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BEFORE THE ARIZONA CORPORATION COMMISSION

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2010 SEP 14 P 4: 23

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

SEP 14 2010

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

DOCKET NO. RT-00000H-97-0137

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

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION AND QWEST
COMMUNICATIONS COMPANY LLC
JOINT REPLY BRIEF**

Qwest Corporation ("QC") and Qwest Communications Company LLC ("QCC") (together referred to below as "Qwest"), jointly file their Reply Brief following the evidentiary hearing held in these consolidated dockets on March 16-18, 2010.

I. The Commission Should Immediately Cap CLEC Switched Access Rates, at the Level of Qwest's Intrastate Rates

The Joint CLECs and Cox have made a number of unpersuasive arguments in their effort to protect the high rates they levy on IXCs for switched access¹ in Arizona. As Qwest noted in its Initial Brief, the CLECs' access charges are ripe for reform. Upon reflection and examination of the initial briefs of the other participants, Qwest believes that it has understated its case in that regard. Qwest believes that even if the Arizona

¹ Throughout this Reply Brief, unless the context indicates otherwise, reference to "access" or to "switched access" shall mean intrastate switched access.

1 Corporation Commission (the "Commission") decides that broader reform is not going to
2 proceed now, the Commission must address the unreasonable and unjust rates that
3 CLECs are charging for switched access.

4 Qwest commends Verizon for the excellent points it makes in Section III of its
5 Initial Brief, pp. 6-46, and Qwest endorses Verizon's arguments in that regard. It would
6 not add qualitatively for Qwest to restate those arguments and exhaustive references to
7 legal authority. However, Qwest does wish to touch on the Joint CLECs' comments
8 about due process and procedure. The Joint CLECs state that due process requires the
9 Commission to give each carrier notice of intention to decrease intrastate switched access
10 rates, and an opportunity to be heard.² The Joint CLECs go on to argue that access
11 charges cannot be reduced in this docket—"certainly not at this point." They contend the
12 Commission has not set forth a specific proposal on intrastate access charges.³ Qwest
13 agrees that the Commission may not order a change to a particular CLEC's access rates
14 in this docket; however, Qwest does believe that the Commission may proceed in this
15 docket to identify the target levels for CLECs' intrastate switched access rates, which is a
16 matter of legislative policy. Further, the Commission may certainly lay down the precise
17 process by which the Commission will implement those policies.

18 The Joint CLECs' contend that there should be another proceeding—a
19 rulemaking—to determine the target rate, or as the Joint CLECs call it, the "default" rate,
20 that would apply, provided that each CLEC has the opportunity to prove that its intrastate
21 access rate should be higher than the default rate.⁴ However, it would be strange and
22 completely redundant to convene another proceeding to investigate access rates in
23 Arizona when that was the avowed and noticed purpose of this Investigation. When the
24

25 ² Initial Brief of Joint CLECs, 6:24—7:2.

26 ³ *Id.*, 7:26—8:1.

⁴ *Id.*, 2:20-22.

1 Commission set the evidentiary hearing, it specifically stated that the hearing will cover
2 “to what target level should access rates be reduced.”⁵ It would also be unnecessary to
3 embody “default rates” for access (which the CLECs concede the Commission may do),
4 in a “rule.” The Joint CLECs are wrong about the need for an additional proceeding to
5 do the very thing this proceeding sets out to accomplish.

6 The instant proceeding is quite similar to how other states have gone about access
7 reductions. Verizon has collected an impressive library of authority in its Initial Brief,
8 showing the clear state regulatory trend in the direction of limiting CLEC access rates to
9 a benchmark determined by the ILECs’ rates, with only a few exceptions.⁶ The many
10 states that have acted with regard to intrastate access rate levels have done so through
11 various means—including legislative enactments, administrative rules, or what may be
12 viewed as generic investigations or dockets. The instant proceeding has much in
13 common with those other states’ proceedings.

