OPEN MEETING ITEM

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

ARIZONA CORPORATION COMMISSION

DATE: January 5, 2006

DOCKET NO: T-02811B-04-0313

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

QWEST COMMUNICATIONS CORPORATION dba QWEST LONG DISTANCE (CC&N EXPANSION TO INCLUDE RESOLD AND FACILITIES-BASED LOCAL EXCHANGE AND RESOLD LONG DISTANCE SERVICES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 17, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION 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.	DOCKET NO. T-02811B-04-0313 DECISION NO. _____ **OPINION AND ORDER**

DATES OF PROCEDURAL CONFERENCES:	January 28, 2005, March 23, June 16, and July 7, 2005 (Oral Argument)
DATES OF HEARING:	May 17 and August 29, 2005
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Teena Wolfe
APPEARANCES:	FENNEMORE CRAIG, P.C., by Timothy Berg, and QWEST CORPORATION, Qwest Law Department, by Norman G. Curtright, Corporate Counsel, on behalf of Qwest Communications Corporation and Qwest Corporation; and Maureen A. Scott, Attorney, Legal Division, on behalf of the Commission's Utilities Division Staff.

BY THE COMMISSION:

On April 23, 2004, Qwest Communications Corporation d/b/a Qwest Long Distance[1] ("QCC") filed an Application and Petition with the Arizona Corporation Commission ("Commission") requesting that its existing Certificate of Convenience and Necessity ("CC&N") be

[1] The application stated that the applicant does business under the d/b/a Qwest Long Distance for its interexchange business.

extended to include the authority to provide resold long distance service, resold local exchange service and facilities-based local exchange service in addition to the facilities-based long distance authority previously granted.[2]

On December 17, 2004, QCC filed a Supplement to Application and Petition.

On January 12, 2005, QCC filed tariff pages to correct information omitted from its December 17, 2004 filing.

On February 1, 2005, a Procedural Order was issued setting the hearing in this matter to commence on March 23, 2005, and setting associated procedural deadlines.

On February 23, 2005, Staff filed a Staff Report on the application.

On February 24, 2005, QCC filed certification of public notice of the hearing on its application.

On March 16, 2005, QCC filed its Response to the Staff Report.

Continuances of the hearing, as jointly requested by QCC and Staff on March 22, April 1, and April 29, 2005, were granted.

On May 13, 2005, Staff filed a supplement to its February 23, 2005 Staff Report.

On May 16, 2005, QCC filed a Second Supplement to Application and Petition.

The hearing on QCC's application commenced on May 17, 2005, as scheduled. QCC and Staff appeared and presented evidence on that date, and the hearing was continued pending a joint request by the parties for a proposed continuation date.

Following Procedural Conferences held on June 16, 2005 and on July 7, 2005, on which date oral argument was presented on a motion filed by QCC, a Procedural Order was issued on July 11, 2005, setting a date for the hearing to reconvene and setting associated procedural deadlines.

Staff filed Supplemental Testimony on August 5, 2005, and QCC filed Supplemental Rebuttal Testimony on August 17, 2005.

The hearing reconvened as scheduled on August 29, 2005, and concluded on that date. QCC and Staff filed closing briefs on September 30, 2005.

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[2] *See* Decision No. 66612 (December 10, 2003).

On December 14, 2005, a Procedural Order was issued joining Qwest Corporation as an indispensable party to this matter. The December 14, 2005 Procedural Order directed Qwest Corporation to make a filing in this docket stating whether it prefers to submit its position through the filing of briefs based on the existing evidentiary record, or whether the record should be reopened to obtain additional factual information regarding the effect on Qwest Corporation of granting Qwest Communications Corporation's application. The December 14, 2005 Procedural Order also directed Qwest Corporation to submit with its filing its brief or a proposed schedule for briefing, or a proposed schedule for filing of testimony and hearing dates. The December 14, 2005 Procedural Order also directed the Utilities Division Staff and QCC to file a response to Qwest Corporation's filing within 7 days of Qwest Corporation's filing.

On December 19, 2005, QCC docketed its Objection to Procedural Order.

Also on December 19, 2005, Qwest Corporation filed its Response to Procedural Order.

On January 3, 2006, Staff filed its Comments on Qwest Corporation's Response to December 14, 2005 Procedural Order. QCC did not file a response to Qwest Corporation's filing. This matter was subsequently taken under advisement pending the submission of a Recommended Opinion and Order to the Commission for its final disposition.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. QCC, a public service corporation, is incorporated under the laws of Delaware and has been authorized to do business in Arizona since June 6, 1989. QCC operates as a Section 272 affiliate of Qwest Corporation, which is a regional bell operating company ("RBOC") and an incumbent local exchange carrier ("ILEC"). On May 22, 1998, in Decision No. 60898, the Commission granted QCC a CC&N to provide competitive interLATA/intraLATA resold telecommunications services except local exchange services in the State of Arizona.

2. In Decision No. 66612 (December 9, 2003), QCC's existing CC&N was modified to allow QCC to provide competitive, facilities-based only, interLATA/intraLATA interexchange

telecommunications services in the State of Arizona, conditioned upon prior approval by the FCC of Qwest Corporation's application for approval under Section 271 of the Telecommunications Act of 1996 ("1996 Act") to re-enter the long distance market in Arizona.

3. On April 23, 2004, QCC filed an Application and Petition with the Commission requesting that its existing CC&N be extended to include authority to provide resold long distance service, resold local exchange service and facilities-based local exchange service in addition to the facilities-based long distance authority previously granted.

4. On September 20, 2004, QCC filed a letter from QCC to Staff in this docket.

5. On September 21, 2004, QCC filed an interconnection agreement with Qwest Corporation. The interconnection agreement went into effect by operation of law on December 20, 2004.

6. On December 17, 2004, QCC filed a Supplement to Application and Petition, which included a request that its proposed services be classified as competitive.

7. On January 12, 2005, QCC filed tariff pages to correct information omitted from its December 17, 2004 filing.

8. On January 18, 2005, QCC filed a Request for Procedural Conference.

9. On January 25, 2005, a Procedural Order was issued setting the requested Procedural Conference, which was held as scheduled on January 28, 2005.

10. On February 1, 2005, a Procedural Order was issued setting the hearing in this matter to commence on March 23, 2005, and setting associated procedural deadlines. The Procedural Order directed Staff to address in its Staff Report the issue of whether the reaffirmation of the limited waiver of the Commission's Affiliated Interests Rules granted in Decision No. 64654 (March 27, 2002) should be revisited, in light of the fact that QCC is requesting authority to provide services in competition with services provided by its ILEC affiliate Qwest Corporation. The Procedural Order also directed Staff to address QCC's compliance with the requirements of Decision No. 66612 (December 9, 2003), including but not limited to Findings of Fact No. 59, and to also address the scope and status of the joint Federal/State independent audit required of QCC's affiliate Qwest

Corporation regarding its competitive affiliates under Section 272 of the 1996 Act.[3]

11. On February 23, 2005, Staff filed a Staff Report on the application ("Initial Staff Report"). The Initial Staff Report included a recommendation that QCC be allowed to provide the requested services outside of Qwest Corporation's current service area, but not inside Qwest Corporation's service territory. The Initial Staff Report stated that Staff believed there is not sufficient competition in Qwest Corporation's in-region local exchange territory in Arizona to guard against any abuses that may occur; that Staff's recommendation is necessary to protect the development of competition in Qwest Corporation's service territory and ensure that all providers are treated on a competitively neutral basis; that Qwest Corporation itself has the ability under Commission rules to have services classified as competitive; and that a condition limiting QCC's provision of competitive local exchange carrier ("CLEC") services to areas outside of Qwest Corporation's service territory is consistent with the CC&Ns granted to four other competitive carriers in Arizona that have ILEC affiliates.[4]

12. At page 8 of the Initial Staff Report, Staff stated that QCC's request to provide local exchange services as a CLEC within the service territory of its affiliate and ILEC Qwest Corporation raised the following unresolved concerns:

> 1) The ability of QCC to leverage Qwest Corporation's ILEC position and engage in anticompetitive conduct including but not limited to cross-subsidization and price-squeezing;
>
> 2) QCC has indicated that it will use the informal brand name "Qwest" to market its CLEC services, which has the potential for significant confusion on the part of customers given the similarity in names;

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[3] Findings of Fact No. 59 of Decision No. 66612 stated:

> Given the existence of numerous enforcement actions and investigations against QCC and/or its QCII affiliates, however, we find it reasonable to additionally require QCC, as a condition of our grant of authority requested in this docket, to provide the Commission with copies of any and all contracts and/or agreements, written or oral, between QCC and its affiliates until such time that QCC, and any successor in interest to QCC, is no longer subject to the requirements of Section 272 of the 1996 Act. Additionally, we will direct Staff to closely monitor these filings to ensure that QCC and its affiliates are not engaging in anticompetitive behavior.

[4] The four companies that received CC&Ns to provide competitive telecommunications services in areas where their ILEC affiliate is not certificated to provide telecommunications services are Rural Network Services, Inc., Decision No. 66841 (March 12, 2004); Valley Connections, LLC, Decision No. 66846 (March 12, 2004); Electric Lightwave, Inc., Decision No. 59982 (January 16, 1997) and Decision No. 60293 (July 2, 1997); and Verizon Select Services, Inc., Decision No. 63546 (April 4, 2001).

3) Use of QCC (the CLEC) to evade Qwest Corporation's (the ILEC's) regulatory obligations within Qwest Corporation's service territory;

4) The potential for discrimination by Qwest Corporation; and

5) Whether it is in the public interest for an RBOC to have an affiliated CLEC operating within its territory when the market is not sufficiently competitive.

The Initial Staff Report stated that Staff did not believe the five issues set forth above were adequately addressed by the QCC's application.

