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BEFORE THE ARIZONA CORPORATION COMMISSION

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3 JEFF HATCH-MILLER
4 Chairman
5 MARC SPITZER
6 Commissioner
7 WILLIAM MUNDELL
8 Commissioner
9 MIKE GLEASON
10 Commissioner
11 KRISTIN MAYES
12 Commissioner
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8 IN THE MATTER OF THE
9 APPLICATION OF QWEST
10 COMMUNICATIONS CORPORATION
11 D/B/A QWEST LONG DISTANCE FOR
12 EXTENSION OF ITS EXISTING
13 CERTIFICATE OF CONVENIENCE AND
14 NECESSITY TO INCLUDE AUTHORITY
15 TO PROVIDE RESOLD AND
16 FACILITIES-BASED LOCAL
17 EXCHANGE AND RESOLD LONG
18 DISANCE SERVICES, AND PETITION
19 FOR COMPETITIVE CLASSIFICATION
20 OF PROPOSED SERVCIES, AND
21 PETITON FOR COMPETITIVE
22 CLASSIFICATION OF PROPOSED
23 SERVICES WITHIN THE STATE OF
24 ARIZONA.

DOCKET NO. T-02811B-04-0313

**NOTICE OF FILING
SUPPLEMENTAL REBUTTAL
TESTIMONY OF MARY FERGUSON
LAFAVE**

18 Qwest Corporation files herewith the Supplemental Rebuttal Testimony of Mary
19 Ferguson LaFave.

20 DATED: August 17, 2005

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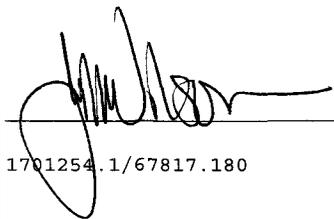
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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner

**IN THE MATTER THE APPLICATION
OF QWEST COMMUNICATIONS
CORPORATION D/B/A QWEST LONG
DISTANCE FOR EXTENSION OF ITS
EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE RESOLD AND FACILITIES
BASED LOCAL EXCHANGE AND
RESOLD LONG DISTANCE SERVICES
IN ADDITION TO ITS CURRENT
AUTHORITY TO PROVIDE FACILITIES
BASED LONG DISTANCE SERVICES,
AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED
SERVICES WITHIN THE STATE OF
ARIZONA**

Docket No. T-02811B-04-0313

**SUPPLEMENTAL REBUTTAL TESTIMONY OF
MARY FERGUSON LAFAVE**

ON BEHALF OF

QWEST COMMUNICATIONS CORPORATION

AUGUST 17, 2005

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I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Mary Ferguson LaFave. I am employed by Qwest Services Corporation. My office is located at 1801 California, 47th Floor, Denver, Colorado 80202.

Q. DID YOU PREVIOUSLY PROVIDE TESTIMONY IN THIS PROCEEDING?

A. Yes. Although my direct testimony was not prefiled in written form, I did provide direct testimony in support of this application at the hearing on May 17, 2005.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL TESTIMONY?

A. By Procedural Order issued on July 11, 2005, the ALJ has requested that the parties file testimony to address several questions. I am filing this testimony to respond to ALJ Wolfe's questions, and rebut certain points made by Staff in its Supplemental Direct Testimony filed on August 5, 2005. By this testimony I am also explaining why public interests will be benefited by granting QCC's Application.

Q. DO YOU HAVE ANY PRELIMINARY POINTS TO MAKE REGARDING THE ALJ'S QUESTIONS AND YOUR TESTIMONY?

A. Yes. I would like to correct any misunderstandings the Commission may have about the Qwest corporate structure. The Applicant in this proceeding is Qwest Communications Corporation, which throughout the proceeding has been designated as "QCC." The ultimate parent corporation is Qwest Communications International Inc., which owns Qwest Services Corporation. Qwest Services Corporation, in turn, owns QCC and Qwest Corporation, which has generally been referred to throughout

1 this proceeding as "QC." Thus, QC and QCC are sister companies in the corporate
2 structure. QC is not the parent company of QCC. Because both QCC and QC are
3 Qwest companies, it is clearer to refer to them as "QCC" and "QC" respectively, rather
4 than to refer to one or the other simply as "Qwest." When I use the name "Qwest"
5 without further description, I am referring to the parent corporation or the Qwest family
6 of companies.

7
8 **II. THE APPLICANT QCC IS A SECTION 272 SEPARATE ENTITY**

9
10 **Q. PLEASE DESCRIBE THE REQUIREMENTS OF A SECTION 272 SEPARATE**
11 **ENTITY.**

12 **A.** A separate affiliate is required by law for a Qwest company to provide originating
13 interLATA services in the QC territories. QC is a Bell Operating Company which is a
14 local exchange carrier under the Telecommunications Act of 1996. As such, QC is
15 prohibited from providing interLATA services. Section 272 requires that such services
16 may only be provided through a separate affiliate which must satisfy several
17 requirements: separate operations, separate books and accounts, separate officers,
18 directors and employees, operate on an arm's length basis with QC, unable to
19 financially encumber QC and makes all transactions with QC available for public
20 inspection. QCC is a business, for-profit corporation formed under the laws of the
21 State of Delaware and operates in accordance with the Section 272 separation
22 requirements described above.

1

2

III. THE BUSINESS PURPOSE BEHIND THE APPLICATION

3

4 **Q. WHAT IS THE BUSINESS PURPOSE BEHIND THE APPLICATION AS IT**
5 **CURRENTLY STANDS?**

6 A. I testified about this in my direct examination on May 17, 2005. Section 272 of the Act
7 prohibits QC from providing both local exchange service and interLATA service to
8 customers. Conversely, a section 272 affiliate is not prohibited by law from providing
9 local service. Therefore, the only companies affiliated with a BOC that are permitted
10 by federal law to provide both local and interLATA services are the 272 affiliates,
11 which, in this instance, is QCC. As I testified on May 17, business customers
12 commonly desire to deal with only one provider for all their telecommunications
13 services. If they cannot have that relationship, they often take their business
14 elsewhere. The business purpose behind the Application is to enable the 272 affiliate-
15 -the only Qwest company that may legally be so enabled—to enter the market for both
16 local exchange services and interLATA services.

