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**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
**QWEST COMMUNICATIONS
CORPORATION'S AND QWEST
CORPORATION'S JOINT
EXCEPTIONS TO RECOMMENDED
OPINION AND ORDER**

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Qwest Communications Corporation ("QCC" or "Applicant") and Qwest Corporation ("QC") hereby jointly file Exceptions to the Recommended Opinion and Order filed by the Administrative Law Judge ("ALJ") in this matter. (QC and QCC are jointly referred to in these exceptions as "Qwest.") Qwest requests that the Arizona Corporation Commission ("Commission") reject certain conditions and restrictions adopted in the Recommended Opinion and Order ("ROO").¹ Specifically, Qwest asks that the Commission:

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¹ In its Post-Hearing Brief filed on September 30, 2005, QCC addressed in detail the legal infirmities of these and several other conditions and restrictions proposed by the Staff. By its narrower focus in these Exceptions, and the arguments made in support of these Exceptions, QCC does not waive any claims, and expressly reserves all of the claims and arguments it has

1 1. Reject the customer tracking and reporting requirements (Staff's proposed conditions
2 8(b) (1-3) as modified by Findings of Fact No. 75). Such tracking is pointless in a competitive
3 market; and if the Commission nevertheless believes that data is necessary, less burdensome,
4 more narrowly tailored alternatives are available.

5
6 2. Delete language that might be interpreted to require imputation of QCC revenue to QC in
7 a rate case or price cap case. That is a matter that must be taken up as part of a rate case.

8
9 3. Reject the two-year moratorium against QCC filing to expand its certificate to include
10 residential and small business services inside the QC service area (Staff's proposed conditions 3
11 and 4). The Commission should not close its doors to potential applicants, denying them "their
12 day in court."

13 4. Delete the requirement that QCC must change its proposed Arizona Tariff No. 3 Section
14 2.2.5 item E (ROO ordering clause at 42, lines 14-17). That tariff is designed to enable QCC to
15 compete more effectively for business customers, and is in all respects consistent with the grant
16 of the CC&N.

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18 **I. INTRODUCTION**

19
20 Hundreds of telecommunications companies certified in Arizona provide both local exchange
21 service and interLATA service. Some are small carriers with only a handful of customers; and a
22 handful of carriers are newly constituted behemoths such as AT&T (formerly SBC) and
23 Verizon, which threaten to dominate the business services market, which in this proceeding has
24 been called the Enterprise Market. These competitors, large and small, have targeted the
25 Enterprise Market for more than a decade. They have been successful. As stated by the Utilities
26 previously made.

1 Division Staff (the "Staff"), the Enterprise Market is highly competitive, and QC's position has
2 steadily eroded.

3
4 A substantial part of the Enterprise Market wants to deal with a single entity rather than
5 multiple entities for their telecommunications needs, whether those are local exchange voice or
6 data service, long distance or dedicated Internet access. They seek service from a single entity,
7 with a single contract, a single point of contact, a single bill, and one place to go to for
8 accountability for service. This is commonly referred to as "one-stop shopping."

9
10 All of Qwest's competitors can provide "one stop shopping" to their customers.
11 However, unless the Commission approves this Application, no single company from the Qwest
12 family of companies may provide both local exchange services and interLATA
13 telecommunications services to Enterprise customers in Arizona. In this proceeding QCC, a
14 Qwest entity that is authorized to provide interexchange services, applied for operating authority
15 to provide local exchange services to Enterprise customers in the parts of Arizona where Qwest
16 Corporation ("QC") is the incumbent local exchange carrier ("ILEC"), and for authority to serve
17 all kinds of customers in the rest of the state. Without the requested Certificate of Convenience
18 and Necessity ("CC&N"), QCC will not be able to provide the "one-stop shopping" capability its
19 Enterprise customers demand and that existing competitors currently offer. This Commission's
20 grant of the authority requested will level the playing field so that QCC can better compete in the
21 Enterprise Market. Failure to do so will result in a further diminution of the role of Qwest—any
22 part of Qwest—in that important market, ultimately to the detriment of all of Qwest and all of
23 Qwest's customers.