13. Page 5, Section 2.6 of the Initial Staff Report addressed QCC's compliance with Findings of Fact No. 59 of Decision No. 66612. Staff stated that 47 U.S.C. Section 272 requires Qwest Corporation to list each contract and agreement it has with QCC on its website, and that Staff determined that contracts and agreements with QCC are listed on Qwest Corporation's website. Staff stated that it was not aware of any complaint filed by another carrier against QCC or Qwest Corporation alleging anticompetitive conduct. Staff stated that 47 U.S.C. Section 272 does not require Qwest Corporation to list on its website contracts and agreements between QCC and its other affiliates, but that Decision No. 66612 requires copies of those contracts or agreements to be provided to Staff. Staff stated that it had reviewed the execution date and the date submitted of a sample of the contracts and agreements that were provided to Staff, in order to ensure that QCC's filings were submitted within thirty days as required. Staff stated that it had informed QCC in writing that four of the sample contracts and agreements were filed late. The content of the contracts was not reviewed.

14. Page 6, Section 2.8 of the Initial Staff Report addressed the joint Federal/State independent audit required of QCC's affiliate Qwest Corporation regarding its competitive affiliates under Section 272 of the 1996 Act.[5] Staff stated that the first such biennial audit examined the compliance of QCC's ultimate parent Qwest Communications International, Inc. ("QCII") with the requirements of Section 272 during the period January 2, 2003 to January 1, 2004, and that the joint oversight team was composed of staff members from 12 state regulatory agencies within Qwest

[5] Staff stated that the FCC's rules provide for the establishment of a Federal/State joint audit team that is authorized to oversee the conduct of the audit from the planning stage to its completion, to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements; and to ensure that the audit meets the objectives stated in the FCC's rules and orders.

Corporation's region, including Arizona, and the FCC. Staff stated that on June 8, 2004, Ernst & Young LLP filed its "Report of Independent Accountants on Applying Agreed-Upon Procedures." Staff's recommendations in this case are not based on a review of the first biennial audit. At the hearing, Staff testified that although Staff attended the audit, due to the fact that Qwest Corporation did not receive Section 271 approval for Arizona from the FCC until December 2003, insufficient information was available for Arizona to participate in the audit regarding Qwest Corporation's performance during the timeframe covered by the first biennial audit, and that Staff was therefore not able to address the scope of the audit.

15. Page 6, Section 2.7 of the Initial Staff Report addressed whether the limited waiver of the Commission's Affiliated Interests Rules granted in Decision No. 64654 (March 25, 2002) should be revisited, in light of the fact that QCC is requesting authority to provide services in competition with services provided by its affiliate ILEC Qwest Corporation. In the Initial Staff Report, Staff stated that based on its recommendation that QCC not be granted authority to provide service inside Qwest Corporation's service territory, Staff did not believe that the limited waiver needed to be revisited.

16. Staff recommended in its Initial Staff Report that QCC's application be granted, but that QCC should initially be approved to provide local exchange service only in areas outside of Qwest Corporation's service territory.

17. In addition, Staff made the following recommendations in its Initial Staff Report:

1) That QCC be ordered to file with the Commission's Docket Control Center its plan to have its customers' telephone numbers included in the incumbents' Directories and Directory Assistance Databases. This information should be filed within 365 days of the effective date of the order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

2) That QCC be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules.

3) That QCC agree to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498).

4) That QCC be ordered to abide by the quality of service standards that were approved by the Commission for Qwest Corporation in Docket No. T-01051B-93-0183.

5) That QCC be prohibited from barring access to alternative local exchange service providers who wish to serve areas where QCC is the only provider of local exchange service facilities;

6) That QCC be required to abide by all the Commission decisions and policies regarding CLASS services.

7) That QCC be required to provide 2-PIC equal access.

8) That QCC be required to notify the Commission immediately upon changes to QCC's name, address or telephone number.

9) That QCC comply with all Commission rules, orders and other requirements relevant to the provision of intrastate telecommunications services.

10) That QCC be ordered to maintain its accounts and records as required by the Commission.

11) That QCC be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate.

12) That QCC be ordered to maintain on file with the Commission all current tariffs and rates and any service standards that the Commission may require.

13) That QCC be ordered to cooperate with Commission investigations including, but not limited to, customer complaints.

14) That QCC be ordered to participate in and contribute to a universal service fund, as required by the Commission.

15) That QCC be subject to the Commission's rules and the 1996 Telecommunications Act to the extent that they apply to CLECs.

16) That the maximum rates for QCC's services be the maximum rates proposed by QCC in its proposed tariffs, and that the minimum rates for QCC's competitive services be QCC's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109.

17) That QCC be authorized to discount its rates and service charges to the marginal cost of providing the service.

18) That QCC be ordered to file an application with the Commission pursuant to A.A.C. R14-2-1107 in the event QCC desires to discontinue service, that QCC should be required to notify each of its customers and the Commission 60 days prior to filing such an application to discontinue service, and that any failure to do so result in forfeiture of QCC's performance bond.

19) That QCC be required to notify the Commission before providing service to any unserved areas in the state.

18. In the Initial Staff Report, Staff further recommended that QCC be ordered to comply with the following conditions, and that if it does not comply, QCC's CC&N should become null and void without further order of the Commission and no time extensions should be granted:

1) QCC shall file shall file with Commission Docket Control, as a compliance item in this docket, tariffs for its CC&Ns to provide resold long distance, facilities-based long distance, resold local and facilities-based local exchange service within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, and in accordance with this Decision. The proposed tariff shall be modified to reflect: i) the limitation Staff proposes on the service area for QCC's provision of resold and facilities-based local exchange service; and ii) modification of its Arizona Tariff No. 3 Section 2.2.5 item E, to ensure that local exchange telecommunications services will not be provided to business customers participating in the Competitive Response Program; and

2) QCC's tariffs must list both an initial rate (the actual rate to be charged) and a maximum rate for each competitive service offered, and the rate for the service must not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

3) QCC shall:
   a. Procure an additional performance bond equal to $135,000. The minimum bond amount of $135,000 shall be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from QCC's customers. The bond amount shall be increased in increments of $67,500. This increase shall occur when the total amount of the advances, deposits and prepayments is within $13,500 of the bond amount.

   b. File with Commission Docket Control, as a compliance item in this docket, proof of the performance bond within 365 days of the

> effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first. The performance bond must remain in effect until further order of the Commission.

19. Staff further recommended that if at some time in the future, QCC does not collect from its customers advances, deposits and/or prepayments, QCC be allowed to file a request for cancellation of its established performance bond regarding its resold long distance services, and that such request be required to reference this Decision and explain QCC's plans for canceling those portions of the bond.

20. In the Initial Staff Report, Staff recommended that QCC's services be classified as competitive. Staff stated that it believes QCC's proposed services should be classified as competitive because there are alternatives to the QCC's services; QCC will have to convince customers to purchase its services; QCC has no ability to adversely affect the local exchange or interexchange service markets outside of its affiliate Qwest Corporation's service territory; and QCC will therefore have no market power in those local exchange or interexchange service markets outside of its affiliate Qwest Corporation's service territory where alternative providers of telecommunications services exist.

21. The Initial Staff Report stated that as reported in QCC's application, QCC's fair value rate base ("FVRB") is captured in a consolidated financial statement together with QCII's other subsidiaries, and that QCC's fair value rate base is $5.8 million but is not useful in either a fair value analysis or in setting rates. Staff stated that the rate to be ultimately charged by QCC for the resold and facilities-based local exchange service(s) and resold long distance service outside of Qwest Corporation's service territory will be influenced by the market, and as those services are competitive, they are not required to be set by rate of return regulation. Staff stated that it reviewed the rates to be charged by QCC under Staff's proposed limitation and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and major long distance carriers currently operating in Arizona, and therefore, while Staff considered the FVRB information submitted by the Applicant, that information should not be given substantial weight in this analysis.

22. On February 24, 2005, QCC filed certification of public notice of the hearing on its application.

23. On March 16, 2005, QCC filed its Response to the Staff Report. In its Response, QCC argued that Staff's proposal to prohibit QCC from competing within Qwest Corporation's service territory would effectively exclude QCC from competing in Arizona in contravention of 47 U.S.C. Section 253;[6] that Staff, in formulating its recommendations, relied on concerns the FCC rejected in its 1996 *Section 272 Non-Accounting Safeguards Order*;[7] that with the exception of Arizona, QCC has been granted the requested authority in every Qwest Corporation incumbent territory state; and that the Commission concluded in 2003 that Arizona's telecommunications markets were open to competition when it recommended that the FCC approve Qwest Corporation's Section 271 application to re-enter the long distance market in Arizona.

24. Continuances of the hearing were jointly requested by QCC and Staff on March 22, April 1, and April 29, and were granted.

25. On March 23, 2005, at the publicly noticed time and date of the hearing on the application, the hearing was convened as scheduled solely for the purpose of receiving public comment. No members of the public appeared to provide public comment on the application.

26. On May 13, 2005, Staff filed a supplement to its February 23, 2005 Staff Report on the application. This Supplemental Staff Report stated that Staff was presenting an alternative recommendation which would allow QCC to provide resold and facilities-based local service to large business customers ("Enterprise Market" customers) within Qwest Corporation's service territory, while at the same time minimizing any customer and competitive harms. The Supplemental Staff

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[6] 47 U.S.C. Section 253 provides in part:

(a) IN GENERAL. – No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) STATE REGULATORY AUTHORITY. – Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

[7] *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21095, FCC Release No. 96-489, ¶ 315 (1996).

Report stated that should the Commission find Staff's alternative recommendation to be appropriate, Staff would recommend the following additions to the recommendations contained in its Initial Staff Report, which additions are an integral and necessary component of Staff's alternative recommendation:

1) QCC should be approved to provide services in the areas as follows:

   a) Resold long distance service on a statewide basis.

   b) Resold and facilities-based local exchange service within Qwest Corporation's service territory for business customers or accounts with four or more switched access lines or their equivalent. For purposes of determining an eligible business account, all individual locations of a multi-location customer shall be added together to determine whether the four or more switched access lines or their equivalent threshold has been met for a given customer/account.

   c) Resold and facilities-based local exchange service for residence and business customers who are located outside of Qwest Corporation's service territory.