17

18 **Q. HOW IMPORTANT IS IT TO BUSINESS CUSTOMERS TO BE ABLE TO DEAL**
19 **WITH A SINGLE ENTITY RATHER THAN MULTIPLE ENTITIES?**

20 A. Our experience in the market tells us that it is very important to a substantial part of
21 the enterprise segment.¹ In my testimony given on May 17, I provided several
22 examples. The local example I gave was that of the Request for Proposal that had
23 recently been issued by Arizona Public Service (“APS”). That RFP had the
24 qualification that APS wanted a full suite of services, local and long distance, and that

¹ For purposes of this proceeding, “enterprise customers” are defined as those business customers subscribing to four or more business lines in the aggregate.

1 there be a single provider with a single point of contact and single bill. There was not
2 any company in the Qwest family of companies that could respond. QC was
3 disqualified from that bidding process. In addition, there are companies that have
4 multiple locations nationally that are both in-region and out-of-region that QC cannot
5 serve.

6
7 The enterprise customer segment, in which we include federal, state, and local
8 government, is looking for what we commonly refer to as "one-stop shopping." They
9 want a single entity with which they can do business for all their telecommunications
10 needs, whether local exchange service, ATM and frame data products, long distance,
11 or dedicated Internet access. They want a whole suite of products that are
12 telecommunications-based. They seek service from a single entity, with a single
13 contact and a single bill. They want a single entity to be responsible and accountable
14 for performance.

15
16 **Q. ARE OTHER PROVIDERS LIKE AT&T, MCI, XO OR TIME WARNER SUBJECT TO**
17 **THE SAME DILEMMA THAT IS FACED BY QWEST IN PROVIDING "ONE STOP**
18 **SHOPPING" TO CUSTOMERS?**

19 **A.** No, they are not. Those other companies are not restricted. They can, and do,
20 provide both local and long distance service from the same entity.

21
22 **Q. SINCE THE RULES UNDER SECTION 272 PERMIT JOINT MARKETING**
23 **BETWEEN QC AND QCC, DOESN'T THAT SOLVE THE "ONE-STOP SHOPPING"**
24 **PROBLEM?**

25 **A.** No. While QC and QCC may be able to jointly market their services, proposals made
26 under joint marketing must be divided to reflect what entity is providing which services,

1 giving proper respect to the limitations that each company has by law. Thus joint
2 marketing is not the same as "one stop shopping."
3

4 **IV. THE ENTERPRISE MARKET SEGMENT IS HIGHLY COMPETITIVE; QCC'S**
5 **MARKET FOCUS**
6

7 **Q. PLEASE DESCRIBE THE COMPETITIVE LANDSCAPE IN THE ENTERPRISE**
8 **MARKET.**

9 A. There is fierce competition in Arizona in the enterprise market. For example, as of
10 July 2005, there were 144 providers of telecom services targeting only business
11 customers. As will be discussed more fully below, the Qwest family of companies
12 often cannot compete successfully in the enterprise market because of customer
13 demands, e.g., for a single contract, bill and point of contact.
14

15 **Q. WHERE WILL QCC'S ENTERPRISE CUSTOMERS BE FOUND?**

16 A. An important part of the enterprise market are customers who have nationwide or
17 region-wide locations. Those customers will be a particular focus for QCC, which
18 among the Qwest family of companies is uniquely capable of meeting the customers'
19 total needs. Many of those customers have already left QC, and are now customers
20 of the national competitors such as AT&T and MCI. For example, Mutual of Omaha
21 dismissed the combined QC and QCC response to a nationwide RFP in the first round
22 because we could not satisfy the single bill and single point of contact requirement set
23 forth in the RFP. With regard to other customers in the enterprise segment (those
24 who are in the enterprise category but not national or regional), QCC expects that the
25 customers it will be able to win over are about as likely to be a current customer of a
26 non-Qwest company as they are a QC customer.

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V. OTHER PUBLIC BENEFITS; NATIONAL PUBLIC POLICY

Q. BESIDES THE ABILITY TO PROVIDE "ONE STOP SHOPPING," WHAT DOES QCC EXPECT TO BE ABLE TO OFFER TO INDUCE LOCAL EXCHANGE CUSTOMERS TO SWITCH TO QCC FROM THE CURRENT PROVIDER?

A. I cannot overemphasize the importance of one-stop shopping. It is a factor that, all other things being equal, will influence a buying decision and may in some instances be a firm requirement along with such other factors as repair response time and other service level agreements. Those benefits to customers – giving them exactly what they want -- are entirely consistent with the goals of the Telecommunications Act of 1996—which were to benefit the public by providing for a pro-competitive, deregulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

Q. ARE YOU AWARE OF ANY STATEMENT OF NATIONAL POLICY SUPPORTING THE CONCLUSION THAT A 272 AFFILIATE SHOULD BE ALLOWED TO PROVIDE LOCAL EXCHANGE SERVICES?

A. Yes. In its Section 272 Non-Accounting Safeguards Order, paragraph 315, the FCC concluded as a matter of national policy that regulations prohibiting Bell Operating Company section 272 affiliates like QCC from offering local exchange service do not serve the public interest. The FCC stated that the public policy goals of encouraging competition and innovation in the telecommunications market are served by the increased flexibility that results from the ability of the 272 affiliate to provide both interLATA and local service. The FCC further concluded that there was no basis to

1 conclude that competition in the local market would be harmed if a section 272 affiliate
2 offers local exchange service to the public that is similar to local exchange service
3 offered by the BOC. The safeguards that are in place address concerns of unlawful
4 subsidization, preferential treatment, improper cost allocations, discrimination, and
5 predatory pricing.
6

7 **Q. DO YOU KNOW OF ANY REASONS WHY THE PUBLIC INTEREST QUESTION**
8 **SHOULD BE VIEWED DIFFERENTLY IN ARIZONA?**

9 A. No. I believe that the public interest in Arizona is well served by permitting QC's
10 section 272 affiliate to provide local exchange services and do not know of any
11 reasons why the Arizona situation is different from that found in other states.
12

