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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS
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BOB STUMP

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

NOTICE OF FILING

Eschelon Telecom of Arizona, Inc., Mountain Telecommunications, Inc., Electric Lightwave, LLC and McLeod USA Telecommunications Services, Inc. dba PAETEC Business Services hereby give notice that they are filing the attached public version of the Rejoinder Testimony of Doug Denney on behalf of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications, Inc., Electric Lightwave, LLC, McLeod USA Telecommunications Services, Inc. dba PAETEC Business Services, tw telecom of arizona, llc and XO Communications Services, Inc. ("Joint CLECS").

RESPECTFULLY SUBMITTED this 5th day of March 2010.

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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

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PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

**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

REJOINDER TESTIMONY

OF

DOUGLAS DENNEY

ON BEHALF OF

**Eschelon Telecom of Arizona, Inc.; Mountain Telecommunications, Inc.; Electric
Lightwave, LLC; McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business
Services; tw telecom of arizona llc; and XO Communications Services, Inc.**

PUBLIC VERSION

March 5, 2010

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ISSUES POSED BY THE PROCEDURAL ORDER.....	4
	Issue 1. What carriers should be covered by access reform?	4
	<i>To The Extent the Commission Mandates Access Rates Reductions for Joint CLECs, these Reductions Should be Limited to Terminating Access Rates.....</i>	<i>4</i>
	<i>The Commission Should Also Establish the Terminating Rate for Intrastate, IntraMTA Wireless Calls.....</i>	<i>14</i>
	Issue 2. To what target level should access rates be reduced?	15
	<i>Any Target Other Than The Carrier Cost is Arbitrary.....</i>	<i>15</i>
	<i>If Cost is Not Used to Set Access Rates, then for CLECs Competing in the Qwest Territory, Qwest's 1999 Access Rates Should be Used.....</i>	<i>19</i>
	Issue 3. What procedures should the Commission implement to achieve the desired reduction in access rates?	22
	<i>Reduction in Access Rates Should be Implemented Gradually to Allow LECs Adequate Opportunity to Adjust Their Business Plans</i>	<i>23</i>
	Issue 4. Should carriers be permitted to contract for access rates that differ from their tariffed rates?	28
	<i>Carriers Should be Required to Pay Tariff Access Rates.....</i>	<i>28</i>
	Issue 6. How much of access cost recovery, if any, should be shifted to end users? What showing should be required for such a shift? What should be the role of "benchmark" rates and how should benchmarks be set?	29
	<i>AT&T Projections of the Alleged End User Savings from Access Rate Reductions are Overstated</i>	<i>Error! Bookmark not defined.</i>

1 **I. INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Douglas Denney. I work at 1201 NE Lloyd Boulevard, Suite 500,
5 Portland, Oregon.

6 **Q. ARE YOU THE SAME DOUGLAS DENNEY WHO PREVIOUSLY FILED**
7 **TESTIMONY IN THIS PROCEEDING?**

8 A. Yes, I filed direct testimony on December 1, 2009 and reply testimony on
9 February 5, 2010.

10 **Q. DO YOU HAVE ANY CORRECTIONS TO YOUR REPLY TESTIMONY?**

11 A. Yes. On pages 43-44 of my reply testimony I evaluated Staff's proposal that all
12 intrastate access rates be capped at Qwest's intrastate access rates by using Dr.
13 Aron's nationwide intrastate toll and access rate data. I observed from Dr. Aron's
14 data that while there were states with average intrastate access rates as low as
15 Qwest's Arizona intrastate access rates, average intrastate toll prices in those
16 states were on average the *same* as intrastate toll prices in Arizona. In other
17 words, the data Dr. Aron offers does not show a correlation between lower access
18 rates and lower intrastate toll prices. While this observation requires no
19 correction, statistics underlying this conclusion that I quoted on page 43 lines 11
20 and 15 require minor corrections¹ – corrections that only re-enforce my

¹ The numbers presented in my reply testimony are based on a count of observations that are *strictly* below Qwest's Arizona intrastate rates, while the intention was to count of observations

1 conclusion. Specifically, based on Dr. Aron's data set of nationwide access and
2 toll rates, there are *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END**
3 **HIGHLY CONFIDENTIAL***** observations (out of 200) with intrastate access
4 rates at or below Qwest's Arizona intrastate access rates. The average intrastate
5 toll price that correspond to these observations is *****BEGIN HIGHLY**
6 **CONFIDENTIAL [REDACTED] END HIGHLY**
7 **CONFIDENTIAL*****, which is the same as Arizona's current average intrastate
8 toll price.

9 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

10 A. The purpose of this testimony is to respond to selected issues raised in reply
11 testimonies of other parties as they relate to the issues and positions of the Joint
12 CLECs as outlined in my direct and reply testimonies. Like my direct and reply
13 testimonies, this testimony is organized by issue as they were outlined in the
14 procedural order.²

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A. No party has demonstrated that Joint CLEC access rates are unjust or/and
17 unreasonable or above cost. A strategic effort by interexchange carriers ("IXCs")
18 to avoid the cost of using local exchange carrier ("LEC") networks is not
19 justification to reduce intrastate access rates in Arizona. There is no reason to
20 require Joint CLECs to reduce their intrastate access rates at this time.

that are below or equal to Qwest's Arizona intrastate rates.

² Procedural Order, September 29, 2009, pp. 4-5.

1 Evaluating whether rates are just and reasonable cannot be accomplished by
2 simply comparing rates charged by different carriers or even the same carriers in
3 different states, where different markets and regulation may apply, or where
4 incumbent local exchange carriers (“ILECs”) were permitted to shift revenue
5 recovery in exchange for reductions in access rates. The only valid comparisons
6 are to the cost of IXC alternatives to switched access charges and ultimately to the
7 underlying cost of switched access service. The IXC testimony generally
8 dismisses the alternatives available to it, such as competing for the end user
9 customer or purchasing facilities, such as special access, to by-pass switched
10 access. They ignore these alternatives because, by comparison, these alternatives
11 demonstrate that the Joint CLEC access rates are well within reason. IXCs
12 similarly ignore the special access alternative because evaluating that alternative
13 would draw attention to rates that are multiple times economic cost. Further,
14 IXC’s proposals are not based on cost, but instead advocate rates that are equal to
15 Qwest’s intrastate or interstate rates. The IXC testimony ignores differences
16 between business and residential customer networks that may explain real cost
17 differences and instead proposes a one-size-fits all approach for every carrier in
18 the state of Arizona.

19 To the extent the Commission elects to reduce CLEC access rates at this time, the
20 Joint CLECs propose that reductions be phased in gradually to minimize the
21 impact to CLECs and their end user customers.

1 A summary of the Joint CLEC proposals is more fully outlined in my rebuttal
2 testimony.³

3 **II. ISSUES POSED BY THE PROCEDURAL ORDER**

4 **Issue 1. What carriers should be covered by access reform?**

5 **Joint CLEC Access Rates are Just and Reasonable**

6
7 **Q. DOES THE STANDARD “JUST AND REASONABLE” IMPLY THAT**
8 **RATES SHOULD BE EXACTLY THE SAME FOR ALL PROVIDERS?**

9 A. No. Dr. Aron assumes that telecommunications services are a simple, single
10 product commodity and then expects a textbook ideal (absolute equality of rates)
11 to result. However, in reality telecommunications is a complex, multiproduct
12 environment that does not fit within that simplified model. Even if we look at the
13 long-distance industry (one subset of telecommunications services), which Dr.
14 Aron heralds for its “competitiveness,” we find significant rate variations. For
15 example, while AT&T residential calling plans charge 10 cents per minute for
16 interstate calling with a \$2.99 monthly fee, other carriers may charge only \$2.50
17 cents per minute with lower monthly fee.⁴ AT&T residential long-distance rates
18 are four times higher than rates of some of its competitors – which is a much
19 bigger gap than the gap between the Joint CLEC and Qwest intrastate access

³ Denney Reply, pp. 3-6.

