACTICES OF SOUTHWESTERN BELL TELEPHONE COMPANY REGARDING THE EXHAUSTION OF TELEPHONE NUMBERS IN THE 214 NUMBERING PLAN AREA AND REQUEST FOR A CEASE AND DESIST ORDER AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY.

Dockets 14940 and 14943: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR INTERIM NUMBER PORTABILITY PURSUANT TO '3.455 OF THE PUBLIC UTILITY REGULATORY ACT; AND APPLICATION OF GTE SOUTHWEST, INC. AND CONTEL OF TEXAS, INC. FOR INTERIM NUMBER PORTABILITY PURSUANT TO '3.455 OF THE PUBLIC UTILITY REGULATORY ACT.

Docket 16251: INVESTIGATION OF SOUTHWESTERN BELL TELEPHONE COMPANY'S ENTRY INTO THE INTERLATA TELECOMMUNICATIONS MARKET.

Docket 16285: PETITION OF MCI TELECOMMUNICATIONS CORPORATION AND ITS AFFILIATE MCIMETRO ACCESS TRANSMISSION SERVICES, INC. FOR ARBITRATION AND REQUEST FOR MEDIATION UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

Docket 18117: COMPLAINT OF MCI TELECOMMUNICATIONS CORPORATION AND MCIMETRO ACCESS TRANSMISSION SERVICE, INC. AGAINST SWBT FOR VIOLATION OF COMMISSION ORDER IN DOCKET NOS. 16285 AND 17587 REGARDING PROVISIONING OF UNBUNDLED DEDICATED TRANSPORT.

Docket 19075: PETITION OF MCI TELECOMMUNICATIONS CORPORATION FOR ARBITRATION OF DIRECTORY ASSISTANCE LISTINGS ISSUES UNDER FEDERAL TELECOMMUNICATIONS ACT OF 1996.

Docket 21791: PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR ARBITRATION WITH MCI WORLDCOM COMMUNICATIONS, INC. PURSUANT TO SECTION 252(B)(1) OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

Docket 21982: PROCEEDING TO EXAMINE RECIPROCAL COMPENSATION PURSUANT TO SECTION 252 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.



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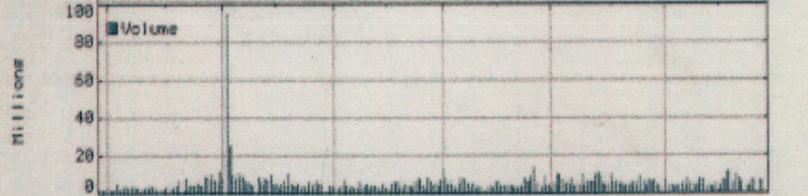
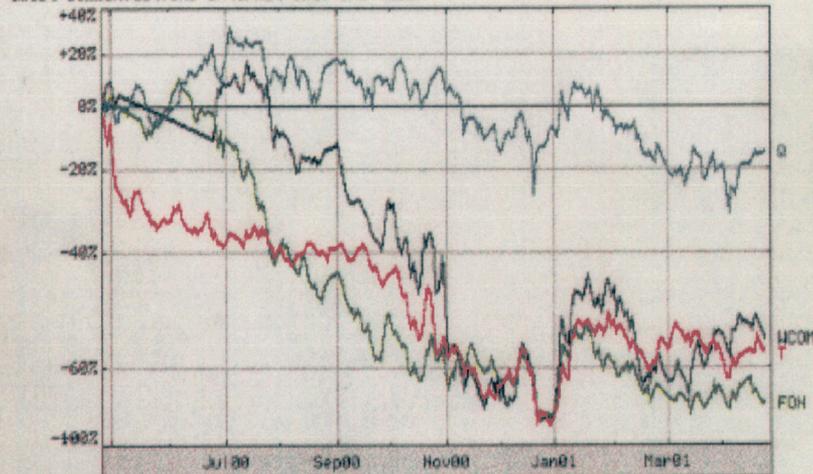
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