13 **Q. DOES QCC HAVE THE NECESSARY STATE REGULATORY COMMISSION**
14 **AUTHORIZATIONS TO PROVIDE LOCAL EXCHANGE SERVICES IN OTHER QC**
15 **STATES, BOTH INSIDE AND OUTSIDE OF QC'S LOCAL SERVICE AREAS?**

16 A. Yes. QCC is authorized to provide local exchange service both inside and outside of
17 QC's local service areas in every state in which QC operates, except for Arizona.
18

1 **VI. ARIZONA CORPORATION COMMISSION DECISIONS**

2 **REGARDING NON-BOC LECS**

3
4 **Q. THE STAFF HAS STATED IN THIS PROCEEDING THAT THE COMMISSION HAS**
5 **PREVIOUSLY DENIED THE APPLICATION OF THE AFFILIATES OF OTHER LECS**
6 **TO PROVIDE LOCAL EXCHANGE SERVICE INSIDE THE SERVICE AREA OF THE**
7 **AFFILIATED LEC. PLEASE STATE YOUR VIEW OF THE PUBLIC POLICY**
8 **CONSIDERATIONS OF THOSE OTHER PROCEEDINGS AS CONTRASTED TO**
9 **THE QCC APPLICATION.**

10 **A.** We believe that the state's denial of a CC&N to the affiliate of the non-BOC ILECs to
11 provide local exchange service inside the ILECs service area is contrary to the goals
12 of the Telecommunications Act of 1996 and specifically contrary to Section 253 of the
13 Act. Beyond that, however, the situations are strikingly different from this case, and
14 for that additional reason should not be held up as the public policy standard in
15 Arizona.

16
17 First, it is important to take into account the demography of Arizona and compare the
18 population centers to the service areas of the different ILECs. It is apparent that the
19 largest market opportunity is inside the QC service area. When Valley Telecom's
20 CLEC affiliate is precluded from providing service to Willcox, it is still able to compete
21 for the opportunity to provide service to 99% of the population of Arizona. Compare
22 that to QCC: If QCC is precluded from serving inside QC's area, QCC is precluded
23 from serving approximately 90% of the Arizona population. The degree of preclusion
24 that is worked on the applicant is slight to the affiliate of the independent telco, but is
25 virtually total to the affiliate of the BOC.

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Second, the independent telephone companies whose affiliates have sought local exchange CC&Ns from this Commission enjoy an exemption from the provisions of Section 251(c). Under the rural exemption, those LECs do not have to open their networks to competitors by providing unbundled network elements, collocation, or resale at wholesale rates. Thus, those independent telephone companies are not facing the same degree or type of competition that QC faces in its service areas. To the extent that the Commission might have looked for a healthy level of competition as a reason to grant a CC&N to an affiliate of an ILEC, there was not likely any significant competition present in those cases. As discussed above, in the case of QC in the enterprise market, there is healthy competition. Therefore, there is a factual difference, in that there is high competition in the case of QC, where there was none in the case of the other ILECs.

Q. DOES QCC EMBRACE THE LEVEL OF COMPETITION AS A TEST FOR WHETHER THE CC&N SHOULD BE GRANTED TO QCC?

A. No, but QCC is aware that Staff believes that the level of competition is relevant. QCC only wishes to point out that, even under the Staff's theory, there is ample competition to provide a justification for granting the limited certificate for QCC.

Q. ARE THERE OTHER DIFFERENCES BETWEEN THE CIRCUMSTANCES OF QC AS AN ILEC AND OTHER LECs IN ARIZONA THAT JUSTIFY DIFFERENT POLICY?

A. Yes. As I have already stated, because QC is restricted from interLATA service, it cannot provide a total package of local and long distance services. The other ILECs

1 in Arizona do not have any limitations in that regard.
2

3 **VII. AFFILIATED INTEREST WAIVER**
4

5 **Q. PLEASE TURN TO THE ALJ'S FIRST QUESTION, CONCERNING THE**
6 **AFFILIATED INTEREST WAIVER:**
7

8 **"IF STAFF'S RECOMMENDATIONS IN ITS SUPPLEMENTAL STAFF**
9 **REPORT ARE ADOPTED, WHY IS IT UNNECESSARY FOR THE**
10 **COMMISSION TO LOOK AT THE CURRENT WAIVER FROM THE AFFILIATED**
11 **INTERESTS RULES HELD BY QCC'S PARENT QWEST CORPORATION**
12 **("QWEST"), GIVEN THAT QWEST'S COMPETITIVE AFFILIATE WOULD BE**
13 **ALLOWED TO COMPETE HEAD-TO-HEAD FOR QWEST'S REGULATED**
14 **BUSINESS? IN RESPONDING TO THIS QUESTION, THE PARTIES SHOULD**
15 **ADDRESS THE PURPOSE OF THE AFFILIATED INTERESTS RULES, AND**
16 **WHAT THE RISKS AND BENEFITS ARE OF KEEPING THE WAIVER IN**
17 **PLACE."**
18

19 **FIRST, WHAT DO YOU UNDERSTAND TO BE THE PURPOSE OF THE**
20 **AFFILIATED INTEREST RULES?**

21 **A.** I understand that the purpose of the Affiliated Interest Rules is to prevent utilities from
22 endangering their assets through transactions with their affiliates. The Rules do not
23 apply to transactions that do not occur in Arizona and which have no impact on the
24 provision of regulated services in Arizona.
25
26

1 **Q. WHAT DO THE AFFILIATED INTEREST RULES ADDRESS?**

2 A. The operative sections are Rules A.A.C. R14-2-803, 804, and 805. Essentially, Rule
3 803 provides that the Commission be notified of, and approve, of the organization or
4 reorganization of a public utility holding company; Rule 804 requires Commission
5 approval of described affiliate transactions; and Rule 805 imposes certain annual filing
6 requirements of diversification activities and plans. The waiver in question is a limited
7 waiver of Rule 803 only, regarding organization and reorganizations of the holding
8 company and affiliates. The Commission did not waive any requirement of Rules 804
9 and 805.