14 Another specific point Qwest wishes to address in reply concerns the process that
15 would follow the setting of a target rate for the CLECs. Qwest agrees with the proposed
16 ordering language stated on page 27 of the Verizon Initial Brief, with one modification
17 which is discussed below. Qwest agrees with Verizon, AT&T, and Sprint that the
18 CLECs’ access rates are unreasonable, for all of the reasons those parties conveyed at the
19 hearing and in their briefs. Chief among those reasons is that the access regime provides
20 an implicit subsidy to LECs to defray the costs of local service, but the CLECs do not
21 have the obligation to serve or the costs of a universal service network. These reasons
22 support the entry of an order setting the target rate to not exceed Qwest’s composite rate.
23 However, it would seem prudent for the Commission to make provision for the
24 possibility, however remote, that an individual CLEC may have costs that are

25 ⁵ Procedural Order dated Sept. 29, 2009, at 4:21-24.

26 ⁶ Verizon Initial Brief, pp. 24-27.

1 extraordinary, and that such costs may justify a higher rate. Accordingly, Qwest
2 proposes that the ordering language be amended to add the concept that the Commission
3 may approve a higher rate for a specific CLEC upon a showing that such CLEC's costs
4 support the higher rate. With that modification, and subject to Qwest's comments in
5 Section IV below in regard to contracts for switched access services, Qwest also agrees
6 with Verizon's proposed Process for Reducing CLEC Access Rates (Verizon Initial
7 Brief, pp. 72-74).

8 **II. Statewide Benchmark Proposals, Contrary to Staff's Understanding,**
9 **Are Appropriate and Do Not Result in a Uniform Statewide Rate**

10 The Staff asks the Commission to reject the adoption of a statewide benchmark or
11 national rate for access for the rural ILECs, based upon the Staff's apparent
12 understanding that such proposals will result in a uniform statewide local service rate.
13 Staff's understanding is incorrect. Qwest's statewide benchmark proposal would operate
14 only with respect to the amount of access revenue that a LEC seeks to recover through
15 AUSF. A couple of examples may help.

16 Assume that the residential benchmark is \$16.48.⁷ If a rural LEC's existing retail
17 rate is \$9.25, and it will forgo \$3 per line in revenue from access reductions, then under
18 the Qwest benchmarking proposal the LEC could increase its local rate to \$12.25.

19 Using the same benchmark of \$16.48, if the rural LEC's existing retail residential
20 rate is \$24.46, and it is going to lose \$5 per line in revenue from access reductions, then
21 under the Qwest benchmarking proposal that LEC would still have a \$24.46 local rate,
22 and it would increase its other retail rates, or go to the AUSF to seek its access recovery.

23 Only in one circumstance will the Qwest benchmark proposal become the retail
24 rate. That circumstance arises when the rural LEC's current retail rate is below the
25 benchmark, and the recovery of the access reduction by way of local rates would result in

26 ⁷ Copeland Direct, Hearing Exhibit Q-7, p. 6.

1 an increase equal to or above the benchmark. Qwest acknowledges that such a result
2 might apply to several of the rural carriers. However, it is clear that the benchmark
3 proposal does not lead to a universal retail rate. Nor would application of the benchmark
4 ignore the disparate costs of providing service.⁸

5 **III. The Commission Should Continue to Resist the Urging of AT&T and**
6 **Sprint to Address Qwest's Access Rates Now**

7 Although the Commission already ruled in this Docket that Qwest Corporation's
8 intrastate switched access rates are not the subject of this Docket,⁹ AT&T and Sprint
9 continue to beat that drum. AT&T distorts Qwest's positions, and wrongly claims that
10 Qwest has assumed a "not in my back yard", "don't look at me", "self-serving" approach.
11 AT&T displays great nerve in throwing out allegations that any party's position in this
12 docket is "self serving." The access reductions AT&T seeks others to make will improve
13 its profit line by many millions of dollars, without making a promise to flow the savings
14 through to its customers. Further, to the extent that AT&T's campaign to reduce its costs
15 causes local rates to increase, AT&T stands to gain customers for its popular wireless
16 business, when wireline customers "cut the cord." (Hearing Transcript, page 513, lines
17 2-22.) Qwest submits that when AT&T decided to call Qwest's proposal "self serving,"
18 AT&T had drunk too deeply of its own rhetoric, and perceived its positions to be more
19 superior than a sober view would reveal.