24
25 No member of the public has stepped forward to voice any concern about QCC's
26 Application, which has been self-limited to providing local service inside of QC's service area to

1 Enterprise customers only. The Residential Utility Consumer Office has not intervened in this
2 matter. No representative of any large business or government agency has voiced any concern;
3 and indeed, all evidence in the record points only to benefits that those customers stand to reap as
4 a result of the potential for increased competition which QCC can bring to the state. And, not
5 one single competitor has intervened in this proceeding. The only reasonable inference is that
6 this Application presents no problems to the public, to customers, or to competition. Every other
7 state where QCC has sought certification as a CLEC – even those states where QC operates as
8 the incumbent local exchange provider – has agreed, and has certified QCC to operate as a
9 CLEC without limiting the territory or customers QCC can serve, and without imposing unduly
10 restrictive reporting requirements.²

11

12 The Staff, and the ALJ, conclude that QCC meets all the criteria established by statute
13 and this Commission's rules governing the grants of CC&Ns. However, the ROO would load
14 the CC&N with burdensome and costly obligations that do not appear in any rule or Commission
15 order, or in any other CC&Ns issued by the Commission, and effectively bar QCC from filing to
16 expand its authority for two years. The application of unwritten rules and criteria that are
17 conceived and applied solely to this Applicant is arbitrary and capricious, discriminatory, not
18 competitively neutral, and violates principles of equal protection. Such action would be
19 unlawful under the United States and Arizona Constitutions, as well as Arizona statutes, and the
20 Act.

21

22 More fundamentally, the restrictions don't make much sense in relation to the Staff's

23

24 ² None of the thirteen other states in the QC incumbent region has limited the customers or
25 territory Qwest can serve. Only two – Nebraska and Iowa – have imposed any reporting
26 requirements. Even in those two states, the reporting requirements do not rest on QCC or QCC
specifically as part of the certification process, but were created in a subsequent rulemaking of
more general application. Iowa's reporting requirements are discussed below.

1 objectives, are too burdensome, or can be better tailored to meet those objectives.

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3 **II. DISCUSSION**

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5 A. The Customer Tracking and Reporting Requirements 8(b) (1-3) Are
6 Unreasonably Burdensome, and Ineffective for the Intended Purpose; Better,
7 More Narrowly Tailored Alternatives Exist.

8
9 The ROO seeks to impose on QC record-generation and reporting requirements relating
10 to the number of business accounts, business lines, and annualized revenues that move from (i)
11 QC to any other carrier; (ii) QC to QCC; and (iii) QCC to QC, all reported on a QC wire center
12 basis. Such reports shall be rendered every 6 months, capturing the data for described changes
13 during the preceding 6 month period.³ The information sought will not be used to determine
14 whether QCC is a fit and proper applicant for the CC&N, or to determine whether QCC is
15 providing adequate service. The ROO tells us the following purpose:

16 Staff believes that the information is necessary in order for Staff and the
17 Commission to evaluate the impact of QCC's operations upon Qwest Corporation
18 for the purposes of future Qwest Corporation AFOR proceedings. Staff states that
19 in the event significant migration of large customers from Qwest Corporation to
20 QCC occurs, the Commission may wish to impute lost revenues back to Qwest
21 Corporation for ratemaking purposes, and the information required by these
22 proposed conditions is necessary to evaluate the magnitude of any such
23 migration."⁴

24 1. The Tracking and Reporting Requirements are Costly and Burdensome

25 The evidence in the record about the cost and burden of complying with the Staff's
26 proposed record generation and reporting requirements (which have been expanded by the ALJ

25 _____
26 ³ Findings of Fact No. 75.

⁴ Findings of Fact No. 74, at 27.

1 to encompass even more transactions), is that the requirements will require a new record-keeping
2 effort. Current systems used by QC or QCC do not have the capability to track in that manner,
3 and “it would take an extraordinary amount of time and money through IT changes to even
4 implement the tracking of the information.”⁵ The Staff stated that it does not know whether QC
5 tracks the data Staff seeks, and has not undertaken any analysis of how difficult it would be for
6 either QC or QCC to begin tracking the data.⁶ However, the ROO concludes that QCC will
7 likely keep that information for its own purposes as part of its business operation. (Findings of
8 Fact 75, at 28). There is no evidence to support that finding; it is only erroneous conjecture. QC
9 has not set up a system to track movement of customer accounts, lines and revenues in the 9
10 years since the Act was passed. Why would QC or QCC set up a system to keep track of such
11 movement now? There is no business purpose served by this requirement.