⁴ Based on <http://www.saveonphone.com/>, a number of carriers charge a rate of 2.5 cents per minute for interstate calls. I verified the charges of one of them, UniTel (<https://www.unitelgroup.com/rates.asp>), which service is available in Arizona.

1 rates. This example illustrates that in real life prices may vary because companies
2 operate in multi-product markets and different market niches, have various
3 geographical footprints, and have unique cost structures.⁵

4 While Qwest operates in both residential and business markets, the Joint CLECs
5 focus on the business markets. A larger portion of network cost is traffic sensitive
6 for a business customer, when compared with a residential customer: Network
7 resources necessary to serve a typical residential customer would constitute one
8 “voice channel” (channel that remains idle most of the day), while network
9 resources necessary to serve one business customer are often sized based on usage
10 of a particular customer – the more calls the business makes and receives, the
11 more “voice channels” it would require. The number of business lines (“voice
12 channels”) associated with a business customer often exceeds of the number of
13 loops serving that business location. In addition, these voice channels can often
14 come at the expense of “data channels” – i.e. more voice usage can mean less
15 usage available to data. As a result, the loop costs associated with the portion of
16 the network used to serve business customers is often traffic sensitive, which is
17 less likely to be the case for residential customers. It follows that business
18 customers impose higher network (and access) costs on the serving LEC

⁵ As incumbent local exchange carriers, Verizon and AT&T take full advantage of this economic reality by charging different rates for the same “service” – unbundled loops. In setting TELRIC rates, Commissions recognize that differences in density, geography, etc. cause the ILEC to have different costs amongst and between themselves, and in fact they have up to three separate costs for the same service within a single state. Yet, for switched access, the IXC affiliates of these entities are effectively telling the Commission that it should ignore those factors in determining just and reasonable rates for CLECs.

1 compared to residential customers (even on a “per voice channel basis”). Dr.
2 Aron’s testimony that the “costs of the loop are independent of the usage on the
3 loop, and most important, *are dedicated to a particular customer,*”⁶ is inconsistent
4 with the way businesses order and use service in today’s environment. For many
5 business customers, the relationship between the user of a telephone line and the
6 loop serving the business is not one-to-one as it typically is for a residential
7 customer. Failure to recognize this fact, denies proper usage based cost recovery.

8 Additionally, even if Qwest’s access rates *were* set at cost, because Qwest’s
9 cost/rates would be averaged across business and residential markets, these rates
10 would likely under-recover access cost of serving just business markets.

11 **Q. WHAT IS YOUR RESPONSE TO DR. ARON’S AND DR. OYEFUSI’S**
12 **ARGUMENT THAT LECS POSSESS MARKET POWER IN ACCESS**
13 **SERVICE?⁷**

14 A. It is significant that AT&T witnesses prefer the term “market power,” rather than
15 a much stronger term “terminating (or originating) monopoly.”⁸ “Market power”
16 is not the same as “monopoly;” and to a certain extent market power is present in
17 most real world markets (as opposed to the extreme textbook ideals of “perfectly
18 competitive” and “monopoly” markets). *Possessing a certain degree* of market

⁶ Aron Reply, p. 36.

⁷ This argument is addressed in detail in Aron Reply, pp. 12-20. Dr. Oyefusi’s Reply testimony (pp. 3-6) re-iterates conclusions made in Dr. Aron’s testimony but lacks the specifics arguments made by Dr. Aron. Therefore, I address this issue by focusing on Dr. Aron’s specific arguments and analysis.

⁸ In her analytical discussion on pp. 12-20, Dr. Aron uses the term “monopoly” only when citing the FCC language.

1 power is not the same as *exploiting* market power, is not the same as having a
2 *monopoly* and is certainly not the same thing as charging unjust or unreasonable
3 rates.

4 To judge whether market power has been abused, one would have to look at
5 margins (the degree by which price exceeds cost) and compare them to other
6 margins observed in the industry. As I noted in my direct testimony,⁹ for other
7 services where ILECs allege they face market pressures, such as special access
8 service, it is a common practice for regulators to allow rates that are many
9 multiples of cost (triple- and quadruple-digit margins).¹⁰ Further, as I noted in my
10 reply testimony,¹¹ if CLECs *had* sufficient market power to unilaterally impose
11 any access rate, their access rates would likely have been *much* higher: For
12 example, CLECs could have set their access rates at the level of Arizona RLECs,
13 some of which are as high as 27.8 cents a minute.¹² Instead, the Joint CLECs'
14 composite terminating access rates are in the vicinity of 4 to 5 cents.

15 Dr. Aron says that AT&T (the CLEC) has not reduced its access rates because it
16 does not want to "leave money on the table,"¹³ which would be "irresponsible to

⁹ Denney Direct, pp. 44-47.

¹⁰ This point was the reason I brought up the issue of special access in my direct testimony. Dr. Oyefusi's Reply testimony (p. 30) appears to miss this point and misrepresents my testimony by suggesting that I am trying to make the issues of FCC's Triennial Review Order and Triennial Review Remand Order an Arizona matter. Further, Dr. Oyefusi is incorrect that special access is a federal issue (Oyefusi Reply, p. 30) because Arizona intrastate special access is an issue of the Arizona Commission.

¹¹ Denney Reply, p. 10.

¹² Shand Direct, Exhibit WMS-1 (Southwestern).

¹³ Aron Reply, p. 40.

1 its shareholders.”¹⁴ Yet, AT&T’s (the CLEC) terminating access rates are in the
2 same range as the Joint CLECs rates¹⁵ – rather than at the levels of Arizona
3 RLECs. So there must be some market constraints that prevented (*i.e.*
4 constrained) AT&T (and the joint CLECs) from setting their intrastate access
5 rates at significantly higher levels, such as the rates of Arizona RLECs.

6 **Q. DR. ARON ARGUES THAT LECS POSSESS MARKET POWER IN**
7 **ACCESS SERVICE ON THE GROUNDS THAT IXCS CANNOT PRICE**
8 **TOLL SERVICES SO AS TO PASS ACCESS CHARGES ON END**
9 **USERS.¹⁶ PLEASE RESPOND.**

10 A. Dr. Aron’s argument is two-prong. First, she claims that IXCs do not have
11 systems in place to inform the end-user about access cost associated with a
12 particular call.¹⁷ Putting these systems in place would not require a technological
13 revolution: For example, receiving a real-time message about a call is not science
14 fiction but current practice: (1) pre-paid calling card users may be given
15 information about the “budgeted” call duration; (2) subscribers to the “call
16 waiting” feature receive information about the party that is calling the subscriber

¹⁴ *Id.*

¹⁵ While Table 1 from my Direct and Reply testimony (pp. 19 and 2 correspondingly) shows AT&T composite rate as being \$0.04223, AT&T data response to JCLEC 1-16 (question about Arizona intrastate switched access rates that AT&T (TCG) charges its affiliates) quotes a slightly higher number at \$0.047724. In a supplemental response to this data request AT&T notes that it had been erroneously charging its affiliates a rate for intrastate intraLATA traffic that is lower than \$0.047724, and that this error has been corrected. It follows that Table 2 on page 39 of Dr. Aron’s Direct testimony (table that contains CLECs composite access rates derived from billing data) contains an incorrectly low number for AT&T (the CLEC).