20 When AT&T says Qwest's position is "not in my backyard," AT&T neglects to
21 acknowledge Qwest's repeated statements that it is not immune from further access rate
22 reductions, but that access reductions must be managed in phases over time.¹⁰ AT&T

23 _____
24 ⁸In any event, it is not clear what policy harm would follow from having a retail rate that
is common to several different rural LECs.

25 ⁹ Procedural Order, dated September 29, 2009, p. 6.

26 ¹⁰ See, for example, Qwest Corporation's Responsive Comments Regarding Scope of
Phase II, March 5, 2009, Page 3, lines 9-21. Docket No. RT-00000H-97-0137.

1 ignores the previous access reductions taken by Qwest (and no other LEC) at the urging
2 of AT&T. AT&T ignores how those reductions by Qwest while all other LECs in the
3 state were untouched, resulted in even greater rate disparities between and among
4 Arizona LECs. AT&T disregards the fact that its advocacy to go after Qwest's rates but
5 no others in these very dockets prior to 2007, and the resulting disparity of access rates,
6 has resulted in significantly increased risk of traffic mischaracterization, and incentive for
7 traffic pumpers to stimulate intrastate minutes of use.

8 AT&T decries QC's rates as too high, but fails to explain why it dropped out of
9 Qwest's last Price Cap Plan proceeding, during which access rates were squarely before
10 the Commission.¹¹ Instead, AT&T spent its time working out secret agreements with
11 CLECs, outside of the Commission's view, arriving at special deals that were available
12 only to AT&T. AT&T's attempts to portray Qwest in a negative way don't wash.

13 Neither AT&T nor Sprint gives much support to the principles of gradualism that
14 Staff and RUCO emphasize. Although AT&T claims its position provides for a "glide
15 path,"¹² at the same time it asks that the access rate reductions be implemented
16 immediately. Sprint is opposed to having subsequent phases (Sprint Brief pp. 30-33),
17 thereby eliminating the opportunity for stepped reductions.

18 The record shows that the rates of rural LECs right now are massively high in
19 comparison to the Qwest rate.¹³ The demand of AT&T and Sprint for all carriers to
20 reduce their rates even deeper than to the current Qwest rate—would be an even more
21 precipitous plunge for the LECs, their customers, and potentially the AUSF, to contend
22 with. The better course of action is that proposed by Qwest—a measured, stepped

23
24 ¹¹ AT&T and TCG's Motion for Leave to Withdraw as Intervenors. October 7, 2004.
Docket No. T-01051B-03-0454.

25 ¹² AT&T Initial Brief, pages 30-31.

26 ¹³ See, Highly Confidential Direct Testimony of Dr. Debra Aron, Hearing Ex. AT&T 1-
Confidential.

1 reduction of all other carriers to the already-lowered Qwest rate levels, followed by
2 further reductions in a subsequent phase.

3 **IV. Arizona Should Permit Contracted Switched Access, Provided that**
4 **the Agreements Are Published, and that the Same Rates, Terms and**
5 **Conditions Are Extended to All IXC's in a Non-Discriminatory**
6 **Manner; However, Agreements that Modify the Rates for Switched**
7 **Access Based on the Purchase of Other Services Should Be Banned.**

8 There is general consensus among the parties commenting on whether Arizona
9 should allow local exchange carriers to contract for switched access. The comments
10 agree that such contracts should be allowed, and that the contracts should be made public,
11 and that the terms and conditions should be available to all IXCs on a nondiscriminatory
12 basis. The Staff and Verizon state that the LEC¹⁴ must modify its tariffs to allow for such
13 agreements, to allow ICB pricing. Qwest does not disagree with that.