2) Qwest Corporation should acknowledge that the Commission's actions approving QCC's CLEC application for local exchange service in no way changes its ILEC obligations.

3) Notwithstanding the services and areas which Staff recommended for approval, QCC should not file an application to amend its certification to provide local exchange services to residence and/or small business customers in the Qwest Corporation service area in Arizona for a period of 24 months from the date of the Commission's Order approving its request for an expanded CC&N. QCC may file an application for either the small business market or residential market before the expiration of the 24 month period only if it can meet all of the following: 1) Qwest Corporation and QCC can demonstrate that there will be no adverse impact upon Qwest Corporation's operations; 2) QCC can demonstrate that the Staff's five concerns identified in its February 23, 2005 Staff Report can be successfully resolved; and 3) competitive conditions in the markets in which QCC seeks entry are sufficiently competitive so that sufficient alternatives are available. Any application by QCC shall be accompanied by at least 18 months of the data identified in paragraphs 8 and 9 below, which period shall commence from the date the Commission issues its Order in this case.

4) Should QCC file an application to amend its certification to provide local exchange services to Residence and/or Small Business customers in the

Qwest Corporation service area upon expiration of the 24 months period, Staff will analyze all factors relevant to the application including but not limited to the competitive situation pertaining to Residence and Small Business markets. Staff's position in this Staff Report with respect to the Enterprise Market should not be construed as support for any subsequent application by Qwest. Similarly, Staff recommended that the order ultimately issued by the Commission in this case specifically state that the Commission's findings and rulings in this case with respect to the Enterprise Market should not be used or construed as precedent for any subsequent Staff recommendation or Commission Order on any subsequent Qwest application.

5) Qwest Corporation will adhere to 37 U.S.C. Section 251 nondiscrimination standards in its dealings with QCC and CLECs.

6) Qwest Corporation and QCC should be required to comply with all Section 272 requirements for the provision of competitive local exchange service by QCC.

7) Qwest Corporation and QCC shall provide the Commission, on request, with access to documents, data and records pertaining to inter-company transactions relating to in-region transactions with respect to Arizona.

8) Qwest Corporation and QCC shall provide the following reports to Staff every six months for three years following approval of QCC's CLEC operations:

   a) QCC Reports

      1. QCC Total Accounts in Service categorized by NPA are to be provided. The information shall be provided in excel file format using electronic media.

      2. QCC Total Lines in Service categorized by NPA are to be provided. The information shall be provided in excel file format using electronic media.

   b) Qwest Corporation Reports

      1. The total number of business accounts that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

      2. The total number of business lines that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

3. The total annualized revenues associated with total business accounts that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

4. State-wide summarized Listings Data should be provided. The information should contain all main listings and additional line listings by Qwest Corporation, QCC, CLECs, ILECs, Wireless Providers or Other for each NPA-NXX level; no end-user specific information should be provided. The information shall be provided in excel file format using electronic media.

5. State-wide summarized local exchange routing guide ("LERG") information should be provided. The report should contain the following column headings and be provided in excel file format using electronic media:
   a. All Switch common language location identification ("CLLI") codes
   b. All Switch Locations (addresses)
   c. All Switch Owner Names
   d. All Switch Owner IDs
   e. All NPA, NXXs, or thousands blocks where NPA NXXs are shared, assigned to each switch
   f. All owner names corresponding to each NPA NXXs, or thousands block where NPA NXXs are shared.

9) Any of the above listed information can be used by Staff in future alternative form of regulation ("AFOR")/Price Cap proceedings to assist in the evaluation of Qwest Corporation's revenue requirements.

10) Qwest Corporation and QCC should be considered to be one entity for the purposes of evaluating the local exchange services competitive situation in future AFOR/Price Cap proceedings.

11) Qwest Corporation's provision of local exchange service in the service territories of rural telephone companies is subject to any future proceedings under Section 251(f)(1) or (2) of the Telecommunications Act of 1996 (47 U.S.C. Section 251(f)(1) and (2)). Granting QCC's request to provide competitive local exchange service outside its service territory is not a ruling that affects the rights of specific rural telephone companies under 47 U.S.C. Section 251(f).

12) Staff's findings in this Docket should not be construed as a finding with respect to what Baskets any service(s) belong under Qwest Corporation's AFOR or as a finding with respect to what constitutes a competitive or sufficiently competitive marketplace for purposes of either Qwest Corporation's AFOR or future applications of QCC to expand its business to other markets.

27. Subsequent to the date Staff filed its Supplemental Staff Report, on May 16, 2005, QCC filed a Second Supplement to Application and Petition. QCC's Second Supplement to Application and Petition requests that its existing CC&N for competitive facilities-based long distance service be amended to include competitive resold long distance service on a statewide basis; and competitive resold and facilities-based local exchange service on a statewide basis only for Enterprise Market customers.

28. The hearing on this matter commenced May 17, 2005. QCC and Staff appeared and presented evidence. The hearing did not conclude on that date, and was continued pending a joint request by the parties for a Procedural Conference to discuss the continuing conduct of the proceeding.

29. On May 27, 2005, QCC docketed a filing that included information on issues raised during the hearing on May 17, 2005.

30. On June 9, 2005, a Procedural Order was issued setting a Procedural Conference for June 16, 2005, for the purpose of discussing a procedural schedule for the continuing conduct of the proceeding. The Procedural Order suspended the timeclock in this matter due to the continuance of the hearing.

31. On June 10, 2005, QCC filed a Notice of Filing Supplemental Authority.

32. On June 15, 2005, Staff filed a Notice of Filing Staff's Position on Continuation of the Partial Waiver of A.A.C. R14-2-803 granted in Decision No. 64654.

33. A Procedural Conference was held as scheduled on June 16, 2005. At the Procedural Conference, the parties were informed of several issues that they should address in this proceeding in order to inform the Commission in its Decision in this matter.

34. On June 21, 2005, QCC docketed a Supplemental Filing and Motion to Amend Order Suspending Timeclock. In its filing, QCC requested that the timeclock be reinstated; that the issue of the Affiliated Interests Rules waiver be severed from this proceeding; and that a Procedural Order be issued setting a schedule for a single round of post-hearing briefs.

35. On June 23, 2005, a Procedural Order was issued directing Staff to file a response to QCC's June 21, 2005 Motion by June 30, 2005, and setting a Procedural Conference for July 7, 2005,

for the purpose of taking oral argument on QCC's Motion and Staff's Response.

36. Also on June 23, 2005, QCC filed a Notice of Filing Responses to Data Requests.

37. On June 30, 2005, Staff filed its Response to QCC's Supplemental Filing and Motion to Amend Order Suspending Timeclock.

38. On July 7, 2005, a Procedural Conference was held as scheduled. QCC and Staff appeared and presented oral argument.

39. On July 11, 2005, a Procedural Order was issued setting a date for the hearing to reconvene and setting associated procedural deadlines.

40. On August 5, 2005, Staff filed Supplemental Testimony.

41. On August 17, 2005, QCC filed Supplemental Rebuttal Testimony.

42. The hearing reconvened as scheduled on August 29, 2005, and concluded on that date.

43. QCC and Staff filed simultaneous closing briefs on September 30, 2005.

44. On December 14, 2005, a Procedural Order was issued joining Qwest Corporation as an indispensable party to this proceeding pursuant to Arizona Administrative Code R14-3-101.A and Arizona Rules of Civil Procedure Rule 19(a) and Rule 21. The December 14, 2005 Procedural Order directed Qwest Corporation to make a filing in this docket stating whether it prefers to submit its position through the filing of briefs based on the existing evidentiary record, or whether the record should be reopened to obtain additional factual information regarding the effect on Qwest Corporation of granting Qwest Communications Corporation's application. The December 14, 2005 Procedural Order also directed Qwest Corporation to submit with its filing its brief or a proposed schedule for briefing, or a proposed schedule for filing of testimony and hearing dates. The December 14, 2005 Procedural Order also directed Staff and QCC to file a response to Qwest Corporation's filing.

45. On December 19, 2005, QCC filed its Objection to Procedural Order. QCC asserted its view that joinder of Qwest Corporation in this proceeding is not necessary, and that joinder would delay consideration of QCC's application as amended. QCC asserted that the delay amounts to a state-imposed barrier to entry. QCC claimed that the "attempt to join the ILEC QC [Qwest Corporation] in the competitive CC&N process is unprecedented;" that "[n]o authority exists for

analyzing whether the ILEC may lose revenue as a factor toward the granting of a certificate to provide competitive services;" and that "[n]o other applicant for a competitive CC&N has been required to defend whether the grant of its application will result in loss of revenue to the ILEC."

46. In its Response to Procedural Order filed on December 19, 2005, Qwest Corporation objected to the joinder, stating that its Response was filed without waiver of its objection to its joinder as a party to this proceeding. Qwest Corporation disagreed that Arizona Rules of Civil Procedure Rule 19(a) and Rule 21 may properly be interpreted to permit its joinder. Qwest Corporation stated that its Response to Procedural Order comprises its complete response to the December 14, 2005 Procedural Order; that it does not believe any further proceedings are necessary; that it has the understanding that loss of revenues due to competition is the only adverse impact upon Qwest Corporation that could result from this docket; and that Qwest Corporation does not consider the potential of competition as grounds for participating in this docket.

47. In Staff's Comments on Qwest Corporation's Response to December 14, 2005 Procedural Order, filed on January 3, 2006, Staff stated that because Qwest Corporation had notice of QCC's application and voluntarily chose not to participate in the proceeding, it thus waived any claims that it may have had that it is an indispensable party such that its absence may as a practical matter impair or impede its ability to protect that interest. Staff asserted that even if Qwest Corporation were not joined as a party in this proceeding, because Qwest Corporation is in sole possession of information needed by the Commission to monitor conditions in the market in the event QCC's application is granted, reporting requirements may nonetheless be imposed on Qwest Corporation, in order to insure that the objectives of 47 U.S.C. 253(b) are met. Staff also stated, however, that given QCC's arguments that the Commission cannot impose any reporting requirements on Qwest Corporation unless it is a party to this proceeding, it is appropriate that Qwest Corporation be joined as a party.

