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ARIZONA CORPORATION COMMISSION  
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Arizona Corporation Commission  
DOCKETED

OCT 21 2010

DOCKETED BY

9 IN THE MATTER OF THE APPLICATION OF )  
TELEQUALITY COMMUNICATIONS, INC. )  
10 FOR APPROVAL OF A CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO )  
11 PROVIDE PRIVATE LINE DATA SERVICES )

DOCKET NO. T-20626A-08-0484  
**RESPONSE TO STAFF'S LATE  
FILED EXHIBIT**

12  
13 In accordance with the Administrative Law Judge's order at the hearing in this  
14 matter, TeleQuality Communications, Inc. ("TeleQuality" or the "Company") files this  
15 brief Response to Staff's Late-Filed Exhibit.

16 **INTRODUCTION**

17 At the September 28, 2010 hearing, the Administrative Law Judge ordered Staff to  
18 file a Late-Filed Exhibit that addressed two issues: (1) whether TeleQuality is subject to  
19 the quality of service standards approved by the Commission for US West  
20 Communications, Inc. (predecessor to Qwest Corporation) in Decision No. 59147 (Docket  
21 No. T-01051B-93-0183); and (2) whether Wholesale Carrier Services ("WCS") was  
22 required to have obtained Commission approval before transferring to TeleQuality the four  
23 customers currently being served by TeleQuality.

24 On October 12, 2010, Staff filed its Late-Filed Exhibit, in which Staff answered  
25 both of the above questions in the negative. Specifically, Staff first determined that  
26

1 TeleQuality is *not* subject to the quality of service standards approved by the Commission  
2 in Decision No. 59147 because those standards specifically apply to facilities-based and  
3 resold local exchange services, whereas TeleQuality seeks to offer resold private line (i.e.,  
4 point-to-point) data services. Second, Staff determined that WCS was not required to have  
5 obtained Commission approval before transferring to TeleQuality the customers at issue  
6 because the private line data services provided to these customers are resold from the  
7 underlying carriers' interstate tariffs and the traffic on the associated circuits is more than  
8 ten percent interstate. TeleQuality concurs with Staff in both of these determinations.

9 **I. QUALITY OF SERVICE STANDARDS**

10 TeleQuality is not subject to the quality of service standards imposed by the  
11 Commission on US West (now Qwest Corporation) in Decision No. 59147. In that  
12 decision, in connection with granting US West a rate increase, the Commission required  
13 the company to submit a service quality plan tariff. Here, unlike US West, TeleQuality is  
14 not seeking to offer local exchange service. Therefore, the service quality standards  
15 approved in Decision No. 59147 do not apply.

16 **II. COMMISSION APPROVAL OF CUSTOMER TRANSFER**

17 Telequality concurs with Staff that WCS was not required to have obtained  
18 Commission approval before transferring to TeleQuality the four customers currently  
19 served by TeleQuality. Under the Federal Communications Commission's ("FCC's") so-  
20 called "Ten Percent Rule," a mixed-use private line is generally classified as interstate for  
21 jurisdictional purposes if the line's interstate traffic is more than ten percent of its total  
22 traffic. *See In re MTS and WATS Market Structure, Amendment of Part 36 of the*  
23 *Commission's Rules and Establishment of a Joint Board*, 4 F.C.C.R. 5660 (1989).

24 As demonstrated by the attached affidavit of Jeff Reynolds, the private line data  
25 services provided to these customers are resold from the underlying carriers' interstate  
26 tariffs. Affidavit of Jeff Reynolds, at ¶ 2. Further, interstate traffic accounts for more than

1 ten percent of the total traffic on the associated circuits. *Id.* at ¶ 3. As such, the private  
2 line circuits associated with the four customers that were transferred from WCS to  
3 TeleQuality are jurisdictionally interstate, and as such, Arizona Corporation Commission  
4 approval of the transfer was not required.

5  
6 RESPECTFULLY submitted this 21st day of October, 2010.

7 LEWIS AND ROCA LLP

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Michael T. Hallam  
11 40 North Central Avenue  
12 Phoenix, AZ 85004

13 Attorneys for TeleQuality Communications, Inc.

14 **ORIGINAL** and thirteen (13) copies  
15 of the foregoing filed this 21st day  
of October, 2010, with:

16 Arizona Corporation Commission  
17 Hearing Division – Docket Control  
1200 W. Washington Street  
18 Phoenix, Arizona 85007

19 **COPY** of the foregoing hand-delivered  
20 this 21st day of October, 2010, to:

21 Honorable Sarah N. Harpring  
22 Hearing Division  
Arizona Corporation Commission  
1200 W. Washington Street  
23 Phoenix, Arizona 85007

24 Maureen Scott  
25 Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
26 Phoenix, Arizona 85007

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Steven M. Olea, Director  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington Street  
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*Jayne Williams*

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**AFFIDAVIT**

STATE OF TEXAS            )  
County of Bexar            ) ss.

I, Jeff Reynolds, swear that the following affidavit is true and correct to the best of my knowledge and belief.

1. I am the President of Telequality Communications, Inc. ("Telequality").

2. The private line data services provided to the four customers transferred from WCS to TeleQuality in 2008, and currently being served by TeleQuality, were resold from the underlying carriers' interstate tariffs.

3. Interstate traffic (e.g., Internet service) accounts for more than ten percent of the total traffic on the private line circuits associated with the four customers transferred from WCS to TeleQuality and currently being served by TeleQuality.

Dated this 19<sup>th</sup> day of October 2010.

Jeff Reynolds  
Jeff Reynolds

Subscribed and Sworn before me this 19<sup>th</sup> day of October, 2010.

Natalie Verette  
Notary Public

My Commission Expires: 3/24/13