14 However, none of the other parties addressed the second level of concern raised,
15 regarding some carriers' contract discounts of switched access based on purchases of
16 services unrelated to switched access. Those other services may be competitive services,
17 and may be non-jurisdictional. For the reasons stated in Qwest's Initial Brief, it is unjust
18 and unreasonable to discount local exchange access rates, which the testimony
19 demonstrates are bottleneck, monopoly services, based on the purchase of unrelated,
20 competitive services such as special access.¹⁵ But, that is just what Cox admitted it has
21 done in its contract with AT&T.¹⁶

22 Further, Cox has recently filed a tariff, which has not been approved, in which it

23 ¹⁴ Verizon couches its comments in terms of CLECs contracting with IXCs. It is not
24 clear whether Verizon intends to restrict ILECs from contracting in the same manner, but
25 if so, such a limitation is not supported. If contracting for ICB pricing is permitted, it
26 should be permitted for all LECs.

¹⁵ Qwest Initial Brief, p. 44

¹⁶ See, Cox response to Qwest Communications Company, LLC's 1st Set of Data
Requests. Response 1.4, November 5, 2009, quoted in Direct Testimony of Lisa Hensley
Eckert, Hearing Ex. Q-1.

1 proposes to extend discounts to its switched access rates based on the amount of
2 "Dedicated and Ethernet services that the [IXC] purchases."¹⁷ Qwest has moved to
3 intervene in that tariff matter, and has protested the filing. A copy of that intervention
4 and protest is attached to this Brief, as Attachment 1. Qwest contends that the statutory
5 prohibition against discrimination cannot be overcome by tariffs. However, the better
6 course of action is for the Commission to expressly condition its decision allowing
7 contracted rates on the safeguards discussed herein. The Commission should state that
8 contracts are allowed, only upon the condition that there is a tariff for a rate that is
9 available without contract; that the contracts must be made public; that the same terms
10 and conditions in any such contract must be available on a nondiscriminatory basis; and
11 that the contracted rate shall not be dependent upon the purchase of services other than
12 intrastate switched access.

13 CONCLUSION

14 The Commission should take a measured, balanced approach to access reform,
15 with phased and stepped implementation. The goal of this phase should be to establish
16 the Qwest switched access rates as the target for all LECs. Qwest's proposals are the best
17 suited to accomplish the policy goals identified, satisfy the public interest, and should be
18 adopted.

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

20 QWEST CORPORATION

21
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¹⁷ Cox Tariff Application, April 6, 2010. Docket No. T-03471A-10-0132

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ATTACHMENT 1

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INTERVENTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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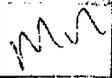
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Arizona Corporation Commission

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APR 22 2010

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**IN THE MATTER OF THE APPLICATION
OF COX ARIZONA TELCOM, L.L.C. TARIFF
FILING TO ADD SWITCHED ACCESS
SERVICES CONTRACT**

DOCKET NO. T-03471A-10-0132

**QWEST COMMUNICATIONS
COMPANY, LLC PROTEST AND
APPLICATION FOR LEAVE TO
INTERVENE**

**MOTION TO SUSPEND COX
ARIZONA TELCOM, L.L.C. TARIFF
REVISIONS AND TO HOLD
HEARINGS**

Expedited Consideration Requested

PROTEST AND APPLICATION FOR LEAVE TO INTERVENE

Qwest Communications Company, LLC ("QCC") protests the Cox Arizona Telecom, L.L.C. Tariff Filing to Add Switched Access Services Contract, and seeks leave to intervene in the docket. In support of its protest and application, QCC states:

QCC is organized under the laws of the State of Delaware with its principal place of business at 1801 California Street, Denver, Colorado. QCC is qualified to do business in Arizona, and is a telecommunications carrier certified to provide telecommunications services in Arizona, pursuant to orders of the Arizona Corporation Commission (the "Commission").¹ Specifically relevant to this proceeding, QCC is an interexchange carrier ("IXC"), providing long

¹ Arizona Corporation Commission Decision Nos. 66612 and 68447.