¹⁶ Aron Reply, pp. 12-20.

¹⁷ Aron Reply, pp. 13-15.

1 while he or she is talking to somebody else; and (3) wireless users may be
2 informed in the middle of the call that they entered a roaming area where higher
3 charges apply.

4 Second, Dr. Aron claims that provisions of section 254(g) of the federal
5 Telecommunications Act preclude IXC's from pricing intrastate toll services in
6 relation to access cost. A plain reading of section 254(g)¹⁸ and the corresponding
7 federal rules (47 C.F.R. §64.1801¹⁹) suggest that Dr. Aron's interpretation is too
8 broad. The rules focus on the difference between urban and rural toll rates,
9 which is not "the dimension" of the discussion about CLECs access rates. While
10 adopting 47 C.F.R. §64.1801, the FCC noted as follows:

11 Different rate structures may satisfy our rule. For instance, we
12 believe that carriers that offer their customers rates based on
13 reasonable differences in duration, time of day, and mileage bands
14 will satisfy their obligations under Section 254(g) to provide
15 geographically averaged rates between subscribers in rural and
16 high-cost areas and subscribers in urban areas... Although we do
17 not specify any particular alternative approaches, we believe there
18 may be other rate schemes that are consistent with the statute's
19 geographic rate averaging requirement. We do not believe that

¹⁸ Section 254(g) says as follows: "INTEREXCHANGE AND INTERSTATE SERVICES.--
Within 6 months after the date of enactment of the Telecommunications Act of 1996, the
Commission shall adopt rules to require that the rates charged by providers of interexchange
telecommunications services to subscribers in rural and high cost areas shall be no higher than
the rates charged by each such provider to its subscribers in urban areas. Such rules shall also
require that a provider of interstate interexchange telecommunications services shall provide
such services to its subscribers in each State at rates no higher than the rates charged to its
subscribers in any other State."

¹⁹ The rule says as follows: "(a) The rates charged by providers of interexchange
telecommunications services to subscribers in rural and high-cost areas shall be no higher than
the rates charged by each such provider to its subscribers in urban areas. (b) A provider of
interstate interexchange telecommunications services shall provide such services to its
subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any
other state."

1 Section 254(g) requires carriers to assess geographically averaged
2 state and local gross-receipts taxes.²⁰

3 In his dissent of the FCC *CLEC Access Charge Order*, Commissioner Furchtgott-
4 Roth noted that

5 the language of the statute merely requires “providers of
6 interexchange telecommunications services” – IXC’s – to provide
7 “interexchange telecommunications services” at the same rates in
8 different geographic areas. It says nothing about the rates for
9 exchange access, which are generally imposed by local exchange
10 carriers and for which IXC’s act merely as billing agents. From the
11 IXC’s perspective, these charges are no different than state-specific
12 gross receipts taxes, which the Commission already allows IXC’s to
13 pass through to end users on a deaveraged basis. *See Policy and*
14 *Rules Concerning the Interstate, Interexchange Marketplace,*
15 *Implementation of § Section 254(g) of the Communications Act of*
16 *1934, as amended*, 11 FCC Rcd 9564 at ¶ 12. Section 254(g) thus
17 need not prohibit IXC’s from passing through the actual costs of
18 exchange access to their end users.²¹

19 He also noted that

20 some carriers, such as iPhonebill, implicitly pass access charges on
21 to customers. Rates for their long-distance service vary by the
22 combination of the originating and terminating area code and
23 carrier-specific three-digit exchanges. The IXC iPhonebill charges
24 more for calls with higher access charges and less for those with
25 lower access charges. Because customers, rather than the IXC,
26 bear the risk associated with the distribution of access charges,
27 iPhonebill does not charge an insurance premium for bearing that
28 risk. Consequently, iPhonebill’s rates are among the lowest of any
29 IXC.²²
30

²⁰ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of § Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Report and Order, August 7, 1996, ¶ 12.

²¹ *In the Matter of Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262; FCC 01-146, April 27, 2001 (“CLEC Access Charge Order”), Dissent Commissioner Furchtgott-Roth, page 6.

²² *Id.*

1 Of course, another example is AT&T's in-state connectivity fee.²³ The federal
2 rules require that "[a] provider of interstate interexchange telecommunications
3 services shall provide such services to its subscribers in each U.S. state at rates no
4 higher than the rates charged to its subscribers in any other state."²⁴ Yet, AT&T
5 charges different in-state connectivity fees in different states. Qwest's Ms. Eckert
6 notes that the express purpose of in-state connectivity fee is to cover high access
7 cost.²⁵ In other words, AT&T's claim that legal or practical considerations
8 prevent IXCs from pricing toll services so as to reflect the differences in access
9 cost are incorrect: Some IXCs, including AT&T, have been doing just that.²⁶

10 **Q. WHAT IS WRONG WITH DR. ARON'S POINT THAT THE JOINT**
11 **CLECS CHARGE LOWER INTRASTATE RATES IN STATES**
12 **"NEIGHBORING" ARIZONA, AS WELL AS LOWER INTERSTATE**
13 **RATES?**²⁷

14 **A.** First, it is unclear how Dr. Aron chose Arizona's neighbors. Figure 1 in her
15 rebuttal testimony compares the rates for PAETEC, tw telecom and XO
16 Communications in New Mexico, *Texas*, and California. She doesn't explain
17 why she failed to include Colorado, Utah and Nevada.²⁸

²³ Denney Direct, pp. 64-65.

²⁴ 47 C.F.R. §64.1801(b).

²⁵ Eckert Reply, p. 13.

²⁶ According to Mr. Price (Price Reply, pp. 11-12), the Massachusetts access order that capped CLECs rates found only practical (rather than legal) obstacles to geographic de-averaging of intrastate rates.

²⁷ Aron Reply, pp. 24-25.

²⁸ If she had done this comparison she would have seen that the rates in Colorado and Utah are

1 Further, considering Dr. Aron's purpose, which is to "show" that CLECs are
2 *willing* to charge lower access rates than their Arizona access rates, she has
3 selected states that do nothing to bolster her claim. The three states selected by
4 Dr. Aron are jurisdictions where CLECs access rates have been capped;²⁹ and Dr.
5 Aron's argument incorrectly implies that rates and underlying market and cost
6 conditions should be the same in Arizona, California, Texas and New Mexico.³⁰

7 **Q. IS A COMPARISON OF CLEC ACCESS RATES TO QWEST ACCESS**
8 **RATES THE PROPER COMPARISON TO DETERMINE WHAT ACCESS**
9 **RATES A MARKET WOULD GENERATE?**

10 A. No. LEC and CLEC access services do not directly compete and generally are
11 not substitutes for each other. The relevant competition is between CLEC access
12 rates and the IXC's ability to self provision access. As mentioned in my reply
13 testimony one method of doing this is by acquiring the end user customer, and
14 thus avoiding access charges, through retail competition.³¹ Another method,
15 which IXCs employ, is the use of special access facilities (facilities used to by-
16 pass switched access that are charged on a per month basis) to avoid usage-based
17 switched access charges services. The IXC can purchase channel terminations to
18 connect an IXC point of presence directly to an end user, thus avoiding access

closer to those in Arizona and the rates in Nevada, which are capped, are closer to those in New Mexico.

²⁹ Oyefusi Direct, pp. 24-25 and Exhibit F; Price Direct pp. 15-16.

³⁰ It should also be noted that California capped CLEC access rates at the ILEC rate plus 10% and allowed for a transition period (see Eckert Direct, p. 8, fn 1). New Mexico allowed for a three year transition period to implement rates. Texas allows CLECs the option to demonstrate its own cost.

