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**BEFORE THE**

**ARIZONA CORPORATION COMMISSION**

**RECEIVED**

**COMMISSIONERS:**

2010 DEC 15 P 3:42

KRISTEN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF QWEST CORPORATION'S  
PETITION FOR ARBITRATION AND APPROVAL  
OF INTERCONNECTION AGREEMENT WITH  
NORTH COUNTY COMMUNICATIONS  
CORPORATION OF ARIZONA PURSUANT TO  
SECTION 252(B) OF THE COMMUNICATIONS  
ACT OF 1934 AS AMENDED BY THE  
TELECOMMUNICATIONS ACT OF 1996 AND  
APPLICABLE STATE LAWS.

**DOCKET NO. T-01051B-09-0383**  
**DOCKET NO. T-03335A-09-0383**

**DIRECT TESTIMONY OF TODD LESSER**

**DECEMBER 15, 2010**

Arizona Corporation Commission  
**DOCKETED**

DEC 15 2010

DOCKETED BY

DOCKET NOS. T-01051B-09-0383  
AND T-03335A-09-0383

DIRECT TESTIMONY NORTH COUNTY  
COMMUNICATIONS CORPORATION OF  
ARIZONA (TODD LESSER)

1 **DIRECT TESTIMONY OF TODD LESSER**

2 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A: My name is Todd Lesser. My business address is 3802 Rosecrans Street, No. 485, San  
4 Diego, California 92110. My telephone number is (619) 364-4750.

5  
6 **Q: WHAT ARE YOU TESTIFYING ABOUT?**

7 A: I am testifying about all aspects of North County's business, the Telecom Act, the relevant  
8 technology, and the proposed interconnection agreement ("ICA"). I'm effectively  
9 testifying about all relevant facts and issues.

10  
11 **Q: PLEASE DESCRIBE YOUR QUALIFICATIONS AND EXPERIENCE AS THEY  
12 RELATE TO THIS PROCEEDING.**

13 A: I am the President of North County Communications Corporation (hereinafter "NCC"),  
14 and I have held that position since 1995. NCC is a privately-held, facilities-based  
15 competitive local exchange carrier ("CLEC") in San Diego, California. NCC entered the  
16 Arizona market after the Arizona Corporation Commission ("ACC") granted NCC a  
17 Certificate of Public Convenience and Necessity ("CC&N") in December of 1999. I have  
18 substantial experience in telecommunications, including obtaining local interconnection  
19 with a number of Bell operating companies including Qwest, AT&T, and Verizon. I've  
20 worked in the telecommunications industry for approximately 27 years.

21  
22 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

23 A. Yes, I have testified as a technical expert before the Illinois Commerce Commission, the  
24 West Virginia Public Utilities Commission, the California Public Utilities Commission,  
25 and the Federal Trade Commission. I have also testified as a fact witness and technical  
26 expert before the Washington Utilities and Transportation Commission and the Oregon  
27 Public Utilities Commission.

1 **Q. DID YOU NEGOTIATE YOUR ICA WITH QWEST?**

2 A. Yes.

3

4 **Q. DOES IT CONTAIN A MANDATORY BINDING ARBITRATION CLAUSE?**

5 A. No.

6

7 **Q. QWEST FEELS THAT BINDING ARBITRATION IS NECESSARY IN THIS**  
8 **CASE EVEN THOUGH THE CONTRACT DOESN'T SAY IT. DO YOU AGREE**  
9 **WITH THIS STATEMENT?**

10 A. No. This is basic contract law. A first-year law student could read the contract and see  
11 that the contract doesn't allow forced arbitration. I designed my whole network and  
12 business plan on this ICA. I expected the agreement to remain in effect and be modified  
13 as necessary; not to be changed arbitrarily and unilaterally because Qwest wants to make a  
14 change. I would have never signed an agreement with Qwest that had a provision forcing  
15 arbitration.

16

17 **Q. WHY NOT?**

18 A. We are a small company. The cost of this arbitration in legal fees will eat up years of  
19 income. Frankly, we may end up going out of business in Arizona over this.

20

21 **Q: PLEASE DESCRIBE THE TYPE OF INTERCONNECTION NCC HAS**  
22 **OBTAINED TO DEPLOY ITS LOCAL TELECOMMUNICATIONS SERVICES.**

23 A: In deploying local telecommunications services to its customers, NCC has established  
24 interconnection with Qwest, AT&T and Verizon. Through my experience at NCC, I have  
25 knowledge of the interconnection practices and procedures of those carriers.