1 distance telecommunications services throughout the State of Arizona.

2 In order to provide long distance services to their customers, IXCs typically must
3 purchase switched access service from the carrier that provides local exchange service. A
4 residential customer, for example, will subscribe to local telephone service from a local
5 exchange carrier (a "LEC"), which may be an incumbent local exchange carrier ("ILEC") or a
6 competitive local exchange carrier ("CLEC"). Under long-standing laws that established
7 competition in the long distance telephone market, the LEC must provide access to the
8 customer's selected IXC, so that long distance calls that are made by the customer originate on
9 the local telephone network and are routed to the IXC's network. In reverse, calls that are sent
10 from long distance carriers to the customer must be terminated on the local network. It would be
11 prohibitively expensive for every IXC to have its own wire to each customer. Local access, both
12 originating and terminating, is most commonly accomplished by switching connections made by
13 the LEC. The service is called switched access.

14 Intrastate switched access services are subject to the jurisdiction of the Commission, and
15 the rates are embodied in tariffs filed by ILECs and CLECs. The switched access charges
16 represent a significant expense to IXCs. The Commission is actively involved in a generic
17 investigation into the cost of switched access services provided by CLECs and other types of
18 LECs (the "Access Charge Investigation").² Although the telecommunications services CLECs
19 provide to end users are competitive, IXCs must access their customers by going through the
20 CLECs' switched access services. Testimony in the Access Charge Investigation establishes that
21 intrastate switched access service provided by every LEC is a non-competitive, bottleneck
22 service.³

23
24 ² In The Matter Of The Investigation Of The Cost Of Telecommunications Access, Docket No.
RT-00000H-97-0137 and T-00000D-00-0672, (the "Access Charge Investigation").

25 ³ AT&T witness Dr. Debra Aron, testified as follows:

26 **Q: SHOULD CLEC RATES BE CAPPED AT THE LEVEL OF THE ILEC
WITH WHICH THEY COMPETE?**

1 Cox Arizona Telcom, L.L.C. ("Cox") is a CLEC which provides switched access services
2 to IXCs in the State of Arizona. If QCC (or any IXC) wishes to provide long distance services to
3 an end user for a call that originates or terminates on the Cox network, QCC is required to use
4 Cox's switched access service and to pay Cox's tariff rates. By its Application, Cox proposes to
5 amend its switched access service tariff in a manner that will provide select IXCs (certainly not
6 all IXCs) significantly lower rates for switched access services in Arizona based on the purchase
7 of wholly unrelated competitive services, which may have been provided in other states or as an
8 interstate service. Disparities in switched access costs among IXCs will directly affect QCC's
9 bottom line and its ability to compete in the long distance market. As discussed below in QCC's
10 Motion for Suspension of Cox's Tariff, significant factual and legal issues are presented by
11 Cox's proposed tariff revisions. Disparities based on unreasonable distinctions are unjust,
12 unreasonable, and unlawfully discriminatory.

13 Cox's Application will affect the rates charged to QCC and to QCC's IXC competitors.
14 QCC has a direct and substantial interest in Cox's Application, and QCC will be potentially
15 adversely affected without its intervention. To QCC's knowledge, no other carriers have
16 intervened in this proceeding, so the interests and perspective of IXCs will not be adequately

17
18 A: Yes.