³¹ Denney Reply, pp. 8-15.

1 charges. A 2-wire, standard voice, channel termination from Qwest's interstate
2 access tariff³² is \$21.47 per month.³³ At an access rate of \$0.053, this option
3 would become attractive when an end user generated 7 hours (or more) of access
4 minutes a month.³⁴ If the cost of bypass alternatives were to significantly
5 decrease, then there would be additional pressure on LECs to reduce access rates
6 in order to compete with this alternative. While AT&T IXC and Verizon IXC are
7 quick to call for regulation of LEC access rates, AT&T LEC and Verizon LEC are
8 strong opponents of attempts to reduce the cost of special access services,³⁵ which
9 can be used by IXCs as an alternative to switched access. In other words, IXCs
10 are opposing price regulation on one important competitive alternative to
11 switched access (i.e. special access), while at the same time complaining that
12 switched access rates are high because there are not competitive options to
13 switched access. The other irony of the IXC advocacy is, as explained in my
14 direct testimony,³⁶ that the ILEC operations of carriers such as AT&T and

³² Interstate, rather than intrastate rate, is likely appropriate because traffic from the end-user would likely be a mix of interstate and intrastate traffic which generally allows a buyer to purchase from the Interstate access tariff (see Qwest Tariff FCC No. 1 section 2.3.11).

³³ Qwest's FCC Tariff #1, Section 7.4.4.A
(http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_fcc1.htm).

³⁴ There may be costs in addition to the channel termination, but the point is that CLEC access rates are very reasonable when compared to the IXC's alternative. For larger business customers the IXC can purchase DS1 or DS3 channel terminations which are more likely to be economical for high volume users.

³⁵ See for example recent comments by AT&T and Verizon before the FCC In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593. Reply Comments of AT&T Inc., February 24, 2010
(<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020390697>) and Reply Comments of Verizon and Verizon Wireless, February 24, 2010
(<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020390675>).

³⁶ Denney Direct, pp. 40-48.

1 Verizon charge rates for special access multiple times in excess of economic cost,
2 while at the same time arguing CLEC access rates are unjust and unreasonable
3 and should be significantly reduced without regard to cost.

4 **The Commission Should Also Establish the Terminating Rate for Intrastate,**
5 **IntraMTA Wireless Calls**

6 **Q. DR. OYEFUSI SUGGESTS THAT YOUR PROPOSAL THAT THE**
7 **COMMISSION SET DEFAULT INTRA-MTA RATES FOR WIRELESS**
8 **CALL TERMINATION (PROPOSAL TO SET THEM TO CLEC ACCESS**
9 **RATES) IS “WRONG.”³⁷ MESSRS. APPLEBY AND PRICE SIMILARLY**
10 **THINK IT IS OUTSIDE THE SCOPE OF THIS PROCEEDING.³⁸**
11 **PLEASE RESPOND.**

12 A. Dr. Oyefusi, and Messrs. Appleby and Price failed to notice that this proposal
13 makes sense when my general proposal about CLECs access rates is considered:
14 Regarding access rates, I propose that if the Commission mandates CLECs access
15 rate reductions, these reductions should be based on cost.³⁹ Regarding intraMTA
16 rates, I propose that these rates be set based on CLECs access rates (which is,
17 given my general proposal on access rates, is equivalent to saying “based on
18 CLECs cost”). Dr. Oyefusi is correct that intraMTA rates are subject to
19 reciprocal compensation rules (47 CFR §§51.701-51.717). Under these rules,

³⁷ Oyefusi Reply, pp. 28-29.

³⁸ Appleby Reply, p. 21, Price Reply, p. 42.

³⁹ Denney Direct, p. 8.

1 state commissions have the authority to set these rates.⁴⁰ These rules also allow
2 the non-ILEC (or smaller ILEC) to charge higher/asymmetrical rates if the carrier
3 can show that its cost is higher than the ILEC's (or larger carrier's) cost.⁴¹ Given
4 that a cost study to determine switched access cost would contain many of the
5 same components as a cost study to determine cost of wireless call termination, it
6 is only logical that the two are determined at the same time. In addition, Mr.
7 Appleby brought up the issue of intraMTA traffic termination and the need to
8 level the playfield for wireless and wireless long-distance services.⁴²

9 **Issue 2. To what target level should access rates be reduced?**

10 **Any Target Other Than The Carrier Cost is Arbitrary**

11 **Q. DR. ARON DISPUTES YOUR STATEMENT THAT IT IS STANDARD**
12 **PRACTICE TO SET REGULATED WHOLESALE RATES BASED ON**
13 **COMPANY SPECIFIC COST.⁴³ PLEASE RESPOND.**

14 **A.** According to Dr. Aron, "[t]he only wholesale service for which I am aware that a
15 "standard practice" exists with respect to CLEC rates is interstate switched
16 access."⁴⁴ I simply disagree with this statement. First, while there are not very
17 many examples where CLECs wholesale rates are regulated, the FCC approach to
18 regulating CLEC interstate rates is only *one example*, rather than a standard.

⁴⁰ See, for example, 47 CFR §§51.705, 51,707, 51,709, 51.711 or 51.713.

⁴¹ 47 CFR §51.711(b).

⁴² Appleby Direct, p. 8.

⁴³ Aron Reply, pp. 30-31.

⁴⁴ Aron Reply, p. 31.

1 Second, quite a few states with caps on CLEC access rates (including
2 Massachusetts discussed on pp. 21-22 of her testimony as a recent example)
3 permit carriers to charge above-cap cost-justified rates.⁴⁵ Third, reciprocal
4 compensation rates for the exchange of local traffic are another example of
5 CLECs wholesale rates that are price regulated. As I mentioned above, the FCC
6 rules (47 CFR §51.711) generally prescribe “symmetrical” reciprocal
7 compensation rates based on the ILEC’s (or larger carrier’s) cost, but allow the
8 non-ILEC (or smaller ILEC) to charge higher/asymmetrical rates if the carrier can
9 show that its cost is higher than the ILEC’s (or larger carrier’s) cost.⁴⁶ Finally,
10 more broadly, it is a standard practice to set regulated rates so that they cover the
11 company’s costs because denial of cost recovery is arguably unfair and unlawful.
12 For example, as I discussed in my reply testimony,⁴⁷ Verizon recently filed for a
13 stay of the New Jersey Board of Public Utilities access decision, arguing that the
14 ordered access rates did not permit cost recovery and therefore, were
15 unconstitutional and confiscatory.⁴⁸ Similarly, in an ongoing Connecticut case
16 that concerns AT&T reciprocal compensation and transit rates, AT&T noted that

⁴⁵ See Denney Reply, pp. 26-27.

⁴⁶ More specifically, 47 CFR §51.711(b) says as follows: “A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.”

⁴⁷ Denney Reply, p. 28.

⁴⁸ Verizon’s filing is included as Exhibit DD-1 to Denney Reply, pp. 1 and 3.

1 “the U.S. Constitution forbids confiscatory rates”⁴⁹ and “[d]enying AT&T
2 Connecticut any cost recovery for use of its switching would violate both
3 TELRIC and the Constitution.”⁵⁰

4 **Q. ACCORDING TO DR. OYEFUSI, THE NEW JERSEY BOARD FOUND**
5 **THAT CLEC ACCESS COST MODELS OVERSTATED COST.**⁵¹
6 **PLEASE RESPOND.**

7 A. Dr. Oyefusi’s reliance on the findings of a New Jersey Board is inappropriate in
8 this docket because it concerns cost models of New Jersey CLECs rather than
9 Arizona CLECs. It is *another state’s* opinion about cost models of *some other*
10 CLECs. Cost models of Arizona CLECs have not been filed in the New Jersey
11 case (or, for that matter, in this case). Extending Dr. Oyefusi’s logic to a
12 hypothetical example, he would apparently argue that the Arizona Commission
13 should not consider Qwest’s cost models simply because Verizon’s cost models
14 were critiqued by the New Jersey Board.

