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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

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POST-HEARING REPLY BRIEF OF AT&T

Arizona Corporation Commission

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PUBLIC VERSION

SEP 14 2010

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1 **I. INTRODUCTION**

2 Just about every party to this proceeding agrees that Arizona's intrastate switched access
3 regime—a holdover from the monopoly era—is not sustainable and needs change. Nine years
4 ago, the Commission decided what to do about that: Reduce the switched access rates that local
5 exchange carriers ("LECs") charge for in-state calls to parity with the rates those LECs charge
6 for performing the same function on interstate calls. But here we are, nine years later. The
7 Commission's goal is still far away and the LECs' access rates for in-state calls still vastly
8 exceed their access rates for interstate calls (often, by several multiples). As a result, Arizona
9 consumers are paying much more for wireline long-distance service than they should and the
10 artificial burden of access charges is placing a massive thumb on the competitive scale. Wireline
11 long-distance carriers are at a huge disadvantage against alternative technologies that do not bear
12 the same artificial burden that wireline long-distance carriers (and their customers) currently
13 shoulder.

14 **ILEC Access Rates.** Just about every party to the proceeding agrees that the
15 Commission should do exactly what it acknowledged nine years ago and reduce the ILECs'
16 intrastate switched access rates to parity with the corresponding interstate rates. Qwest, Staff and
17 ALECA agree that's the right result. Indeed, Qwest agreed in 2001 to achieve that very result as
18 a basis for the Commission's adoption of a settlement of Qwest's price cap plan. Yet now,
19 Qwest wants to ignore the deal it made over nine years ago by advocating still more delay before
20 it reduces its intrastate switched access rates to parity with interstate rates. Staff and ALECA
21 also advocate an indefinite delay. They suggest that the Commission should, for now, reduce the
22 intrastate rates of all LECs to match Qwest's intrastate rates. But, that would leave *Qwest's*
23 rates—which cover the majority of access volume in the State—untouched. Obviously, Qwest

1 likes that idea, because it would continue to rake in massive access subsidies from its own access
2 rates while reducing the access charges it pays to other LECs. Arizona consumers, however,
3 would lose most of the benefits of access reform. Moreover, even for those LECs that do reduce
4 their rates, the Qwest proposal would still leave the LECs' intrastate rates well above the
5 corresponding interstate rates, where they will continue to encourage harmful arbitrage
6 opportunities and the wasteful administrative costs of maintaining two sets of rates for the same
7 access functions. Once again, Arizona consumers would be the losers. Simply put, the Qwest
8 approach is not a middle ground; it is a false start that does absolutely nothing about the majority
9 of access traffic and it takes only a small step for the minority of traffic that remains after Qwest
10 receives a "get out of access reform free" card.

11 Qwest, Staff and ALECA offer two main rationalizations for their do-little approach.
12 The first is entirely formalistic. They suggest that the Commission decided that any adjustments
13 to Qwest's access rates should take place in Qwest's price-cap docket. But, the Commission
14 decided *not* to exclude Qwest's access rates from examination in *this* access reform docket—a
15 decision that would be entirely nullified if the Commission were now to exempt Qwest from the
16 reforms adopted in this docket. The Commission said that the mechanics of implementing the
17 actual *adjustment* would be left to Qwest's price-cap docket and Staff agrees that the
18 Commission can make policy decisions regarding Qwest here. The Commission can and should
19 make the *policy* decision to reduce Qwest's access rates here and without further, needless delay,
20 it should concurrently order Qwest to implement those reductions in Qwest's price-cap docket.

21 The second rationalization is no better. Qwest, Staff and ALECA advance the entirely
22 unfounded argument that implementing parity between interstate and intrastate switched access
23 rates—which the Commission announced as its goal *nine years ago*—would have a "precipitous"

1 effect on local service rates. Nonsense. As AT&T has demonstrated, the Commission can give
2 ILECs the opportunity to recover all the revenue reduction that would result from access parity
3 simply by allowing ILECs to raise their local rates up to a reasonable benchmark of \$18 per
4 month and by allowing ILECs to recover any remaining revenue reduction through the Arizona
5 Universal Service Fund ("AUSF"). To make the transition even easier for Arizona consumers,
6 AT&T proposes that the Commission consider limiting increases in monthly rates for basic local
7 service to \$2 in each year until those rates reach the \$18 benchmark. *No one has contended that*
8 *\$18 is an unreasonable monthly rate and no one has confronted the \$2 limit on rate increases*
9 *that AT&T has suggested.* As for the Universal Service Fund, AT&T's proposal requires much
10 less AUSF support than that of ALECA.

11 **CLEC Access Rates.** The Commission should order CLECs to issue tariffs "capping"
12 their intrastate switched access rates at the level of the corresponding ILEC rates, just as the FCC
13 has already done for CLEC interstate rates and as several states have done for CLEC intrastate
14 rates. Staff, Qwest and ALECA agree (as noted above, their dispute is about the timing of
15 reform for *ILEC* rates).

16 The CLECs try to raise two procedural obstacles to reform. Neither withstands scrutiny
17 and neither should delay Commission action. The CLECs' first argument is that due process
18 gives CLECs the right to try justifying their exorbitant access rates. This argument is moot. The
19 CLECs have already had ample opportunity in this three-year proceeding to justify their access
20 rates.

21 Moreover, the order that AT&T proposes here would simply state the Commission's
22 policy for all CLECs and direct them to modify their tariffs and establish the appropriate rate
23 caps. If any CLEC wants to make an individualized case supporting its current rates, it can

1 choose not to modify its tariffs. Staff would then issue a show-cause order and the CLEC will
2 then have the opportunity to prove its costs and try defending its rates in the ensuing proceeding.
3 AT&T is skeptical that any CLEC could put forth a *winning* case, but it would certainly have yet
4 another opportunity to try and it would certainly receive any process that is arguably “due.”

5 It is equally fruitless for the CLECs to suggest that the Commission sit on its hands and
6 wait for the FCC to implement reforms for in-state rates that fall within this Commission’s
7 jurisdiction. The FCC has pondered global reforms of intercarrier compensation for the past
8 decade, with no concrete results. Even now, there is no assurance that the FCC will act at all,
9 much less anytime soon. While the recent *National Broadband Plan* (“NBP”) *recommends* that
10 the FCC reduce intrastate switched access rates, the FCC has yet to take any substantive action;
11 in fact, the FCC does not plan to even issue a notice of *proposed* rulemaking until the fourth
12 quarter of 2010.

13 Moreover, there is absolutely no basis for the CLECs’ red herring that this Commission’s
14 order might be “incompatible” with some decision the FCC might someday issue. All AT&T is
15 asking the Commission to do is to track reforms that the FCC has *already* implemented at the
16 federal level. The *NBP*, which Cox and the Joint CLECs cite, already recommends that parity
17 with interstate rates be the first step of intercarrier compensation reform.

18 **II. DISCUSSION**

19 After three years of issue filings, proceedings, statements and workshops, three rounds of
20 testimony, three days of evidentiary hearings and one round of briefs, one thing is absolutely
21 clear. No one contends that Arizona’s current switched access regime is working. Everyone
22 agrees that something must be done. Not surprisingly, some parties offer purely self-serving
23 proposals suggesting the Commission reduce the access rates they *pay out* while maintaining the

1 high access rates they *take in*. In this camp, Qwest wants all other carriers to reduce their access
2 rates to match Qwest's rates, while leaving its own rates intact. Conversely, the CLECs say that
3 rural incumbents should be first in line for reform, while advocating no action (or at best, lengthy
4 delays in reform) for themselves.

5 The purpose of this proceeding, though, should not be to benefit, disadvantage or exempt
6 one carrier or group of carriers, but to reform a broken *system* and bring relief to all Arizona
7 consumers. AT&T offers a holistic proposal to serve that purpose:

8 (A) The Commission should order all incumbents to reduce their intrastate switched
9 access rates to "parity" with their corresponding interstate rates and to maintain
10 parity going forward;

11 (B) The Commission should order all CLECs—and that *includes* AT&T—to "cap"
12 their intrastate rates at the levels charged by the incumbent LEC for the applicable
13 geographic area, just as the FCC ordered CLECs to do years ago on interstate
14 calls; and

15 (C) To "rebalance" the reduction in access revenues from access reform, the
16 Commission should give all LECs the flexibility to raise retail local service rates
17 and give incumbents the opportunity to receive support from the AUSF.

18 AT&T responds to the other parties' briefs on those subjects in Sections II.A-II.C below.
19 In Section II.D, AT&T responds to the proposal that IXCs be required to demonstrate that they
20 have "passed through" access charge reductions.

1 A. The Commission Should Reduce the ILECs' Intrastate Switched Access
2 Rates to Parity With Their Interstate Rates and Keep Them in Parity With
3 Interstate Rates.

4 As Staff correctly observes, "most all parties agree that the Commission should undertake
5 access reform at this time."¹ Staff, ALECA, Qwest, AT&T, Verizon and Sprint all advocate
6 reform; the CLECs try to delay reform of their own rates, but advocate reform for the smaller
7 incumbents; and finally, RUCO offers general platitudes and procedures without taking a
8 position for or against reform. Given the array of different market segments that are represented,
9 the level of consensus is remarkable. And, as described in Section II.B below, there is virtually
10 unanimous agreement that CLEC access rates should be capped at the level of the incumbent
11 serving the CLEC's geographic area.

12 What target should the Commission use for reforming the *incumbents'* rates? The
13 Commission answered that question nine years ago, when it stated that its goal was to reduce
14 intrastate switched access rates to parity with the corresponding interstate rates.² AT&T's
15 recommendation is that the Commission simply take action on its decision. Many other states
16 have already taken a similar path to reform: For example, earlier this year, New Jersey's Board
17 of Public Utilities ordered all local exchange carriers to bring their intrastate switched access
18 rates into parity with their corresponding interstate rates.³

19 While Qwest, ALECA and Staff have a different proposal, the Commission should note
20 that they do not oppose parity as a goal. Indeed, earlier in this proceeding, "ALECA
21 recommend[ed] that the Commission bring intrastate switched access rates into equality with

22 ¹ Staff Br. at 1.

23 ² Decision No. 63487, p. 12 and Attachment A, p. 2.

24 ³ *In re Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, NJ BPU
Docket No. TX08090830, Order, February 1, 2010, p. 27 (emphasis added).