48. QCC did not file a response to Qwest Corporation's filing.

QCC's Request

49. QCC requests operating authority to provide local exchange services to Enterprise Market customers in the parts of Arizona where Qwest Corporation is the ILEC and for authority to

serve all types of customers in the rest of the state. QCC wishes to provide the same "one-stop shopping" capability to Enterprise Market customers that its non-ILEC affiliated competitors provide. QCC stated that because of Section 272 limitations, unless QCC obtains the requested authority, no QCII company may legally provide "one-stop shopping" to Enterprise Market customers. QCC believes the public interest will be served if its application is granted because QCC would be added to the market as a competitor and an available choice for Enterprise Market customers. QCC requests that Staff's recommended restrictions and conditions be rejected.

50. If the application is granted, QCC will compete for Enterprise Market subscribers' business in Qwest Corporation's service territory, and subscribers may choose to leave Qwest Corporation to take service from QCC. QCC's witness testified that QCC should be allowed to compete directly with Qwest Corporation and other carriers for customers because the national and state telecommunications policy favors customer choice and competition. QCC's witness testified that the FCC has ruled that permitting an RBOC affiliate to provide both interLATA and local services from a single entity would serve the public interest by encouraging deployment of new and innovative services, and that any concerns about accounting and discrimination are fully addressed by FCC accounting rules, audits under Section 272, and specific non-discrimination rules under Section 272.

51. QCC asserted that other than impacts from the opening of local exchange markets to competition generally, QCC's operations will not have any adverse impact on the revenue and financial viability of Qwest Corporation. QCC believes that to the extent there is a concern about the effect that QCC's operations may have on Qwest Corporation's financial condition, the concern would best be addressed in a future wholesale cost/rate docket, rate case or AFOR proceeding where all competitive effects are taken into account.

52. QCC stated that it does not intend to construct new facilities or purchase facilities from other providers where Qwest Corporation has facilities and QCC does not, but that instead, QCC intends to incorporate Qwest Corporation network facilities or services into the QCC network through purchase of Qwest Corporation services for resale, or through purchase of unbundled

network elements from Qwest Corporation, at Commission-approved rates.[8]

53. QCC asserted that the combination of existing regulatory oversight and competitive pressure provides adequate assurance that Qwest Corporation will continue to adequately maintain its network in Arizona.

54. QCC disagrees with several of the restrictions and conditions Staff proposed in its Supplemental Staff Report, as addressed further below.

Qwest Corporation's Position

55. By Procedural Order issued December 14, 2005, Qwest Corporation was joined as a party to this proceeding and provided an opportunity to present evidence and legal arguments in support of its position regarding Staff's recommended conditions. The December 14, 2005 Procedural Order required Qwest Corporation to state whether it preferred to submit its position through the filing of briefs based on the existing evidentiary record, or whether it believed the record should be reopened to obtain additional factual information regarding the effect on Qwest Corporation of granting Qwest Communications Corporation's application; and required Qwest Corporation to submit a brief or a proposed schedule for briefing, or a proposed schedule for filing of testimony and hearing dates.

56. In its Response to Procedural Order filed on December 19, 2005, Qwest Corporation objected to the joinder, stating that its Response was filed without waiver of its objection to its joinder as a party to this proceeding. Qwest Corporation disagreed that Arizona Rules of Civil Procedure Rule 19(a) and Rule 21 may properly be interpreted to permit its joinder. Qwest Corporation stated that its Response to Procedural Order comprises its complete response to the December 14, 2005 Procedural Order; that it does not believe any further proceedings are necessary; that it has the understanding that loss of revenues due to competition is the only adverse impact upon Qwest Corporation that could result from this docket; and that Qwest Corporation does not consider the potential of competition as grounds for participating in this docket.

[8] QCC's witness testified that to the extent Qwest Corporation's competitors provide local exchange services over Qwest Corporation's facilities, the revenues Qwest Corporation derives from its competitors' purchases are wholesale revenue, and that Qwest Corporation's wholesale rates are Commission-approved rates.

Staff's Position

57. Staff stated that its alternative recommendation was offered as a means to accommodate QCC's desire to provide one-stop shopping to large Enterprise Market customers, and that Staff can support QCC's amended application as long as the additional conditions proposed by Staff in its Supplemental Staff Report are adopted, and the Commission is satisfied that QCC and Qwest Corporation have presented sufficient assurance that Qwest Corporation's ratepayers will not be harmed by the loss of Enterprise Market customers and revenues that is likely to occur.

58. Staff stated in its Supplemental Testimony that given the competitive nature of the Enterprise Market in the larger metropolitan areas in Arizona, QCC's entry into that market should not have an adverse impact on competition, and that Staff's proposed conditions should allow Staff to gather enough data to determine its impact on Arizona ratepayers, and to determine whether eventual expansion of QCC's CC&N to serve Small Business and Residential customers will be in the public interest. Staff believes that as long as QCC does not receive unfair support from Qwest Corporation, and QCC does not deter Qwest Corporation from its Small Business and Residence Markets focus, a grant of limited CLEC authority to QCC will help prevent the Enterprise Market from gradually moving toward a duopoly between the merged SBC/AT&T and Verizon/MCI.

59. Staff stated in its Supplemental Testimony that with respect to any analysis of competition in the future, Qwest Corporation and QCC should be treated as one company, and that this approach has been used in the state of Nebraska when determining the effective level of competition in Qwest Corporation's service territory.

60. Staff stated in its Supplemental Testimony that at a minimum if QCC's amended application is granted, it is important that Qwest Corporation's customers not be held responsible for any adverse impact caused by any loss of customers and their associated revenues from Qwest Corporation to QCC, and that any Qwest Corporation customers and associated revenues lost to QCC should be accounted for and considered in Qwest Corporation's next rate review proceeding. Staff stated that its recommended information and reporting requirements must be imposed on QCC and Qwest Corporation so that the impact of QCC's operations upon the financial viability of Qwest Corporation can be understood and quantified.

61. Staff stated that QCC's position that Qwest Corporation will be compensated by QCC for use of its network on either a resale or unbundled network element ("UNE") basis does not address the overall impact upon Qwest Corporation and the concern that even if wholesale revenues were taken into account, Qwest Corporation and its customers may still be worse off.

62. Staff stated that if Qwest Corporation loses many of its largest business customers to QCC and other providers, it may not have either the incentive or ability to maintain or update its network.

63. Staff believes it is necessary to impose the requirements in this proceeding in order to insure that the information Staff will need for its analysis will be tracked by both QCC and Qwest Corporation.

64. Staff stated that its alternative recommendation in the Supplemental Staff Report recommending conditional approval of QCC's amended application is in the public interest only if all of Staff's informational and reporting requirements are adopted.

Contested Supplemental Staff Report Proposed Conditions

65. Staff Proposed Condition 2. Staff's alternative recommendation proposes that if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers:

> 2) Qwest Corporation should acknowledge that the Commission's actions approving QCC's CLEC application for local exchange service in no way changes its ILEC obligations.

QCC argued that this condition, as worded, and other proposed conditions that are worded to require action on the part of Qwest Corporation, would inappropriately encumber QCC's CC&N because it would place an order directly on Qwest Corporation, which was not a party to this proceeding. However, Qwest Corporation was subsequently joined as a party to this proceeding and was provided an opportunity to present evidence and legal arguments in support of its position regarding Staff's recommended conditions. Qwest Corporation stated that it does not believe any further proceedings are necessary. We find Staff's recommendation reasonable, and it will be adopted.

66. Staff Proposed Conditions 3 and 4. Staff's alternative recommendation proposes that

if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers, the following conditions be placed on the approval:

> 3) Notwithstanding the services and areas which Staff recommended for approval, QCC should not file an application to amend its certification to provide local exchange services to Residence and/or Small Business customers in the Qwest Corporation service area in Arizona for a period of 24 months from the date of the Commission's Order approving its request for an expanded CC&N. QCC may file an application for either the small business market or residential market before the expiration of the 24 month period only if it can meet all of the following: 1) Qwest Corporation and QCC can demonstrate that there will be no adverse impact upon Qwest Corporation's operations; 2) QCC can demonstrate that the Staff's five concerns identified in its February 23, 2005 Staff Report can be successfully resolved; and 3) competitive conditions in the markets in which QCC seeks entry are sufficiently competitive so that sufficient alternatives are available. Any application by QCC shall be accompanied by at least 18 months of the data identified in paragraphs 8 and 9 below, which period shall commence from the date the Commission issues its Order in this case.
>
> 4) Should QCC file an application to amend its certification to provide local exchange services to Residence and/or Small Business customers in the Qwest Corporation service area upon expiration of the 24 month period, Staff will analyze all factors relevant to the application including but not limited to the competitive situation pertaining to Residence and Small Business markets. Staff's position in this Staff Report with respect to the Enterprise Market should not be construed as support for any subsequent application by Qwest. Similarly, Staff recommends that the order ultimately issued by the Commission in this case specifically state that the Commission's findings and rulings in this case with respect to the Enterprise Market should not be used or construed as precedent for any subsequent Staff recommendation or Commission Order on any subsequent Qwest application.