19 **Q: BUT AREN'T CLEC ACCESS RATES DISCIPLINED BY COMPETITION?**
20 A. No, they are not. CLECs, as well as ILECs, possess market power in the provision of
21 switched access service. The fact that CLECs face extensive competition in the retail
22 market for *local exchange service* does not render the market for wholesale *switched*
23 *access* service competitive. This is because (i) IXCs cannot choose which local carrier will
24 originate or terminate their end users' calls; (ii) the party that does make the choice of local
25 carriers (the IXC's end-use customer or the person the customer calls) is not the party that
26 pays for switched access service (the IXC); and (iii) regulatory restrictions on long distance
price de-averaging, as well as logistical restrictions on doing so prevent IXCs from
charging a customer more for a particular call based on the access charges that will apply to
that specific call; therefore IXCs cannot send a price signal to the end users to discourage
them from choosing (or calling people who choose) LECs with high access charges.
Direct Testimony of Dr. Debra J. Aron, Access Charges Investigation, Docket No. RT-00000H-
97-0137 and T-00000D-00-0672, December 1, 2009, p. 86.

1 represented without participation by QCC. Granting QCC's application for intervention will not
2 unduly broaden the issues presented. QCC's application for intervention should be approved.

3
4 **MOTION TO SUSPEND COX'S TARIFF REVISION AND TO HOLD**
5 **HEARINGS TO DETERMINE WHETHER THE PROPOSED TARIFF IS JUST,**
6 **REASONABLE, AND NON-DISCRIMINATORY**

7 Qwest Communications Company, LLC ("QCC") moves for an order suspending Cox's
8 proposed tariff revision, pursuant to A.R.S. Section 40-250. QCC further requests that a hearing
9 be held to determine whether the proposed tariff revisions are just, reasonable, and non-
10 discriminatory.

11 Cox proposes to amend its intrastate switched access rates by providing a graduated scale
12 of discounts that range as high as 65%. The level of discount depends on the amount of
13 "Dedicated and Ethernet Services that the [IXC] purchases" on a monthly basis.⁴ The proposed
14 tariff does not give an explanation of "dedicated" or "ethernet" services; however, upon
15 information and belief, "dedicated service" likely is synonymous with special access. Special
16 access is a private line that directly connects the IXC network to its customer, bypassing the
17 LEC's switching service. The provision of special access has no bearing on Cox's provision of
18 switched access service. QCC is aware of no study or analysis supporting a conclusion that the
19 cost of providing tandem-routed switched access to a particular IXC is in any way reduced by the
20 LEC providing special access circuits to such IXC. Further, while switched access is undeniably
21 a non-competitive, bottleneck service, special access is considered to be a competitive service.
22 In the Access Charges Investigation, Cox's Regional Vice President agreed, in response to cross-
23 examination by the undersigned:

24 Q. Now, without discussing Cox's specific rate, I will just throw
25 out a hypothetical and say, we will say for talking purposes here that Cox's
intrastate termination access charges is 5 cents a minute. Okay? Is the

26 ⁴ Cox proposed Tariff No. 2, Second Revised Page 70, Section 6.2.1.

1 sense of Cox's response here, does it mean that if AT&T purchases more of
2 some other service -- and that is in this case special access -- that the actual
3 rate for switched access goes down or is discounted?

4 A. The effective rate for the switched access would be discounted
5 based on the purchase of special access services.

6 Q. Are there any other services that the agreement might address
7 that would discount Cox's switched access rate?

8 A. I don't have the contract in front of me, but there may be other
9 competitive services included in that agreement.

10 Q. And I think you are right when you say other competitive
11 services. Do you agree that special access is a service that a carrier can
12 choose to purchase either from Cox or from some other carrier, depending
13 upon the circumstances?

14 A. Yes. The services, the special access services or transport services, if you
15 will, that we offer are also offered by other carriers, including Qwest.⁵

16 Special access is provided on both an intrastate and interstate basis. Cox's proposed
17 tariff does not distinguish between interstate and intrastate jurisdiction special access. Thus, Cox
18 apparently is proposing to discount the rate for its non-competitive intrastate switched access
19 based upon the IXC customer's purchases of wholly-unrelated, competitive, non-jurisdictional
20 services. QCC disputes the appropriateness or lawfulness of this practice, and urges the
21 Commission to investigate the matter.