1 interstate rates”⁴ and urged “immediate reform.”⁵ Even now, ALECA advocates “closing the
2 gap between the members’ intrastate and interstate rates.”⁶ Likewise, Staff proposes that the
3 Commission “move toward consistency with interstate rates.”⁷ Qwest acknowledges on the very
4 first page of its brief that the Commission’s “long term goal is to have intrastate access rates
5 mirror the interstate rates of the LECs.”⁸ At the hearing, Qwest’s witness, Ms. Eckert, agreed
6 “that Qwest has repeatedly stated both as an ILEC and as an IXC that intrastate switched access
7 charges should not exceed the interstate rate, so long as the rebalancing is done in both the
8 revenue neutral and competitively neutral manner.”⁹ Moreover, Ms. Eckert acknowledged that
9 “it is not Qwest’s position that dropping to an interstate level would produce an unjust or
10 unreasonable intrastate access rate” and “that it is pretty clear ultimately we will get there.”¹⁰

11 Yet, after nine years of delay and three years of these proceedings to develop a robust
12 record, Qwest, ALECA and Staff tell the Commission to put off its goal yet again and take a
13 meaningless baby step instead. This is particularly troubling in Qwest’s case, because Qwest
14 sought and received a settlement of its 2001 Price Cap Plan by promising, among other things,
15 that it would reduce its intrastate switched access rates “with the objective of obtaining parity
16 with interstate switched access rates.”¹¹ Yet, it proposes here that the Commission do nothing
17 about Qwest’s intrastate rates, which are still substantially above its interstate rates, while
18

19 ⁴ AT&T-13, “Updated Access Charge Questions” at 1.

20 ⁵ AT&T-13, Ex. A at 11.

21 ⁶ ALECA Br. at 3.

22 ⁷ S-1 (Shand Direct, Public), Executive Summary.

23 ⁸ Qwest Br. at 1.

24 ⁹ HR TR 563.

¹⁰ HR TR 564.

¹¹ Decision No. 63487, Att. A, p. 3.

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1 making the other incumbents reduce their intrastate switched access rates to match Qwest's
2 intrastate rates.¹² ALECA (also making a sharp turnabout from its prior positions) advocates the
3 same approach.¹³ Staff proposes a similar, but slightly modified, tack: That each incumbent
4 reduce its intrastate rates to Qwest's intrastate rates, *or* the incumbent's interstate rates,
5 whichever is higher.¹⁴

6 **1. The Commission Should Not Waste the Enormous Effort Expended in**
7 **This Proceeding By Giving Qwest, Which Carries a Substantial**
8 **Majority of Access Traffic, an Exemption From Reform.**

9 AT&T demonstrated in its opening brief that the Qwest approach does little for
10 consumers and suffers from multiple problems. **First**, the Qwest approach does absolutely
11 *nothing* about Qwest's intrastate rates, even though Qwest carries the great majority of access
12 traffic in the State—[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]
13 [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]¹⁵—and even though
14 Qwest's intrastate rates are more than double its interstate rates.¹⁶

15 **Second**, for the minority of traffic that *would* see rate reductions, the cuts would not be
16 all that significant and would certainly not give consumers any meaningful relief.¹⁷ Qwest's
17 average intrastate switched access rate per minute is still quite high ([BEGIN HIGHLY
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20 ¹² Qwest Br. at 2.

21 ¹³ ALECA Br. at 3.

22 ¹⁴ Staff Br. at 2.

23 ¹⁵ AT&T-5 (Aron Rejoinder, Confidential) at 10; AT&T-10 (Oyefusi Reply, Confidential) at 9 and n. 5.

24 ¹⁶ AT&T-2 (Aron Direct, Confidential) at 36 and Table 1.

¹⁷ AT&T-4 (Aron Rejoinder, Public) at 10-11; AT&T-3 (Aron Reply, Public) at 69.

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1 **CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]**¹⁸) and, in fact, is
2 among the highest rates for a Bell operating company in the nation.¹⁹

3 **Third**, the Qwest approach still leaves a large gap between interstate and intrastate
4 switched access rates. Qwest's average intrastate rate of **[BEGIN HIGHLY**
5 **CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]**²⁰ is more than
6 double its average interstate rate.²¹ It is also much higher than the average interstate access rate
7 of other Arizona ILECs (whose overall average rate is 1.66 cents per minute on the interstate
8 side).²² Such large disparities make no sense, because there is no dispute that interstate and
9 intrastate switched access services have virtually the same underlying cost.²³ Moreover, the
10 disparities Qwest wants to maintain not only create opportunities, but also afford incentives for
11 harmful arbitrage.²⁴ They also continue the administrative inefficiencies of maintaining two
12 separate, very different sets of charges for the same underlying services.²⁵

13 **Fourth**, the Qwest approach is more difficult to implement. The other incumbents would
14 have to modify their tariffs and billing systems to match Qwest's rate structure and levels, which
15 no one but Qwest charges today.²⁶ By contrast, under AT&T's proposal, carriers would simply
16 charge for in-state traffic at the same rates they already charge (and have been charging for
17

18 ¹⁸ AT&T-2 (Aron Direct, Confidential) at 36, 45-46 and Tables 1 and 3.

19 ¹⁹ AT&T-3 (Aron Reply, Public) at 72.

20 ²⁰ AT&T-2 (Aron Direct, Confidential) at 36, 45-46 and Tables 1 and 3.

21 ²¹ AT&T-2 (Aron Direct, Confidential) at 36 and Table 1; *see also* AT&T-4 (Aron Rejoinder, Public) at 10.

22 ²² AT&T-1 (Aron Direct, Public) at 37.

23 ²³ AT&T-1 (Aron Direct, Public) at 17, 20-22; AT&T-7 (Oyefusi Direct, Public) at 14-15; HR TR 228 (Garrett).

24 ²⁴ AT&T-1 (Aron Direct, Public) at 78-81; AT&T-7 (Oyefusi Direct, Public) at 45-48.

25 ²⁵ *Id.*

26 ²⁶ AT&T-9 (Oyefusi Reply, Public) at 20.

1 years) for interstate traffic.²⁷ Moreover, the difficulty of implementing Qwest's approach would
2 be compounded if Qwest's intrastate access rates change in the future (e.g., when the
3 Commission orders Qwest to lower its intrastate rates to its interstate levels, as Qwest itself
4 agrees will eventually be done). In that event, all other LECs in Arizona would have to make
5 conforming changes, even if the new Qwest intrastate rate were below a particular LEC's
6 interstate rate and irrespective of whether that LEC would have the opportunity to rebalance the
7 resulting revenue reduction.

8 To the extent the Commission wants further rebuttal, it need only look at the comments
9 ALECA filed in this docket. In ALECA's own words, "unifying or equalizing the rates for each
10 jurisdiction [interstate and intrastate] will remove the incentive for carriers to provide incomplete
11 call detail records or to seek routing alternatives" while "[m]oving to Qwest's intrastate access
12 rates would not address rate arbitrage encouraged by an individual company's variance between
13 intrastate and interstate access rates."²⁸

14 In short, if the Commission adopts the Qwest approach, the majority of the current
15 system's problems will be left unresolved. More than three years of workshops, prefiled
16 testimony, evidentiary hearings and briefing will turn out to have been a waste of time and effort.
17 Arizona consumers will see little relief and the Commission will not make any real progress
18 towards the goal of parity it announced nine years ago. In Dr. Aron's words, "I see no
19 justification, really for taking a half measure, for going through all of this proceeding with all of
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23 ²⁷ *Id.*

24 ²⁸ AT&T-14; HR TR 142.

1 the evidence marshaled and resources invested and the opportunity to do what the FCC did
2 almost a decade ago and what state after state is now doing and take a half step.”²⁹

3 **2. None of the Arguments Advanced in Favor of the Qwest Approach**
4 **Have Any Merit.**

5 Qwest, ALECA and Staff simply fail to confront the problems and shortcomings of their
6 do-little proposals. They offer a few rationalizations, but none hold any water.

7 a. Staff goes nowhere with the formalistic argument that “the Commission has
8 already decided that further reductions to Qwest’s access charges should be handled in its Price
9 Cap Plan.”³⁰ What the Commission actually said is that “any *adjustment* to Qwest’s access
10 charges shall be addressed in the pending Price Cap Plan docket.”³¹ As Staff states, “[t]his does
11 not mean that certain policy decisions . . . could not be decided for Qwest as well in this
12 Docket.”³² The Commission should make the critical policy decision—how much to reduce
13 intrastate switched access rates—for all LECs, including Qwest, here. Deciding the appropriate
14 level of access rates is the central purpose of *this* docket. All AT&T suggests is that the
15 Commission carry out its long-stated goal of reducing intrastate switched access rates to parity
16 with the corresponding interstate rates—a goal to which Qwest has agreed.³³

17 The September 29, 2009 Procedural Order poses no obstacle to this sensible result.
18 While the Commission left the mechanics of implementation for the price-cap docket, it *also* said

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21 ²⁹ HR TR 340.

22 ³⁰ Staff Br. at 7.

23 ³¹ Sept. 29, 2009 Procedural Order at 6 (emphasis added).

24 ³² Staff Br. at 7.

³³ Decision No. 63487, Att. A, p. 3

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1 that Qwest should be part of the process in *this* docket.³⁴ Moreover, the Commission—in that
2 same procedural order—expressly asked the parties to address “What carriers should be covered
3 by access reform?”³⁵ If there was to be no consideration of Qwest’s access rates *here*, then
4 Qwest or Staff or ALECA should have moved long ago to strike all the written and oral
5 testimony that has been submitted regarding Qwest’s rates. None of them did. Given that three
6 years of proceedings have taken place here, it would make no sense to make the parties and the
7 Commission start over from scratch in the price-cap docket. Arizona consumers deserve relief,
8 not more delay and waste. The Commission can satisfy Staff’s procedural concern by ordering
9 all incumbent LECs’ intrastate access rates to mirror their interstate rates going forward and by
10 *concurrently* ordering Qwest to implement such reductions in the price-cap docket.

11 **b.** Qwest agrees that “traffic pumping” is “a rapidly growing [arbitrage] scheme, and
12 it flourishes because of high intrastate access rates.”³⁶ By making the correct and convincing
13 case that lower access rates are the way to reduce traffic pumping, Qwest’s own brief destroys its
14 absurd suggestion that “Qwest’s is the better proposal” for reducing traffic pumping and other
15 arbitrage schemes.³⁷ On balance, Qwest’s target rate for incumbents—Qwest’s own average
16 intrastate rate of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY
17 CONFIDENTIAL]³⁸—is far higher than AT&T’s target (the average interstate access rate of
18 other Arizona ILECs, which is 1.66 cents per minute).³⁹ The math is obvious. Applying

19 _____
20 ³⁴ See March 17, 2009, Procedural Order at 5 (First Ordering Paragraph) (“[T]he investigation under Phase II of the
Access Charge Docket will include Qwest Corporation.”); Sept. 29, 2009 Procedural Order at 3 (“Our Procedural
Order dated March 17, 2009, determined that Qwest should participate in the Phase II process.”).