67. QCC requests that Staff's proposed conditions 3 and 4 not be adopted. QCC asserted that because it is not requesting authority to provide local exchange services to Residence and/or Small Business customers in the Qwest Corporation service area at this time, the issue is hypothetical. QCC argued that the proposed moratorium is against Arizona's public policy to encourage competition; contravenes Section 253 of the 1996 Act; violates principles of equal protection because it would treat QCC differently from similarly situated competitors for no legitimate state interest; and would violate QCC's right to due process in that QCC would be barred from having a future request for a CC&N extension heard and decided on the merits. QCC asserted

that Staff's concerns regarding the development of competition in Qwest Corporation's service territory and the timing of market entry are not among the policy concerns listed in the "savings clause" of Section 253.[9] QCC further argued that the data Staff's proposal would require QCC to provide with a future CC&N extension application would reflect only Enterprise Customer lines, accounts, and revenues, which QCC claims has nothing to do with Residential and Small Business service, customers, or markets.

68. Staff stated that its proposed condition 3 does not restrict QCC's right to file an application, but is merely specifying the information that the Company should provide to the Commission at the time it files another application for expansion of its CC&N. Staff believes that based on QCC's actions in other states, at some point in the future QCC will likely request an expansion of its CC&N to provide service to mass market (Residence and/or Small Business) customers in Qwest Corporation's service territory. Staff asserted that the condition is necessary in order to place QCC on notice for the information Staff will request for any such application that QCC submits in the future and that the information required by its proposed condition will provide a basis for the Commission to determine whether further expansion of QCC's CC&N within Qwest Corporation's service territory is in the public interest. Staff argued that if the conditions are not imposed as a part of this Decision, QCC may claim that it does not have the requested information.

69. While the proposed conditions 3 and 4 specify factual information necessary for a public interest analysis, they do not bar QCC from having a future request for a CC&N extension heard and decided on the merits, as QCC alleges. We disagree with QCC's assertion that because it is not requesting authority to provide local exchange services to Residence and/or Small Business customers in the Qwest Corporation service area at this time, the issue is hypothetical. As QCC stated in its Supplemental Rebuttal Testimony, QCC currently has authority or certificates to compete with Qwest Corporation for local exchange service subscribers in thirteen of the fourteen states in

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[9] 47 U.S.C. Section 253(b) provides:

(b) STATE REGULATORY AUTHORITY. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Qwest Corporation's ILEC territory, including unrestricted authority in eleven of those states, and it is reasonable to assume that QCC may wish to operate under the same business model throughout Qwest Corporation's ILEC territory. We agree with Staff that the information required by its proposed conditions will provide a basis for the Commission to determine whether further expansion of QCC's CC&N within Qwest Corporation's service territory is in the public interest, and that that if the conditions are not imposed as a part of this Decision, that QCC could claim in the future that it does not have the required information. It is therefore reasonable to impose Staff's proposed conditions 3 and 4 as a condition of approval of QCC's application.

70. Imposition of Staff's proposed conditions 3 and 4 does not contravene Section 253 of the 1996 Act. The development of competition in Qwest Corporation's service territory and the timing of market entry are concerns this Commission must analyze in order to ensure that universal service is preserved and advanced, to ensure the continued quality of telecommunications services, and to safeguard the rights of consumers and protect the public safety and welfare. Section 253 of the 1996 Act explicitly gives states authority to impose requirements necessary to address these public interest concerns, and Staff's proposed Conditions 3 and 4 provide a reasonable means for this Commission to address those concerns.

71. We disagree with QCC that imposition of Staff's proposed conditions 3 and 4 would violate principles of equal protection by discriminating against QCC. QCC argued that QCC and the other CLECs that are already authorized and providing the services for which QCC seeks authorization are similarly situated. However, as QCC itself states, the difference between QCC and those CLECs is that QCC is an affiliate of Qwest Corporation, the ILEC in QCC's requested service territory. In addition, QCC plans to market its services using the same name as the ILEC Qwest Corporation. Unlike revenues lost to Qwest Corporation when a subscriber chooses another CLEC, revenues lost to QCC from Qwest Corporation will remain with the QCII family of affliates. This Commission has not, to this date, approved a request by a CLEC for authority to compete against an affiliated ILEC in the ILEC's service territory. QCC is clearly not "similarly situated" to the other CLECs referenced by QCC. We further disagree with QCC's assertion that there is no legitimate state interest. The information required by Staff's proposed conditions is important for evaluation

purposes and will aid the Commission in ensuring that universal service is preserved and advanced, ensuring the continued quality of telecommunications services, safeguarding the rights of consumers, and protecting the public safety and welfare. Staff's proposed conditions 3 and 4 are reasonable and will be adopted. The reference in condition 3 to condition 8 shall include the modifications we adopt to Staff's proposed condition 8(b), as described further below.

72. Staff Proposed Conditions 5-7. Staff's alternative recommendation proposes that if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers:

> 5) Qwest Corporation will adhere to 37 U.S.C. Section 251 nondiscrimination standards in its dealings with QCC and CLECs.
>
> 6) Qwest Corporation and QCC should be required to comply with all Section 272 requirements for the provision of competitive local exchange service by QCC.
>
> 7) Qwest Corporation and QCC shall provide the Commission, on request, with access to documents, data and records pertaining to inter-company transactions relating to in-region transactions with respect to Arizona.

QCC argued that these conditions, as worded, would inappropriately encumber QCC's CC&N because the wording of these recommendations would place orders directly on Qwest Corporation, which was not a party to this proceeding. However, Qwest Corporation was subsequently joined as a party to this proceeding and was provided an opportunity to present evidence and legal arguments in support of its position regarding Staff's recommended conditions. Qwest Corporation stated that it does not believe any further proceedings are necessary. We find Staff's recommendations to be reasonable, and they will be adopted.

73. Staff Proposed Condition 8(b)(1-3) Reports. Staff's alternative recommendation proposes that if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers, Qwest Corporation be required to provide the following reports to Staff every six months for three years following approval of QCC's CLEC operations:

> 1. The total number of business accounts that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

2. The total number of business lines that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

3. The total annualized revenues associated with total business accounts that have moved from Qwest Corporation to QCC by Qwest Corporation wire center are to be provided in excel file format using electronic media.

QCC argued that the data that would be required would not provide an understanding of the effect QCC's business has on Qwest Corporation's revenue, because the Enterprise Market is competitive and customers are free to choose from among a number of telecommunications service providers, and customers can be expected to move their business between and among Qwest Corporation, QCC and other competitive CLECs multiple times. QCC protests that these reporting requirements only track movement of customers from Qwest Corporation to QCC, and do not track movement that goes the other way, or movement that involves a nonaffiliated competitor. QCC also claims that the recommended reporting requirements will not have any effect as a preventive measure to the public interest concerns raised by Staff, and will not provide an accurate measure of the effects of competition. QCC stated that the reports Staff recommended in Condition 8(b)(1-3) will require a new record-keeping effort, as current systems do not have the capability to track the requested information. QCC also raised the issue that in order for Qwest Corporation to create the proposed data, it would have to ask a disconnecting customer where the customer is taking its business, noting that competitors could question whether such inquiries are anti-competitive. QCC proposed that if the Commission determines supplemental information about Qwest Corporation sales to QCC and to other CLECs is necessary, that instead of the information proposed by Staff, QCC be required to provide information similar to the information it is required to provide in its annual report in the State of Iowa.[10]

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[10] QCC listed the Iowa filing requirements as follows:

a. The number of local numbers ported by the ILEC to nonaffiliated CLECs.
b. The number of local numbers ported by the ILEC to its affiliated CLEC.
c. The number of unbundled network element loops (UNE-Ls) provided by the ILEC to nonaffiliated CLECs.
d. The number of UNE-Ls provided by the ILEC to its affiliated CLEC.
e. The number of unbundled network element platforms (UNE-Ps), or their equivalent,

74. Staff believes that all of the information contained in its proposed condition 8(b) is important for evaluation and monitoring purposes, and that the reports should be required if QCC's application is granted. Staff stated that imposition of the Iowa informational reporting requirements instead of Staff's proposed reports would fail to provide much of the critical information that Staff seeks, including tracking or trending information on QCC's impact upon Qwest Corporation; listings information; and information by wire center. Staff stated that because Qwest Corporation's operations are disaggregated on a wire center basis, reporting on a wire center basis should not be burdensome, and that its proposed reports will provide important information regarding customer and geographic impact of customer movement between Qwest Corporation and QCC. Staff believes that the information required by its proposed conditions 8(b)(1-3) is necessary in order for Staff and the Commission to evaluate the impact of QCC's operations upon Qwest Corporation for purposes of future Qwest Corporation AFOR proceedings. Staff states that in the event significant migration of large customers from Qwest Corporation to QCC occurs, the Commission may wish to impute lost revenues back to Qwest Corporation for ratemaking purposes, and the information required by these proposed conditions is necessary to evaluate the magnitude of any such migration.

75. We agree with Staff that it is reasonable to require all of the information contained in Staff's proposed condition 8(b) as a condition of approval of QCC's application. QCC is requesting authority to directly compete with its affiliate ILEC Qwest Corporation within Qwest Corporation's service territory using the Qwest name. The information required by Staff's proposed report is required to enable the Commission to evaluate and monitor whether the requested grant of authority for QCC to enter into direct competition with its affiliate ILEC will have detrimental impacts on the preservation and advancement of universal service, the continued quality of telecommunications

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provided by the ILEC to nonaffiliated CLECs.

f. The number of UNE-Ps, or their equivalent, provided by the ILEC to its affiliated CLEC.

g. The number of resale access lines provided by the ILEC to nonaffiliated CLECs.

h. The number of resale access lines provided by the ILEC to its affiliated CLEC.

i. The number of central office collocation sites provided by the ILEC to nonaffiliated CLECs.

