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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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MAR - 5 2009

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**IN THE MATTER OF THE REVIEW AND  
POSSIBLE REVISION OF ARIZONA  
UNIVERSAL SERVICE FUND RULES,  
ARTICLE 12 OF THE ARIZONA  
ADMINISTRATIVE CODE**

DOCKET NO. RT-00000H-97-0137

**IN THE MATTER OF THE  
INVESTIGATION OF THE COST OF  
TELECOMMUNICATIONS ACCESS.**

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION'S  
RESPONSIVE COMMENTS  
REGARDING SCOPE OF PHASE II**

Pursuant to the Procedural Order dated February 3, 2009, Qwest Corporation ("Qwest") files responsive comments on the question of whether Qwest's intrastate access rates should be included as part of Phase II of the inquiry regarding access costs ("Access Charges Docket"). Qwest also provides additional information from proceedings in other state jurisdictions regarding the access charges of Competitive Local Exchange Carriers ("CLECs").

1 **INTRODUCTION**

2  
3 Qwest's initial comments regarding the scope of Phase II, which were filed on February  
4 18, 2009, stated Qwest's opposition to inclusion of its access rates in Phase II. The Commission  
5 previously split the Access Charges Docket into phases, one phase for Qwest and one for the  
6 other carriers. The phase regarding Qwest's rates was resolved, and there are no compelling  
7 reasons for the Commission to re-open its determination or to reverse course on its established  
8 process. Qwest pointed out in its Comments that its access rates were already the lowest in the  
9 state, and have been reduced four times since 2001, while no other carriers' rates have been  
10 analyzed by the Commission. The Commission should complete its plan, and turn its attention to  
11 the other carriers, including CLECs. Further reductions of Qwest's access rates would only  
12 increase the gulf that separates the higher, heretofore unexamined rates of the other LECs and  
13 Qwest's rates, making an already difficult task for those other LECs harder still.

14 No support exists for AT&T's proposal to include Qwest. AT&T is the only participant  
15 in this industry-wide proceeding that commented in favor of including Qwest's rates in Phase II.  
16 None of the other carriers filed comments, nor did the Staff. RUCO, which is the only other  
17 commenting party, agrees with Qwest that AT&T's request to include Qwest has already been  
18 decided by the Commission.

19 RUCO also finds that AT&T has not presented any evidence that Qwest's rates are  
20 inappropriate. Indeed, AT&T's initial comments are based on inaccurate facts and unsupported  
21 or illogical theories, and a rehash of its flawed procedural analysis that claims to find that the  
22 Commission never really intended for the docket to proceed in serial phases. More serious,  
23 perhaps, is AT&T's failure to grasp that insistence on including Qwest's rates can only prolong  
24 the docket, and cause all those other carriers whose rates are higher than Qwest's an even greater  
25 challenge to bring their access charges down and make up the lost revenue by other means.  
26 AT&T has not shown the justification for its claims of urgency.

1           Having sat on its hands for years on end and having not participated in Phase I, or done  
2 anything to advance Phase II, AT&T's request that the Commission should now urgently strive  
3 for AT&T's view of universal perfection, is unwise. Qwest submits that the more orderly  
4 method of proceeding, and the course of action that holds the most chance of success, is to  
5 complete Phase II as originally planned by the Commission. All other carriers' rates must now  
6 be examined and a means found to lower those rates in a revenue neutral solution. Movement of  
7 those other carriers toward the Qwest rate is a reasonable, potentially achievable objective of this  
8 Phase II.

9           Qwest does not claim that its access charge rates are forever exempt from further review  
10 and possible reduction because it completed Phase I. The approach that suggests itself is to  
11 complete Phase II for all the other carriers, with Qwest's intrastate access rates as the objective.  
12 While that process is more modest than AT&T argues for, it will provide a better likelihood that  
13 meaningful access reform will occur for the first time for all other carriers. It will also provide a  
14 better chance for the exercise of due care toward the important necessary corollary objectives of  
15 (a) revenue neutrality for the access rate reductions forced on those other carriers, and (b)  
16 leveling the competitive advantage of implicit subsidies currently enjoyed by CLECs whose  
17 access charges are higher than Qwest's. If the Commission can accomplish those objectives,  
18 which are not easy, then it can turn its attention to a possible subsequent Phase III for all carriers,  
19 including Qwest. In that Phase III, all carriers would, for the first time, start from the same  
20 levels. Further reductions, if then justified, will be more manageable because the high rates  
21 currently assessed by rural LECs will have been lowered from their previous peaks.