21 ³⁵ Sept. 29, 2009 Procedural Order at 4 (Issue No. 1).

22 ³⁶ Qwest Br. at 22 (footnote omitted).

23 ³⁷ Qwest Br. at 22 (footnote omitted).

24 ³⁸ AT&T-2 (Aron Direct, Confidential) at 36, 45-46 and Tables 1 and 3.

³⁹ AT&T-1 (Aron Direct, Public) at 37.

1 Qwest's own principle that traffic pumping "flourishes because of high intrastate access rates,"
2 AT&T's proposal, not Qwest's, "is the better proposal," because Qwest's approach results in
3 significantly *higher* intrastate access rates. As Dr. Aron explained at the hearing, AT&T's
4 approach "addresses it [the problem of traffic pumping] better than Qwest's proposal does,"
5 because:

6 Traffic pumping is a form of arbitrage that's caused by rates for access that are
7 substantially in excess of the cost of providing access. So, for example, if a company is
8 charging, let's say, 10 cents a minute for access, and it costs half a cent a minute to
9 provide that service, the company is making over 9 cents a minute in margin on every
10 minute of traffic. And so if you are a seller of access minutes, you want to get as many
11 minutes as possible and make that nine and a half cents or nine plus cents on every
12 minute.

10 And that margin creates an incentive for companies to find ways to pump traffic
11 through their switch. And ways of doing that would be, for example, to work with a
12 provider of conference calling and offer free conference calling or free chat rooms so that
13 people can call into that chat room.

12 * * *

13 Under Qwest's proposal, that 10 cent rate would be brought down to 2.2 cents. Under
14 AT&T's proposal, if that were any of the large LECs in the State of Arizona, the rate
15 would be brought down below 2.2 cents, because for all of the large LECs in Arizona,
16 their . . . interstate rates are below Qwest's intrastate rate.⁴⁰

16 Qwest argues that in *some* rural areas, the ILEC's interstate rate might be higher than
17 Qwest's rate.⁴¹ But, Qwest does not provide evidence that there is any significant amount of
18 traffic at stake. As demonstrated above, on average, the ILECs' interstate rates are significantly
19 *lower* than Qwest's target rate (and the same is true for all the large LECs), so for most intrastate
20

22 _____
23 ⁴⁰ HR TR 281, 285 (Aron).

24 ⁴¹ Qwest Br. at 22.

1 access traffic carried by these LECs, AT&T's proposal is far superior.⁴² Indeed, Qwest does not
2 identify how its target rate would be *materially* lower or make any real difference. Moreover, to
3 the extent a rural ILEC does have a higher interstate rate than Qwest, that is because the FCC has
4 found a higher rate to be justified. Thus, Staff itself eliminates Qwest's asserted advantage on its
5 proposal: Where an ILEC's interstate rate is higher than Qwest's rate, Staff rejects Qwest's
6 approach and proposes that the ILEC be allowed to charge its higher interstate rate.⁴³

7 c. The modest reform proposed by AT&T here is neither "precipitous" nor
8 "tumultuous."⁴⁴ Nor does it constitute a "flash cut."⁴⁵ Arizona's ILECs have been charging
9 interstate rates on interstate calls for years, and they are still very much in business. Likewise,
10 AT&T's proposal is hardly "extreme."⁴⁶ As Staff itself has said, the ultimate goal is to reduce
11 access rates to cost.⁴⁷ Moreover, the *NBP* recommends that "the FCC should continue reducing
12 ICC [intercarrier compensation] rates by phasing out per-minute rates for the origination and
13 termination of telecommunications traffic."⁴⁸ AT&T's proposal of interstate parity is simply a
14 meaningful, straightforward step the Commission can take quickly. The time to implement is
15 now.

16 Moreover, AT&T's plan gives ILECs the opportunity to recover the majority of the
17 access reductions through flexibility in retail local service rates. At the same time, AT&T's plan

18 ⁴² In contrast, Qwest's proposal would require the smallest ALECA members to reduce their intrastate access rates
19 below interstate levels, while the largest ALECA members (carrying the bulk of the traffic) would continue to enjoy
intrastate access rates substantially higher than their interstate rates. AT&T-10 (Oyefusi Reply, Confidential) at
Ex. A.

20 ⁴³ Staff Br. at 2.

21 ⁴⁴ Qwest Br. at 12.

⁴⁵ Staff Br. at 8.

22 ⁴⁶ Qwest Br. at 11.

23 ⁴⁷ Staff Br. at 1.

⁴⁸ *NBP*, p. 150.

1 protects consumers from large or “precipitous” increases in local service rates. ILECs’ basic
2 monthly rates would remain at or below a benchmark of \$18. Moreover, although RUCO
3 emphasizes the need for gradualism in rate rebalancing, RUCO fails to acknowledge that
4 AT&T’s proposal adopts such a gradual approach—in moving retail rates towards the \$18
5 benchmark, ILECs would be limited to monthly rate increases of no more than \$2 each year.

6 Qwest claims that “[t]he weight of the evidence is that the additional strain for ALECA
7 members to reduce its [sic] rates the additional 0.6 cents that they would have to do under the
8 AT&T proposal, and the increased demand potentially placed on the universal service fund,
9 counsels strongly in favor of the Qwest rate as the target.”⁴⁹ But, Qwest does not cite any
10 evidence of any “strain.” Certainly, Qwest’s view does not hold the “weight” of evidence.
11 ALECA, like AT&T, advocated parity with interstate rates for its own members for much of this
12 proceeding and it has made no showing of hardship for any of its members here. And, as shown
13 in Section II.C below, AT&T’s proposal places *less* demand on the Universal Service Fund than
14 ALECA’s.

15 Staff asserts that ILECs other than Qwest have not taken any steps to phase down their
16 rates before now.⁵⁰ All that means is that those ILECs have received massive subsidies since the
17 Commission embraced the goal of interstate parity nine years ago. They should not be rewarded
18 with continued subsidies and more delays now.

19 **d.** Staff’s argument that “Qwest’s switched access rates have already been reduced”
20 to some extent in the past is no reason for giving Qwest a free pass now.⁵¹ While Qwest’s rates
21 have been reduced *part* of the way towards parity, those reductions were only steps towards the

22 ⁴⁹ Qwest Br. at 23.

23 ⁵⁰ See Staff Br. at 8.

24 ⁵¹ Staff Br. at 7.

1 ultimate goal of parity. That goal is still far away—Qwest's average intrastate access rate is still
2 more than double its interstate rate.⁵² Further, the last step Qwest made towards parity was more
3 than four years ago.⁵³ That Qwest has made some progress towards the Commission's goal
4 means only that it will be *easier* to finish the job here. As Dr. Oyefusi showed, Qwest can
5 recover the entire amount of the access reduction as a result of implementing parity by simply
6 increasing its retail local service rates by 75 cents per line per month. That would leave its
7 monthly residential rate at only \$13.93 per line.⁵⁴

8 Similarly, reducing Qwest's switched access rates to interstate levels now will make it
9 easier to conform to access charge reductions the FCC may make in the future. The *NBP*
10 recommends that the FCC consider the elimination of per-minute access charges. Reducing
11 Qwest's and other LECs' per-minute rates to parity with interstate rates now will ease that
12 transition—as is clear from the fact that the *NBP* recommends parity between intrastate and
13 interstate access rates as the first step in global reform.⁵⁵

14 Moreover, the Commission should note the inherent Catch-22 of Staff's arguments. On
15 the one hand, Staff says that the Commission should do nothing about Qwest now, because
16 Qwest made some far-from-complete progress in the past. On the other hand, Staff thinks the
17 Commission should also water down reform for other ILECs, because they have made *no*
18 progress towards reform before now. Neither of these self-contradictory positions should carry
19 any weight.

21 _____
22 ⁵² AT&T-2 (Aron Direct, Confidential) at 36 and Table 1.

23 ⁵³ Decision No. 68604, p. 32.

24 ⁵⁴ AT&T-9 (Oyefusi Reply, Public) at 34.

⁵⁵ *NBP*, p. 148.

1 e. Staff claims that the Commission should not order ILECs to reach interstate parity
2 “without more scrutiny” into the “differences in the federal and state pricing structure.”⁵⁶ No
3 more “scrutiny” is needed. Arizona ILECs are quite familiar with the federal “pricing structure”:
4 They have been charging federal prices on interstate calls for years. All AT&T is asking is that
5 they charge those same familiar prices on in-state calls, too. It is true, as Staff points out, that
6 when the FCC reduced the ILECs’ interstate access rates, it rebalanced some of the interstate
7 access charges to end users (through a “subscriber line charge”).⁵⁷ But, AT&T proposes the
8 same solution here by giving ILECs the opportunity to rebalance access reductions with modest
9 increases to the local service rates paid by their subscribers (within the constraints of the \$18
10 benchmark and a \$2 limit on price increases per year).⁵⁸

11 f. In a disingenuous attempt to manufacture precedent for the Qwest approach,
12 ALECA claims that it “is similar to the reforms that have already taken place in the interstate
13 regime.”⁵⁹ That is simply not true. The FCC has not ordered any ILEC to match the access rates
14 of any other ILEC. The FCC has ordered *CLECs* to cap their interstate access charges for a
15 geographic area at the rate of the ILEC serving that area. AT&T and ALECA (along with Staff,
16 Qwest and Sprint) all agree that the Commission should do the same for *CLEC* intrastate rates.⁶⁰
17 For *CLECs*, the comparison to the ILEC serving the same area makes sense: The CLEC serves
18 the same geographic area, so one would expect that it could not charge more than the incumbent
19 if switched access services were competitive and if long-distance carriers could choose the LEC

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21 ⁵⁶ Staff Br. at 8.

22 ⁵⁷ *Id.*

23 ⁵⁸ AT&T-3 (Aron Reply, Public) at 90-92.

24 ⁵⁹ ALECA Br. at 3.

⁶⁰ See Section II.B *infra*.

1 that originates or terminates their customers' calls. Moreover, the CLEC has no carrier-of-last-
2 resort obligations, so if it thinks any particular customer or geographic area is too costly to serve
3 with the access rate cap, it can simply choose not to serve that customer or area. End users can
4 then choose the ILEC, or a different CLEC that has chosen to serve that area, for their service.

5 Ordering *ILECs* to match the rate of other ILECs is a completely different kettle of fish.
6 Arizona's ILECs do not serve the same territories as Qwest. Moreover, they serve as carriers of
7 last resort, so they cannot forego end users that are too costly to serve using Qwest's rates.