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

services, and the Commission's ability to safeguard the rights of consumers and protect the public safety and welfare. QCC complains that new record-keeping efforts will be required. QCC's entry into this new market will likely require new record-keeping efforts even in the absence of regulatory requirements; but even in the unlikely event that QCC would not, for its own business purposes, institute the capability to track the information, the regulatory need for access to the requested information outweighs the burden of QCC's asserted new record-keeping effort. QCC's proposal to substitute Iowa's annual report requirements for Staff's proposed reporting requirements as a condition of Commission approval of QCC's CC&N expansion falls short of providing the information necessary to properly evaluate and monitor the competitive and revenue effects of granting QCC's application in Arizona. Staff's proposed condition 8(b) reporting requirements, together with the other reporting requirements discussed and adopted herein, will provide the Commission with a more accurate measure of the effects of QCC's entry into the market as a direct competitor with its affiliate ILEC than the Commission would otherwise have. As Staff argued, reporting on a wire center basis should not be burdensome due to the fact that Qwest Corporation's operations are disaggregated on a wire center basis. We agree with QCC, however, that Staff's proposed reporting requirements only track movement of customers from Qwest Corporation to QCC, and do not track movement that goes the other way, or movement that involves a nonaffiliated competitor. We find that Staff's proposed reporting requirements should be modified so that the reports will show such movement. In order to show movement of customers from Qwest Corporation to QCC, to track movement that goes the other way, and to track movement that involves a nonaffiliated competitor, the reporting requirements set forth in Staff's proposed conditions 8(b)(1-3) should include the modifications shown underlined below:

> 1. The total number of business accounts that have moved <u>from Qwest Corporation to any other carrier, by Qwest Corporation wire center; the total number of business accounts that have moved</u> from Qwest Corporation to QCC by Qwest Corporation wire center<u>; and the total number of business accounts that have moved from QCC to Qwest Corporation by Qwest Corporation wire center;</u> are to be provided in excel file format using electronic media.

2. The total number of business lines that have moved from Qwest Corporation to any other carrier, by Qwest Corporation wire center; the total number of business lines that have moved from Qwest Corporation to QCC by Qwest Corporation wire center; and the total number of business lines that have moved from QCC to Qwest Corporation by Qwest Corporation wire center; are to be provided in excel file format using electronic media.

3. The total annualized revenues associated with total business accounts that have moved from Qwest Corporation to any other carrier, by Qwest Corporation wire center; the total annualized revenues associated with total business accounts that have moved from Qwest Corporation to QCC by Qwest Corporation wire center; and the total annualized revenues associated with total business accounts that have moved from QCC to Qwest Corporation by Qwest Corporation wire center; are to be provided in excel file format using electronic media.

QCC also stated that in order for Qwest Corporation to create the proposed data, it would have to ask a disconnecting customer where the customer is taking its business, and stated that competitors could question whether such inquiries are anti-competitive. The above modifications do not require Qwest Corporation to ask disconnecting customers where the customer is taking its business, but only whether the customer is transferring its business to another carrier, rather than simply disconnecting service. QCC can of course obtain the information regarding movement from Qwest Corporation to QCC by asking the new customer the name of the carrier from which it will be transferring its service. With the modifications shown above, Staff's proposed conditions 8(b)(1-3) are reasonable and necessary and will be adopted.

76. QCC noted that it is unclear whether the proposed reports are snapshots in time for movements in the previous six months, or whether movements between Qwest Corporation and QCC and potentially other carriers, must be tracked for three years. As Staff recommended, these reports shall be provided to Staff every six months for three years following this Decision. The first of the reports required by conditions 8(b)(1-3) as modified herein, shall be provided to the Commission's Utilities Division Staff no later than July 31, 2006, and shall include the total number of business accounts, business lines, and total annualized revenues that have moved during the timeframe beginning on the date of this Decision and ending June 30, 2006. The second report shall be filed no later than January 31, 2007, and shall include the total number of business accounts, business lines,

and total annualized revenues that have moved during the timeframe beginning July 1, 2006 and ending December 31, 2006. The same filing schedule and filing requirements shall continue every six months, with reports filed July 31, 2007, January 31, 2008, July 31, 2008, and ending January 31, 2009. On the same date the reports required by conditions 8(b)(1-3) as modified herein are provided to Staff, the entity providing the reports shall file with Commission Docket Control, as a compliance item in this docket, a notice that references this Decision, includes the language of the condition, and confirms that the reports have been provided to Staff. We will also require Staff to file in this docket, within 60 days of each of the filings, a report that includes its analysis of the information provided, its conclusions, and recommendations to the Commission for any further action.

77. Staff Proposed Condition 8(b)(4) Report. Staff's alternative recommendation proposes that if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers, Qwest Corporation be required to provide the following reports to Staff every six months for three years following approval of QCC's CLEC operations:

> 4. State-wide summarized Listings Data should be provided. The information should contain all main listings and additional line listings by Qwest Corporation, QCC, CLECs, ILECs, Wireless Providers or Other for each NPA-NXX level; no end-user specific information should be provided. The information shall be provided in excel file format using electronic media.

QCC asserted that the purposes for which Staff is requesting this data are improper in this proceeding; that information should not be required in this docket to evaluate Qwest Corporation's compliance; that the compliance check rationale does not justify the routine production of the listings data covering every provider of wireline and wireless service statewide; and that Staff's analysis of competition should be taken up in a future Qwest Corporation AFOR case or in a generic docket dealing with the status of competition, such as the Generic Investigation of Competition in Arizona Telecommunications Markets, Docket No. T-000001-04-0749.

78. Staff stated that it requires the information required by this proposed condition for compliance and monitoring purposes, and to determine the competitive impact of QCC's expanded

presence in Qwest Corporation's service territory. Staff argued that the information must be provided so that Staff can determine whether QCC is targeting its provision of service within Qwest Corporation service territory in a manner consistent with the limited authority granted in this proceeding, and so that Staff can determine whether QCC's provision of service outside of Qwest Corporation's service areas is based on leveraging Qwest Corporation assets within Qwest Corporation service areas, either through the use of assets acquired by Qwest Corporation or through arrangements with other providers. Staff asserted that because Qwest Corporation uses the listings information internally, this proposed reporting requirement is not unusual or burdensome.

79. We agree with Staff that the reporting requirement in Staff's proposed condition 8(b)(4) is not unusual or burdensome and that it is reasonable to require the proposed report as a condition of Commission approval of QCC's application in this proceeding. QCC is requesting authority to directly compete with its affiliate ILEC Qwest Corporation within Qwest Corporation's service territory using the Qwest name. The information required by Staff's proposed report is required to enable the Commission to evaluate and monitor whether the requested grant of authority for QCC to enter into direct competition with its affiliate ILEC will have detrimental impacts on the preservation and advancement of universal service, the continued quality of telecommunications services, and the Commission's ability to safeguard the rights of consumers and protect the public safety and welfare. The purpose of the reporting requirement is not to evaluate Qwest Corporation's compliance, but to provide information to enable the Commission to determine whether QCC is targeting its provision of service within Qwest Corporation service territory in a manner consistent with the limited authority granted in this proceeding, and whether QCC's provision of service outside of Qwest Corporation's service areas is based on leveraging Qwest Corporation assets within Qwest Corporation service areas, either through the use of assets acquired by Qwest Corporation or through arrangements with other providers. This proposed condition is reasonable and will be adopted. The report shall be provided on the same schedule set forth in Findings of Fact No. 76 above, and Staff shall file in this docket, within 60 days of each of the filings, a report that includes its analysis of the information provided, its conclusions, and recommendations to the Commission for any further action.

80. Staff Proposed Condition 8(b)(5) Report. Staff's alternative recommendation proposes that if QCC is approved to provide local exchange services within Qwest Corporation's service territory to Enterprise Market customers, Qwest Corporation be required to provide the following reports to Staff every six months for three years following approval of QCC's CLEC operations:

> 5. State-wide summarized local exchange routing guide ("LERG") information should be provided. The report should contain the following column headings and be provided in excel file format using electronic media:
>
> a. All Switch common language location identification ("CLLI") codes
> b. All Switch Locations (addresses)
> c. All Switch Owner Names
> d. All Switch Owner IDs
> e. All NPA, NXXs, or thousands blocks where NPA NXXs are shared, assigned to each switch
> f. All owner names corresponding to each NPA NXXs, or thousands block where NPA NXXs are shared.

QCC stated that the purpose for which Staff is requesting this data is to analyze the state of competition with a view toward the next Qwest Corporation AFOR case, and that Staff's analysis of competition should instead be taken up in a future AFOR case or in a generic docket dealing with the status of competition, such as the Generic Investigation of Competition in Arizona Telecommunications Markets, Docket No. T-000001-04-0749. QCC asserted that Staff may subscribe directly to the LERG to obtain this information, and that such access is often times free of charge. QCC proposes that Staff obtain the LERG information requested by proposed condition 8(b)(5) directly from Telcordia.

81. Staff stated that it will use the reported information required by this proposed condition for compliance and monitoring purposes and to determine the competitive impact of QCC's expanded presence in Qwest Corporation's service territory. Staff further stated that because Qwest Corporation has an established relationship with Telcordia to receive the information required by this proposed condition, and because Qwest Corporation already uses this information internally, this reporting requirement is not burdensome. Staff stated that it needs the information required by this proposed condition in order to determine whether QCC's targeting of customers within Qwest

Corporation's service territory is consistent with the limited authority granted in this proceeding, and to monitor whether QCC's provision of service outside Qwest Corporation's service territory may be improperly based on leveraging Qwest Corporation assets within Qwest Corporation service areas, through the use of assets acquired by Qwest Corporation or through arrangements with other providers. Staff stated that given Qwest Corporation's established business relationship with Telcordia and its extensive operational experience with the LERG, it would be most expedient if Qwest Corporation obtains the information from Telcordia and provides it to Staff, and that if necessary, Staff will request information from Telcordia to verify the information Qwest Corporation provides.