12

13 2. The Tracking and Reporting Requirements Do Not Serve a Rational
14 Regulatory Purpose since the Enterprise Market is Highly Competitive.

15

16 As a regulatory requirement, the tracking is misguided because the Enterprise Market is
17 fully competitive. QC does not “own” the customer. Customers can, and have left QC, and
18 continue to do so. QC’s revenues have already declined, and in the Enterprise category, given
19 some of the artificial disabilities placed on QC, its revenues can be expected to continue to
20 decline. By extension, it is wrong for QC, or its shareholders, or any class of customers that
21 historically enjoyed subsidized rates because of the higher rates charged to business services, to
22 expect to have a guaranteed level of revenues from Enterprise customers. Stated bluntly, if QCC
23 does not win some of the business, it will simply be lost by the Qwest companies entirely.

24

⁵ See Supplemental Rebuttal Testimony of QCC Witness M. Lafave, Hearing Exhibit
25 A-10 at 18 (lines 20-22). See also, Cross-examination of Qwest Witness M. LaFave, TR, Vol. II
at 298-299.

26

⁶ See *id.* at 146.

1
2 3. The Tracking and Reporting Requirements Will Yield Misleading Data.
3

4 The tracking and revenue requirements imposed by the ROO assume that when a
5 customer transitions from one carrier to another, that there is 100% congruity in the services and
6 the resulting revenue. That notion is categorically wrong. There simply is no way to do an
7 “apples to apples” comparison that will result in a reliable calculation about how much revenue
8 QCC may “take” from QC. Consider, for example, a business customer that has been a QC
9 Centron customer, subscribing to 100 lines, resulting in, say, \$3,000 revenue to QC each month.
10 If that customer switches to Verizon service, provided via a DS-1, with VoIP capability behind
11 the service to provide comparable Centron functionality, for \$900 a month, what revenue has QC
12 lost? Is it \$3,000, or \$900, or the amount that QC or QCC would have charged that customer for
13 whatever substitutable service they may have marketed, had they known the customer was about
14 to leave Qwest?⁷ Clearly, if QC were to have kept the customer, it would have had to offer a
15 solution that would have been different from Centron, and most probably at a lower cost to the
16 customer. Therefore, if the amount of revenue that Qwest reports as “moved” under 8(b)(3) is
17 the amount that it had been billing the customer, that amount is almost certainly overstated and
18 not useful for any analysis about the effect of the movement on QC’s revenues.

19 Similar problems exist in the metric required under 8(b)(2)—the number of business lines
20 that have “moved.” In modern times, it simply is not meaningful or, at times not even possible,
21 to speak about “lines.” The old system of trunks and lines is fast disappearing, replaced by
22 software defined services over fiber transport, sold in various configurations. Some of the
23 services such as VoIP may not even be within the state’s jurisdiction. To complicate matters
24 more, often a customer’s business needs drive the change to a different provider. For example, a

25 _____
26 ⁷ An additional problem: How will QC or QCC know what services a customer is buying from a
competitor, and how much a competitor is charging the customer that moves?

1 customer that is substantially increasing or downsizing its operations will likely re-evaluate the
2 types of services it needs and consider switching to a competitive provider as part of the process.
3 Other customers may be switching carriers in connection with a move that is taking them outside
4 of QC's service area. Such information could never be known by Qwest, and it is completely
5 unrealistic to expect customers to participate in the in-depth disconnection interviews that would
6 be required for Qwest to get the information.

7 Last, none of the tracking that the ROO requires would take into account local exchange
8 revenues that are *lost by QCC* to some other carrier.

9 These are obvious, fatal shortcomings to the tracking and reporting requirements under
10 Staff's proposed condition 8(b) (1-3). The ROO concludes that the regulatory need for the
11 information outweighs the burden of the record-keeping effort. However, it is clear that the
12 information, in the form requested, is largely meaningless, and the ROO's conclusions should be
13 rejected.

14

15 4. Better, More Narrowly Tailored Alternatives Exist.