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**A. No Other Party Argues For Out-of-Phase Inclusion of Qwest's Rates in Phase II**

1 As the Commission is aware, the order requiring parties to comment on whether Qwest  
2 should be included in Phase II came about as a direct result of earlier comments filed by just one  
3 party—AT&T. In the course of its procedural comments requested by the Commission on how  
4 to advance Phase II, AT&T made unauthorized and unsolicited recommendations that Qwest  
5 should be included. Qwest properly moved to strike those comments. At the ensuing procedural  
6 conference, the parties agreed and the Hearing Division decided that rather than deciding the  
7 question raised by AT&T in the context of a motion to strike filed by Qwest, it made sense to  
8 take comments from all parties on the question of whether Qwest should be included in Phase II.  
9 The resulting filings are powerful evidence that the industry as a whole does not consider the  
10 inclusion of Qwest in Phase II to be wise or necessary. Only AT&T commented in favor of  
11 inclusion of Qwest

12 The only party commenting, other than AT&T and Qwest, is RUCO. RUCO rejects  
13 AT&T's flawed interpretation of the procedural history of this docket. RUCO states that the  
14 Commission has already decided the question raised by AT&T, and that AT&T has not provided  
15 any evidence that Qwest's rates are inappropriate.

16

17 **B. AT&T's View That Phase I and II Are Already Combined Procedurally Is**  
18 **Unsupportable**

18

19 In its comments AT&T attempts to persuade the Commission that while it bifurcated the  
20 Access Charges Docket into two Phases, one for Qwest and one for the rest of the LECs, that the  
21 Commission would simultaneously hold hearings on both phases and that the two phases were  
22 not intended to be conducted one after the other. AT&T Comments, p. 8-9. There is no support  
23 for that strained interpretation. As RUCO states:

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AT&T's filing resurrects an issue that was already decided by Judge Nodes in Docket RT-00000H-97-0137 and T00000D-00-0672. At that time, the Commission, over the concerns of Qwest and RUCO, bifurcated the issue of access charges and placed the discrete issue of Qwest's access charges in Phase I. Now, that Phase I has concluded, including Qwest in

1 Phase II is tantamount to re-litigating the matter already decided by the  
2 Commission.

3 RUCO Comments, p. 3.

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5 **C. Qwest's Access Rates Have Been Resolved By the Commission**

6  
7 RUCO agrees with Qwest that the matter of Qwest's access rates has been resolved.  
8 RUCO notes that the Commission determined that Qwest's access rates should be addressed in  
9 Phase I, in conjunction with the review of the Qwest price cap plan in docket no. T-01051B-03-  
10 0454, and that Phase I was subsequently concluded by order of the Commission:

11 Qwest's Price cap plan was reviewed under the above-referenced docket and its  
12 access charges were considered. The matter was resolved by a settlement  
13 agreement ("Settlement Plan") approved by the Commission on March 23, 2006.  
See Decision 68604, Docket No. T-0105-03-0454, approving the Settlement Plan.  
The Decision set Qwest's intrastate access charges.

14  
15 RUCO Comments, p. 2., lines 14-18 (emphasis added).

16 **D. AT&T Has Not Demonstrated that Examination of Qwest's Rates Must Be**  
17 **Included In Phase II**

18 Qwest showed in its initial comments that AT&T voluntarily abandoned its participation  
19 in Phase I regarding Qwest's rates. AT&T did not even file comments. Then, AT&T failed to  
20 urge action on this Phase II. Now, in a sudden about-face AT&T claims that the Commission  
21 must urgently address Qwest's access rates again, in Phase II. Qwest submits that any such  
22 drastic revision of Commission orders and pre-determined processes must be supported by a  
23 showing of a significant change of circumstances. AT&T has failed to make any such showing.  
24 As stated by RUCO, "AT&T has not provided any evidence that Qwest's rates are  
25 inappropriate." RUCO Comments, p.3, lines 10-11.