26

27

28

1 **Q: PLEASE DESCRIBE YOUR INTERCONNECTION EXPERIENCES WITH THE**  
2 **REGIONAL BELL OPERATING COMPANIES TO DATE.**

3 **A:** I have been involved directly in establishing CLEC interconnection for NCC in the  
4 following locales with the following regional Bell operating companies: Pacific Bell  
5 (AT&T) in San Diego, CA, Los Angeles, CA, Sacramento, CA, and San Francisco, CA;  
6 Qwest in Portland, OR, Vancouver, WA, Phoenix, AZ, Tucson, AZ; and Verizon in  
7 Charleston, WV and DeKalb, IL.  
8

9 **Q. HAS ANY CARRIER OTHER THAN QWEST ATTEMPTED TO CANCEL AN**  
10 **INTERCONNECTION AGREEMENT?**

11 **A.** No. NCC has had nearly identical agreements with Verizon and AT&T during the whole  
12 time NCC has been interconnected with them.  
13

14 **Q. WHAT TYPES OF SWITCHES HAVE YOU INSTALLED AND MAINTAINED?**

15 **A.** NCC has installed and maintains Lucent, Northern Telecom, and Ericsson central offices.  
16

17 **MF SIGNALING**

18 **Q. DOES YOUR CURRENT AGREEMENT WITH QWEST ALLOW MF**  
19 **SIGNALING?**

20 **A.** Yes. We've done it that way for 13 years.  
21

22 **Q. DOES YOUR NETWORK IN OREGON, WASHINGTON, AND ARIZONA**  
23 **SUPPORT SS7?**

24 **A.** No. We designed our interconnection and entire network based on the terms of the ICA.  
25

26 **Q. IS SS7 IS MORE RELIABLE THAN MF?**

27 **A.** Absolutely not. There have been well-publicized SS7 outages across the country. For  
28 example, on June 26, 1991, over six million Bell Atlantic lines were cut off for seven

1 hours in Washington, DC, Maryland, Virginia, and West Virginia. Pacific Bell had an  
2 outage of three and a half million lines on the same day for a few hours. This was all  
3 caused by one SS7 problem in Baltimore, Maryland, where a bad circuit board disabled  
4 the whole network. SS7 has single points of failure. If your SS7 links or your STP fails,  
5 your entire network goes down. With MF signaling, each call receives the call routing  
6 direction on that specific trunk. If you have a problem with MF, only one trunk or T1  
7 goes down – not your whole network. In fact, many carriers around the country use MF  
8 signaling for 911 trunks even when the rest of their network is SS7. MF signaling is much  
9 more reliable than SS7 signaling. If SS7 was so much more reliable than the first trunks  
10 to be converted to SS7 would have been 911 trunks. I can't think of a more important  
11 type of call than a 911 call. Qwest has admitted that it and most, if not all, carriers have  
12 911 trunks that were MF.

13  
14 **Q. IN THIRTEEN YEARS, HAS NORTH COUNTY EVER HAD AN OUTAGE WITH**  
15 **QWEST WITH ITS MF TRUNKS?**

16 A. No.

17  
18 **Q. DO MF CIRCUITS AND EQUIPMENT REQUIRE MORE MAINTENANCE?**

19 A. No. When you dial a telephone number at your house, the touch tones are in band  
20 signaling. The interoffice MF trunks are just a different set of tones. In the 1960's there  
21 were transistorized MF transmitters and receivers. Today, they are all done with Digital  
22 Single Processors or DSPs. Those don't have issues. In fifteen years, NCC has never  
23 had a DSP card go bad.

24  
25 **Q. DOES MF LIMIT THE NUMBER OF CARRIERS OR THE SIZE OF THE**  
26 **RECORDING CAPABILITY IN COMPARISON TO SS7?**

27 A. No. Whether the signaling for call set up is sent in band or out of band with SS7, you still  
28 need to record it. In fact, SS7 has a lot more parameters to record.

1 **Q. IS SS7 RECORDING MORE ACCURATE?**

2 A. No. In fact, in one jurisdiction, we proved that the SS7 recordings were incorrect by  
3 swapping call detail recording from our central office switch. The SS7 recordings weren't  
4 recording all the calls because the instructions the monitor was given were not correct.  
5 CDR (Call Detail Recordings) from MF trunks are so simple, you don't have problems  
6 like that.