10

11 **Q. DOES THE PENDING QCC APPLICATION INVOLVE A CHANGE IN THE**
12 **CORPORATE STRUCTURE OF THE QWEST COMPANIES?**

13 A. No. QCC and QC already exist, as I described at the beginning of my testimony.
14 QCC's plans to expand the scope of its operations in Arizona do not require any
15 corporate restructuring.

16

17 **Q. DOES THE PENDING QCC APPLICATION NECESSITATE ANY CHANGES IN**
18 **QC'S CAPITAL STRUCTURE?**

19 A. No. The capital needs of QC, and the current methods of capitalization, will not need
20 to be changed when QCC proceeds with the business that will be authorized by this
21 Application.

22

23 **Q. WILL THERE BE A TRANSFER OF CUSTOMERS AND CUSTOMER REVENUES**
24 **FROM QC TO QCC?**

25 A. No, neither customers nor revenues will be assigned or conveyed from QC to QCC.
26 QC will remain in business and will continue to provide services to any customers who

1 wish to purchase from QC. QCC will compete for customers against other CLECs
2 who are able to meet all of the customer's requirements. When a customer decides to
3 purchase service from QCC, a new provider / subscriber relationship is established.
4

5 **Q. WILL THERE BE A TRANSFER OR LEASE OF OWNERSHIP OF ANY QC ASSETS**
6 **TO QCC?**

7 A. No. QC will not lease assets, or transfer ownership of any assets to QCC. QCC will
8 obtain use of QC assets in the same way that any CLEC uses QC assets – by buying
9 interconnection services, special access, collocation, unbundled network elements or
10 services for resale – all upon non-discriminatory terms and conditions available to all
11 CLECs equally.
12

13 **Q. BASED ON WHAT YOU HAVE SAID ABOVE, WILL QCC'S LAUNCH OF ITS NEW**
14 **BUSINESS, AUTHORIZATION FOR WHICH IS SOUGHT BY THIS APPLICATION,**
15 **BE AN EVENT THAT MUST BE REPORTED UNDER RULE 803?**

16 A. No. I do not expect a transaction of the type or kind about which notice of intent is
17 required to be given under Rule 803.
18

19 **Q. WHAT DO YOU UNDERSTAND TO BE THE SCOPE OF THE LIMITED WAIVER**
20 **QWEST HOLDS?**

21 A. The waiver in question is a limited waiver of Rule 803 only, regarding organization and
22 reorganizations of the holding company and affiliates. Rule 803 provides that the
23 Commission may reject a proposal for organization or reorganization if it determines
24 that it would impair the financial status of the public utility, otherwise prevent it from
25 attracting capital at fair and reasonable terms, or impair the ability of the public utility
26 to provide safe, reasonable and adequate service. Under Commission Decision No.

1 58087 rendered in 1992, the BOC operating company U S West Communications, Inc.
2 ("USWCI") and its ultimate parent company U S WEST, Inc. ("USWI") were granted a
3 limited waiver of A.A.C. R14-2-803. Under the limited waiver, USWI, USWCI, and all
4 affiliates of USWCI not regulated by the Commission were required to file a notice of
5 intent to organize or reorganize a public utility holding company only for those
6 organizations or reorganizations which were likely to: 1) result in increased capital
7 costs to USWCI; 2) result in additional costs allocated to the Arizona jurisdiction; or 3)
8 result in a reduction of USWCI's net operating income. No cumulative threshold or
9 "exempt" amount applied to any organization or reorganization planned by USWCI, its
10 parent USWI, or any affiliate of USWCI that would result in any or all of the three
11 impacts listed above. As part of the waiver, USWCI was required to file annually, at
12 the time it provides the information required by Rule 805, an affidavit from its Chief
13 Executive Officer which lists the transactions for which USWCI, its parent USWI or any
14 affiliate of USWCI not regulated by the Commission, had not filed a notice of intent
15 pursuant to the waiver granted, and which certified that such transactions would not
16 result in either increased capital costs to USWCI, additional costs being allocated to
17 the Arizona jurisdiction, or a reduction of USWCI's net operating income.
18 Subsequently, in 2002 the Commission examined the appropriateness of the limited
19 waiver previously granted in light of the fact that QCC intended to commence
20 provision of competitive interLATA services. In Decision No. 64654, the Commission
21 ordered that the limited waiver of Rule 803 is reaffirmed to apply to QCC, QC, their
22 affiliates and parent Qwest Communications International Inc. with the same terms.

23
24 **Q. HOW DOES RULE 803 APPLY TO QWEST IN LIGHT OF THE WAIVER?**

25 A. The Rule states that the Commission may reject a proposal for organization or
26 reorganization if it determines that it would impair the financial status of the public

1 utility, otherwise prevent it from attracting capital at fair and reasonable terms, or
2 impair the ability of the public utility to provide safe, reasonable and adequate service.
3 The Waiver, however, provides that Qwest need not provide advance notice to the
4 Commission unless the reorganizations are likely to have the adverse impacts
5 described above. It appears that the wording used in the waiver is an attempt to be
6 more precise about the types of transactions that would need to be filed under the
7 rule. It is therefore my opinion that the purpose of the waiver is to state that Qwest is
8 not required to file every transaction under the affiliate interest rules. In other words, I
9 believe that the Waiver provides for a *de minimus* exception to the advance reporting
10 and approval requirement.

11
12 **Q. IS THAT ADEQUATE PROTECTION OF THE PUBLIC INTEREST?**

13 A. As the Commission Staff reported in its consideration of the Waiver in Docket No. T-
14 02811B-01-0456, as reported in Decision No. 64654, the partial waiver of the Rules
15 has served as a safety net through which transactions inconsequential to Arizona
16 have passed, while larger transactions with more significant consequences to the
17 Arizona jurisdiction are processed.