15 **Q. IN RESPONSE TO YOUR POINT THAT QWEST INTERSTATE RATES**
16 **ARE NOT AN APPROPRIATE TARGET FOR ARIZONA CLEC**
17 **INTRASTATE RATES BECAUSE CLECS WERE NOT A PARTY IN**
18 **NEGOTIATIONS THAT SET THESE RATES, DR. ARON CLAIMS THAT**

⁴⁹ Reply Brief of the Southern New England Telephone Company (AT&T-CT), *DPUC Investigation into the Southern New England Telephone Company’s Cost of Service RE: Reciprocal Compensation*, Connecticut Docket No. 09-04-21, December 4, 2009, p. 1.

⁵⁰ *Id.*

⁵¹ Oyefusi Reply, p. 6.

1 **CLECS SUPPORTED “THE RATES THAT WERE ULTIMATELY SET”⁵²**
2 **IN THE *CALLS* ORDER.⁵³ IS SHE CORRECT?**

3 A. No. A review of source documents on which Dr. Aron relies shows that she
4 simply misrepresented the CLECs’ position. Dr. Aron’s claim is based on her
5 reference to April 3, 2000 and April 17, 2000 joint comments of the Association
6 for Local Telecommunication Services (“ALTS”) and Time Warner Telecom on
7 the *CALLS* Modified Proposal⁵⁴ (proposal that was adopted in May 2000 *CALLS*
8 Order). These comments stated that “ALTS and TWTC **fundamentally object to**
9 **both the process and substance of the Modified Proposal**”⁵⁵ and critiqued the
10 key aspects of the proposed access rates. Specifically, the joint comments noted
11 that the proposed caps for per minute access rates were “**simply wild guesses**
12 without any foundation in the record or in economic reasoning.”⁵⁶ They also
13 noted that since the proposed new Subscriber Line Charge “**would bear no**
14 **relation to the costs** of the loops to which it is assigned, it **would add to the**
15 **implicit subsidies** that the Modified Proposal purports to reduce.”⁵⁷ These

⁵² Aron Reply, p. 29.

⁵³ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Boards on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (hereafter “*CALLS Order*”).

⁵⁴ *Joint Comments of the Association for Local Telecommunication Services and Time Warner Telecom* in CC Docket Nos. 96-262, 94-1, 99-249 and 96-45 dated April 3, 2000 (“April 3, 2000 Joint Comments”) and *Joint Reply Comments of the Association for Local Telecommunication Services and Time Warner Telecom* in CC Docket Nos. 96-262, 94-1, 99-249 and 96-45 dated April 17, 2000 (“April 17, 2000 Joint Comments”).

⁵⁵ April 3, 2000 Joint Comments, p. 3 (emphasis added).

⁵⁶ April 17, 2000 Joint Comments, p. 16 (emphasis added).

⁵⁷ April 17, 2000 Joint Comments, p. 3 (emphasis added).

1 comments “urge the Commission to reject both the Modified Proposal as well
2 as the more general attempt to rely on negotiated solutions.”⁵⁸ They propose
3 an alternative only “[i]n the event that the Commission insists on pursuing this
4 approach,”⁵⁹ and characterize its alternative proposal as “a compromise,”⁶⁰ “an
5 attempt to at least improve upon the Modified Proposal”⁶¹ and
6 “ALTS/TWTC's good faith effort to work with the Commission to accomplish its
7 needs for price reductions in the coming year.”⁶² To summarize, ALTS/TWTC
8 alternative proposal was *not a support for CALLS rates*, but a last-minute effort to
9 improve on the faulty access reduction plan that was bound to happen anyway.

10
11 **Q. MR. APPLEBY SUGGESTS THAT CARRIERS SHOULD BE WILLING**
12 **TO EXCHANGE TRAFFIC AT MARGINAL COST AND DOES NOT SEE**
13 **HOW THAT COULD BE CONFISCATORY IF RATES COVER**
14 **MARGINAL COST.⁶³ PLEASE RESPOND.**

15 **A.** It is not clear that Mr. Appleby understands the concept of marginal cost and the
16 implications of his suggestion. As noted by Dr. Johnson, “pricing at marginal
17 cost may not allow the firm to recover its total costs.”⁶⁴ Dr. Johnson also
18 correctly noted that proposals to price access at marginal costs are no better than

⁵⁸ April 17, 2000 Joint Comments, p. 4 (emphasis added).

⁵⁹ April 17, 2000 Joint Comments, p. 4 (emphasis added).

⁶⁰ April 3, 2000 Joint Comments, p. 18 (emphasis added).

⁶¹ April 3, 2000 Joint Comments, p. 15 (emphasis added).

⁶² April 17, 2000 Joint Comments, p. 7.

⁶³ Appleby Reply, pp. 9-10.

⁶⁴ Johnson Direct, p. 25.

1 proposals to price local service at marginal costs.⁶⁵ When discussing marginal
2 cost it is important to distinguish between short run marginal costs and long run
3 marginal cost. In economics, the short run is a period of time where some of the
4 inputs are fixed. An example of short run marginal cost of access would be to
5 consider the additional cost a carrier would face to add an additional minute to the
6 network. In the telecommunications industry, which has large fixed costs (most
7 network costs are fixed), short run marginal costs are close to zero (this is true,
8 not just for access, but for most telecommunications services). If one service
9 using a shared facility is priced at short run marginal cost, then in order to recover
10 total costs, other services provisioned over a shared facility would bear an unfair
11 burden of the cost of any shared facility. This is why in the telecommunications
12 industry we typically look at long run marginal cost (or long run incremental cost)
13 when cost is taken into consideration for setting rates.

14 IXCs also argue that telephone networks were built to accommodate only local
15 service⁶⁶ in attempt to explain why IXCs should not have to pay to use the LEC's
16 network. This extreme is as nonsensical as the opposite argument – that
17 telephone networks were built to accommodate only long-distance service.
18 (However, this last argument could also be advanced because some end-users may
19 value long-distance connectivity more than local connectivity). Further, Mr.
20 Appleby appears to think that marginal costs are likely to be very low (that is why

⁶⁵ Johnson Direct, p. 24.

⁶⁶ See also Oyefusi Reply, p. 27 footnote 47, suggesting that a loop was built to provide local service.

1 he likes it); however, that is not necessarily true. Short run marginal costs may
2 also be very high, which is why short run marginal cost pricing is so rarely used
3 to set regulated rates. For example, if a company is bumping up against a
4 capacity constraint that precipitate a major network expansion, the marginal unit
5 will be very expensive. Also, if Sprint tends to terminate calls at LECs at the
6 peak hour, and AT&T terminates in off peak hours, Sprint's calls have
7 significantly higher marginal costs than AT&T's. Would Mr. Appleby propose
8 that Sprint pay higher rates than AT&T?

9 The Commission should reject these unreasonable extremes that attempt to assign
10 costs to a single user of the network, and instead adopt a practical middle ground
11 – that telephone networks were built to be shared between local and long-distance
12 services.