16

17 a. *The Iowa Rule.*

18

19 At the evidentiary hearing, Qwest offered as an alternative the Iowa Utilities Board's
20 solution to the data question. After granting QCC the authority to provide local exchange
21 services that state, the Iowa Board conducted a rulemaking regarding the same concerns
22 expressed by the Staff in this proceeding. The resulting reporting requirements involve data that
23 ILECs capture in the normal course of business, so the expense of developing new record
24 systems can be avoided.⁸ Second, this reporting provides data regarding competitive line

25

26 ⁸ See Supplemental Rebuttal Testimony of Mary F. LaFave, Hearing Exhibit A-10 at 20.
The rule requires that the following information be filed annually:

1 loss/gain or growth for all CLECs, which gives Staff comparative data. Qwest still holds the
2 opinion that the Iowa rule is a better solution to the Staff's stated needs, because it provides the
3 specific data about services provided by QC to QCC and to all other CLECs. This gives a better
4 indication of the amount of customer connections that have "moved" to QCC from QC than does
5 the Staff's proposal.

6
7 *b. Alternatively, Presumptions May Be Made Regarding QCC's*
8 *Revenue, That Serve the Staff's Purpose, That Are Simple, and*
9 *That Are More Accurate than the Tracking and Reporting*
10 *Requirements of the ROO.*

11
12 As noted above, Qwest believes that the Staff's concerns about creating data that it may
13 use someday in a future AFOR proceeding for possible imputation of revenue to QC, are not
14 well-placed because the Enterprise market is highly competitive. QC does not "own" the

15
16 In Iowa, the ILEC is required to file all commercial agreements, not just interconnection
17 agreements, between the ILEC and the affiliated CLEC "as they are made." The ILEC must also
18 file as part of its annual report the following information:

- 19 a. The number of local numbers ported by the ILEC to nonaffiliated CLECs.
- 20 b. The number of local numbers ported by the ILEC to its affiliated CLEC.
- 21 c. The number of unbundled network element loops (UNE-Ls) provided by the
22 ILEC to nonaffiliated CLECs.
- 23 d. The number of UNE-Ls provided by the ILEC to its affiliated CLEC.
- 24 e. The number of unbundled network element platforms (UNE-Ps), or their
25 equivalent, provided by the ILEC to nonaffiliated CLECs.
- 26 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.

1 customer, and has no entitlement to the revenue of a customer that leaves for a competitor.
2 Secondly, QC will gain wholesale revenue from QCC.⁹ These wholesale rates have been set by
3 the Commission. The impact on QC will be no different from the impact by any competitor
4 buying wholesale services, and the prices for those wholesale services have been found by the
5 Commission to cover QC's expenses and to provide an adequate return.¹⁰ If the wholesale rates
6 QCC pays QC are fully compensatory, there is no reason to impute any revenue to QCC in a
7 future QC rate proceeding. However, if the Commission remains uneasy, and requires that
8 useful data should be captured, Qwest has a simple, effective alternative. Qwest proposes that all
9 of QCC's revenue derived from regulated local exchange services in Arizona should be
10 presumed to have been moved from QC, except as QC or QCC may provide credible evidence to
11 the contrary.

12
13 Besides simplicity and ease of administration, this proposal avoids most of the invalid
14 comparison problems that plague the Staff's proposals. To the extent that the presumption
15 Qwest proposes would result in over-reporting of revenue "moved" from QC (such as accounts
16 won from Verizon, for example), it is incumbent upon QCC to track that information and report
17 it to the Staff.

18 ⁹ In the QC Revised Price Cap Plan proceeding, the Staff's consultant points to what he
19 calls "considerable new and growing revenues" for QC "by serving many of its departing retail
20 customers on a wholesale basis." Surrebuttal Testimony of Michael L. Brosch in Docket No. T-
21 01051B-03-0454, cited in this proceeding in Hearing Exhibit A-11 at 4. The record in this
22 proceeding shows that QCC will buy wholesale services from QC rather than providing its own
23 facilities. Hearing Exhibit A-10 at 24.

24 ¹⁰ The ROO states that QCC's observation that QC will be compensated by QCC for use of
25 its network on a wholesale basis "addresses only the effects of wholesale revenues, and fails to
26 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." In point of fact, those are the essential factors the Commission took into account in
determining that QC's wholesale rates need not be the same as its retail rates. For the
Commission to suggest otherwise now would cast considerable doubt on the adequacy of the
rates QC may charge for UNEs and for resale.

