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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

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Enclosure

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**JEFF HATCH-MILLER**

Chairman

**WILLIAM A. MUNDELL**

Commissioner

**MARC SPITZER**

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**  
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**Arlington, Virginia 22203-1837**

by

**Peter Q. Nyce, Jr.**  
**General Attorney**

October 28, 2005

## Table of Contents

	<u>Page</u>
I. Introduction .....	1
II. The Commission Should Not Reject The Settlement Agreement.....	2
III. The Commission Should Not Modify The Settlement Agreement.....	4
IV. Conclusion.....	9

Rebuttal Testimony in Support of Settlement of Richard B. Lee  
Page 1, October 28, 2005

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 Snavely King Majoros O'Connor & Lee, Inc. ("Snavely 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

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

Rebuttal Testimony in Support of Settlement of Richard B. Lee  
Page 3, October 28, 2005

1 jurisdictional revenue deficiency is \$31.8 million.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> Indeed, the deficiency is about \$130 million less than RUCO  
12 originally proposed.<sup>5</sup>

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

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<sup>1</sup> Settlement Agreement, at Section 2.

<sup>2</sup> *Id.*, at Sections 17 and 29.

<sup>3</sup> Lee Testimony In Support of Settlement, at 3-5.

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

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

Rebuttal Testimony in Support of Settlement of Richard B. Lee  
Page 4, October 28, 2005

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

13

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

---

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

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,<sup>7</sup> 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).<sup>8</sup> The Renewed Price Cap Plan also allows Qwest  
10 to introduce promotional offerings upon one day notice<sup>9</sup> and establishes reasonable  
11 conditions on service packages.<sup>10</sup>

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

---

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

<sup>8</sup> Settlement Agreement, Section 12.

<sup>9</sup> Id., at Section 22.

<sup>10</sup> Id., at Section 23.

<sup>11</sup> Id., at Sections 9 and 20.

Rebuttal Testimony in Support of Settlement of Richard B. Lee  
Page 7, October 28, 2005

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.<sup>12</sup> 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.<sup>13</sup>

11 Residential ratepayers will certainly benefit from the significant  
12 enhancements made to the Service Quality Plan Tariff.<sup>14</sup> 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.<sup>15</sup>

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

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<sup>12</sup> Settlement Agreement, at Section 26.

<sup>13</sup> Lee Surrebuttal, at 3-4.

<sup>14</sup> Id., at Section 15.

<sup>15</sup> Settlement Agreement, at Section 13.

1 residential ratepayers.<sup>16</sup> 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.<sup>17</sup> 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.

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<sup>16</sup> Id., at Section 16.

<sup>17</sup> 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?**

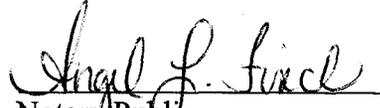
4 **A.** Yes, it does.

AFFIDAVIT OF RICHARD B. LEE

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3  
4 Before me, the undersigned Notary Public in and for the District of Columbia,  
5 Commonwealth of Virginia, this day personally appeared Richard B. Lee, Vice President,  
6 Snavelly King Majoros O'Connor and Lee, Inc., to me personally known, who stated under oath  
7 that the foregoing Rebuttal Testimony in Support of Settlement was prepared by him or under his  
8 direct supervision and control; that he has knowledge of the matters set forth in said testimony;  
9 and that such matters are true and correct to the best of his knowledge, information, and belief.

10  
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RICHARD B. LEE

16 Subscribed and sworn to before me this 20<sup>th</sup> day of October, 2005, in the District of  
17 Columbia.

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25  
  
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.

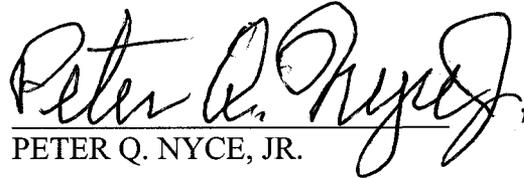
**Rebuttal Testimony in Support of Settlement (10/28/05)**

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.

  
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