22 It is less clear what Cox means by "ethernet service." QCC believes that Cox provides
23 ethernet technology to customers through metro optical ethernet networks, enabling internet
24 access and wide area networking to customers. These types of services are generally considered
25 competitive, and interstate. This proposal would again discount non-competitive intrastate
26 switched access rates, based upon the amount of purchases by the customer of competitive,
interstate services.

Furthermore, it is not clear whether the purchases of "dedicated and ethernet services"

⁵ March 16, 2010 Hearing transcript, Access Charge Investigation, Docket No. RT-00000H-97-0137 and T-00000D-00-0672, Tr. 240-241.

1 that qualify the purchaser to receive a discount for switched access services in Arizona, must
2 have been based on Arizona transactions. Thus, purchase of ethernet services from Cox in
3 Georgia, for example, may result in a discount in the Arizona switched access rates.

4 Cox's proposal is not clear about the nature of the services that qualify for the discount,
5 and how those discounts are calculated. A hearing on those factual questions would benefit the
6 Commission in its evaluation.

7 Significant factual, legal, and policy questions are raised by Cox's proposed tariff
8 revisions. These include, but are not limited to, the following:

9 **1) *Is it lawful to condition a discount to the rate for a bottleneck service on the***
10 ***purchase of large quantities of an unrelated, competitive, non-jurisdictional service?***

11 Cox proposes to lower the price of its noncompetitive services (those that IXCs have no
12 choice to forgo) in exchange for the purchase of competitive services (those that IXCs can get
13 from other vendors). Such arrangements are of doubtful lawfulness under the "just and
14 reasonable" standard. Under Arizona law, all providers of switched access (including Cox and
15 other CLECs) are required to provide switched access on a nondiscriminatory basis.⁶ It is
16 unlawful for Cox to favor one class of switched access customers over another, absent
17 demonstration of a sound economic basis for such distinctions. As discussed above, Cox's cost
18 of providing switched access to an IXC (e.g., AT&T) does not vary depending upon whether
19 AT&T purchases one special access circuit from Cox or whether it purchases ten thousand
20 special access circuits. Cox should not be able to discriminate in favor of AT&T when there is
21 no difference in cost to provide the same intrastate switched access to AT&T as it provides to
22 QCC, or any IXC. As this matter proceeds to hearing, Cox should be required to identify and
23 support its cost or other economic basis for conditioning this potentially-massive rate distinction
24 on the purchase of unrelated special access services. In the absence of such a showing, the tariff
25 should be rejected.

26 ⁶ A.A.C. R14-2-1111. Requirement for IntraLATA Equal Access

1 Further, it is unclear whether a national IXC such as AT&T might qualify for the
2 switched access discount in Arizona based on its purchases of interstate special access circuits
3 provisioned in some other state. Discounts based on such purchases are unjust, unreasonable,
4 and discriminatory, and any tariff revisions featuring such discounts should be rejected.

5 2) *Is this tariff discount plan designed to favor a single IXC?*

6 To qualify for *any* discount off of Cox's tariff switched access rates, an IXC must
7 purchase at least \$575,000 worth of "Dedicated and Ethernet" services *each month*.
8 Significantly larger discounts are provided, culminating in a potential discount of 65%, as the
9 IXC purchases more and more special access from Cox each month. It should be obvious from
10 the face of the proposed tariff that very few IXCs are large enough to require the purchase of so
11 many special access circuits from Cox on a monthly basis. In evaluating Cox's proposed
12 discount program, the Commission should fully investigate current purchase levels from Arizona
13 IXCs to determine whether this program will benefit only a single IXC, a small subset of IXCs or
14 numerous IXCs. On information and belief, QCC assumes that it is possible that only one IXC
15 will benefit from the purported discount program, in which case the Commission should be
16 particularly concerned about Cox's motivation and good faith in presenting this program as a
17 ubiquitously available alternative. The Commission should likewise scrutinize how this proposal
18 relates to any unfiled, off-tariff agreements, if any, that Cox may have entered with Arizona
19 IXCs.