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Because the purpose behind the data gathering is the potential for imputation of QCC revenue to QC in a future QC AFOR case (a rate case), Qwest respectfully states that if its alternative proposal is adopted, there is not any need to track movements of customers accounts and revenue between QC and other carriers. Nor is there any need to track information at the wire center level, since revenue requirement in rate cases is indifferent to the amount of revenue on a wire center-by-wire center basis.

B. The Commission Should Delete Language in the Recommended Opinion and Order that Would Require Imputation of QCC Revenue to QC in a Rate Proceeding

At several places in the ROO, the ALJ states, “. . . 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.*” (Findings of Fact No. 89 at 37; No. 92 at p. 38, and ordering clause at p. 41, lines 25-26). (Emphasis added). The issue presented in this proceeding was whether data about QCC revenue must be recorded and reported, for *potential* imputation in a future QC rate proceeding. Whether or not QCC revenue should actually be imputed to QC in a future QC rate proceeding was not presented in this CC&N case, and that issue was fully and fairly litigated. Nor would it be appropriate to do so. Ratemaking matters must be taken up in the context of a rate application, where the Commission reviews the totality of a utility’s circumstances. Ratemaking may not be conducted in a piecemeal fashion. *Scates v. Arizona Corp. Commission*, 118 Ariz. 531, 578 P.2d 612 (Ariz.App. 1978).

To remedy this problem, in each instance where the language “*recognized and imputed to*” appears, Qwest asks that the sentence be modified to read as follows: “. . . all Qwest

1 Corporation revenues lost due to its customers migration to Qwest Communications Corporation
2 shall be quantified so that it can be *used by Staff in future rate proceedings to assist in the*
3 *evaluation of Qwest Corporation's revenue requirements.*" The italicized wording parallels the
4 language used by the Staff in its Condition 9.

5
6
7 C. The Commission Should Reject the Moratorium Against QCC Filing to Expand its
8 Certificate to Include Residential and Small Business Services Inside the QC Service
9 Area (Staff's Proposed Conditions 3 and 4). The Commission Should Not Close its
10 Doors to Potential Applicants, Denying Them "Their Day In Court."

11
12 Despite the fact that QCC's Application does not ask for authority to serve residential
13 customers inside the QC service area, the ROO takes the extraordinary step of decreeing that
14 QCC should not file an application to amend its certification to provide local exchange services
15 to Residence and/or Small Business customers in the Qwest Corporation service area in Arizona
16 for a period of 24 months. There are important principles of fairness at stake here, which compel
17 Qwest to strenuously object to the provisions of the ROO that adopt Staff's conditions 3 and 4,
18 even though QCC has no intention at this time to provide residential or small business services
19 inside the QC area. The high-handed treatment proposed in the ROO is wrong on many levels,
20 not the least of which is that according to the Staff witness it was inserted "to make sure that
21 QCC does not turn around and file an application to provide service to residential customers in
22 QC's territory."¹¹ In other words, one of the chief purposes of this provision is simply to cut
23 QCC off from the legal processes that are available to any other entity desiring such authority.
24 Even though QCC may have a legitimate basis for requesting a CC&N extension as provided by
25 statute and rule, it would be barred from having its request heard and decided on the merits. This

26 ¹¹ TR, Vol. I at 206 (lines 15-21).

1 would, in effect, prejudice any application QCC might make during the moratorium, regardless of
2 any evidence QCC might be able to present concerning market conditions or changes in the law.

3
4 The Staff attempted to justify this denial of due process by stating also that a purpose of
5 the moratorium is to gather data required by the Staff's proposed conditions, that will provide a
6 basis for the Commission to determine whether further expansion of QCC's CC&N with QC's
7 service territory in the public interest. Those claims ring hollow, and are ill-considered for the
8 following reasons:

9
10 1. The data Staff seeks is that required by condition 8. The lion's share of data
11 required by condition 8—that is, 8(a), and 8 (b) (1-3), will consist of information resulting from
12 QCC's services to business customers. (Recall, that during this moratorium period, QCC will
13 only serve Enterprise customers in the QC area, so under condition 8 QCC and QC will be
14 reporting on the Enterprise accounts and lines in service, and the revenues QCC has gained from
15 serving Enterprise customers.) The data collected about QCC's activity in the Enterprise Market
16 will not be useful in determining whether QCC should be provided a certificate to serve
17 residence customers. The two markets have very little in common.

