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DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON VA 22203-1837



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October 26, 2005

REPLY TO
ATTENTION OF

Regulatory Law Office
U 4102

Subject: In The Matter Of Qwest Corporation's Filing Of Renewed Price Regulation Plan.
Arizona Corporation Commission, Docket No. T-01051B-03-0454 and In The Matter Of The
Investigation Of The Cost Of Telecommunications Access. Arizona Corporation Commission,
Docket No. T-00000D00-672.

Arizona Corporation Commission
Docket Control
1200 West Washington Street
Phoenix, Arizona 85007

Enclosed for filing with the Arizona Corporation Commission are the original and fifteen copies of the Rebuttal Testimony In Support Of Settlement of Richard B. Lee on behalf of the Department of Defense and All Other Federal Executive Agencies (DOD/FEA) in the subject proceedings. This Testimony is dated October 28, 2005. Also enclosed for filing is Mr. Lee's Summary of his Testimonies in support of Settlement.

Copies of this Testimony and Summary have been served in accordance with the attached Certificate of Service. Inquiries concerning this matter may be directed to the undersigned at (703) 696-1644.

Sincerely,

Peter Q. Nyce Jr.
General Attorney
Regulatory Law Office

Enclosure

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

IN THE MATTER OF QWEST) DOCKET NO. T-01051B-03-0454
CORPORATION'S FILING OF RENEWED)
PRICE REGULATION PLAN)
)

IN THE MATTER OF THE INVESTIGATION) DOCKET NO. T-00000D-00-0672
OF THE COST OF TELECOMMUNICATIONS)
ACCESS)

REBUTTAL TESTIMONY IN SUPPORT OF SETTLEMENT
of
RICHARD B. LEE

on behalf of

THE UNITED STATES DEPARTMENT OF DEFENSE
And
ALL OTHER FEDERAL EXECUTIVE AGENCIES

ROBERT N. KITTEL, CHIEF
Regulatory Law Office
Office of the Judge Advocate General
U.S. Army Litigation Center
901 N. Stuart Street, Suite 713
Arlington, Virginia 22203-1837

by

Peter Q. Nyce, Jr.
General Attorney

October 28, 2005

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I. INTRODUCTION

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Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Richard B. Lee. I am Vice President of the economic consulting firm of Snavelly King Majoros O'Connor & Lee, Inc. ("Snavelly King"). My business address is 1220 L Street, N.W., Suite 410, Washington, D.C. 20005.

Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS DOCKET?

A. I am appearing on behalf of the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA").

Q. ARE YOU THE SAME RICHARD B. LEE WHO SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING ON NOVEMBER 18, 2004, SURREBUTTAL TESTIMONY ON JANUARY 12, 2005 AND TESTIMONY IN SUPPORT OF SETTLEMENT ON SEPTEMBER 6, 2005?

A. Yes, I am.

Q. DID YOUR DIRECT TESTIMONY CONTAIN A DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE?

A. Yes, it did.

Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT SUPERVISION?

A. Yes, it was.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the opposition of the Residential Utility

Rebuttal Testimony in Support of Settlement of Richard B. Lee
Page 2, October 28, 2005

1 Consumer Office ("RUCO") and the Arizona Consumers Council ("ACC") to the
2 Settlement Agreement dated August 23, 2005, signed by DOD/FEA, Qwest Corporation
3 ("Qwest"), the Arizona Corporation Commission Utilities Division ("Staff"), the
4 regulated subsidiaries of MCI, Inc. ("MCI"), Time Warner Telecom of Arizona, LLC
5 ("Time Warner"), the Arizona Utility Investors Association ("AUIA"), Cox Arizona
6 Telecom ("Cox"), and XO Communications Services, Inc. ("XO") (collectively "the
7 Parties").
8

9 **II. THE COMMISSION SHOULD NOT REJECT THE SETTLEMENT**
10 **AGREEMENT**

11
12 **Q. HOW LONG DID IT TAKE THE PARTIES TO REACH A SETTLEMENT IN**
13 **THIS PROCEEDING?**

14 A. It took the Parties over six months to reach agreement. Settlement negotiations began on
15 February 10, 2005, and culminated with the filing of the Settlement Agreement in August
16 23, 2005. RUCO withdrew from the settlement negotiations in April, but the Parties
17 continued working until agreement was reached on every detail of the Settlement
18 Agreement.