18
19 **Q. HOW WOULD THE WAIVER OPERATE IN THE CASE OF QCC'S PROPOSED
20 LOCAL EXCHANGE BUSINESS?**

21 A. As I stated previously, I do not foresee that there will be a proposed transaction of the
22 type or kind about which notice of intent is required to be given under Rule 803.
23 Obviously, the Waiver does not come into play if the underlying rule does not apply.
24 If, there is a reorganization in the future, it will have to be noticed to the Commission if
25 it falls outside the scope of the waiver. In other words, the Waiver will not screen out
26 any requirement to file a transaction for approval if it is one that will impair its financial

1 status, prevent QC from attracting capital at fair and reasonable terms, or impair the
2 ability of the public utility to provide safe, reasonable and adequate service. The
3 Waiver is not a complete waiver from the rule.
4

5 **Q. BASED ON THE FOREGOING DISCUSSION, WHAT SHOULD THE COMMISSION**
6 **DO WITH RESPECT TO THE CURRENT LIMITED WAIVER OF RULE 803?**

7 A. No action should be taken. The QCC Application, in conjunction with the limited
8 Waiver of Rule 803, does not, without an associated reorganization, trigger a Rule 803
9 filing. Should a reorganization which has an impact on QC in Arizona that is more
10 than inconsequential ever become necessary, the Waiver will not relieve QC or QCC
11 from making a filing with this Commission, in advance of consummating the
12 transaction.
13

14 **Q. WHAT OTHER LAWS AND REGULATIONS PROTECT AGAINST THE POTENTIAL**
15 **FOR ABUSE THAT YOU CONSIDER RELEVANT TO THE COMMISSION'S**
16 **CONSIDERATION OF THIS QUESTION?**

17 A. There are a number of specific laws and regulations. The following is not intended to
18 be an exhaustive listing.

- 19 1. The other Affiliated Interest Rules, 804 and 805, are not subject to any waiver.
- 20 2. Slamming rules prohibit a carrier from switching a customer without having
21 customer consent.
- 22 3. Neither QC nor QCC, both of which are public service corporations under
23 Arizona law, may sell, lease, assign, mortgage or otherwise dispose of or
24 encumber the whole or any part of plant, or system *necessary or useful* in the
25 performance of its duties to the public without first having secured from the
26 commission an order authorizing it so to do.

1 or of the limited waiver Qwest has for Rule 803, is necessary or appropriate. If Staff
2 believes, on the other hand, that the Commission's Rule 803 is somehow inadequate,
3 it should petition for a rule modification rather than try to impose a new Rule on Qwest
4 in this CC&N docket.

5
6 **IX. LACK OF RELATIONSHIP BETWEEN THE CONDITIONS STAFF ATTACHES TO**
7 **ITS "ALTERNATIVE RECOMMENDATIONS" AND THE PUBLIC INTEREST**
8 **CONCERNS STAFF IDENTIFIES**

9
10 **Q AT NEARLY EVERY QUESTION IN STAFF'S SUPPLEMENTAL DIRECT**
11 **TESTIMONY, STAFF CONDITIONS ITS SUPPORT OF ITS ALTERNATIVE**
12 **RECOMMENDATION UPON THE REPORTING REQUIREMENTS. DO THE**
13 **REPORTING REQUIREMENTS ADDRESS THE PUBLIC INTEREST CONCERNS**
14 **THAT HAVE BEEN HYPOTHESIZED BY THE STAFF, OR THE QUESTIONS**
15 **ASKED BY THE ALJ?**

16 **A.** The reporting requirements Staff insists are the answer to every public interest
17 concern will not have any effect as a preventive measure to the issues Staff has listed,
18 nor will they provide an accurate measure of the effects of competition.

19
20 As I have previously testified, Staff seeks to impose reporting requirements on both
21 QC and QCC which have not been imposed on any other LEC or competitive carrier.
22 In a competitive environment, which clearly exists in Arizona, individual carriers should
23 not be singled out and subjected to different and burdensome regulatory
24 requirements. There is a fundamental flaw in the Staff's recommended reporting
25 requirement (which in and of itself is discriminatory). Staff concedes that robust
26 competition is at work in the enterprise sector. Staff believes it is well and good when

1 an entity not affiliated with QC takes customers from QC, and Staff does not have any
2 concern about the effects on QC or its ratepayers. However, Staff seems to believe,
3 that in that same competition, it is anti-competitive or somehow otherwise not in the
4 public interest when QCC successfully wins a customer. Staff's reporting
5 requirements are flawed because they will only portray QC customer losses to QCC,
6 with a view toward the next QC rate case, without taking into account that other
7 carriers continue to carve the market, and that any customer that QCC wins would
8 likely have become a customer of some other carrier if QCC had not been in the
9 business. These reporting requirements only track movement of customers from QC
10 to QCC, and do not track movement that goes the other way, or movement that
11 involve a nonaffiliated competitor.

12
13 Furthermore, the Staff's reporting requirements that purport to track movement of
14 customers and revenue from QC to QCC are vague. It is not clear whether the reports
15 it requests in its recommendations 8 b 1-3 are snapshots in time for movements in the
16 previous 6 months, or whether Qwest must track customers' wanderings between QC
17 and QCC for 3 years. Contrary to Staff's earlier testimony, this one-sided reporting
18 does not assess the degree of competitiveness in the market.

19
20 The reporting Staff requests in its recommendations 8 b 1-3 will require a new record-
21 keeping effort. Current systems in Qwest do not have the capability to track in that
22 manner.

23

1 **X. ALTERNATIVES TO THE REPORTING STAFF REQUESTS**

2
3 **Q. ARE THERE ALTERNATIVE DATA COLLECTION PROPOSALS THAT OTHER**
4 **STATE COMMISSIONS HAVE IDENTIFIED THAT ADDRESS THE REGULATORS'**
5 **CONCERNS AND THAT ARE EASIER TO ADMINISTER THAN THE STAFF'S**
6 **PROPOSED REQUIREMENTS IN 8. B 1-3 OF ITS SUPPLEMENTAL STAFF**
7 **REPORT FILED ON MAY 13, 2005?**

8
9 **A.** Yes. In 2005, the Iowa Utilities Board opened a rulemaking proceeding, and imposed
10 rules applicable to ILECs with CLEC affiliates. Those rules require any ILEC with a
11 CLEC affiliate operating in its incumbent territory to file agreements between the ILEC
12 and the affiliated CLEC as they are made, and present the following data in the ILEC's
13 annual report:

- 14 a. The number of local numbers ported by the ILEC to nonaffiliated CLECs.
15 b. The number of local numbers ported by the ILEC to its affiliated CLEC.
16 c. The number of unbundled network element loops (UNE-Ls) provided by the
17 ILEC to nonaffiliated CLECs.
18 d. The number of UNE-Ls provided by the ILEC to its affiliated CLEC.
19 e. The number of unbundled network element platforms (UNE-Ps), or their
20 equivalent, provided by the ILEC to nonaffiliated CLECs.
21 f. The number of UNE-Ps, or their equivalent, provided by the ILEC to its
22 affiliated CLEC.
23 g. The number of resale access lines provided by the ILEC to nonaffiliated
24 CLECs.
25 h. The number of resale access lines provided by the ILEC to its affiliated CLEC.
26 i. The number of central office collocation sites provided by the ILEC to

1 nonaffiliated CLECs.

2 j. The number of central office collocation sites provided by the ILEC to its
3 affiliated CLEC.

4
5 Qwest has the capability to track this information without creating costly special
6 tracking.

7
8 **Q. DOES QCC RECOMMEND THE IOWA REPORTING REQUIREMENTS IN THIS**
9 **CASE?**

10 A. Yes. We believe that these are reasonable and achievable requirements if the
11 Commission determines supplemental information about QC sales to QCC and to
12 other CLECs is necessary.

13
14 **Q. PLEASE ADDRESS WHETHER THERE ARE ANY ALTERNATIVES TO STAFF'S**
15 **REQUIREMENT FOR QWEST TO PROVIDE REPORTS FROM THE LERG (STAFF**
16 **SUPPLEMENTAL REPORT, CONDITION 8. B. 5).**

17
18 A. We have spoken directly to representatives of Telcordia, who state that regulatory
19 agencies may have direct access to the LERG. The number of users, frequency of
20 use, and the purpose are evaluated by Telcordia in its determination of whether to
21 allow access, and whether there is a charge. It is not uncommon for Telcordia to
22 provide regulatory agencies with access to the LERG without charge.

23

24

1 **XI. WHY SHOULD QCC BE ALLOWED TO TAKE CUSTOMERS AWAY FROM QC?**

2

3 **Q. PLEASE ADDRESS THE ALJ'S SECOND QUESTION, WHICH IS AS FOLLOWS:**

4

5 **“WHY SHOULD QCC BE ALLOWED TO TAKE CUSTOMERS AND THEIR**
6 **ASSOCIATED REVENUES AWAY FROM QWEST, THE REGULATED**
7 **ENTITY?”**

8

9 **A.** This question makes two incorrect assumptions: (1) that any customer QCC wins will
10 have been a QC customer; and/or (2) that QCC would simply transfer customers from
11 QC. QC will not move its customers and it cannot do so legally. Rather, QCC will
12 compete for a subscriber's business. Customers who want to switch to QCC will be
13 entering a new provider / subscriber relationship, just as would be the case when a
14 non-affiliated provider wins the customer's business.

15

16 QCC should be allowed to take customers from QC and from other carriers because
17 the national and state telecommunications policy favors innovation, customers having
18 the ability to choose among carriers and competition. As I previously testified, the
19 FCC specifically addressed this situation and ruled that permitting a BOC affiliate to
20 provide both interLATA and local services from a single entity will serve the public
21 interest by encouraging deployment of new and innovative services. Any concerns
22 about accounting and discrimination are fully addressed by FCC accounting rules,
23 audits under Section 272 as well as specific non-discrimination rules under Section
24 272

25

26 Implicit in the Staff's argument giving rise to this question are assumptions that the

1 market is static and that QC is a monopoly. Neither assumption is correct. Further,
2 the question does not recognize that the Second Supplement to the Application limits
3 the CC&N request to the enterprise market. Because the enterprise market is
4 competitive, enterprise customers are free to choose from among a number of
5 telecom service providers, and a large number have already chosen providers other
6 than QC. As Staff correctly noted in its supplemental report dated May 13, 2005, the
7 Enterprise market is "a market segment in which it [QC] has diminished presence. Id.
8 p. 3. Staff also concluded in its supplemental report dated May 13, 2005, "The
9 Enterprise Market is highly competitive." Hearing Exhibit S-2, p. 2. Because
10 enterprise customers have left QC, or may freely do so, the question is not whether
11 QCC should be allowed to take customers from QC, but rather whether any Qwest
12 company will be allowed to try to successfully compete in the enterprise market
13 against large well-funded carriers that currently focus on this market segment.

14
15 Whether any Qwest company can successfully compete in the enterprise market
16 depends in significant part on whether any Qwest company can bring to customers the
17 "one stop shopping" that enterprise customers demand and that existing competitors
18 currently offer. Enterprise customers require that their telecom carrier of choice be
19 able to provide a suite of services, including local and interLATA. Because of Section
20 272 limitations applicable only to Bell Operating Companies (QC), unless the CC&N
21 requested by QCC in this docket is granted, no Qwest company is legally allowed to
22 provide the "one stop" total solutions enterprise customers increasingly require.

23

24

1 **XII. QC AND QCC REVENUES FROM A RATEMAKING PERSPECTIVE**

2
3 **Q. PLEASE ADDRESS QUESTION 3 FROM THE ALJ:**

4
5 **“WHAT IS THE DIFFERENCE IN THE WAY QWEST (QC) AND QCC**
6 **REVENUES WOULD BE TREATED FROM A RATEMAKING PERSPECTIVE,**
7 **AND WHAT WILL THE EFFECT OF THE DIFFERENCE BE ON QC’S**
8 **REVENUES AND FUTURE RATES?”**

9
10 A. QCC’s operations will not have any adverse impact on the revenue and financial
11 viability of QC differently than the opening of local exchange markets to competition
12 has had generally on QC. As noted above, the enterprise market is highly
13 competitive, and QC has a diminished presence in that market. A combination of very
14 large competitors such as AT&T and MCI, and smaller but aggressive competitors,
15 such as McLeod, Time Warner, and XO, are competing for enterprise customers. To
16 the extent that those competitors use their own facilities that bypass the QC network
17 to provide local exchange service, QC has lost income and suffered stranded
18 investment. To the extent that those competitors provide local exchange services to
19 their subscribers over the facilities of QC through wholesale service arrangements,
20 QC is compensated for that use at rates established or approved by the Arizona
21 Corporation Commission.