82. We agree with Staff that it is reasonable to require that all of the information contained in Staff's proposed condition 8(b)(5) report to be provided as a condition of approval of QCC's application in this proceeding. QCC is requesting authority to directly compete with its ILEC affiliate Qwest Corporation within Qwest Corporation's service territory using the Qwest name. The information is necessary in order to determine whether QCC's targeting of customers within Qwest Corporation's service territory is consistent with the limited authority granted in this proceeding, and to monitor whether QCC's provision of service outside Qwest Corporation's service territory may be improperly based on leveraging Qwest Corporation assets within Qwest Corporation service areas, through the use of assets acquired by Qwest Corporation or through arrangements with other providers. Since Qwest Corporation already uses the required information internally and has an established relationship with Telcordia to receive the information, this reporting requirement is not overly burdensome when balanced against the regulatory need for the information. Staff's proposed reporting requirement is reasonable and will be adopted. The report shall be provided on the same schedule set forth in Findings of Fact No. 76 above, and Staff shall file in this docket, within 60 days of each of the filings, a report that includes its analysis of the information provided, its conclusions, and recommendations to the Commission for any further action.

Examination of Existing Affiliated Interests Rules Waiver

83. Staff stated in its Supplemental Testimony that if its alternative recommendation is adopted, along with all the Staff's proposed conditions, the limited waiver of the Commission's

Affiliated Interests Rules currently held by Qwest Corporation and its affiliates pursuant to Decision No. 64654 (March 27, 2002)[11] should be continued. Staff stated that if all its proposed informational and reporting requirements are not adopted, the waiver should be narrowed or eliminated entirely.

84. QCC argued that the authority requested in this proceeding does not constitute an organization or reorganization as defined by the Affiliated Interests Rules; that the rules are therefore not implicated by QCC's application; and that it is unnecessary to amend the limited waiver. QCC also cited Decision No. 64654's Findings of Fact that there are a number of safeguards in place protecting Qwest Corporation's ratepayers and competitors, including Section 272 requirements, accounting safeguards related to the 1996 Act, and the joint Federal/State audit paid for by Qwest Corporation and conducted by an independent auditor, in order to determine compliance with Section 272.

85. Even though QCC has already been formed, and as such there is no "reorganization" at issue in this proceeding, QCC's entry into the Enterprise Market as a direct competitor to its affiliate ILEC Qwest Corporation may well result in a reduction to Qwest Corporation's net operating income, thus implicating a concern that the Affiliated Interests Rules are designed to address. In *Ariz. Corp. Com'n v. State ex rel. Woods,* 171 Ariz. 286 (1992), the Arizona Supreme Court recognized the Commission's authority to apply a public interest standard in promulgating rules requiring both review and approval of transactions between affiliated entities. The Court, citing to

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[11]Decision No. 64654 reaffirmed the limited waiver of A.A.C. R14-2-803 granted in Decision No. 58087 to apply to QCC and its affiliates. However, because Decision No. 58087 did not grant a waiver of A.A.C. R14-2-804, Decision No. 64654's reaffirmation of the waiver does not preclude Commission oversight of any future financial transactions between QCC and Qwest Corporation or any other affiliates. QCC and its affiliates also remain subject to the annual filing requirements of A.A.C. R14-2-805. Under the limited waiver of A.A.C. R14-2-803 currently held by QCC, Qwest Corporation, their parent QCII and their affiliates, the following filings are required:

a. QCC, Qwest Corporation, their affiliates, and their parent QCII are required to file a notice of intent to organize or reorganize a public utility holding company for those organizations or reorganizations that are likely to: 1) result in increased capital cost to Qwest Corporation; 2) result in additional costs allocated to the Arizona jurisdiction; or 3) result in a reduction or Qwest Corporation's net operating income.

b. Qwest Corporation must file annually, at the time it provides the information required by A.A.C. R14-2-805, an affidavit from its Chief Executive Officer that lists the transactions for which QCC, Qwest Corporation, and their parent QCII, or any of their affiliates, has not filed a notice of intent pursuant to the limited waiver, and which certifies that such transactions will not result in either increased capital costs to Qwest Corporation, additional costs being allocated to the Arizona jurisdiction, or reduction of Qwest Corporation's net operating income.

the Commission's expansive authority over such transactions, stated:

> The Commission was not designed to protect public service corporations and their management but, rather, was established to protect our citizens from the results of speculation, mismanagement, and abuse of power. To accomplish those objectives, the Commission must have the power to obtain information about, and take action to prevent, unwise management or even mismanagement and to forestall its consequences in intercompany transactions significantly affecting a public service corporation's structure or capitalization. It would subvert the intent of the framers to limit the Commission's ratemaking powers so that it could do no more than raise utility rates to cure the damage from inter-company transactions. . . . The Commission must certainly be given the power to prevent a public utility corporation from engaging in transactions that will so adversely affect its financial position that the ratepayers will have to make good the losses, and it cannot do so in any common sense manner absent the authority to approve or disapprove such transactions in advance. To put it simply, the Commission was given the power [by the Arizona Constitution] to lock the barn door before the horse escapes.

Woods, 171 Ariz. at 296-297.

86. Because QCC's requested relief may result in a reduction to Qwest Corporation's net operating income, it would not be unreasonable to re-examine the limited waiver currently held by QCC, Qwest Corporation and their parent and affiliates in the course of examining whether granting QCC's requested authority in this proceeding is in the public interest. The record in this case does not include an analysis of how well, or whether, the safeguards QCC cites from Decision No. 64654 are functioning in Arizona. As Staff testified, insufficient information was available for Arizona to participate in the audit regarding Qwest Corporation's performance during the timeframe covered by the first biennial audit, and Staff was therefore not able to address the scope of the audit. We find that in the absence of information and analysis regarding the effectiveness of the purported safeguards, the conditions and reporting requirements we adopt herein are necessary to ensure that the grant of authority requested by QCC is in the public interest. If QCC and Qwest Corporation cannot agree to comply with these conditions and reporting requirements, it will be necessary to require a review of the limited waiver of the Affiliated Interests Rules, and an examination of

whether the waiver should be narrowed or eliminated entirely, prior to allowing QCC's entry into the Enterprise Market as a direct competitor to its affiliate ILEC Qwest Corporation.

Conclusion

87. If granted the requested authority, QCC will be competing in the Enterprise Market, which is currently served by Qwest Corporation as well as by other CLECs. The possibility exists that some Enterprise Market customers currently served by Qwest Corporation will migrate to QCC, along with their associated revenues. The record indicates that Enterprise Market customers comprise a lucrative market segment for Qwest Corporation.

88. QCC's request for authority to provide telecommunications services in direct competition with its ILEC affiliate Qwest Corporation presents issues not previously presented to or considered by this Commission. QCC is requesting authority to do what Qwest Corporation, its ILEC affiliate and carrier of last resort, is prohibited from doing under the 1996 Act – provide both local exchange and interstate long distance services. The 1996 Act promoted competition in local exchange markets by requiring RBOCs such as Qwest Corporation to open their markets to other CLECs. As an incentive to opening the markets, the 1996 Act allowed RBOCs to receive authority to provide interstate long distance services when their local exchange markets had become sufficiently competitive, but required that originating interstate long distance services be provided by a separate, "Section 272" affiliate. Under this arrangement, while the RBOC provides local exchange service, the RBOC can provide interstate long distance service only through its Section 272 affiliate. By its application in this proceeding, QCC, Qwest Corporation's Section 272 affiliate, is requesting authority to provide local exchange service, in addition to the interstate long distance service it is already authorized to provide. Qwest Corporation may not legally provide both types of services itself. Because QCC is requesting authority to do what its ILEC affiliate Qwest Corporation cannot legally do under the 1996 Act, if QCC is granted the requested authority, it is important to ensure that adequate safeguards are put in place to ensure that QCC's activities do not allow QCC and the affiliates' parent corporation to reap financial benefits at the expense of adverse financial consequences to Qwest Corporation, the ILEC and carrier of last resort.

89. We agree with Staff that it is of the utmost importance that Qwest Corporation's ratepayers not be held responsible for any adverse impact resulting from any loss of customers and their associated revenues from Qwest Corporation to QCC. It is necessary, in order to protect Qwest Corporation and its ratepayers from any adverse impacts resulting from granting QCC the requested authority to compete with Qwest Corporation, to require in this proceeding that any loss of Qwest Corporation customers and associated lost revenues to its affiliate QCC be properly quantified and imputed to Qwest Corporation in Qwest Corporation's future rate proceedings. In order to accomplish this, it is essential that the impacts of the requested grant of authority to QCC upon the revenues of Qwest Corporation be properly quantified and addressed, also as a condition of QCC receiving the requested authority. QCC's position that Qwest Corporation will not be harmed because Qwest Corporation will be compensated by QCC for use of its network on either a resale or UNE basis addresses only the effects of wholesale revenues, and fails to address retail revenue loss effects, other than stating that there will be an anticipated decrease in Qwest Corporation's retail costs or in its long run incremental cost of providing network functions. QCC stated an intent not to construct new facilities or purchase facilities from providers other than Qwest Corporation in areas where Qwest Corporation has facilities in place, but did not agree to limit its business practices in this manner, and the legality of a CLEC favoring its affiliate in this manner may be questionable. QCC also failed to adequately address the possibility that large revenue losses associated with customer migration to QCC could conceivably leave Qwest Corporation without incentive or ability to maintain or update its network, despite regulatory mandates to the contrary. QCC stated that it expects its maintenance expenses to decrease as it loses customers to other providers, but argued at the same time that the presence of aggressive competitors will require Qwest Corporation to maintain a high quality of service to compete successfully. Neither QCC nor Qwest Corporation explained how Qwest Corporation plans to maintain a high quality of service while decreasing its maintenance expenses. While QCC claimed that any concerns about accounting and discrimination are fully addressed by FCC accounting rules, audits under Section 272 and specific non-discrimination rules under Section 272, the record in this case includes no information or analysis regarding how well, or whether, the safeguards QCC cites from Decision No. 64654 are functioning in Arizona.

90. The Staff proposed restrictions and conditions on approval of QCC's application as set forth in Findings of Fact No. 26 above, as modified in Findings of Fact No. 75 above, are designed to operate to ensure that any problems that arise as a result of QCC's operations in Arizona will quickly come to light so that this Commission can promptly address them, and to provide the Commission with information necessary to commence the analysis necessary for the imputation of revenues to Qwest Corporation in future rate proceedings. These restrictions and conditions are reasonable and necessary in order to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers in Arizona. It is reasonable to require, as a condition of approval of QCC's application, that QCC and Qwest Corporation, its affiliate ILEC, provide the information required by all the conditions and reporting requirements we adopt herein.