1 capability, because it will enable callers to migrate to VoIP and other services that do not incur  
2 access charges. The study admits that its conclusion is hotly debated. *Id.*, p. 2. However, even  
3 if true, the conclusion only supports that the most urgent issue is in the rural areas where LECs  
4 generally have the highest access charge rates. The conclusion is of doubtful value altogether in  
5 the case of a carrier such as Qwest, which has demonstrated an objective and history of building  
6 out its broadband capabilities. All that AT&T has shown is that Phase II is most urgent for rural  
7 providers that tend to have the highest access rates.

8 **2. The Only Thing That Has Happened Since Phase I--The Mere**  
9 **Passage Of Time--Does Not Provide A Reason For The Commission To**  
10 **Change Its Approach.**

11 Much of AT&T's argument for the Commission to revise its orders setting Qwest's  
12 access rates relies on the passage of time since the entire Access Charges Docket was first  
13 bifurcated. AT&T states it "had no idea that examination of other carriers' switched access  
14 charges would still have not taken place by today in 2009." AT&T Comments, p. 8. However,  
15 the mere passage of time is not grounds to re-litigate a matter already decided by the  
16 Commission. None of the fundamentals of the matter have changed from the time Qwest's rates  
17 were set in Decision No. 68604.

18 AT&T points to the difference between Qwest's intrastate and interstate switched access  
19 rates, for example. But that disparity has been virtually the same since Decision No. 68604 was  
20 entered. AT&T does not explain why it is urgent now, when it wasn't when Phase I was  
21 resolved.

22 AT&T makes vague allusions to the growth of newer technologies and developments to  
23 which consumers are turning, to the detriment of AT&T's core long distance wireline business.  
24 AT&T claims that "none of these providers, however, is subject to the same high access charge  
25 subsidy regime" that AT&T faces. AT&T Comments, p. 2. However, AT&T's arguments are of  
26

1 doubtful value, insofar as AT&T attempts to equate “e-mail” and “social web sites” as  
2 comparable functionality to wireline toll service. Clearly, AT&T’s disadvantage in that regard is  
3 borne out of the public’s acceptance of new, non-voice means of communicating, and is not  
4 caused by access charges. Further, AT&T mentions “cable telephony,” which has indeed grown  
5 phenomenally in Arizona. However, AT&T doesn’t explain how the growth of cable telephone  
6 service from providers such as Cox has changed the fundamental issue of access charges. So far  
7 as Qwest is aware, Cox charges AT&T and all IXC’s switched access.

8 **3. AT&T Fails To Recognize That Switched Access Reductions**  
9 **Will Cause Local Rates to Rise, Which In Turn Will Result In Further**  
10 **Migration of Traffic Off Circuit Switched Wireline Services**

11 AT&T seems to believe that access charges are the primary cause of the migration of  
12 users to wireless and VoIP. However, Qwest submits that a far more influential factor in the  
13 minds of consumers is the cost of local voice communications. Qwest believes that customers  
14 choose VoIP over local wireline telephone service, for example, on the basis of the monthly rate.  
15 Because a potential outcome of the reduction of access charges likely will be higher local rates,  
16 greater access line losses may result. It will be ironic if AT&T’s mission to pay reduced access  
17 charges results in greater bypass of wireline circuit switched services and further decline of its  
18 business.

19 What AT&T doesn’t address when it complains of high access charges, is that consumers  
20 don’t generally benefit as a direct result of reduction of those rates. Long distance rates are set  
21 on a nationwide basis and national IXC’s such as AT&T don’t typically flow the access charge  
22 reductions in a given state through to their customers. The premise of AT&T’s argument that  
23 customers will use their services more if access charges are lower, because AT&T’s rates will be  
24 lower, has not been shown to be true.

25 **4. AT&T Does Not Prove That Qwest’s Interstate Access Rates**  
26 **Are Unreasonable**

1 As shown above, Qwest's intrastate access rates have been set by the Commission, and  
2 AT&T's request is tantamount to a request to re-litigate a resolved issue. As such, AT&T's  
3 request should be denied. However, even if AT&T's request for review of Qwest's rates was  
4 procedurally appropriate, AT&T has not substantiated its claims that Qwest's intrastate switched  
5 access rates are unreasonable.