8 If, as ALECA asserts, the Commission's goal is to mirror "reforms that have already
9 taken place in the interstate regime"—and the Commission has quite properly held that as its
10 goal—then it should adopt AT&T's proposal. AT&T proposes that Arizona ILECs reduce their
11 intrastate rates to *match* their corresponding interstate rates and then maintain parity going
12 forward—a plan that is *identical* "to the reforms that have already taken place in the interstate
13 regime."

14 g. Equally disingenuous is Qwest's claim that AT&T's "contractual arrangements
15 are distinctly at odds with its advocacy that rates be lowered immediately to interstate levels."⁶¹
16 Yes, AT&T has reached agreement with some *CLECs* to cap their intrastate rates at the level of
17 the ILEC with which they compete.⁶² But, that agreement precisely matches AT&T's advocacy
18 here: For *CLECs*, AT&T proposes that access rates be capped at the level of the relevant
19 ILEC.⁶³ Such agreements also comport with AT&T's underlying position (and the
20 Commission's goal) of reducing in-state access rates to interstate levels, because the FCC has
21 had the same caps on CLEC switched access rates for interstate traffic for years.

22 ⁶¹ Qwest Br. at 3.

23 ⁶² Qwest Br. at 25-26.

24 ⁶³ See Section II.B *infra*.

1 **h.** Finally, it is also off base for Qwest to assert that its intrastate rate “is the only
2 rate level proposed by any of the parties that has been approved by the Commission in any rate
3 proceeding.”⁶⁴ The Commission “approved” Qwest’s current intrastate rate for *Qwest*, not for
4 other ILECs. More importantly, the Commission “approved” Qwest’s current rate in 2006, and
5 only as a transitional step towards the ultimate goal of reducing intrastate rates to parity with
6 interstate. Whatever merit such incremental steps had years ago, many years have passed since
7 the Commission announced its goal of interstate parity. It is long past time to achieve that goal
8 and give Arizona consumers meaningful relief.

9 **B. As the FCC Has Already Done on the Interstate Side, the Commission**
10 **Should “Cap” the CLECs’ Intrastate Switched Access Rates at the Level of**
11 **the ILEC With Which They Compete, Now and in the Future.**

12 Nine years ago, the FCC issued an order “capping” each CLEC’s access rates on
13 interstate calls for a geographic area at the level of the incumbent serving that area.⁶⁵ AT&T
14 proposes that the Commission direct the CLECs—and that includes AT&T—to file tariffs to the
15 same effect for in-state calls. Staff, Qwest, Verizon and Sprint all agree.⁶⁶

16 Predictably, Cox and the Joint CLECs oppose reform. They have gorged themselves on
17 high in-state access rates for years and would like the feast to continue without interruption.
18 Tellingly, though, they make no attempt to defend their in-state rates on the merits. Indeed, the
19 CLECs claimed in their pre-filed testimony that access services are “competitive” and that the
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22 ⁶⁴ Qwest Br. at 12.

23 ⁶⁵ *In re Access Charge Reform & Reform of Access Charges Imposed by Competitive Local Exchange Carriers*,
24 Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 (2001) (hereinafter,
 “*FCC Order Capping CLEC Access Charges*”).

⁶⁶ Staff Br. at 9; Qwest Br. at 26-27; Sprint Br. at 33-35; Verizon Br. at 6-16.

1 prices would be adjusted by the market, but AT&T and others thoroughly refuted their argument
2 and the CLECs now appear to have abandoned that claim.⁶⁷

3 Lacking any substantive response, the CLECs try to stall reform through procedural
4 delaying tactics. None of their delaying tactics has any merit.

5 **1. The Commission Should Not Delay Reform of Intrastate Access Rates**
6 **on the Off Chance the FCC Might Someday Comprehensively**
7 **Address Intercarrier Compensation.**

8 First, the CLECs argue that the FCC “is already moving forward” with access reform and
9 that the Commission should do nothing while it waits for the FCC.⁶⁸ Nonsense. The FCC has
10 been saying it should comprehensively review intercarrier compensation for a decade and the
11 long-promised reform has not yet materialized. The FCC opened a rulemaking for
12 comprehensive intercarrier reform in 2001, parties provided a decade’s worth of comments to the
13 FCC and the FCC has not acted on any of them.⁶⁹ However, while the FCC has not made
14 progress on a comprehensive solution to intercarrier compensation, it has made some progress in
15 reducing *interstate* access charges to more rational levels. AT&T simply asks that this
16 Commission make the same progress with *intrastate* access charges as the FCC has with
17 interstate rates. By requiring in-state access rates to move to parity with interstate access rates,
18 the Commission would act completely consistently with reforms the FCC has already
19 implemented for interstate switched access and any reforms the FCC makes in the future.⁷⁰

20 The CLECs note that the *NBP*—a series of “RECOMMENDATIONS” developed by the
21 FCC *staff*—suggests that the FCC should conduct a comprehensive reform of intercarrier

22 ⁶⁷ See AT&T-3 (Aron Reply, Public) at 10-23.

23 ⁶⁸ Cox Br. at 1; Joint CLEC Br. at 1.

24 ⁶⁹ AT&T-3 (Aron Reply, Public) at 44-45.

⁷⁰ AT&T-17 (Reply Comments of ACC to FCC WC Docket No. 05-337) at 14-15.

1 compensation.⁷¹ But, not one of these “RECOMMENDATIONS” has been adopted or formally
2 considered by the FCC. The FCC has not even received comments on the staff recommendations
3 and it remains unclear when it will do so. In a proposed schedule, the FCC’s Chairman
4 announced that the *NBP* process will consist of some **60** separate rulemakings and that the
5 earliest the FCC will even issue a notice of *proposed* rulemaking on intercarrier compensation
6 reform is in the fourth quarter of 2010.⁷²

7 It is entirely disingenuous for the CLECs to suggest that the FCC “is already moving
8 forward with rulemakings and other proceedings.”⁷³ The CLECs’ own appendix shows that the
9 FCC is moving forward with rulemakings on subjects other than access reform (in fact,
10 intercarrier compensation is well down the FCC’s list, behind things like lifeline, cybersecurity
11 and rural health care).⁷⁴

12 Rather than waiting endlessly for the FCC to act on intrastate matters that unquestionably
13 fall within state authority, other states have confronted the problem of implicit subsidies. For
14 example, the New Jersey Board of Public Utilities this year rejected the same “wait on the FCC”
15 arguments that the CLECs advance here and ordered local exchange carriers to reduce their
16 intrastate switched access rates to “parity” with interstate rates:

17
18
19
20 _____
⁷¹ Cox Br. at 1; Joint CLEC Br. at 1.

21 ⁷² *Broadband Action Agenda*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.

22 ⁷³ Cox Br. at 1; Joint CLEC Br. at 1.

23 ⁷⁴ Joint CLEC Br., App. A.

1 The Board also HEREBY FINDS that the Board need not . . . wait for federal
2 action from the FCC or from Congress on Intrastate Access Rate issues. As the
3 Board stated in its December 2008 Order, the Board regulates Intrastate Access
Rates and it is within the Board's authority to review the complete record in this
proceeding and render its decision.⁷⁵

4 By ordering parity between intrastate and interstate rates, New Jersey virtually guaranteed that it
5 would be acting consistently with the FCC now and in the future.

6 This Commission approved the objective nine years ago to move in-state access rates to
7 parity with interstate rates.⁷⁶ Nothing in the *NBP* precludes this Commission from fulfilling that
8 promise now. To the contrary, the *NBP* invites state action: “[t]he FCC should also encourage
9 states to complete rebalancing of local rates to offset the impact of lost access revenues.”⁷⁷ The
10 *NBP* also recognizes the *need* for access reform. The *NBP* frankly acknowledges that “[t]he
11 current ICC [InterCarrier Compensation] system is not sustainable.”⁷⁸

12 AT&T's plan for reforming the switched access rates of Arizona CLECs is simply that
13 the Commission implement caps that the FCC has *already adopted* for interstate traffic (which is
14 also the very first step recommended by the *NBP* for intrastate reform) and rebalance local rates
15 (an approach the *NBP* also endorses).⁷⁹ The FCC may go on to implement *further* rate
16 reductions at the state and federal levels, but AT&T would be surprised to see the CLECs
17 advocate those reductions. The Commission can save those future steps for another day: Indeed,
18 by ordering ILECs to mirror interstate rates going forward and by capping CLEC rates at the
19

20 _____
21 ⁷⁵ *In re Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, NJ BPU
Docket No. TX08090830, Order, Feb. 1, 2010, p. 28.

22 ⁷⁶ Decision No. 63487, p. 12 and Attachment A, p. 2.

23 ⁷⁷ *NBP*, p. 148.

24 ⁷⁸ *NBP*, p. 142.

⁷⁹ *NBP*, p. 148.

1 ILECs' levels going forward, the in-state access rates for ILECs and CLECs will *automatically*
2 adjust to mirror whatever new rules the FCC might someday adopt.

3 **2. The Commission Can Give CLECs All the "Process" They Are "Due"**
4 **Without Holding Up Long-Overdue Reforms.**

5 AT&T is puzzled by the CLECs' arguments that "[a]ll affected parties need sufficient
6 opportunity to be heard to ensure that the reduction in rates is not confiscatory or illegal."⁸⁰ This
7 proceeding has been going on for three years. The Commission has given parties ample
8 opportunity to file comments, address workshops, file testimony, conduct cross-examination and
9 submit briefs. It has been patently obvious that the Commission would consider reductions in
10 access rates: Issue No. 1 identified by the Administrative Law Judge is "What Carriers Should
11 Be Covered By Access Reform?"; Issue No. 2 is "To What Target Level Should Access Rates
12 Be Reduced?"; and Issue No. 3 is "What Procedures Should the Commission Implement to
13 Achieve the Desired Reduction in Access Rates?"⁸¹ All parties have had ample notice, ample
14 opportunity to be heard and ample opportunity to marshal and present evidence. The CLECs
15 bypassed all these opportunities to present any evidence supporting their arguments about
16 "confiscation."

17 The CLECs' due process arguments appear to rest on the formalism that access rates
18 should not be reduced until the Commission opens and conducts a case formally labeled a "rate
19 case." But, as Staff properly recognizes, such hyper-formalities need not delay the long-overdue
20 day of access reform any longer than it has already been delayed: While Staff states that a CLEC
21 "should have the option of filing information with the Commission to demonstrate that a higher
22 maximum rate is appropriate," it still recommends "that the CLECs be required to reduce their

23 ⁸⁰ Cox Br. at 2; Joint CLEC Br. at 2.

24 ⁸¹ Sept. 29, 2009 Procedural Order at 4-5.