13 **Q. DR. ARON ARGUES AGAINST YOUR SUGGESTION THAT IF THE**
14 **COMMISSION DECIDES TO CAP CLEC RATES, IT SHOULD USE**
15 **QWEST 1999 RATES. WHY IS SHE WRONG IN SAYING THAT CLECS**
16 **BENEFITED FROM RATE INCREASES CONTAINED IN QWEST'S**
17 **REVENUE NEUTRAL RATE REBALANCING (REBALANCING THAT**
18 **OFFSET QWEST'S ACCESS REDUCTIONS)?⁶⁷**

19 **A.** Dr. Aron is wrong because Qwest's rate rebalancing was not an "across the
20 board" proportional increase in retail prices. In fact, for some services Qwest was

⁶⁷ Aron Reply p. 35.

1 mandated to **reduce** prices. For example, as a result of the first price cap plan,
2 prices for some services went down, including, basic business service.⁶⁸ For
3 others services (the “flexibly-priced basket”) it was **up to Qwest** to decide which
4 rates to increase and by how much.⁶⁹ As a rational firm, Qwest increased rates in
5 the relatively less competitive areas. Therefore, CLECs would not have
6 benefited from Qwest’s rate rebalancing the way Dr. Aron suggests.

7 **Q. DO THE LEC AFFILIATES OF THE LARGE IXCS (INCLUDING**
8 **QWEST) ADVOCATE RATES MULTIPLE TIMES ECONOMIC COST IN**
9 **MARKETS WHERE THEY BELIEVE THERE IS COMPETITION?**

10 **A.** Yes. As mentioned previously and discussed in my direct testimony, ILECs
11 typically charge for special access circuits at levels multiple times their economic
12 cost. It makes no sense that these carriers defend a “so called” competitive
13 market for special access where Qwest charges rates that are multiple times
14 economic cost, while at the same time arguing that it is imperative that CLEC
15 access rates be reduced to low levels, without regard for cost.

16
17 **Issue 3. What procedures should the Commission implement to achieve the**
18 **desired reduction in access rates?**
19

⁶⁸ In the Matter of the Application of U S WEST Communications, Inc. for a Hearing to Determine the Earnings of the Company for Ratemaking Purposes, to fix a Just and Reasonable Rate of Return thereon and to Approve Rate Schedules, Docket No. T-01051B-99-0105 (“1999 Price Cap Docket”), US WEST Communications, Inc. Tariff Filing for Approval of a \$.25 Surcharge for a Call to a US WEST 800 Service Line from a Pay Telephone, Docket No. T-0105B-00-0369, Decision No. 63487 dated March 30, 2001 (“2001 Price Cap Decision”), p. 5.

⁶⁹ *2001 Price Cap Decision*, p. 9.

1 **Reduction in Access Rates Should be Implemented Gradually to Allow LECs**
2 **Adequate Opportunity to Adjust Their Business Plans**

3
4 **Q. DR. ARON DEVOTES THIRTEEN PAGES OF HER TESTIMONY⁷⁰**
5 **ARGUING AGAINST YOUR PROPOSAL TO IMPLEMENT CLEC**
6 **ACCESS REDUCTIONS GRADUALLY. PLEASE RESPOND.**

7 A. Dr. Aron's lengthy discussion can be summed up as follows: immediate flash-cut
8 access reductions are necessary because they will benefit long-distance
9 customers, and CLECs can easily bear the financial burden of sudden access rate
10 reductions. Dr. Aron's specific arguments are full of contradictions and
11 misrepresentations of facts: While Dr. Aron believes that CLECs can simply
12 increase their local prices to make up for access revenue losses,⁷¹ she fails to
13 recognize that in this case the benefit to long-distance customers would be at
14 expense of local customers.⁷² In other words, even under Dr. Aron's simplistic
15 view, immediate benefits to long-distance customers would also mean immediate
16 price hikes for local customers. Mr. Price was critical of this argument stating that
17 "it rests on a misconception that somehow all customers are *either* toll customers
18 or local service customers, but not both."⁷³

⁷⁰ Aron Reply, pp. 32-33 and 45-55.

⁷¹ Aron Reply, pp. 50-53. Of course, as I explain in my Reply testimony on pp. 31-33, this is an incorrect assumption for end-user markets in which CLECs operate.

⁷² As I showed on pp. 36-37 of my reply testimony, the historical trends in local and long-distance prices are the opposite: While long-distance prices have been generally falling, local prices were going up, so that the aggregate price index (local and long-distance services combined) remained relatively stable.

⁷³ Price Reply, p. 7. Mr. Price made this statement in critique of my testimony. However, I agree

1 In general, Dr. Aron's characterization of the retail local markets in which the
2 Joint CLECs operate is full of misconceptions: First, she points out (correctly)
3 that Joint CLECs focus on business markets and claims (incorrectly) that local
4 business rates are a source of a *subsidy*.⁷⁴ This observation is inconsistent with
5 the current (competitive) state of business markets. Mr. Price observes that "the
6 retail market for services to end user customers in Arizona is highly
7 competitive."⁷⁵ This means that if business rates were a source of a subsidy, they
8 would have been competed away. Second, she claims that Qwest's access charge
9 reductions were offset by increases in rates that were *set below cost*, and that
10 CLECs benefited from these rate increases.⁷⁶ This claim directly contradicts the
11 first claim – do CLECs operate in markets where retail rates contain a subsidy or,
12 on the contrary, are set below cost? Third, she claims that the Joint CLECs have
13 the ability to increase retail rates to offset access revenue shortfall.⁷⁷ For a
14 number of reasons this claim is incorrect. CLECs are often bound by end user

with Mr. Price that local service customers subscribe to both toll and local service. My point, which follows from Mr. Price's observation, is that this case is less about benefits to end user customers, as the IXCs have claimed, and more about a redistribution of revenues and costs between carriers and subclasses of end users.

⁷⁴ Aron Reply, p. 54. A similar statement is made in Oyefusi Reply, p. 24.

⁷⁵ Price Reply, p. 13.

⁷⁶ Aron Reply, p. 35.

⁷⁷ Aron Reply, pp. 50-53.

1 term contracts which preclude price changes to offset access revenue shortfall.⁷⁸
2 Further, Qwest as the incumbent competitor would not have an access revenue
3 shortfall and would not increase retail rates in the same markets, thus exerting
4 competitive pressure on CLECs to not raise rates. Dr. Aron's argument
5 contradicts her own testimony that "a competitive market would not permit a
6 competitor with an equivalent service to charge a price that is higher than that of
7 the incumbent."⁷⁹

8 **Q. WHAT ARE SOME OTHER CONTRADICTIONS IN DR. ARON**
9 **ADVOCACY OF THE SHORT (60-DAY) TRANSITION PERIODS?**

10 A. Dr. Aron claims that the Joint CLEC intrastate access revenues are relatively
11 small,⁸⁰ which she interprets as an argument for immediate access reduction. Yet,
12 when defending AT&T-CLEC current access rates in Arizona (which are similar
13 to access rates of the Joint CLECs), she claims that "[o]ne CLEC alone reducing
14 its access rates would have minimal effect on the average rate paid by IXCs" and

⁷⁸ While discussing the issue of term contracts on p. 52 of her Reply testimony, Dr. Aron misrepresents my testimony: Dr. Aron's language (expressions such as "Mr. Denney claims," "he does not say" and "which presumably is not the case, or Mr. Denney would have said so") mask the fact that my direct testimony (p. 52) merely cited McLeodUSA comments previously filed in the case. In other words, if I "did not say" what percentage of McLeodUSA contracts fall under certain class, that is because my source (McLeodUSA comments) did not contain that information. Further, Dr. Aron complains on page 50 that JCLECs declined to provide their term contracts omits the important nuance that the AT&T data request in question (AT&T 1-5) requested to provide "copies of all term agreements with end-user customers" for each JCLEC, which is unduly burdensome.