18
19 2. The data Staff seeks that is produced under 8(b)(1-3) will be fairly meaningless,
20 for the reasons discussed above.

21
22 3. Conditions 8(b)(4-5) don't make much sense either, as a pre-condition to QCC's
23 ability to seek expanded authority in the future. Conditions 8(b)(4-5) compel QC to provide
24 periodic reports drawn from the LERG (Local Exchange Routing Guide) system (which all
25 providers have access to), and listings data from all wireline and wireless carriers in the state
26 (including, apparently, listings information for all wireless providers, CLECs, and ILECs outside

1 of QC's service area). The rationale stated is that Staff will use the data from these reports "for
2 compliance and monitoring purposes, and to determine the competitive impact of QCC's
3 expanded presence in Qwest Corporation's service territory." However, studies regarding
4 statewide listings data of all kinds of carriers, and regarding the numbers of switches operated
5 by all carriers statewide, is a very over-inclusive, and indirect method, of monitoring for whether
6 QCC is properly targeting its business to customers allowed to it by its CC&N,. Second, no
7 statute or rule requires a study of competition before a carrier may file for a CC&N to provide
8 competitive services. Whether or not the services it proposes to offer are competitive is one of
9 the matters that is decided during the course of the CC&N application proceeding.

10
11 4. The conditions that QCC must fulfill before it can file were not fully and fairly
12 litigated in this proceeding, because the matter of future filings to expand its certificate are
13 highly speculative, conjectural and hypothetical.

14
15 5. The moratorium provides new conditions placed upon an applicant for a CC&N—
16 conditions that are not currently provided in any statute or rule. In adjudging whether an
17 applicant meets the requirements of its existing rule governing the grant of CC&Ns, the
18 Commission may not make up new rules just for this or for any other applicant.

19
20 Last, the ROO adopts the Staff's position that the moratorium does not bar QCC from
21 having a future request for a CC&N extension heard and decided on the merits, as QCC has
22 argued. (Findings of Fact No. 69.) The most that can fairly be said, however, is that the

23 ¹³ The actual period of preclusion from the market would, of course, be much longer than 18
24 months. Assuming, for example, that QCC decided to file at the very first opportunity available
25 to it under the ROO, and assuming for purposes of illustration only that the Commission issues
26 its order adopting this ROO on January 25, 2006, the earliest QCC would be able to file for its
extension would be approximately June 25, 2007. If that proceeding takes the same amount of
time that the instant filing has consumed, QCC's expanded certificate may be decided 21 months
later, on or about March, 2009.

1 moratorium does not act as a *permanent* bar. While it is presumably true that QCC's application
2 would be heard and decided after QCC had gathered the required data over the prescribed period
3 of 18 months, it cannot be denied that QCC is barred for that significant period of time.¹³

4
5 D. The Commission Should Delete the Requirement that QCC Must Change its
6 Proposed Arizona Tariff No. 3 Section 2.2.5 Item E.

7
8 The ROO adopts a condition that QCC must be changed so that the provisions of QCC's
9 proposed Tariff No. 3, Section 2.2.5 Item E, "to ensure that local exchange telecommunications
10 service will not be provided to business customers participating in the Competitive Response
11 Program." (ROO ordering clause at 42, lines 14-17.) QCC suspects that this condition is an
12 artifact from the First Staff Report in this matter, when the Staff was not considering the
13 Enterprise Market CC&N possibility that is adopted by the ROO. As such, the condition is no
14 longer necessary or even relevant. Certainly, inasmuch as the tariff in question is designed to
15 increase QCC's ability to compete, it is entirely consistent with the purposes articulated by the
16 ROO that it is appropriate to grant the CC&N.¹⁴ If, however, the Staff has identified some
17 other issue that concerns Staff about the tariff in question, QCC suggests that the matter should
18 be examined separately, and that the Commission's Order granting the CC&N should not rule on
19 the tariff in a way that precludes further analysis and review of the proposal.