19 **Q. PLEASE SUMMARIZE THE SETTLEMENT AGREEMENT.**

20 A. The Settlement Agreement has two principal components. First, the Parties resolve the
21 many contested revenue requirement issues in this proceeding by agreeing that Qwest's

1 jurisdictional revenue deficiency is \$31.8 million.¹ Second, the Parties have agreed to a
2 three-year Renewed Price Cap Plan during which none of them will initiate a general rate
3 case.²

4 **Q. IS THIS SETTLEMENT AGREEMENT IN THE PUBLIC INTEREST?**

5 A. Yes. As I explained in my Testimony In Support of Settlement, the Settlement
6 Agreement strikes an appropriate balance between the interests of Qwest and its
7 ratepayers.³

8 **Q. DO RUCO OR ACC OBJECT TO THE AGREEMENT BY THE PARTIES THAT**
9 **QWEST'S REVENUE DEFICIENCY IS \$31.8 MILLION?**

10 A. No. This revenue deficiency is only about 10 percent of the revenue deficiency originally
11 proposed by Qwest.⁴ Indeed, the deficiency is about \$130 million less than RUCO
12 originally proposed.⁵

13 **Q. DO RUCO OR ACC OBJECT TO THE RENEWED PRICE CAP PLAN AGREED**
14 **TO BY THE PARTIES?**

15 A. Yes. As I will discuss below, both RUCO and ACC ask the Commission to reject the
16 Settlement Agreement because they disagree with various details of the Renewed Price

¹ Settlement Agreement, at Section 2.

² *Id.*, at Sections 17 and 29.

³ Lee Testimony In Support of Settlement, at 3-5.

⁴ Qwest Schedule A-1, Rule 103 filing – 6/21/04 update (\$318.5 million).

⁵ Direct Testimony of Marylee Diaz Cortez November 18, 2004, at 2 (\$160 million).

1 Cap Plan.

2 **Q. SHOULD THE COMMISSION REJECT THE SETTLEMENT AGREEMENT?**

3 A. No. First of all, as I explain below, the specific criticisms of the Renewed Price Cap Plan
4 by RUCO and ACC are without merit. More importantly, however, the rejection of this
5 intensely negotiated Settlement Agreement would place a chill over the prospects for the
6 resolution of complex matters through good faith negotiation in the future. RUCO quit
7 the negotiations after two months, and ACC never participated at all. Rejection of the
8 Settlement Agreement would suggest that parties in future proceedings might profit by
9 avoiding the "give and take" of negotiations. By opposing an agreement reached by
10 others, the party might find itself able to "take" without "giving". For this reason, the
11 Commission should only consider the rejection of a fairly negotiated settlement when it
12 clearly fails to serve the public interest.

13

14 **III. THE COMMISSION SHOULD NOT MODIFY THE SETTLEMENT**
15 **AGREEMENT**

16

17 **Q. DOES RUCO OBJECT TO THE RENEWED PRICE CAP PLAN AGREED TO**
18 **BY THE PARTIES?**

19 A. Yes. RUCO witness Cortez states:

20 RUCO believes the following issues are not satisfactorily resolved by the
21 agreement:

Rebuttal Testimony in Support of Settlement of Richard B. Lee

Page 5, October 28, 2005

- 1) The agreement, as a whole does not address the current status of competition in Arizona, nor will it do anything to further competition in Arizona's telecom industry;
- 2) Inappropriate placement of certain services in certain baskets;
- 3) Lack of geographic distinction in classifying competitive services;
- 4) The degree to which pricing freedom is allowed in Basket 2;
- 5) The agreement results in a modified price cap plan that, when compared to the existing plan, negatively impacts residential ratepayer; and
- 6) The manner in which the issue of the April 1, 2005 productivity adjustment (required under the existing plan) is resolved by the settlement.⁶

Q. DO YOU AGREE WITH RUCO THAT THE AGREEMENT, AS A WHOLE, DOES NOT ADDRESS THE CURRENT STATUS OF COMPETITION IN ARIZONA, NOR WILL IT DO ANYTHING TO FURTHER COMPEITION IN ARIZONA'S TELECOM INDUSTRY?

⁶ Testimony of Marylee Diaz Cortez, October 14, 2005, at 2. ACC expresses similar concerns.

Rebuttal Testimony in Support of Settlement of Richard B. Lee
Page 6, October 28, 2005

1 A. No. On the contrary, the Renewed Price Cap Plan clearly recognizes that local
2 service competition has increased significantly in Arizona since the adoption of the
3 original Price Cap Plan in 2001. The Renewed Price Cap Plan allows Qwest
4 increased pricing flexibility consistent with the competition it now faces.

5 Qwest competitors now serve over 700,000 access lines in Arizona,⁷ and four
6 of them participated fully in the negotiations which will allow Qwest to compete on
7 a more equitable basis in the future. Qwest will have at least some pricing flexibility
8 for Limited Pricing Flexibility Retail Services (Basket 2) and Flexibly – Priced
9 Competitive Services (Basket 3).⁸ The Renewed Price Cap Plan also allows Qwest
10 to introduce promotional offerings upon one day notice⁹ and establishes reasonable
11 conditions on service packages.¹⁰

12 On the other hand, further competition is protected by the Settlement
13 Agreement's special access, imputation and price floor provisions.¹¹ The settlement
14 negotiations have thus resulted in provisions which both recognize the current state
15 of competition and further its development.