20 3) *Is Cox simply attempting an end-run around the Commission's pending Access*
21 *Charge Investigation through this tariff filing?*

22 Cox's proposal appears to be an end-run around the Access Charge Investigation that the
23 Commission is currently conducting. In the Access Charge Investigation, the Commission is
24 investigating whether LECs should be permitted to alter the rates specified in their respective
25 filed tariffs by private contracts. The Qwest companies' advocacy in the Access Charge
26 Investigation is that such contracts should be published, and the contract terms and conditions

1 should be available to all carriers. Important to this matter, the Qwest companies also advocate
2 that LECs should be prohibited from discounting switched access rates based upon purchases of
3 competitive services or services that are not jurisdictionally Arizona intrastate.⁷ At hearing, the
4 Administrative Law Judge pointedly addressed this issue, which is clearly pending before the
5 Commission.⁸ Cox's filing appears to be a transparent attempt to lock its disputed practice into a
6 tariff, hoping that it will become effective by law, so that Cox may claim legitimacy.

7 For the foregoing reasons, the Commission should suspend Cox's proposed tariff
8 revision, and establish a procedural schedule leading to a hearing, for determination of whether
9 the proposal is just, reasonable, and non-discriminatory. Permitting Cox's tariff to go into effect
10 prior to resolution of this issue would be inappropriate.

11 QCC respectfully requests expedited consideration of its motion. The tariff was filed on
12

13 ⁷ QCC witness Lisa Hensley Eckert testified in the Access Charge Investigation as follows:

14 Q. IS IT APPROPRIATE FOR INTRASTATE SWITCHED ACCESS RATES
15 TO BE INCLUDED IN VOLUME DISCOUNT AGREEMENTS FOR THE
16 PURCHASE OF INTERSTATE SERVICES?

17 A. No. Such bundling of services into bulk purchase price discount arrangements affect and
18 obscure the price of intrastate switched access. Not only is it difficult to determine the actual
19 amount of discount in such agreements—it is also unlikely that the duty of nondiscrimination can
20 be satisfied when the price of a bottleneck monopoly service varies and depends upon the
21 purchase of unrelated, competitive services.

22 *The linking of the two purchases is not supportable. As mentioned before, special access is a
23 switched access bypass product. The two products are not logically dependant upon one
24 another- that is an IXC does not need to purchase special access to reach an end user
25 through a switch. An IXC may choose to do so because they can avoid tandem switching
26 charges- or the volumes of traffic to that end user indicate that a dedicated facility is necessary.
Volume discounts for special access based on special access purchases have been part of contract
tariffs, and part of special access pricing. However, special access is a competitive service,
and as described earlier, switched access is a terminating monopoly service. Using a
competitive service as a basis for offering a discount on a monopoly service obfuscates the
real price of the underlying services—and allows for discrimination. For these reasons, the rates
for switched access service, whether offered by contract, tariff, or some combination of the two,
must stand on their own, and not be affected by the purchase of unrelated services.*

25 Direct Testimony of Qwest witness Lisa Hensley Eckert, Access Charges Investigation, Docket
No. RT-00000H-97-0137 and T-00000D-00-0672, December 1, 2009, p. 14.

26 ⁸ March 18, 2010 Hearing Transcript, Access Charges Investigation, Docket No. RT-00000H-97-
0137 and T-00000D-00-0672, Tr. 570-571.

1 April 6, 2010, and absent suspension, it would otherwise become effective thirty (30) days
2 thereafter.

3

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DATED this 22nd day of April, 2010.

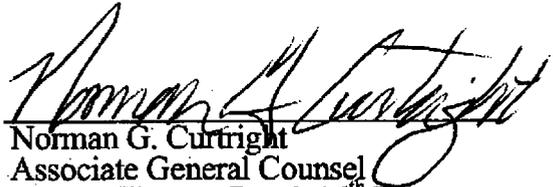
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QWEST COMMUNICATIONS COMPANY,
LLC

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1 **Original and 13 copies of the foregoing**
2 **were filed this 22nd day of April, 2010 with:**

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