6 AT&T's premise for the notion that Qwest's rates are excessive seems to be that Qwest's  
7 interstate rates are lower than its intrastate rates.<sup>1</sup> That, however, was a known fact when the  
8 Commission set the rates in Phase I. Regardless, when it comes to determining the  
9 reasonableness of access charges of a single company such as Qwest, the analysis must look at  
10 the rates of other providers to be fair.

11 AT&T's criticism of Qwest's rates is not fair or reasonable, because it does not compare  
12 those rates to the rest of the LECs in Arizona. Access charges are a historical product of  
13 regulator-approved subsidies. As subsidies, those rates are not cost of service based.  
14 Accordingly, an allegation that the lowest rates in the state (Qwest's) are unreasonable, is  
15 nothing more than a perspective on the need for further access charge reductions across the  
16 board. AT&T may say that access charges in general are too high as a matter of policy, and that  
17 access charges must be brought down, as a matter of policy; but to single out one company's  
18 rates as unreasonable and excessive simply by comparing its intrastate rate to its interstate rate  
19 does not prove anything. AT&T does not compare the disparity between Qwest's interstate and  
20 intrastate rates to the disparities of the other carriers. That analysis would show that by  
21 comparison, Qwest has moved much closer than most other carriers. It would also show that

22  
23 <sup>1</sup> See, AT&T Comments, p 4. There, AT&T compares something it calls "average unit rates" for  
24 Qwest's interstate and intrastate rates. "Average unit rates" are the product of manipulation of  
25 data by AT&T. AT&T does not state the "average unit rates" for any other LEC in its comments.  
26 Qwest wishes to note that it does not agree that the "average unit rates" are validly calculated or  
provide meaningful information. The interstate switched unit access rate AT&T cites for Qwest  
does not match any rate stated in Qwest's tariffs, and Qwest believes it is substantially  
understated. Qwest submits that a commonly accepted national average rate for interstate access  
may be more reliable and useful. That commonly accepted national average rate is \$.0055.

1 Qwest's interstate rates are lower than the rates of the rural ILECs, and its intrastate rates and  
2 interstate rates are lower than other carriers in an absolute comparison. .

3 Nor does the fact that there is a difference between interstate and intrastate rates show a  
4 failure on the part of either Qwest or Arizona public policy. The Commission may have  
5 articulated in the past a long range purpose to achieve parity with interstate rates, but it never set  
6 a deadline or locked itself into that objective. By its actions in setting the Phase I rates as it did,  
7 the Commission signaled that its course of action is to decrement access rates on a phased basis.  
8 There is not a fixed ultimate objective. That remains to be decided by the Commission.

9 **E. Inclusion of Qwest's Rates in Phase II Will Only Serve to Complicate, Delay**  
10 **or Thwart Final Resolution**

11 Qwest reiterates that its intrastate switched access rates are lower, sometimes  
12 substantially lower, than the other carriers. Qwest's rates have been described in Phase II Access  
13 Charges Docket as the "target" for reductions other carriers should make. Reaching that lower  
14 rate will be difficult, as most parties have recognized. If Qwest's rates are the target that the  
15 other companies should strive to meet, further reductions in Qwest's rates will only make the  
16 challenge for those companies, and the task of this Commission to achieve those reductions, even  
17 harder.

18 RUCO agrees with Qwest when RUCO says that "the inclusion of Qwest in Phase II may  
19 make it more difficult for the parties to narrow the issues in the scheduled workshops." RUCO  
20 Comments, p. 3. AT&T's own comments support that concern. AT&T states that a recovery  
21 method that might be appropriate for the amount of revenue associated with just rural carriers,  
22 for example, might not be appropriate for the amount of revenue associated with all local  
23 exchange carriers, including Qwest. AT&T Comments, pp. 6-7.