⁷⁹ Aron Reply, p. 36.

⁸⁰ Aron Reply, pp. 47-48. Note that Dr. Aron's specific numbers that back up her point that intrastate switched access revenue is a small percent of total CLECs revenue (contained in line 19, p. 47, line 1 p. 48 and footnote 76) are a misrepresentation: Dr. Aron reports Arizona intrastate access revenue as a percent of "global" (Arizona and other states) CLECs revenue. This approach essentially suggests that CLECs should make up the shortfall in Arizona revenues (stemming from access rate reductions in Arizona) from their end-user customers in Colorado (as an example).

1 would not “meaningfully benefit consumers.”⁸¹ Given that AT&T (the IXC)
2 offers the same per minute long-distance in-state rates,⁸² and Arizona CLECs are
3 small when compared to total intrastate traffic nationwide, access reductions by
4 Arizona CLECs would similarly have no “meaningful” benefit on consumers of
5 in-state long-distance services.

6 In response to my point that CLECs often purchase long-distance services at
7 wholesale from companies like AT&T, and that these contracts often have fixed
8 terms, Dr. Aron brings up her regression predictions according to which *retail* toll
9 prices *tend to* decrease with access rates.⁸³ Dr. Aron misses the point – retail toll
10 prices are not the same as wholesale toll prices, and her regression is too generic
11 as it does not account for the manner in which toll prices are set, blends together
12 business and residential markets and includes a large number of observations
13 outside the “relevant range” (for which intrastate access costs are significantly
14 higher than Arizona access rates).⁸⁴ As Dr. Oyefusi explained in his reply
15 testimony,⁸⁵ if the AT&T proposal is adopted, AT&T plans to remove the in-state
16 connectivity fee and reduce calling card rates. Because the in-state connectivity
17 fee is a flat monthly charge, access rate reductions would not translate linearly (as
18 assumed in Dr. Aron’s regression) into savings to end-users. In fact, high-usage
19 customers would not see their “fair” share of access cost savings.

⁸¹ Aron Reply, pp. 39-40.

⁸² Denney Direct, p. 64.

⁸³ Aron Reply, pp. 54-55.

⁸⁴ Denney Reply, pp. 40-42.

⁸⁵ Oyefusi Reply, p. 28.

1 **Q. HOW DO YOU RESPOND TO CLAIMS BY DR. ARON AND MR. PRICE**
2 **THAT ARIZONA CLECS ARE READY FOR IMMEDIATE ACCESS**
3 **REDUCTIONS BECAUSE THEY SAW ACCESS RATE CAPS IN OTHER**
4 **JURISDICTIONS?**⁸⁶

5 **A.** According to Dr. Aron's and Mr. Price's logic, Arizona CLECs should have been
6 pricing their retail products not based on Arizona-specific market and regulatory
7 conditions, but based on conditions and regulations in other states. Dr. Aron
8 reviews 10-K filings made by the Joint CLECs with the SEC from between 1998
9 and 2007 regarding risks associated with access reductions.⁸⁷ She equates
10 recognizing the business risks associated with access reductions to actual planning
11 to have access rates reduced. This is not the case. Almost all of the selected SEC
12 notices warn that reductions in access rates can have an impact on the CLEC's
13 business. This does not mean that the CLECs should plan to lose arguments that
14 their access rates are just and reasonable. Most of the 10-K excerpts referenced
15 by Dr. Aron involved the FCC's CALLS order. Dr. Aron concludes, "the CLECs
16 provided no evidence or examples that they have curtailed any activities (let alone
17 exited a state) as a result of access rates caps in any state."⁸⁸ Apparently Dr. Aron
18 forgot that the FCC cap on CLEC interstate access rates was followed by a wave
19 of CLECs bankruptcies.⁸⁹

⁸⁶ Aron Reply, p. 34 and Price Reply, pp. 15-16.

⁸⁷ Aron Reply, pp. 33-34 and Attachment DJA-R2.

⁸⁸ Aron Reply, p. 34. Dr. Oyefusi makes a similar statement on p. 26 of his reply testimony.

⁸⁹ While there were many factors that drove a large number of CLECs to bankruptcies, access rate

1 Dr. Aron and Mr. Price also overlook that there are many jurisdiction in which
2 this issue has been debated and no action has ensued. In fact, it is still true that
3 the majority of states have opted not to follow the FCC's access pricing policies.

4 **Issue 4. Should carriers be permitted to contract for access rates that differ from**
5 **their tariffed rates?**

6 **Carriers Should be Required to Pay Tariff Access Rates**

7
8 **Q. DR. OYEFUSI CLAIMS THAT YOUR DIRECT TESTIMONY**
9 **RECOMMENDED THAT THE ACC "NOT ALLOW CARRIERS TO**
10 **ENTER INTO CONTRACTS FOR SWITCHED ACCESS SERVICE."⁹⁰ IS**
11 **HE CORRECT?**

12 A. No. I only said that there should be a requirement that IXC's pay tariffed access
13 rates,⁹¹ which is not the same as "not allowing" contracts. Currently, it is
14 apparently unclear to IXC's that they should pay tariffed access rates. The absence
15 of such explicit requirement allows IXC's to simply withhold payments on their
16 access bills and bully CLECs into "agreeing" to accept lower payments. If paying
17 tariffed access rates is a "default" obligation, negotiations for contract access rates
18 would be on a somewhat more leveled playing field and contracts could be the
19 result of mutual benefit rather than economical blackmail. The Joint CLECs do
20 not oppose contract tariffs if access tariffs are treated as a "default" obligation.

reductions mandated by the FCC contributed to that phenomenon by decreasing CLECs cash flow.

⁹⁰ Oyefusi Reply, p. 30.

⁹¹ Denney Direct, p. 55.

1 As I explained in my Reply testimony,⁹² the Joint CLECs do not oppose Staff's
2 proposal that contract access tariffs be filed with the Commission.

3 **Issue 6. How much of access cost recovery, if any, should be shifted to end users?**
4 **What showing should be required for such a shift? What should be the**
5 **role of "benchmark" rates and how should benchmarks be set?**

6
7 **IXCs and Their Customers Are the Cost Causers of Traffic Sensitive Costs and Not**
8 **End Users**

9
10 **Q. MR. PRICE CLAIMS THAT PROPOSALS TO SHIFT ACCESS COST**
11 **RECOVERY TO END-USERS ARE NOT A "FREE RIDE" TO IXCS**
12 **BECAUSE LOCAL CUSTOMERS ARE ALSO LONG-DISTANCE**
13 **CUSTOMERS.⁹³ PLEASE RESPOND.**

14 A. Mr. Price's argument is wrong; it would hold only if there existed only one
15 telephone company (carrying both local and long-distance calls), and if each end-
16 user had the same demand for local and long-distance service. The reality is quite
17 opposite: There are numerous competing local and long-distance companies, and
18 end-users are also not created the same. For example, when a telemarketer (a
19 Verizon-IXC customer) in Phoenix calls Integra's end-user in Tucson, Integra's
20 end-user may find this call unwelcomed and distracting. The telemarketer is the
21 cost-causer.⁹⁴ Why should the Integra and/or Integra's end-user (who may

⁹² Denney Reply, p. 34.

⁹³ Price Reply, pp. 6-7.

⁹⁴ According to Mr. Price (Price Reply, p. 11), the Massachusetts access order that capped CLECs rates found just that – that the calling party is the cost-causer.

1 subscribe to AT&T long-distance) subsidize network cost associated with a
2 Verizon customer?