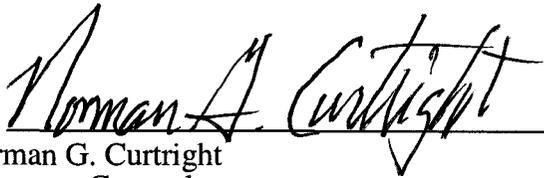
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21 **III. CONCLUSION**

22
23 For the reasons set forth, Qwest respectfully requests that the Commission reject the
24 customer tracking and reporting requirements (Staff's proposed conditions 8(b) (1-3) as modified
25 by Findings of Fact No. 75), delete language in the ROO that might be interpreted to require

26 ¹⁴ A copy of the proposed tariff is attached, marked as Exhibit I.

1 imputation of QCC revenue to QC in a rate case or price cap case, and reject the two-year
2 moratorium against QCC filing to expand its certificate to include residential and small business
3 services inside the QC service area (Staff's proposed conditions 3 and 4). Finally, the
4 Commission should delete the requirement that QCC must change its proposed Arizona Tariff
5 No. 3 Section 2.2.5 item E.

6
7
8 DATED this 17th day of January, 2006.

9
10
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Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona

COPY of the foregoing delivered by hand
this 17th day of January, 2006 to:

Teena Wolfe, Administrative Law Judge
Hearing Division
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EXHIBIT I

Issued: {

2. GENERAL REGULATIONS – CONDITIONS OF OFFERING

2.2 ESTABLISHING AND FURNISHING SERVICE

2.2.5 SPECIAL SERVICES (Cont'd)

E. Competitive Response Programs

1. Business Competitive Response Program

a. Description

The Business Competitive Response Program is an offering to business Customers who qualify under one of the following categories below. In accordance with the terms of this program and based on its reasonable discretion, the Company may offer incentive(s) to potential, current or prior business Customers, who:

- return to the Company from a competing telecommunications provider, or
- are potential new Qwest business Customers, or
- request to have one or more products disconnected and who decide to retain the product(s) after having been informed of the product(s) benefits.

b. Terms and Conditions

- (1) The Company will determine periods and provisions of the offer, pending Commission approval.
- (2) Qualifying business Customers are required to have a satisfactory credit rating.
- (3) Business Customers will receive the incentive(s) only in connection with services that are reestablished or established upon their initial return to the Company.
- (4) For some services, business Customers are required to sign a contract in order to receive the incentive(s).
- (5) Business Customers who receive the incentive(s) are required to remain with the Company for a minimum of one year or to the renewed term length; to the extent the Customer terminates service early, the Customer will be rebilled for all incentives received.
- (6) The Company reserves the right to discontinue this offer at any time.

Issued: {

2. GENERAL REGULATIONS – CONDITIONS OF OFFERING

2.2 ESTABLISHING AND FURNISHING SERVICE

2.2.5 SPECIAL SERVICES

E.1. (Cont'd)

c. Rates and Charges

- (1) Customers who qualify under the Terms and Conditions of this Tariff may be offered one of the following on selected products, as determined by the Company:
 - A waiver of an amount up to 100% of the current business nonrecurring charge(s), or
 - A waiver of up to three months of the recurring rates, or
 - A waiver of an amount up to 100% of the current business nonrecurring charge(s) and up to three months of the recurring rates, or
 - A benefit or consideration offered or provided that is not associated with a service or product offered by the Company such as CPE, merchandise, or discounts on merchandise offered by others, gift certificates, gift cards, or otherwise and with a retail value not to exceed the sum of c., above.
- (2) Waiver amounts are calculated based on the first month's nonrecurring charge(s) and monthly rate(s). The total waived amount will not exceed the total nonrecurring charge(s) plus three months service of the monthly rate(s).
- (3) The Company may also provide an additional reasonable reward after a period of time or on an anniversary date to recognize the continued retention of the Customer.

F. Individual Case Basis

Services and arrangements may be developed on an individual case basis in response to requests of the Customer, or in response to competitive situations, for unique services or arrangements or for unique or specially-bid pricing. Rates and charges associated with such services or arrangements may differ from those for the basic services and arrangements identified in this Tariff.