22
23 As I testified at the hearing on May 17, 2005, QCC owns and operates a network for
24 its data services and long distance services, and will augment those facilities and
25 connect those facilities to local facilities that QCC might obtain from QC or from
26 another provider. (Examination by ALJ Wolfe of Mary Ferguson Lafave, TR at 94,

1 May 17, 2005). Rather than construct new facilities or purchase facilities from other
2 providers where QC has facilities but QCC does not, QCC will incorporate QC network
3 facilities or services into the QCC network, through purchasing QC retail services at
4 tariff rates, through purchasing QC services for resale, or through purchasing
5 unbundled network elements from QC. In each case, QC is compensated for that use
6 at rates established or approved by the Arizona Corporation Commission. The
7 Commission has found that those rates are just and reasonable, and adequately
8 compensate QC. The premise under which QC's wholesale rates were established
9 was that QC would recover all, but its avoided costs, and would, therefore, be kept
10 financially whole. Therefore, to the extent that QC's retail revenues decrease as a
11 result of competitive losses to QCC, there will also be an anticipated decrease in QC's
12 retail costs or in its long run incremental costs of providing network functions and an
13 increase in QC's wholesale revenues. This equation is no different than what has
14 been occurring in Arizona through thousands of transactions between QC and CLECs
15 since passage of the federal 1996 Telecommunications Act.

16
17 Staff has concluded that the enterprise market is highly competitive. By logical
18 extension, QC's revenues and customer share are not guaranteed or fixed. Failure to
19 permit QCC to compete in the enterprise market will not keep QC's revenues from
20 declining. It will only provide a competitive advantage to providers other than QC or
21 QCC and maximize QC losses to the extent existing QC customers choose to receive
22 service from providers who have invested in their own facilities. To the extent there is
23 a concern about the effect QCC's operations have on QC's financial condition, the
24 appropriate venue would be before the Commission in a future wholesale cost / rates
25 docket, rate case or AFOR proceeding where issues can be addressed on a fact
26 specific basis taking all of the competitive effects into account, not just the

1 consequences of QCC operations. In the meantime, there is no indication in this
2 record or the associated evidence that QC will experience adverse economic
3 consequences from this application being granted.
4

5 **XIII. EFFECTS ON MAINTENANCE**

6
7 **Q. PLEASE RESPOND TO THE ALJ'S FOURTH QUESTION:**

8
9 **"HOW CAN THE COMMISSION INSURE THAT MAINTENANCE AND**
10 **EXPANSION OF QWEST'S INFRASTRUCTURE WILL NOT SUFFER AS A**
11 **RESULT OF ALLOWING QCC TO TAKE CUSTOMERS AND THEIR**
12 **REVENUES AWAY FROM QWEST?"**

13
14 **A.** I would like to address the premise of this question, which seems to imply that, absent
15 QCC's presence in the market, QC's maintenance expenses would either be static, or
16 possibly even increase. This premise is not correct and is not supported by any
17 evidence. QC's maintenance expense is, in part, a function of the number of
18 customers it serves and denial of QCC's CC&N would not guarantee that QC would
19 not lose customers to other providers. It is reasonable to expect that QC's
20 maintenance expenses will decrease as it loses customers to other providers,
21 regardless of whether that provider is QCC or an unaffiliated CLEC.

22
23 As noted above, QC's maintenance of its network will not be affected. There are
24 already two significant means by which QC is compelled to properly maintain its
25 network in Arizona. First, through QC's Service Quality Tariff, the Commission has
26 established a process for dealing with the effects of poor maintenance of QC's

1 network facilities. This tariff provides strong incentives for QC to provide adequate
2 levels of service in Arizona. Declines in QC's performance can result in significant
3 financial penalties and/or credits to customers. Second, the presence of aggressive
4 competitors in the Arizona market will require QC to maintain a high quality of service
5 if it is to compete successfully. This combination of regulatory oversight and
6 competitive pressure should provide adequate assurance that QC will continue to
7 maintain its network.

8
9 **XIV. REPLY TO STAFF'S RESPONSE TO QUESTION 5—CHANGES STAFF**
10 **SUGGESTS TO THE WAIVER?**

11
12 **Q. THE ALJ ASKED THE STAFF TO RESPOND TO THE FOLLOWING QUESTION:**

13
14 **"IF ALL OF STAFF'S RECOMMENDATIONS IN ITS SUPPLEMENTAL STAFF**
15 **REPORT ARE NOT ADOPTED, WHAT CHANGES TO THE EXISTING**
16 **WAIVER WOULD STAFF RECOMMEND, AND WHAT PROCEDURE WOULD**
17 **STAFF PROPOSE FOR EFFECTING ANY RECOMMENDED CHANGES?**

18
19 **HOW DO YOU RESPOND TO THE STAFF'S ANSWER?"**

20 **A.** I certainly applaud the Staff for recognizing the degree of competition in the enterprise
21 market in Arizona, but totally fail to see any nexus between the state of competition in
22 that market and the need for the burdensome and unreasonable data demands it
23 seeks to impose on QC and QCC in the name of being able to quantify any adverse
24 impact on QC and its ratepayers.

25
26 In summary, QCC does not believe that revisiting the waiver is appropriate or

1 necessary. Existing Arizona utility regulation statutes, Arizona Commission and FCC
2 rules related to affiliate transactions and consumer or competitor complaints
3 adequately address any concerns raised by QCC's limited request to operate as a
4 competitive local exchange carrier (CLEC) in Arizona. Further, the pending QCC
5 application for CLEC authority has no effect on Qwest's existing corporate structure.
6 Arizona consumers would in no way benefit from the waiver being further limited or
7 eliminated. The existing waiver does not preclude Arizona Commission review of any
8 future financial transactions between Qwest Corporation (the ILEC) and any
9 prospective affiliated telecommunications service provider. In addition it does not
10 exempt any Qwest company from filing the information currently required in the annual
11 affiliated interest reports of intrastate telecommunications service providers, including
12 both QC and QCC. However, the waiver is necessary to ensure that the public utility
13 and the Arizona Commission are not burdened with review of transactions that do not
14 occur in Arizona; and that have no impact on the provision of regulated services in
15 Arizona. No party to this proceeding has articulated a reason why the existing waiver
16 should be further limited or revoked.