⁷ FCC, Local Telephone Competition: Status as of December 31, 2004, Table 10, shows competitive local exchange switched access lines as 792,272 in Arizona.

⁸ Settlement Agreement, Section 12.

⁹ *Id.*, at Section 22.

¹⁰ *Id.*, at Section 23.

¹¹ *Id.*, at Sections 9 and 20.

1 Q. DO YOU AGREE WITH RUCO THAT THE SETTLEMENT AGREEMENT
2 NEGATIVELY IMPACTS RESIDENTIAL RATEPAYERS?

3 A. No. First of all, residential and other ratepayers are relieved of responsibility for
4 Qwest revenue deficiencies that could have reached well over \$100 million had the
5 Settlement Agreement not been negotiated. Secondly, Qwest's withdrawal of its
6 proposal for competitive zones allows the significant implicit subsidy of residential
7 rates in less dense areas of Arizona to continue.¹² This lack of "geographic
8 distinction" referred to by RUCO thus serves rural residential ratepayers well.
9 Moreover, the hard-cap on primary residential lines and associated services allows
10 the implicit subsidy of residence lines by business lines to continue.¹³

11 Residential ratepayers will certainly benefit from the significant
12 enhancements made to the Service Quality Plan Tariff.¹⁴ Consumers living in rural
13 areas of the state will also find the establishment of service more affordable thanks to
14 the increase in the Line Extension Credit.¹⁵

15 Finally, of course, neither RUCO nor ACC acknowledge the additional
16 consumer benefits specifically included in the Settlement Agreement to benefit

¹² Settlement Agreement, at Section 26.

¹³ Lee Surrebuttal, at 3-4.

¹⁴ Id., at Section 15.

¹⁵ Settlement Agreement, at Section 13.

1 residential ratepayers.¹⁶ These provisions reduce zone charges, reduce residential
2 non-published and non-listed telephone number rates, and increase funding for the
3 Telephone Assistance Plan for the Medically Needy.

4 **Q. HOW DO YOU RESPOND TO RUCO'S CRITICISM'S OF THE**
5 **PLACEMENT OF CERTAIN SERVICES IN CERTAIN BASKETS; THE**
6 **DEGREE OF PRICING FREEDOM IN BASKET 2; AND THE MANNER IN**
7 **WHICH THE ISSUE OF THE APRIL 1 PRODUCTIVITY ADJUSTMENT IS**
8 **RESOLVED BY THE SETTLEMENT?**

9 A. These detailed matters were thoroughly examined and discussed during the
10 settlement negotiations. Had RUCO not quit these negotiations, or ACC
11 participated, there might well have been somewhat different resolutions to these
12 issues. Ironically, it was RUCO, itself, which initiated the consideration of a third
13 retail basket and thus the changes in basket placement.¹⁷ The Commission should
14 not attempt to modify the Parties' comprehensive Settlement Agreement to reward
15 RUCO for its after-the-fact nit-picking. Instead, the Commission should commend
16 the Parties, and particularly the Staff, for a complex and difficult job well done.

¹⁶ Id., at Section 16.

¹⁷ RUCO, Supplemental Testimony in Opposition to Qwest's Settlement Agreement of Ben Johnson, Ph.D., at 10.

1

IV. CONCLUSION

2

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

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

AFFIDAVIT OF RICHARD B. LEE

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Before me, the undersigned Notary Public in and for the District of Columbia,
Commonwealth of Virginia, this day personally appeared Richard B. Lee, Vice President,
Snively King Majoros O'Connor and Lee, Inc., to me personally known, who stated under oath
that the foregoing Rebuttal Testimony in Support of Settlement was prepared by him or under his
direct supervision and control; that he has knowledge of the matters set forth in said testimony;
and that such matters are true and correct to the best of his knowledge, information, and belief.


RICHARD B. LEE

Subscribed and sworn to before me this 20th day of October, 2005, in the District of
Columbia.


Notary Public

My Commission expires: 3-14-06

Before the Arizona Corporation Commission

Docket No. T-01051B-03-0454

Docket No. T-00000D-00-0672

**Summary of Testimonies in Support of Settlement of Richard B. Lee
on behalf of
The United States Department of Defense
And
All Other Federal Executive Agencies**

Testimony in Support of Settlement (9/6/05)

Mr. Lee fully supports the Settlement Agreement dated August 23, 2005 in these proceedings. He finds that the Settlement Agreement strikes a reasonable balance between the interests of Qwest and its ratepayers. He explains that the Settlement Agreement allows Qwest increased pricing flexibility consistent with the local service competition it now faces. He finds the Settlement Agreement to be in the public interest, and recommends that it be approved by the Commission.