1 maximum tariffed switched access rates to the level of the ILEC.”⁸² In this proceeding, the
2 Commission can make a policy decision directing CLECs to revise their tariffs so that they “cap”
3 their in-state access rates at the level of the corresponding ILEC with which they compete. *If* any
4 CLEC wishes to put on a case that it somehow deserves different treatment from the rest, it can.
5 It can simply choose not to revise its tariffs and offer then its case in the ensuing “show cause”
6 proceeding. Given the extensive proceedings that have already taken place, that is all the
7 “process” any CLEC is “due” and then some.

8 While the process proposed by AT&T is sufficient to dispel the CLECs’ “due process”
9 arguments, AT&T wishes to make clear that it is skeptical, to say the least, that any CLEC will
10 be able to justify in-state access rates above those charged by the relevant incumbent. **First**, the
11 caps proposed by AT&T here are the same as those that the FCC ordered in 2001 and that the
12 CLECs have been charging for years for interstate calls.⁸³ There is no suggestion that any CLEC
13 has left the interstate market because of the FCC’s caps, so it is highly doubtful that any CLEC
14 could actually prove that the same caps are somehow “confiscatory” or “illegal” on the intrastate
15 side.⁸⁴ At the hearing, the Joint CLECs’ witness, Mr. Denney, admitted that “[w]e have not
16 made that claim” (that their interstate access rates are not compensatory).⁸⁵

17 **Second**, the CLECs appear to think that they are entitled to charge more for access just
18 because their costs may be higher.⁸⁶ Factually, the CLECs have not made any real
19 demonstration (beyond their say-so) that their costs really are higher, despite having multiple

21 ⁸² Staff Br. at 9.

22 ⁸³ AT&T-3 (Aron Reply, Public) at 43; AT&T-9 (Oyefusi Reply, Public) at 25 and n. 43.

23 ⁸⁴ See AT&T-3 (Aron Reply, Public) at 34.

24 ⁸⁵ HR TR 607.

⁸⁶ Joint CLEC Br. at 10; Cox Br. at 9.

1 opportunities to do so.⁸⁷ As the Joint CLECs' witness admitted on cross-examination, "nobody
2 has produced any cost studies in this proceeding":

3 Q. But it is true, isn't it, that Integra has not performed a study demonstrating
4 the cost of providing its switched access service in Arizona?

5 A. That's correct.

6 Q. And it is true . . . neither XO nor TW Telecom have produced any . . . cost
7 studies in this proceeding?

8 A. That's correct. I think Dr. Aron said nobody has produced any cost
9 studies in this proceeding and I agree with that statement.⁸⁸

10 More fundamentally, higher costs do not justify higher prices. As Dr. Aron showed,
11 competitive markets do not permit entrants to charge higher prices than those of incumbents
12 simply because the entrants happen to have higher costs.⁸⁹ Such prices would not be viable in a
13 competitive market, because for a comparable product, consumers in a given geographic area
14 who have a choice would not choose to purchase from a higher-priced provider when they could
15 choose a lower-priced provider instead.⁹⁰ The FCC recognized that when it placed caps on
16 CLECs' interstate access rates.⁹¹

17 **Finally**, it is important to keep in mind that AT&T does not propose reductions in access
18 charges in isolation. Instead, AT&T proposes that the Commission give CLECs the opportunity
19 to increase their local service rates to make up for the reduction in access charges proposed here.

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21 ⁸⁷ AT&T-3 (Aron Reply, Public) at 26-27.

22 ⁸⁸ HR TR 607 (Denney).

23 ⁸⁹ AT&T-3 (Aron Reply, Public) at p. 26, n. 31, p. 36.

24 ⁹⁰ AT&T-3 (Aron Reply, Public) at 26, n. 31.

⁹¹ *FCC Order Capping CLEC Access Charges*, ¶¶ 37, 61.

1 To the extent any CLEC's tariffs do not give them enough flexibility to do that now,⁹² the
2 Commission should make clear that CLECs can modify their local service tariffs at the same
3 time as they modify their access tariffs. Thus, the only way a CLEC would not make up for the
4 reduction in access revenue is if its customers are unwilling to pay a high enough price for that
5 CLEC's local service to cover the costs that CLEC incurs to serve those customers.⁹³ That is a
6 risk that every business bears and that the CLECs should bear as well. The proper response is to
7 be more efficient and reduce costs or provide a better service so that customers are willing to pay
8 more—not to seek handouts from other phone companies and their customers.

9 **3. Given the Years of Delay in Implementing Access Reform, the**
10 **Commission Should Reject the CLECs' Calls for a Multi-Year "Glide**
11 **Path."**

11 Arizona consumers have already waited years for access reform. It is baseless for the
12 CLECs to advocate still more delay through phasing in access reductions over a multi-year
13 "glide path."⁹⁴ It is quite telling that neither Cox nor the Joint CLECs can bring themselves to
14 actually say in their briefs how many years they want. In pre-filed testimony, the CLECs'
15 witness proposed a transition period of *eight to ten years*: No reform at all in the first three
16 years, followed by a five- to seven-year phase-in.⁹⁵ The CLECs apparently know full well that
17 such a period is untenable on its face and do not repeat it now.

18 There is no merit to the CLECs' contention that they need so much time to modify their
19 "business plans."⁹⁶ In the first place, the CLECs are not struggling "mom and pop stores" that

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21 ⁹² See Joint CLEC Br. at 13; Cox Br. at 10.

22 ⁹³ AT&T-3 (Aron Reply, Public) at 47-48.

23 ⁹⁴ Joint CLEC Br. at 2; Cox Br. at 2.

24 ⁹⁵ CLEC-1 (Denney Direct, Public) at 52.

⁹⁶ Cox Br. at 8; Joint CLEC Br. at 11.

1 need subsidies from other carriers to survive.⁹⁷ In 2008, Integra Telecom pulled in annual
2 revenues of \$0.7 billion, while XO reaped \$1.5 billion and PAETEC garnered \$1.6 billion.⁹⁸
3 Thus, the reduction in their access revenues that AT&T proposes here would be a drop in the
4 CLECs' massive revenue buckets: On average, the reduction would be *less than one tenth of one*
5 *percent* of their total revenues and the reduction for each CLEC would be less than half a percent
6 of total revenues in all cases.⁹⁹ That is before one even considers the CLECs' opportunities to
7 recover at least some of those access reductions through rebalancing local rates or other business
8 measures.¹⁰⁰ On the interstate side—where CLECs have over 80% of their access volumes¹⁰¹--
9 the CLECs have done business for years with FCC-ordered "caps" that prevent them from
10 charging interstate access rates that are higher than the rates of the ILECs in whose territories
11 they compete, exactly as AT&T proposes here for the intrastate side.¹⁰² The CLECs have
12 operated in the interstate jurisdiction with such caps since 2001 and there is no reason why they
13 cannot operate the same way in the intrastate jurisdiction.¹⁰³ Also, several states have reduced
14 intrastate access rates and the CLECs have not presented any evidence that they have left any
15 state in which interstate or intrastate access rates were, in fact, reduced over the last decade.¹⁰⁴
16 When asked in discovery to provide support for the contention that a policy to cap CLECs'

17 _____
18 ⁹⁷ AT&T-9 (Oyefusi Reply, Public) at 25.

19 ⁹⁸ AT&T-9 (Oyefusi Reply, Public) at 25 and OAO Reply, Ex. B thereto.

20 ⁹⁹ For Integra, it would be 0.23% of its total 2008 revenues; for PAETEC, it would be 0.02%; for tw telecom,
0.16%; for XO Communications, 0.04%; and for all Joint CLECs taken together, the loss would be 0.09% of their
total 2008 revenues. AT&T-3 (Aron Reply, Public) at 47-48 and n. 67.

21 ¹⁰⁰ AT&T-3 (Aron Reply, Public) at 48.

22 ¹⁰¹ AT&T-9 (Oyefusi Reply, Public) at 25, n. 43. *See also* AT&T-3 (Aron Reply, Public) at 49 (citing CLEC
responses to Staff data request).

23 ¹⁰² AT&T-9 (Oyefusi Reply, Public) at 25.

24 ¹⁰³ AT&T-9 (Oyefusi Reply, Public) at 25-26.

¹⁰⁴ *See* AT&T-3 (Aron Reply, Public) at 34 (citing Joint CLEC discovery responses).

1 access rates has curtailed their ability to compete or expand their networks, the Joint CLECs'
2 witness, Mr. Denney, admitted that he had not performed any analyses to support such a
3 conclusion.¹⁰⁵

4 Second, any responsible CLEC should already have accounted in its business plan for the
5 possibility of reductions in access rates.¹⁰⁶ Publicly traded companies are required by the
6 securities laws to advise their shareholders of all material risks to the business. The Joint
7 CLECs' disclosures make clear that they and their shareholders have been well aware of possible
8 reductions in access rates since 1997 at least.¹⁰⁷ Given the CLECs' own disclosures, the CLECs
9 have considered the effects of potential reductions to access rates and have incorporated that
10 prospect into their business judgment and analysis—and, if they have not, then they have made
11 false disclosures to shareholders or they have been irresponsible and reckless in not planning for
12 the risks they disclosed.¹⁰⁸

13 The CLECs' asserted "precedents" for transition periods are also far off base. It is true
14 that in 2001, the FCC gave CLECs a three-year transition period to implement rate caps, because
15 they had not previously been "held to the regulatory standards imposed on ILECs."¹⁰⁹ The
16 interstate traffic covered by the FCC caps, however, is more than 80% of CLEC access
17 volumes.¹¹⁰ Whatever the merits of establishing a transition period for interstate calls in 2001,
18 that does not support an eight- to ten-year transition period for in-state calls *today*. In-state calls

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20 ¹⁰⁵ *Id.*

21 ¹⁰⁶ AT&T-3 (Aron Reply, Public) at 33.

22 ¹⁰⁷ AT&T-3 (Aron Reply, Public) at 33 and Ex. DJA-R2 thereto (summarizing CLEC disclosures).

23 ¹⁰⁸ See AT&T-3 (Aron Reply, Public) at 33-35.

24 ¹⁰⁹ *FCC Order Capping CLEC Access Charges*, ¶¶ 61-62.

¹¹⁰ AT&T-9 (Oyefusi Reply, Public) at 25, n. 43. See also AT&T-3 (Aron Reply, Public) at 49 (citing CLEC discovery responses).

1 represent a much smaller percentage of CLEC access volume than the interstate calls addressed
2 by the FCC, which comprise over 80% of CLEC access traffic. And today, unlike 2001, CLECs
3 have been operating under interstate rate caps for many years and several states have adopted
4 similar rate caps on the intrastate side.¹¹¹ The CLECs have had ample opportunity to adjust—
5 and they have reaped massive windfalls while Arizona in-state access rates have remained static.
6 No further delay is warranted.