17
18 **XV. ACTIONS BY OTHER STATE REGULATORY AGENCIES**

19
20 **Q. HOW HAVE OTHER STATES ADDRESSED THE CONCERNS RAISED BY STAFF?**

21 **A.** Eleven of the fourteen states in QC's incumbent territory approved QCC's requests for
22 authority or certificates to compete without any restrictions not also applicable to other,
23 non-affiliated CLECs. Two of the fourteen states have addressed concerns similar to
24 those addressed by Staff in this proceeding.

25

26

1 **Q. HAVE ANY STATES RESTRICTED QCC FROM SELLING ITS SERVICES TO ANY**
2 **CONSUMERS, AS STAFF SUGGESTS?**

3 A. No. There seems to be some misunderstanding on this point. No state has limited
4 QCC to serving only certain types of consumers or consumers in certain areas, as
5 Staff proposes. Two states, Iowa and Nebraska, have imposed some disclosure and
6 reporting requirements, but in a manner and context far different than that presented
7 here. The states that have enacted disclosure requirements to monitor the
8 competitive effects of affiliated CLECs operating in ILEC territory have done so by
9 rulemakings of general application, not a certificate-specific set of restrictions as Staff
10 proposes here. See my earlier testimony at page , infra.

11
12
13 **Q. DID THE NEBRASKA PUBLIC SERVICE COMMISSION ALSO INITIATE AND**
14 **CONCLUDE A RULEMAKING ON THIS ISSUE IN 2005?**

15 A. Yes. The Nebraska Public Service Commission ("NPSC") proposed rules apparently
16 modeled on the Iowa rules,² but it seems the NPSC found even those requirements
17 excessive, as only one of the twelve disclosure requirements adopted in Iowa was
18 even proposed in Nebraska. Mr. Abinah mentions at page 14 of his testimony that
19 "the Nebraska order clearly places reporting obligations on QC even though the CLEC
20 authority was granted to QCC in an application to which QC was not even a party."
21 This statement appears to misread what the Nebraska PSC actually did. In 1998, the
22 Nebraska PSC adopted an order in an investigative docket³ that purported to have
23 statewide and general application. In that order, the Nebraska PSC imposed certain
24 restrictions on the operations of affiliated CLECs in ILEC territory.⁴ QCC applied for a

² Nebraska PSC Docket No. Rule and Regulation 164, Order Opening Docket, March 29, 2005.

³ Nebraska PSC Docket No. C-1839.

⁴ Nebraska PSC Docket No. C-1839, Order Dated December 15, 1998, p. 3-5.

1 certificate in Nebraska in 2004, and the Nebraska PSC granted that application,
2 subject to the restrictions in place from the 1998 order.⁵ In the order granting QCC's
3 certificate, however, the Nebraska PSC invited QCC to initiate a docket of general
4 application requesting that the 1998 order be lifted.⁶ Shortly after QCC initiated such
5 an action, the Nebraska PSC initiated a formal rulemaking proceeding, and pursuant
6 to that proceeding, adopted rules requiring any ILEC with a CLEC affiliate operating in
7 its incumbent territory to file agreements between the ILEC and the affiliated CLEC as
8 they are made, and also to annually file the number of resale access lines provided by
9 the ILEC to its affiliated CLEC.⁷

10
11 **Q. WHAT DO THESE PROCEEDINGS LEAD YOU TO CONCLUDE?**

12 A. There are no formal parties to a rulemaking, contrary to what Mr. Abinah suggests in
13 his testimony. Rulemakings have general application, as to which comment from all
14 members of the public is usually invited. In contrast, in this proceeding, there are
15 formally defined parties. Even so, Staff proposes that the Commission impose
16 requirements on QC, a non-party to this proceeding. Such a result might take fewer
17 steps, but seems to contradict proper procedure. Should this Commission elect to
18 restrict QCC's operations unlike any other state in Qwest's incumbent territory, the
19 Commission should at least follow the procedural example of Nebraska and Iowa, and
20 impose such restrictions by a rulemaking, not through this docket.

21
22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A. Yes.

⁵ Nebraska PSC Docket No. C-3201, Order Dated December 14, 2004, p. 5.

⁶ *Id.*

⁷ Nebraska PSC Docket No. Rule and Regulation 164, Order Issuing Certificate of Adoption, June 7, 2005.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLI CATION)
OF QWEST COMMUNICATIONS)
CORPORATION D/B/A QWEST LONG)
DISTANCE FOR EXTENSION OF ITS)
EXISTING CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO)
INCLUDE AUTHORITY TO PROVIDE)
RESOLD AND FACILITIES-BASED)
LOCAL EXCHANGE AND RESOLD LONG)
DISTANCE SERVICES IN ADDITION TO)
ITS CURRENT AUTHORITY TO PROVIDE)
FACILITIES-BASED LONG DISTANCE)
SERVICES, AND PETITION FOR)
COMPETITIVE CLASSIFICATION OF)
PROPOSED SERVICES WITHIN THE)
STATE OF ARIZONA)

STATE OF COLORADO) :
COUNTY OF DENVER)

DOCKET NO. T-02811B-04-0313

AFFIDAVIT OF
MARY F. LAFAVE

SS

Mary F. Lafave, of lawful age being first duly sworn, deposes and states:

1. My name is Mary F. Lafave. I am Staff Director – Public Policy for Qwest Services Corporation in Denver, Colorado. I have caused to be filed written rebuttal testimony in Docket No. T-02811B-04-0313.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



Mary F. Lafave

SUBSCRIBED AND SWORN to before me this 12th day of August, 2005.





Notary Public

My Commission Expires _____

My Commission Expires July 25, 2008