24 Qwest believes that the inclusion of Qwest's rates in Phase II will diffuse the focus of the  
25 proceeding, complicate the matter unduly, and increase the costs of participation for all carriers,  
26 as Qwest stated in its Comments. Qwest Comments, p. 6. AT&T's Comments did not address

1 those objections. In its mission to accomplish the perfect universal result, AT&T is asking this  
2 Commission to undertake the most difficult approach imaginable—that of simultaneous  
3 universal carrier rate determination with nothing short of parity with interstate access as the only  
4 acceptable goal. A lesser objective could garner more certainty of positive result in this case.

5 **F. Phase II Should Proceed As Planned; A Third Phase May Be Considered**  
6 **Subsequently to Include All Carriers on An Evenhanded Basis**

7 Qwest is not arguing that its access charges are exempt from further analysis and possible  
8 future reduction. Qwest's position is that since the Commission determined that it should  
9 proceed in two phases that those two phases should be completed as planned. Since the  
10 magnitude of the challenge for the independents and the CLECs is significant, the separate Phase  
11 II that is already established for these companies is still appropriate. It does not promise to be an  
12 easy task to reduce the access charges of those entities to a level that is at parity with Qwest, and  
13 it does not make sense to make the task even harder by injecting Qwest into Phase II. Therefore,  
14 the approach that suggests itself is for the Commission to complete its Phase II as planned, and,  
15 if the commission deems it necessary, follow with a Phase III. The Phase III Qwest envisions  
16 will include all LECs, all treated the same.

17  
18 **G. Phase II Should Include the Rates of CLECs As Originally Was Intended**

19  
20 In its Comments, Qwest advocated that data requests should be devised to assist in the  
21 exploration of whether CLECs should be included in Phase II. Qwest notes that nothing in the  
22 record has excluded CLECs from Phase II. Indeed, the Commission's orders have stated that  
23 Phase I would address Qwest and "Phase II will consider access charges for all other telephone  
24 carriers that provide access service." Procedural Order, November 17, 2003, p 4, lines 4-5.  
25 Qwest is concerned that the provision of the Procedural Order dated February 3, 2009, to the  
26 effect that the workshop process that is ordered should address whether CLECs should be

1 included Carriers in Phase II, has not been adequately aired. Opening the door for a discussion  
2 about whether CLECs shall be dismissed from Phase II would constitute a stark reversal of  
3 course. There has not been adequate process, commentary, or evidence to support such a  
4 reversal.

5 The logic for including CLECs in Phase II is even more compelling now than it was  
6 when the docket was bifurcated. In the intervening period CLECs have become formidable  
7 competitors. Indeed, with Cox's massive presence in the metropolitan markets which so  
8 dominate Arizona's telecommunications, the omission of CLECs would constitute a major  
9 regulatory gulf that would be unthinkable.

10 Long ago the FCC capped CLEC interstate access rates.<sup>2</sup> A CLEC's interstate per minute  
11 access rate cannot be higher than the interstate switched access rate of the ILEC with which the  
12 CLEC competes. A number of states have considered and adopted similar proposals for  
13 reducing or capping CLECs' intrastate rates.<sup>3</sup> Qwest urges that the Arizona Commission take

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14 <sup>2</sup> Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report  
15 & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("CLEC Rate  
16 Cap Order").

17 <sup>3</sup> A number of states have adopted regulations that generally mirror the FCC's price cap  
18 approach for CLEC access rates. Even prior to adoption of the FCC rule, the Maryland Public  
19 Service Commission established a rule that generally caps CLECs' switched access rates at the  
20 level of the ILEC's (Verizon's) switched access rates. See Code of Maryland Regulations  
21 §20.45.09.03(b). In Pennsylvania, the same result was accomplished through legislation in 2004.  
22 66 Pa.C.S. [Consolidated Statutes] §3017(c) ("No telecommunications carrier providing  
23 competitive local exchange telecommunications service may charge access rates higher than  
24 those charged by the incumbent local exchange telecommunications company in the same  
25 service territory unless such carrier can demonstrate that the higher access rates are cost  
26 justified."). Public Service Commissions in New York and Louisiana have also adopted  
identical requirements. See, e.g., Case 94-C-0095, Opinion No. 98-10 (June 2, 1998), 1998 N.Y.  
PUC Lexis 325, at 26-27 (CLECs must maintain their intrastate switched access charges at levels  
that "[d]o not exceed those of the largest carrier in the LATA" "without a showing that higher  
rates are cost based and in the public interest"). See also Louisiana PSC General Order No. U-  
17949-TT, Appendix B ("Regulations for Competition in the Local Telecommunications  
Market"), Section 301 (k)(4)(May 3, 1996)(providing that a CLEC shall charge non-  
discriminatory switched access rates that do not exceed the intrastate switched access rates of the  
competing ILEC in each of the CLEC's certificated areas). Similarly, CLECs in Connecticut  
have been required to adjust their intrastate access rates, if necessary, so that they do not exceed  
the per-minute access rates of the largest ILEC in the state. *CLEC Rate Cap Order*, Decision,  
*DPUC Investigation of Intrastate Carrier Access Charges*, Docket No. 02-05-17 (2004), 2004  
Conn. PUC Lexis 15, at \*45. In late 2007, three additional states – Virginia, Ohio and California