7 Another mark missed is the CLECs' reference to the transition period proposed in the
8 *NBP*.¹¹² The *NBP* is neither legal authority nor precedent; it is a set of recommendations that the
9 FCC has not even begun to consider. The *NBP* recommends phasing out per-minute rates for
10 access charges entirely during Stage Three (2017-2020) of the recommended transition plan,
11 with the intermediate step of achieving equality between interstate and intrastate rates in two to
12 four years. AT&T is not asking the Commission to eliminate in-state access charges, so the
13 CLECs' reference to the *NBP*'s recommended ten-year transition for completing comprehensive
14 access reform is not relevant here.

15 In sum, the CLECs have enjoyed a more than sufficient "glide path" already. The
16 Commission stated its goal of interstate parity nine years ago and it began this proceeding three
17 years ago. During that time, the CLECs could have begun the transition to reasonable,
18 sustainable access rates; instead, they continued to impose and reap excessive access charges that
19 are harmful to Arizona consumers and the competitive marketplace. Delay has brought the
20 CLECs a windfall—at the expense of Arizona consumers who have been paying unnecessarily
21 high rates for intrastate long-distance service. Further delay would minimize the benefits that

22
23 ¹¹¹ AT&T-3 (Aron Reply, Public) at 49-50.

¹¹² Joint CLEC Br. at 12; Cox Br. at 8.

1 consumers would otherwise enjoy as a result of access reform and would perpetuate the already-
2 excessive amount of time that the uneconomically high intrastate access rates in Arizona have
3 distorted competition. It is time to bring relief to Arizona consumers.

4 **4. Adopting AT&T's Proposed Access Reform for CLECs Will Moot**
5 **Qwest's Concern About "Bundled" Switched Access Contracts.**

6 Although Qwest believes switched access agreements between carriers should be
7 allowed, Qwest takes issue with switched agreements, like one between Cox and AT&T, in
8 which an IXC purchases switched access, special access and other services from a CLEC.¹¹³
9 Qwest claims such agreements should be barred as discriminatory. Qwest is wrong. Agreements
10 like those cited by Qwest are simply a form of bundling that is a normal business practice of
11 companies inside and outside the telecommunications industry.¹¹⁴ The remedy for Qwest's
12 concern is not to deprive carriers of their right to contract, but to reform Arizona's intrastate
13 switched access system as proposed by AT&T in this proceeding. Such reform would eliminate
14 much of the need for these agreements by allowing all carriers to receive intrastate switched
15 access services at rational prices.

16 Qwest is correct that Cox and AT&T had an agreement for switched access services and
17 other services, including special access services. Dr. Oyefusi explained during cross-
18 examination that bundling of services is a normal business practice of many companies, both
19 inside and outside the telecommunications industry.¹¹⁵ He also explained that an IXC purchasing
20 a combination of switched and special access services from a local exchange carrier faces risk

21 ¹¹³ Qwest Br. at 42, 44.

22 ¹¹⁴ Since Qwest did not object to allowing these agreements, it appears Qwest is only interested in ensuring that its
23 long-distance affiliate can enjoy the more favorable switched access charges that are included in the bundle without
24 agreeing to buy the whole bundle.

¹¹⁵ HR TR 502.

1 that the volume of special access services purchased may exceed that which is actually used.¹¹⁶
2 These and other risks affect the determination of the prices parties are willing to include in the
3 agreement.

4 In the case of the Cox-AT&T agreement, Qwest's witness, Ms. Hensley Eckert, testified
5 that Cox offered the same contractual arrangement to Qwest.¹¹⁷ Qwest didn't even bother to
6 respond to Cox's offer.¹¹⁸ Those circumstances demonstrate no discrimination and Qwest's
7 present attempt to deprive carriers of their right to contract rings hollow. Qwest does not claim
8 that it did not have the opportunity to get the same bundle as AT&T, only that it was not allowed
9 to cherry pick certain parts of the bundle without buying everything else in the bundle that
10 AT&T was required to buy.

11 While Qwest's call to prohibit bundled contracts lacks merit, AT&T agrees that contracts
12 do not solve the problems of the current intrastate switched access regime in Arizona. Frankly,
13 contractual switched access rates negotiated to date have remained artificially excessive,
14 distorting competition and making wireline long-distance customers pay much more for service
15 than they should. That is because CLECs know that in the absence of an agreement, they can
16 continue to charge their excessive tariffed rates, so there is little incentive to bargain. The way to
17 solve the problem is to reduce ILECs' switched access rates to interstate levels and cap CLEC
18 switched access rates at the ILECs' levels, as proposed by AT&T. This would largely eliminate
19 the need for IXCs to enter into contracts for switched access services, which only mitigate to a
20 small degree the harm caused by excessive access rates.¹¹⁹

21 _____
¹¹⁶ HR TR 503.

22 ¹¹⁷ Q-1 (Hensley Eckert Direct, Public) at 15.

23 ¹¹⁸ *Id.*

24 ¹¹⁹ AT&T-7 (Oyefusi Direct, Public) at 51.

1 **C. The Commission Should Allow ILECs to “Rebalance” Local Rates Up to a**
2 **Reasonable Benchmark, and to Recover the Remaining Access Revenue**
3 **Reductions From the AUSF.**

4 **1. The Commission Need Not and Should Not Delay the Implementation**
5 **of Reform in Order to Implement Formal Rule Changes.**

6 Implementation of AT&T’s proposal is simple. First, the Commission should order
7 ILECs to file tariffs within 60 days of the Commission’s decision, which reduce their intrastate
8 switched access rates to parity, in both structure and level, with their interstate rates. Second, the
9 Commission should order CLECs to file tariffs within 60 days “capping” their intrastate rates at
10 the level of the ILEC with which they compete. In each case, the Commission is simply telling
11 the ILECs and CLECs to do in relation to intrastate traffic what they have already been doing on
12 interstate traffic for years. To enforce its decision, the Commission should also authorize and
13 instruct Staff to bring an order to show cause against any ILEC or CLEC that fails to comply
14 with these directions.

15 With respect to AUSF support, AT&T has proposed amending text for the AUSF Rules
16 (Exhibit 1 to AT&T’s opening brief, and Exhibit C to Dr. Oyefusi’s Reply Testimony, AT&T-9).
17 The Commission should approve that amending text in this Decision and refer those revisions for
18 public notice, comment and adoption in compliance with the Administrative Procedures Act.

19 Formal adoption of the AUSF Rules changes should be straightforward, as the
20 Commission has already assembled a robust record on the issues and will complete a full policy
21 analysis in its Decision here. Accordingly, the time required for public notice and comment on
22 formal AUSF Rules should not be a reason to further delay the implementation of access charge
23 reductions. Staff and Qwest each offer a way for the Commission to avoid such delay. Staff
24 proposes that the Commission permit ILECs to receive temporary AUSF surcharge revenues to
offset access charge reductions on an interim basis, to the extent ILECs require such support

1 before passage of the AUSF Rules amendments.¹²⁰ Qwest, meanwhile, proposes that ILECs be
2 required to reduce their access rates in two steps: (i) the ILECs should reduce their access rates
3 immediately to the extent those reductions can be recovered through increases in local service
4 rates, up to the Commission-approved benchmark, and then (ii) the ILECs should implement the
5 remaining reductions (which would be eligible for AUSF support) upon adoption of formal
6 AUSF Rules.¹²¹ While AT&T disagrees with Staff and Qwest as to the *amount* that ILEC access
7 charges should be reduced and as to whether Qwest should be exempt from reform (*see* Section
8 II.A *supra*), AT&T believes that either of their proposals regarding the *procedure* for
9 implementation would be a reasonable plan to avoid delay. The important thing is that the
10 Commission should avoid further, needless delay in achieving the access reforms it endorsed.

11 **2. The Commission Should Not Delay Reform By Requiring Carriers to**
12 **Demonstrate “Need” Before Receiving AUSF Support.**

13 Staff proposes that carriers be required to demonstrate “need” through a “rate case”
14 before they receive AUSF support.¹²² Qwest also suggests a requirement of “need” to be
15 established through Rule 103 filings.¹²³ ALECA rightly points out that such proceedings “would
16 even further delay access-charge reform” and would impose “a huge, time-consuming, expensive
17 burden.”¹²⁴ AT&T agrees. The Commission should reject such proposals.

18 Staff and Qwest both miss a critical point. Today, Arizona ILECs are already receiving
19 subsidies *without* a showing of need, through in-state access charges that impose a competitive
20 disadvantage on wireline long-distance services and fall ultimately on Arizona consumers.

21 ¹²⁰ Staff Br. at 3.

22 ¹²¹ Qwest Br. at 5-6.

23 ¹²² Staff Br. at 10.

24 ¹²³ Qwest Br. at 39.

¹²⁴ ALECA Br. at 8.

1 Forcing the parties, the Staff and the Commission to slog carrier-by-carrier through numerous
2 rate cases—a process that ALECA estimates will take as long as four more years¹²⁵—means that
3 the existing subsidies would continue unabated. That is simply untenable.

4 Staff also misses the point in arguing that “[t]he simple fact that an ILEC may lose \$50 in
5 access revenues, does not mean that the ILEC needs the whole \$50 repaid in AUSF monies.”¹²⁶
6 AT&T does not propose that all, or even half, of the access revenue reductions it proposes would
7 be recovered through AUSF monies. Rather, the majority of the access revenue reduction—
8 \$36.1 million out of \$56.8 million, or nearly two-thirds—would be recovered by giving ILECs
9 the opportunity to rebalance their local service rates up to an \$18 monthly benchmark.¹²⁷ As
10 Dr. Aron explains, that is the economically efficient solution.¹²⁸ The real-world competitive
11 market for retail local service will then determine whether a given ILEC *should* receive that
12 much for its local service—without contentious rate cases and the costs and delays they would
13 bring.

14 To be sure, AT&T’s proposal also calls for the Commission to use AUSF support as a
15 transitional mechanism for the minority of access reductions in some cases. But, the purpose of
16 such support is not to repay the ILEC; rather, it is to protect consumers from large or sudden
17 increases in local rates. The question, then, is not whether the ILECs need AUSF support, but
18 whether *consumers* need protection. The Commission does not need a series of carrier-by-carrier
19 rate cases to decide on a reasonable benchmark rate for consumers. Indeed, no one disputes that
20 the \$18 benchmark proposed by AT&T is affordable and reasonable.

21 _____
¹²⁵ ALECA Br. at 9.

22 ¹²⁶ Staff Br. at 10.

23 ¹²⁷ AT&T-7 (Oyefusi Direct, Public) at 58, 61.

24 ¹²⁸ AT&T-1 (Aron Direct, Public) at 90-91.