91. While we have considered QCC's argument that analysis of competition should be taken up not in this proceeding, but in a future Qwest Corporation AFOR case or in a generic docket dealing with the status of competition, we do not find it a valid reason to allow QCC to enter into direct competition with Qwest Corporation without imposing the conditions and reporting requirements discussed herein. It is imperative that the conditions and reporting requirements be imposed now, in this proceeding, in order to insure that the information required for the Commission's analysis will be tracked by both QCC and Qwest Corporation and be available for future proceedings. If it is not required now, there is a danger that the affiliates could argue in the future that the information is not available because they were not required to track it. In the event QCC is not is the repository for information to be included in the reports that we will require as a condition of approval of QCC's application, the information must be provided by QCC's affiliate ILEC, Qwest Corporation.

92. Approval of QCC's amended application is in the public interest only if all of the informational and reporting requirements discussed herein are adopted, and if Qwest Corporation revenues lost due to customers' migration to QCC are quantified, recognized, and imputed to Qwest Corporation in future rate proceedings.

93. The conditions recommended by Staff as set forth in Findings of Fact 17 and 26

above, as modified by Findings of Fact No. 75 above, are reasonable and will be adopted.

94. QCC's fair value rate base is determined to be $5.8 million for purposes of this proceeding, but is not useful in either a fair value analysis or in setting rates for QCC at this time.

CONCLUSIONS OF LAW

1. QCC is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over QCC and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. A CC&N should be issued only upon a showing that the issuance will serve the public interest.

6. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest, with the conditions and reporting requirements adopted herein, for QCC to provide the telecommunications services set forth in its amended application.

7. With the conditions and reporting requirements adopted herein, QCC is a fit and proper entity to receive a CC&N authorizing it to provide the competitive telecommunications services in Arizona as authorized herein.

8. The telecommunications services that QCC will be authorized to provide are competitive within Arizona.

9. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest public interest, with the conditions and reporting requirements adopted herein, for QCC to establish rates and charges that are not less than QCC's total service long-run incremental costs of providing the competitive services conditionally approved herein.

10. Staff's recommendations, as set forth herein, are reasonable and should be adopted as modified herein.

11. QCC's competitive rates, as set forth in its proposed tariffs, are just and reasonable and with the conditions and reporting requirements adopted herein, should be approved for the services conditionally approved herein.

ORDER

IT IS THEREFORE ORDERED that Qwest Communications Corporation's Certificate of Convenience and Necessity is hereby expanded to include authority to provide resold long distance service throughout the State of Arizona, and to include authority to provide resold and facilities-based local exchange service throughout the State of Arizona with the exception of areas within Qwest Corporation's service territory, conditioned upon Qwest Communications Corporation filing with Commission Docket Control, as a compliance items in this docket, within 365 days of the effective date this Decision, or 30 days prior to the provision of service, whichever comes first: 1) tariffs for its Certificate of Convenience and Necessity to provide resold long distance service as ordered herein; 2) tariffs for its Certificate of Convenience and Necessity to provide resold and facilities-based local exchange service throughout the State of Arizona with the exception of areas within Qwest Corporation's service territory as ordered herein; and 3) proof of procuring an additional performance bond as ordered herein.

IT IS FURTHER ORDERED that Qwest Communications Corporation's Certificate of Convenience and Necessity is hereby expanded to include authority to provide resold and facilities-based local exchange service within Qwest Corporation's service territory only for customers or accounts having four or more switched access lines or their equivalent, conditioned upon Qwest Communications Corporation's timely compliance with the conditions set forth in the prior Ordering Paragraph, and also upon Qwest Communications Corporation's and Qwest Corporation's timely compliance with the reporting requirements set forth in Findings of Fact No. 26 above, as modified by Findings of Fact No. 75 above.

IT IS FURTHER ORDERED that for purposes of determining whether a customer or account has four or more switched access lines or their equivalent, all individual locations of a multi-location customer shall be added together to determine whether the four or more switched access lines or their equivalent threshold has been met for a given customer or account.

IT IS FURTHER ORDERED that that Qwest Communications Corporation and Qwest Corporation, its affiliate ILEC, shall provide the information required by all the conditions and reporting requirements adopted herein, and that in the event Qwest Communications Corporation is not the repository for information that must be included in the reports required as a condition of approval of Qwest Communications Corporation's amended application, the information shall be provided by Qwest Communications Corporation's affiliate ILEC, Qwest Corporation.

IT IS FURTHER ORDERED that in order to be considered timely, the filings required by Findings of Fact No. 26 above, as modified by Findings of Fact 75 above, shall be filed according to the schedule set forth in Findings of Fact No. 76 above.

IT IS FURTHER ORDERED that on the same date Qwest Communications Corporation or Qwest Corporation, its affiliate ILEC, provide the filings required by Findings of Fact No. 26 above, as modified by Findings of Fact 75 above, according to the schedule set forth in Findings of Fact No. 76 above, the entity providing the filing shall file with Commission Docket Control, as a compliance item in this docket, a notice that references this Decision, includes the language of the condition, and confirms that the reports have been provided to Staff.

IT IS FURTHER ORDERED that within 60 days of each of the filings required by Findings of Fact No. 26 above, as modified by Findings of Fact 75 above, the Commission's Utilities Division Staff shall file a report in this docket that includes its analysis of the information provided, Staff's conclusions based thereon, and Staff's recommendations to the Commission for any further action.

IT IS FURTHER ORDERED that any information provided pursuant to the reporting requirements ordered herein shall be used in future alternative form of regulation and Price Cap proceedings to assist in the Commission's evaluation of Qwest Corporation's revenue requirements.

IT IS FURTHER ORDERED that as a condition of approval of Qwest Communications Corporation's amended application, all Qwest Corporation revenues lost due to its customers' migration to Qwest Communications Corporation shall be quantified, recognized, and imputed to Qwest Corporation in future rate proceedings.

IT IS FURTHER ORDERED that Qwest Communications Corporation and Qwest Corporation shall be considered to be one entity for the purposes of evaluating the local exchange

services competitive situation in future alternative form of regulation or Price Cap proceedings.

IT IS FURTHER ORDERED that findings in this proceeding shall not be construed as a finding with respect to what Baskets any service(s) belong under Qwest Corporation's alternative form of regulation or as a finding with respect to what constitutes a competitive or sufficiently competitive marketplace for purposes of either Qwest Corporation's alternative form of regulation proceedings or future applications of Qwest Communications Corporation to expand its business to other markets.

IT IS FURTHER ORDERED that the tariffs filed by Qwest Communications Corporation shall list both an initial rate (the actual rate to be charged) and a maximum rate for each competitive service offered. The rate for the service shall not be less than Qwest Communications Corporation's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

IT IS FURTHER ORDERED that Qwest Communications Corporation is hereby authorized to discount its rates and service charges to the marginal cost of providing the service.

IT IS FURTHER ORDERED that the tariffs filed by Qwest Communications Corporation shall include a change to its proposed Arizona Tariff No. 3 Section 2.2.5 item E, to ensure that local exchange telecommunications services will not be provided to business customers participating in the Competitive Response Program.

IT IS FURTHER ORDERED that Qwest Communications Corporation shall procure an additional performance bond equal to $135,000. The minimum bond amount of $135,000 shall be increased, in increments of $67,500, if at any time the total amount of the advances, deposits and prepayments collected its customers is within $13,500 of the existing bond amount.

IT IS FURTHER ORDERED that Qwest Communications Corporation shall file with Commission Docket Control, as a compliance item in this docket, proof of the ordered performance bond within 365 days of the effective date this Decision, or 30 days prior to the provision of service, whichever comes first.

IT IS FURTHER ORDERED that Qwest Communications Corporation shall keep the performance bond in effect as ordered herein until further Order of the Commission. If at some time in the future, Qwest Communications Corporation ceases collecting advances, deposits and/or

prepayments from its customers, Qwest Communications Corporation may file a request for cancellation of its established performance bond regarding its resold long distance services. Such request shall reference this Decision and explain Qwest Communications Corporation's plans for canceling those portions of the bond.

IT IS FURTHER ORDERED that the expanded services this Decision conditionally grants authority for Qwest Communications Corporation to provide are hereby classified as competitive.

IT IS FURTHER ORDERED that Qwest Communications Corporation shall notify the Commission prior to providing service to any unserved areas in the State of Arizona.

IT IS FURTHER ORDERED that Qwest Communications Corporation shall comply with all of the Staff recommendations set forth in Findings of Fact No. 17 above.

IT IS FURTHER ORDERED that if Qwest Communications Corporation fails to meet the timeframes outlined in these Ordering Paragraphs for the filing of tariffs and performance bond, the expansion of Qwest Communications Corporation's Certificate of Convenience and Necessity conditionally granted herein shall become null and void.

IT IS FURTHER ORDERED that if Qwest Communications Corporation fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, Qwest Communications Corporation's performance bond shall be forfeited.

IT IS FURTHER ORDERED that nothing in this Decision changes Qwest Corporation's obligations as an incumbent local exchange carrier.

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IT IS FURTHER ORDERED that Qwest Corporation's provision of local exchange service in the service territories of rural telephone companies is subject to any future proceedings under Section 251(f)(1) or (2) of the Telecommunications Act of 1996 (47 U.S.C. Section 251(f)(1) and (2)). Granting QCC's request to provide competitive local exchange service outside its service territory is not a ruling that affects the rights of specific rural telephone companies under 47 U.S.C. Section 251(f).

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: QWEST COMMUNICATIONS CORPORATION D/B/A QWEST LONG DISTANCE

DOCKET NO.: T-02811B-04-0313

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