1 careful note of those decisions of other states. The workshop's proper role should be to  
2 determine the details, not the principle, of reducing and capping CLECs rates.

3  
4 **CONCLUSION**

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6 For the reasons stated above, the Commission should proceed with Phase II of the Access  
7 Charges Docket for all carriers who provide access services, other than Qwest. Qwest's access  
8 rates were resolved in Phase I.

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10  
11 also acted to limit CLEC access rates. The Virginia Commission adopted a rule capping CLEC  
12 access rates at the higher of the CLEC's interstate rates or the intrastate rates of the ILEC in the  
13 CLEC's service territory. 20 Virginia Admin. Code §5-417-40(E)(1)(see *Amendment of Rules*  
14 *Governing the Certification and Regulation of Competitive Local Exchange Carriers*, Final  
15 Order, Case No. PUC-2007-00033 (Sept. 27, 2007)). In Ohio, CLECs must cap their intrastate  
switched access rates on a rate element basis at the current rates of this ILEC providing service  
in the CLEC's service area. *In the Matter of the Establishment of Carrier-to-Carrier Rules*,  
Opinion and Order, Case No. 06-1344-TP-ORD (August 22, 2007), at 55-57 (adopting Rule  
4901:1-7-14(D)).

16 In Missouri, the Public Service Commission determined that "the public interest would be best  
17 served" by capping CLEC access rates at the level of the access rates of the ILEC with which the  
18 CLEC competes; it implements this policy by imposing it as a condition in orders that grant  
19 CLECs certificates of authority. *Access Rates to be Charged by Competitive Local Exchange*  
20 *Telecommunications Companies in the State of Missouri*, Report and Order, Case No. TO-99-  
21 596 (June 1, 2001), 2000 Mo. PSC Lexis 996, at \*28-31. New Hampshire likewise limits  
22 CLECs to charging no more than the rates contained in the ILEC's access tariff, and enforces  
23 this requirement when approving CLEC applications for authority to enter the market. New  
24 Hampshire Public Utilities Code §431.07. Commissions in other states, including Indiana, Iowa,  
25 Maine, Michigan, and Washington, have pursued alternative means of imposing constraints on  
26 CLECs' intrastate access rates, such as requiring them to mirror the carriers' interstate rates.  
Importantly, several states that impose limits on CLEC access rates also require the carriers  
periodically to update their access tariffs to reflect recent developments, such as changes in the  
applicable benchmark. *See, e.g.*, Texas P.U.C. Subst. Rule §26.223 (a CLEC may not charge a  
higher aggregate amount for intrastate switched access than the ILEC in the area served or the  
statewide average composite rates published by the Texas P.U.C. and updated every two years);  
65-407 Maine P.U.C. Chapter 280, §8(B)(a CLEC's intrastate access rates may not exceed its  
own interstate access rates, and the carrier must adjust its rates, if necessary, every other year to  
remain in compliance). In Maryland, the commission directs CLECs to file tariff revisions and  
change their access rates after changes are made in the applicable benchmark rate (*i.e.*, when the  
prevailing ILEC reduces its rates).

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RESPECTFULLY SUBMITTED this 5th day of March, 2009.

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