1 Qwest goes nowhere in arguing that “[h]igh AUSF support comes at the expense of
2 ratepayers of all the LECs and IXC’s in the state who pay into the AUSF.”¹²⁹ AT&T’s proposal
3 does not result in “high AUSF support”; indeed, it results in substantially *less* AUSF support
4 than ALECA’s proposal. Also, it is important to stress that while AT&T’s plan involves fewer
5 AUSF dollars, it will give consumers much greater access charge relief. In the first year of
6 AT&T’s plan, total AUSF support will be about \$20 million,¹³⁰ meaning that “the LECs and
7 IXC’s in the state who pay into the AUSF” would contribute only 0.79% of Arizona
8 telecommunications revenues to the fund.¹³¹ By contrast, ALECA’s plan would require a \$32
9 million total payment and a 1.2% contribution factor,¹³² in spite of the fact that it does not give
10 consumers any meaningful relief from in-state access charges. Plainly, AT&T’s proposal gives
11 consumers much more bang for their AUSF buck. Moreover, Qwest again ignores the fact that
12 today’s high access charges place a much heavier subsidy burden on Arizona ratepayers; further,
13 that subsidy burden falls disproportionately on IXC’s and their customers rather than being spread
14 out among the much larger AUSF contribution base.

15 **3. The Commission Should Not Delay Reform to Calibrate Individual**
16 **Benchmarks for Each ILEC.**

17 Just as the Commission should avoid time-consuming rate cases to assess “need,” the
18 Commission should reject Staff’s plan to slog through rate cases in order to set “individualized”
19 benchmarks for each ILEC. AT&T proposes a single Statewide benchmark of \$18. Qwest also
20 proposes a Statewide benchmark, although the monthly amount is different.¹³³ As Dr. Oyefusi

21 ¹²⁹ Qwest Br. at 33.

22 ¹³⁰ AT&T-7 (Oyefusi Direct, Public) at 60-61.

23 ¹³¹ AT&T-7 (Oyefusi Direct, Public) at 59 and Fig. 5.

24 ¹³² AT&T-9 (Oyefusi Reply, Public) at 20 and n. 34.

¹³³ See Qwest Br. at 34.

1 explains, a single Statewide benchmark will save the Commission a great deal of time and
2 effort.¹³⁴ Qwest correctly agrees that individualized benchmarks would “caus[e] an enormous
3 draw on the resources of the Commission.”¹³⁵ In addition, a single benchmark is consistent with
4 the Congressional universal service mandate that rates should be reasonably comparable for
5 similar services in urban and rural areas.¹³⁶

6 A Statewide benchmark has the practical advantage of bringing highly disparate local
7 retail rates closer together so that customers paying higher retail rates receive meaningful relief
8 from having to pay subsidies towards customers with artificially lower retail rates. Qwest
9 concurs that Staff’s individualized benchmark cases “will not work as well as the competing
10 [statewide] benchmark proposals to reduce the subsidies and narrow disparities between the
11 retail rates among the LECs.”¹³⁷

12 4. The Commission Should Reject RUCO’s “Rate Case” Proposals.

13 RUCO tries to make a bad idea worse by proposing that the Commission do *nothing* in
14 this docket and instead use rate cases—not just to determine AUSF support (as Staff and Qwest
15 propose) and rate benchmarks (as Staff proposes) but also to decide whether and by how much to
16 reduce access charges. RUCO’s plan reduces this entire three-year proceeding to a waste of
17 time. Even worse, the Commission will have to reinvent the wheel again and again with rate
18 cases for each ILEC. That makes no sense. Virtually all the parties to this proceeding agree that
19 access reform is needed. The Commission has already adopted the goal of reducing intrastate
20

21 _____
¹³⁴ AT&T-9 (Oyefusi Reply, Public) at 39.

22 ¹³⁵ Qwest Br. at 34.

23 ¹³⁶ AT&T-9 (Oyefusi Reply, Public) at 39.

24 ¹³⁷ Qwest Br. at 34.

1 access rates to parity with the corresponding interstate rates. Arizona consumers should not be
2 forced by RUCO's plan to bear more delay.

3 No one shares RUCO's extreme view that the Commission cannot adjust access charges
4 without a "fair value proceeding."¹³⁸ A fair value assessment is required to determine whether a
5 rate change "result[s] in a rate of return greater or lesser than that established in the [prior] rate
6 hearing."¹³⁹ Here, however, AT&T proposes revenue neutrality: That the Commission
7 rebalance the access rate reductions by giving ILECs the opportunity to (i) raise local service
8 rates up to a reasonable benchmark of \$18 per month and (ii) obtain support from the AUSF for
9 the access revenue reduction that remains, if the opportunity to increase local service rates is not
10 enough to recover the entire reduction in access revenues. There is no need for a fair value
11 proceeding in the context of a revenue-neutral rate adjustment like that proposed by AT&T here.
12 The *Scates* court's holding on fair value assessments is inapplicable, because the rate increase in
13 *Scates* was accompanied by "no concomitant reduction in the charges for other services,"¹⁴⁰ a
14 sharp contrast from the revenue-neutral proposal by AT&T here.

15 Staff correctly "believes that a change to other rates of the company could be made to
16 offset the switched access charge reduction so long as the change in rates was overall revenue
17 neutral outside of a rate case" or that "a revenue neutral change could be accomplished by
18 reducing the companies' switched access rates and using the AUSF on a temporary basis."¹⁴¹ As
19 Staff states: "such a scenario would be permissible under the *Scates* case."¹⁴²

20
21 ¹³⁸ RUCO Br. at 7.

22 ¹³⁹ *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 534, 578 P.2d 612, 615 (Ct. App. 1978).

23 ¹⁴⁰ *Scates*, 118 Ariz. at 534, 578 P.2d at 615.

24 ¹⁴¹ S-1 (Shand Direct, Public) at 28.

¹⁴² *Id.*

1 **5. The Commission Should Not Require Carriers to Increase Local**
2 **Rates Before Receiving AUSF Support.**

3 Despite professing a desire to protect consumers from local rate increases, Qwest
4 proposes that ILECs not be allowed to collect a penny of AUSF support unless and until they
5 raise their local rates up to the full amount of the benchmark.¹⁴³ AT&T disagrees. The
6 Commission should *permit* ILECs to raise their local rates up to the benchmark level, but it
7 should not *require* them to raise their rates by any amount.¹⁴⁴ The benchmark should not be a
8 requirement; rather, it should serve as (i) an upper limit on rate increases and (ii) a way to
9 calculate AUSF support (which is designed to make up for the amount of access reduction *above*
10 the share that the carrier can recover by raising its local rates). A carrier should make its own
11 business judgment about the best way to recover its share of the access revenue reductions—
12 whether that be local rate increases, expense reductions or some other approach.¹⁴⁵ Of course, if
13 an ILEC decides not to use all of its flexibility or raise its rates up to the benchmark level, the
14 Commission should not subsidize the lower retail rates. The Commission should authorize
15 AUSF support only for the portion of access revenue reductions that exceed the benchmark.
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22 ¹⁴³ Qwest Br. at 39.

23 ¹⁴⁴ AT&T-7 (Oyefusi Direct, Public) at 55.

24 ¹⁴⁵ AT&T-7 (Oyefusi Direct, Public) at 62-63.

1 **D. There Is No Basis for the Unfounded Suggestions That Access Charge**
2 **Reductions Will Not “Pass-Through” to Consumers.**

3 There is no dispute that wholesale access charges are a substantial component of the cost
4 of providing retail wireline long-distance service.¹⁴⁶ There also is no dispute that high access
5 charges drive up the cost of long-distance service. Therefore, they force Arizona consumers to
6 pay higher prices for wireline long-distance service than they should.¹⁴⁷ Obviously, reducing the
7 burden of in-state switched access charges will bring lower retail long-distance prices to Arizona.
8 Undisputed economic principles tell us that will be the result and AT&T has presented a wealth
9 of uncontroverted economic data proving this, in fact, has been the case in the many states that
10 have implemented access reform.¹⁴⁸

11 To drive this point home, AT&T has made a *concrete* commitment: Once AT&T’s
12 proposal for interstate parity is implemented, AT&T will (1) eliminate its \$1.49 per line monthly
13 in-state connection fee for stand-alone long-distance customers and (2) reduce its in-state rates
14 for prepaid calling cards to interstate levels.¹⁴⁹ AT&T made the same commitment in New
15 Jersey. Several months ago, the Board of Public Utilities there ordered all LECs to implement
16 interstate parity and AT&T is carrying out its part of the bargain.

17 No one disputes any of these basic facts, yet Staff and the CLECs still suggest uncertainty
18 and propose the Commission impose a vague “pass-through” requirement.¹⁵⁰ These proposals
19 come without any real showing of need or any real discussion of how such a requirement would
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21 ¹⁴⁶ AT&T-1 (Aron Direct, Public) at 56.

22 ¹⁴⁷ AT&T-1 (Aron Direct, Public) at 55.

23 ¹⁴⁸ AT&T-1 (Aron Direct, Public) at 66-67.

24 ¹⁴⁹ AT&T-7 (Oyefusi Direct, Public) at 42.

¹⁵⁰ Staff Br. at 15; CLEC Br. at 14-15.

1 or could work in practice. As demonstrated below, such a pass-through requirement is unjust,
2 unwise and would needlessly complicate the real issue: Reforming access charges.

3 Before proceeding, though, AT&T wishes to correct Staff's misreading of AT&T's
4 voluntary commitment. AT&T has been very plain about what it commits to do and when. *If* the
5 Commission implements AT&T's parity proposal (parity with interstate rates for all incumbent
6 LECs, including Qwest, and parity with the relevant incumbent's rates for competitive LECs),
7 *then* AT&T will eliminate its in-state connection fee and reduce in-state prepaid calling charges
8 to interstate levels.¹⁵¹ Staff's brief, however, makes it sound as if "AT&T has agreed to"
9 eliminate its in-state connection fee if the Commission adopts *any* kind of access reduction for
10 *anyone*—for example, even if the Commission adopts the minimalist step that Staff suggests,
11 which would leave intact the vast bulk of today's excessive access charges (those assessed by
12 Qwest).¹⁵² That is not what AT&T has said. AT&T cannot offer the same immediate benefits in
13 exchange for meaningless reform as it would for meaningful reform. To dispel any possible
14 confusion, AT&T reiterates that it makes no commitment of any kind if the Commission adopts
15 the Staff proposal or any other proposal less than full parity with interstate rates for all.

16 **1. A Pass-Through Requirement Would Be Unworkable.**

17 A "pass-through" requirement is easier said than done. Neither Staff nor the CLECs
18 offer any proposals for how the Commission would *verify* pass-through. Staff simply says that
19 interexchange carriers should be "required to demonstrate" that they have "pass[ed] through to
20 their end users the access charge reductions they receive" through a "filing with the
21

22 _____
23 ¹⁵¹ AT&T-7 (Oyefusi Direct, Public) at 42.