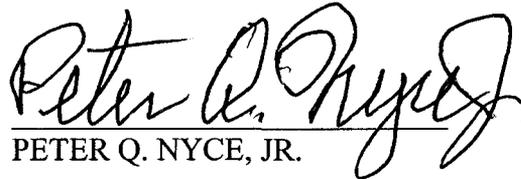
Rebuttal Testimony in Support of Settlement (10/28/05)

Mr. Lee responds to the opposition of the Residential Utility Consumer Office ("RUCO") and the Arizona Consumers Council ("ACC"). He notes that neither RUCO nor ACC objected to the Settlement Agreement finding that Qwest's revenue deficiency is only about 10 percent of the revenue deficiency originally proposed by Qwest, and \$130 million less than RUCO originally proposed. He then explains why RUCO and ACC's criticisms of the Renewed Price Cap Plan are without merit. He explains that the Renewed Price Cap Plan addresses the current status of competition; furthers competition in Arizona; and does not negatively impact residential ratepayers. He concludes that the Commission should neither reject nor modify the comprehensive Settlement Agreement reached by the Parties.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Rebuttal Testimony In Support Of Settlement of Richard B. Lee on behalf of the United States Department of Defense and All Other Federal Executive Agencies and Mr. Lee's Summary of his Testimonies in Support of Settlement were sent to the parties on the attached service list either by United Parcel Service - Next Day Air, or by first class mail, postage prepaid on October 26, 2005.

Dated at Arlington County, Virginia, on this 26th Day of October 2005.


PETER Q. NYCE, JR.

Timothy Berg
Teresa Dwyer
Fennemore Craig, P.C.
3003 North Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for Qwest Corporation

Todd Lundy
Qwest Law Department
1801 California Street
Denver, Colorado 80202

Daniel W. Pozefsky
RUCO
1110 West Washington, Suite 220
Phoenix, Arizona 85007

Patrick A. Clisham
AT&T Arizona State Director
320 E. Broadmoor Court
Phoenix, AZ 85022

Richard S. Wolters
AT&T Law Department
1875 Lawrence Street, Suite 1503
Denver, CO 80202

Joan S. Burke
Osborn Maledon, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794
Attorneys for AT&T

Thomas F. Dixon
Worldcom, Inc.
707 17th Street, 39th Floor
Denver, Colorado 80202

Walter W. Meek, President
Arizona Utility Investors Association
2100 N. Central Avenue, Suite 210
Phoenix, AZ 85004

Thomas H. Campbell
Michael T. Hallam
Lewis and Roca
40 N. Central Avenue
Phoenix, Arizona 85004
Attorneys for Worldcom, Inc.

Michael W. Patten
Roshka Heyman & Dewulf PLC
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Mark A. Dinunzio
Cox Arizona Telcom, LLC
1550 W. Deer Valley Rd.
MS:DV3-16;Bldg C
Phoenix, Arizona 85027

Peter Q. Nyce Jr.
Regulatory Law Office
U.S. Army Litigation Center
901 N. Stuart Street, Suite 713
Arlington, VA 22203-1644

Richard Lee
Snaveley King Majoros O'Connor &
Lee, Inc.
1220 L Street N.W., Suite 410
Washington, DC 20005

Martin A. Aronson, Esq.
Morrill & Aronson PLC
One E. Camelback, Suite 340
Phoenix, AZ 85012-1648
Attorneys for Arizona Dialtone, Inc.

Brian Thomas
Vice President Regulatory
Time Warner Telecom, Inc.
223 Taylor Avenue North
Seattle, Washington 98109

Daniel D. Haws
OSJA
ATTN: ATZS-JAD
USA Intelligence Center & Fort Huachuca
Fort Huachuca, Arizona 85613-6000

Maureen Scott, Attorney
Arizona Corporation Commission
Legal Division
1200 West Washington
Phoenix, AZ 85007

Jane L. Rodda
Administrative Law Judge
Arizona Corporation Commission
Hearing Division
400 West Congress
Tucson, Arizona 85701

Albert Sterman
Arizona Consumers Council
2849 East Eighth Street
Tucson, AZ 85716

Arizona Reporting Service, Inc.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1103

Ernest G. Johnson, Director
Arizona Corporation Commission
Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley, Chief Counsel
Arizona Corporation Commission
Legal Division
1200 West Washington
Phoenix, AZ 85007

Jeffrey W. Crockett
Snell & Wilmer
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004-2202

Jon Poston
ACTS
6733 East Dale Lane
Cave Creek, AZ 85007