3 Further, IXCs note that reducing long-distance prices would stimulate long-
4 distance demand.⁹⁵ Similarly, increasing local prices would depress demand for
5 local services. Because LECs and IXCs are not the same entities, the impact of
6 potential “free ride” and re-distribution of revenue streams is not a trivial issue.

7 Finally, because end-users purchase and use of local and long-distances services
8 are often unique, proposals to shift cost recovery could lead to cross-subsidies and
9 a re-distribution of wealth between end-users. For example, end-user X may
10 make and receive a lot of long-distance calls, while end-user Y may not use long-
11 distance services at all. A regulator may find it undesirable to make end-user Y
12 pay the same (flat-rated) amount for access to long-distance networks as the first
13 end-user. After decades of trying to eliminate cross-subsidies from
14 telecommunications prices, this is not the time for regulators to create new ones.

15 **Q. DRS. ARON AND OYEFUSI CLAIM THAT NO LOOP COST CAN BE**
16 **ATTRIBUTED TO SWITCHED ACCESS SERVICE.⁹⁶ PLEASE**
17 **EXPLAIN WHY THIS POSITION IS INCORRECT.**

18 **A.** Drs. Aron and Oyefusi deny a commonly accepted fact – that loop is a facility
19 shared by several services, and as a result, the cost of loop facility is attributable

⁹⁵ Aron Direct, pp. 66-67.

⁹⁶ Aron Reply, pp. 36-39 and Oyefusi Reply, pp. 26-28.

1 to all services that share this facility, including switched access and long-distance
2 services. Indeed, if not for local loops, a long-distance call could not be
3 completed (or an IXC would have to build its own facilities to reach the called
4 party). Dr. Oyefusi's comment that "[t]he loop is built for the purpose of
5 providing local service"⁹⁷ is nonsensical: If that were the case, IXCs would be
6 building their own loops (parallel to the existing LEC loops) to reach end-users.

7 Regulators also treat loop cost as attributable to both local and access services.
8 For example, in its *Local Competition Order*, the FCC noted that "**[t]he costs of**
9 **local loops and their associated line cards in local switches, for example, are**
10 **common with respect to interstate access service and local exchange**
11 **service[.]**"⁹⁸ Similarly, the FCC 2008 *FNPRM* in the intercarrier compensation
12 docket noted that "the subscriber line charge (SLC) that the Commission
13 established is intended to capture the *interstate* cost of the *local* loop."⁹⁹ Clearly,
14 the existence of "interstate cost of local loop" and the interstate SLC (an *access*

⁹⁷ Oyefusi Reply, p. 27 footnote 47.

⁹⁸ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, *First Report and Order*, adopted August 1, 1996, ¶ 678 (emphasis added).

⁹⁹ In the Matter of *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition*, CC Docket No. 96-98, *Provisions in the Telecommunications Act of 1996*, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 99-68, *Intercarrier Compensation for ISP-Bound Traffic IP-Enabled Services*, WC Docket No. 04-36, *Order On Remand And Report And Order And Further Notice Of Proposed Rulemaking*, released November 5, 2008 ("FNPRM"), Appendix A ¶ 104 (emphasis original to the source).

1 charge) is an indicator that local loop is attributable to more than just local
2 services.

3 **Q. DOES DR. ARON CONFUSE WHETHER LOOP COST SHOULD BE**
4 **ATTRIBUTED TO ACCESS WITH HOW LOOP COST IS RECOVERED?**

5 A. Yes. Dr. Aron claims that no loop cost should be attributed to access services,¹⁰⁰
6 but in support cites sources that discuss *recovery* of the “interstate portion”¹⁰¹ of
7 loop cost through flat-rated charges – which is not the same. As noted by Staff’s
8 Mr. Shand, loop cost is recovered in a different manner in Arizona compared with
9 the federal jurisdiction, where the FCC uses a flat-rated method.¹⁰² The FCC
10 approach is far from ideal. For example, as noted above, ALTS critiqued the
11 federal CALLS plan on the grounds that the federal SLC rates are set at the same
12 generic level across states and carriers: Because loop cost vary significantly
13 across states and carriers, the use of the same generic level of SLC charges means
14 that these rates are not tied to loop cost that they intend to recover.¹⁰³ In Qwest’s
15 AFOR docket the Commission noted “[w]hile we agree that achieving parity
16 between intrastate and interstate switched access rates is a laudable goal, **there**

¹⁰⁰ Aron Reply, p. 37 lines 6-7 and p. 38 lines 1-2.

¹⁰¹ Aron Reply, p. 38 line 13 (citing the FCC).

¹⁰² Shand Reply, p. 4 (“Interstate access charges are generally lower than intrastate access charges because of the manner in which costs that have been allocated to interstate access are recovered.”)

¹⁰³ April 17, 2000 Joint Comments, p. 3.

1 **are many other public policy issues that impact our ability to reach that goal,**
2 **such as the desirability of imposing an End User Common Line charge.”¹⁰⁴**

3 **Q. REBUTTING YOUR POINT THAT IXCS BENEFIT FROM THE LOCAL**
4 **LOOP, DR. ARON PROVIDES AN ANALOGY OF HANDSETS. SHE**
5 **SUGGESTS THAT IT WOULD BE UNREASONABLE TO EXPECT IXCS**
6 **“SUBSIDIZE” HANDSETS.¹⁰⁵ PLEASE RESPOND.**

7 A. Dr. Aron’s analogy is not convincing. Apart from the fact that handset
8 subsidization is a common market practice in wireless industry,¹⁰⁶ handsets do not
9 provide a good analogy to local loop because handset costs are significantly lower
10 than loop cost. For example, a handset may cost just a few dollars per year
11 (spreading its price over its lifetime),¹⁰⁷ while annual cost of a loop would be
12 measured in hundreds of dollars.¹⁰⁸ Because the cost of a loop (a shared asset) is
13 very high compared to the cost of a handset, the issue of fair cost allocation is
14 more urgent for a loop than for a handset. Indeed, if the cost of a loop *were* as
15 low as the cost of a handset, the regulatory landscape (which is driven to a large

¹⁰⁴ 1999 Price Cap Docket, ACC Decision No. 63487 (March 30, 2001), p. 12 (emphasis added).

¹⁰⁵ Aron Reply, p. 37.

¹⁰⁶ See the FCC report on Wireless Competition (*13th Report* in WT Docket No. 08-27 released on January 16, 2009), p. 60: “Fixed-term service contracts and ETFs [Early Termination Fees] are part of a traditional industry business model in which providers use handset subsidies to offer consumers a discount on the upfront price of handsets and thereby promote the sale of mobile telephone services.”

¹⁰⁷ AT&T Corded Basis Triline Phone sold currently at target.com is priced at \$5.99.

¹⁰⁸ For example, based on the latest cost data contained in the annual Universal Service Fund filing of National Exchange Carrier Association cost data available at <http://www.fcc.gov/wcb/iatd/neca.html>, Qwest-Arizona annual average loop cost per line was \$413.15. For several Arizona carriers annual average loop cost per line was over one thousand dollars, with Accipiter having the highest annual average loop cost per line at \$9,495.48.

1 extent by the notion that loop facilities represent a bottleneck and a barrier to
2 entry) would be much different from what we have today. Further, as described
3 above, for most business customers the loop is traffic sensitive, unlike a handset,
4 in that multiple loops or capacity is purchased based on the business's usage
5 requirements. This is the same way long distance networks are built – based on
6 the demand that will travel over them. It is understandable that IXC's want
7 CLECs to give access to their facilities for free; however, this is not the practice
8 of any business, including IXC's, who rightly charge carriers that use capacity on
9 their network.

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

11 **A. Yes.**