24 ¹⁵² Staff Br. at 15.

1 Commission.”¹⁵³ How would such a demonstration be made? Staff does not provide any
2 guidance.

3 Implementing a “pass-through” requirement would be an administrative nightmare for
4 interexchange carriers and for the Commission. In fact, when asked in discovery whether they
5 have passed through access rate reductions in the states in which they provide long-distance
6 service, the CLECs responded that they did not know and such a determination would require an
7 “extensive special study.”¹⁵⁴

8 Just as the CLECs recognized, there are a number of practical impediments to
9 implementing a pass-through requirement in the real world.¹⁵⁵ On the access charge side, an
10 IXC’s access cost is a combination of the rates charged by each LEC, the particular combination
11 depending on the number of access minutes purchased from each LEC.¹⁵⁶ If all LECs reduce
12 their access rates, the amount by which IXCs’ access expenses decline in total and on a per-
13 minute basis will vary from one IXC to another and from one time period to another.¹⁵⁷ No one
14 can predict in advance how all these factors will play out in the competitive market.

15 With respect to retail long-distance prices, a rational IXC will respond to a reduction in
16 access rates by reducing retail prices, but how it reduces its retail prices could take many
17 forms.¹⁵⁸ An IXC’s retail rate structure consists of multiple rate plans, including discount plans
18 that may be available only for a defined period of time.¹⁵⁹ An IXC could offer discounts on

19 _____
¹⁵³ Staff Br. at 15.

20 ¹⁵⁴ AT&T-3 (Aron Reply, Public) at 89 (citing CLEC discovery responses).

21 ¹⁵⁵ AT&T-3 (Aron Reply, Public) at 86.

22 ¹⁵⁶ AT&T-3 (Aron Reply, Public) at 86-87.

23 ¹⁵⁷ AT&T-3 (Aron Reply, Public) at 87.

24 ¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

1 existing plans for a limited time; it could focus greater resources on encouraging new customers
2 to purchase existing discounted rate plans; it could focus greater resources on encouraging
3 existing customers to switch from existing higher-priced to lower-priced rate plans; it could
4 introduce new rate plans while keeping the old ones; it could reduce volume-sensitive (per
5 minute) rates on existing plans; it could reduce non-volume-sensitive rates on existing plans; it
6 could increase the number of minutes offered for a given flat price; it could expand the times of
7 day in which lower rates apply; or any number of other possibilities.¹⁶⁰ Any or all of these rate
8 changes would decrease the average price paid by customers for long-distance services.¹⁶¹ The
9 precise mix chosen will inevitably require market research and trial and error.¹⁶² Like any rate
10 change, the effects on customers' demand and usage—and, therefore, the effect on average and
11 total retail revenues—is uncertain for the IXC and variable over time.¹⁶³ AT&T may offer new,
12 lower priced calling plans, but there is no way to know how competitors (and end users) will
13 respond; no way to know how many end users will take advantage of the new calling plans; and,
14 thus, no way to know what the dollar savings for end users will be.

15 So, in advance, there is no way for any IXC to know what effect access charge reductions
16 will have on access cost and what effect retail price plan changes will have on price. As a result,
17 there is no basis to require an IXC to make the two reach an equal result.

18 **2. Because the Market Naturally Results in Pass-Through, There is No**
19 **Need to Require an Artificial "Pass-Through" Demonstration.**

20 Just as important as these problematic implementation issues is the fact that a pass-
21 through requirement is unnecessary. There is no need for the Commission to mandate what a

22 ¹⁶⁰ AT&T-3 (Aron Reply, Public) at 87.

23 ¹⁶¹ *Id.*

24 ¹⁶² AT&T-3 (Aron Reply, Public) at 87-88.

¹⁶³ AT&T-3 (Aron Reply, Public) at 88.

1 properly functioning market (free of implicit subsidies, such as those embedded in intrastate
2 access charges) will do naturally on its own. Under basic economic principles, when the
3 incremental cost of producing something goes down, a company *increases* its profits by *lowering*
4 its prices (all else equal) to stimulate demand.¹⁶⁴ This is an elementary economic and
5 mathematic principle that is true, even for a company that faces no competition whatsoever.¹⁶⁵ It
6 is the straightforward consequence of profit maximization: Regardless of competitive pressures
7 on prices, the profit maximizing response to a decrease in incremental costs is a decrease in
8 price, all else equal.¹⁶⁶

9 Of course, competitive pressures reinforce the incentive to lower prices when incremental
10 costs fall.¹⁶⁷ A company whose incremental cost decreases has an opportunity to compete more
11 effectively and still cover costs by lowering its prices.¹⁶⁸ This induces other competitors to lower
12 their prices, too, so that they can meet the lower-priced rival and maintain their market position.¹⁶⁹
13 Hence, incentives for profit maximization and competitive pressures both work in the same
14 direction to induce companies to decrease prices when their incremental costs fall; both forces
15 reinforce one another.¹⁷⁰

16 Besides basic economics and common sense, a wealth of empirical evidence
17 demonstrates that declines in access charges lead to lower long-distance prices without any
18 “pass-through” mandate. Dr. Aron, an expert economist, has presented a comprehensive analysis

19 _____
20 ¹⁶⁴ AT&T-1 (Aron Direct, Public) at 66.

21 ¹⁶⁵ *Id.*

22 ¹⁶⁶ *Id.*

23 ¹⁶⁷ AT&T-1 (Aron Direct, Public) at 66-67.

24 ¹⁶⁸ *Id.*

¹⁶⁹ AT&T-1 (Aron Direct, Public) at 67.

¹⁷⁰ *Id.*

1 of historical data of AT&T's intrastate access costs and intrastate long-distance prices from
2 2004-2008 for all 50 states.¹⁷¹ Dr. Aron's analysis found a strong positive correlation between
3 AT&T's intrastate access cost and AT&T's intrastate long-distance price: In states or years
4 where the access cost is higher, the long-distance price charged also tends to be higher.¹⁷² To
5 redouble the point, FCC historical data since 1996 show that interstate long-distance prices
6 decreased in step as per-minute interstate access charges decreased.¹⁷³ Based on a statistical
7 regression analysis of data from all 50 states, Dr. Aron predicted that reducing intrastate access
8 rates to "parity" with the corresponding interstate rates would result in a reduction of 19-42%
9 from AT&T's current intrastate long-distance prices in Arizona.¹⁷⁴

10 Staff and the CLECs have had almost a year to produce an economic study or any
11 economic data to counter this wealth of evidence, but have not done so. Many other states have
12 reduced access charges. If there were any real question regarding "pass-through" in any one of
13 those states, one would have expected the advocates of a "pass-through" requirement to produce
14 *some* evidence. They have produced none. The Commission should act on AT&T's mountain of
15 uncontested economic evidence and on AT&T's undisputed economic principle, rather than
16 innuendo and speculation.

17 In sum, all the evidence—which the proponents of a "pass-through" mandate ignore—
18 shows that pass-through will occur naturally as access charges decrease. There is no need to
19 impose a pass-through mandate, particularly where such a mandate would be unworkable and
20 improper (because it imposes an artificial regulatory burden on IXC's with no additional benefit).

21 _____
171 AT&T-1 (Aron Direct, Public) at 60-65.

22 172 AT&T-1 (Aron Direct, Public) at 61-62 and Fig. 6.

23 173 AT&T-1 (Aron Direct, Public) at 58-59 and Fig. 5.

24 174 AT&T-1 (Aron Direct, Public) at 65.

1 **III. CONCLUSION**

2 There is widespread agreement among the parties to this proceeding that the current
3 system of high intrastate access charges—which was set up to support universal service in the
4 monopoly era—simply cannot continue to support it. Revenues are relentlessly dwindling as
5 consumers avoid Arizona intrastate switched access rates that run as high as 13 cents per minute.
6 Reform addresses other problems as well, including higher long-distance prices for consumers,
7 the economic irrationality of the current subsidy system and the traffic pumping, arbitrage and
8 traffic disguise schemes the present system invites.

9 Meaningful reform is needed now. AT&T has offered a balanced approach for that
10 reform. We ask that the Commission enter its Decision covering the seven subject areas stated at
11 page 41 of AT&T's Post-Hearing Brief which, for convenience, is attached as Exhibit A.

12 RESPECTFULLY SUBMITTED this 14th day of September, 2010.

13 GALLAGHER & KENNEDY, P.A.

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21 **Original and 15 copies** of the foregoing
22 filed this 14th day of September, 2010, with:

23 Docket Control
24 Arizona Corporation Commission
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1 **Copies** of the foregoing delivered
this 14th day of September, 2010, to:

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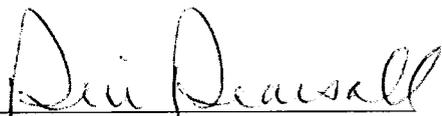
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EXHIBIT A

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
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

POST-HEARING BRIEF OF AT&T

PUBLIC VERSION

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1 carrier of last resort obligations. They are not required to serve residential subscribers. They
2 entered the market at a time when they should have known that competitive forces had the ability
3 to impact their business plans.”¹⁸⁵ Thus, he succinctly concluded, “CLECs should not in any
4 way, shape or form be entitled to recover those revenues from a state fund.”¹⁸⁶

5 **IV. CONCLUSION**

6 AT&T respectfully requests that the Commission enter its Decision:

7 (1) directing the ILECs to file a tariff reducing their intrastate switched access rates to
8 parity with their corresponding interstate rates, within 60 days of the effective date of its
9 Decision, and to maintain that parity with interstate rates in the future;

10 (2) directing the CLECs to file a tariff “capping” their intrastate switched access rates
11 at the level of the corresponding rates of the ILECs with which they compete, within 60 days of
12 the effective date of its Decision, and to maintain that parity with the ILEC’s rates in the future;

13 (3) authorizing and instructing Staff to bring an order to show cause against any
14 ILEC or CLEC which does not file tariffs as specified above;

15 (4) authorizing ILECs and CLECs to file for approval adjustments to local rates or
16 maximum local rates on a revenue neutral basis to offset access revenue reductions;

17 (5) authorizing ILECs to seek temporary AUSF support under the existing AUSF
18 Rules, if necessary, to offset access revenue reductions;

19 (6) adopting proposed modifications to the AUSF Rules as described herein and as
20 attached as Exhibit 1; and

21 (7) referring the proposed modifications to the AUSF Rules for public notice,
22 comment and adoption pursuant to the Administrative Procedures Act.

23 ¹⁸⁵ HR TR 415.

24 ¹⁸⁶ HR TR 399.