7

8 **TRACKING MINUTES**

9 **Q. DO YOU INTERCONNECT WITH VERIZON AND AT&T USING MF**  
10 **SIGNALING?**

11 A. Yes.

12

13 **Q. DO VERIZON AND AT&T HAVE THE ABILITY TO TRACK THE MINUTES**  
14 **OF USE?**

15 A. Yes.

16

17 **Q. QWEST ASSERTS THAT IT DOESN'T HAVE THE ABILITY TO TRACK**  
18 **USAGE FOR MF. IS THIS CORRECT?**

19 A. No. It is a complete fabrication. AT&T and Verizon have the exact same central offices  
20 as Qwest. What Qwest is saying simply doesn't make sense. If it were unable to track  
21 MF usage, that would mean that it would never be able to track minutes when its entire  
22 network was MF and/or when it had long distance interexchange carriers ("IXCs")  
23 interconnect with Qwest by MF. So for decades they have been billing long distance  
24 carriers without having any ability to track usage? We have had, from Qwest, IXC trunk  
25 groups (Feature Groups B and D) that are MF. Qwest has always been able to bill us for  
26 originating and terminating traffic on those trunk groups. Local interconnections trunks  
27 are no different than IXC trunk groups. They use the exact same equipment. The only  
28 difference is the class of service on the trunks. Importantly, prior to Qwest's request to

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enter into a new agreement, we never had a single billing issue. We've gone 13 years without one issue with billing, but now that they want to force a new, untested, agreement upon us all of the sudden there are billing issues.

**Q. DOES QWEST HAVE THE ABILITY TO TRACK AND BILL CALLS MADE ON MF TRUNKS?**

A. Absolutely. We have had MF long distance trunks for years with Qwest. If someone dials our CIC code (i.e., incoming call) or if we make an outbound call on Qwest's network, Qwest tracks the calls and bills us for the usage. Moreover, if Qwest claims we are the only carrier with MF technology, then Qwest can simply subtract the total number of SS7 minutes from the total number of minutes and that simple formula will provide the number of MF minutes, and thus the number of minutes terminating to NCC.

**Q. DO MF TRUNKS HAVE THE CAPABILITY TO PROVIDE CALLING PARTY INFORMATION?**

A. Yes. Although, for some unknown reason, Qwest won't let us send it to them on our local interconnection trunks like they do for our long distance trunks. To repeat, Qwest allows us to send calling party information on our long distance MF trunks. In addition, Qwest won't send us calling party information when it delivers calls to us.

**Q. DOES QWEST HAVE THE TECHNICAL ABILITY TO GIVE YOU ANI ON MF TRUNK GROUPS?**

A. Yes. This is a simple Class of Service option on the trunk group. Qwest gives us ANI on our MF long distance trunks. Other ILECs have given us ANI on our local interconnection trunks. In fact, I recently turned up a trunk group with another carrier that gave us ANI over MF for local traffic.

1 **Q. ARE ANY OTHER CARRIERS IN ARIZONA GIVING NCC ANI ON MF TRUNK**  
2 **GROUPS?**

3 A. Yes, Neutral Tandem.

5 **Q. IS NEUTRAL TANDEM ABLE TO TRACK NCC'S OUTBOUND MINUTES?**

6 A. Yes.

8 **Q. IN YOUR WASHINGTON ARBITRATION, QWEST STATED THAT THE ICA**  
9 **DEFINES ANI AS ONLY USING FEATURE GROUP D LONG DISTANCE**  
10 **TRUNKS. WHAT ARE YOUR THOUGHTS ON THIS?**

11 A. First, ANI stands for "Automatic Number Identification." The definition wasn't that well  
12 worded in the agreement, but this is an industry standard term. The definition simply said  
13 ANI is used in Feature Group D signaling. It never said ANI can't be provided in other  
14 signaling formats. For example, you can get ANI on ISDN. ISDN isn't Feature Group D  
15 format. Under the existing agreement, Qwest delivers ANI if you have SS7. The way  
16 they are attempting to define it now would mean that you shouldn't get ANI over SS7  
17 local interconnection trunks; you should only get ANI over SS7 Feature Group D long  
18 distance trunks. Clearly, they are misinterpreting the definition.

20 **Q. DOES THIS DEFINITION DISPUTE TROUBLE YOU?**

21 A. Absolutely. This is why the Commission shouldn't allow Qwest simply to scrap our  
22 existing agreement. Even if the Commission agrees with Qwest's position that certain  
23 things should be added, the new items should be added to our existing agreement. Qwest  
24 is unwilling to state all the material changes to the agreement or how they will interpret it  
25 differently from the existing agreement. I had a similar issue when I lost an arbitration  
26 with Verizon in Oregon over a definition. The language in our agreement was as clear as  
27 day: Verizon was required to pay for all traffic, including ISP traffic. The judge ruled that  
28 Verizon felt they should never have to pay for ISP traffic. Under the law, you are required

1 to have a meeting of the minds for there to be a contract. Since Verizon was able to  
2 fabricate a lack of meeting of the minds, the court found there was no contract and  
3 Verizon did not have to pay. I can't guess by reading Qwest's new agreement how they  
4 interpret every provision. Although, I know how they have interpreted our existing  
5 agreement for 13 years.

6  
7 **Q. WHAT DID QWEST SAY WHEN YOU ASKED THEM TO GIVE YOU ANI?**

8 A. They said our agreement doesn't require them to give it to us. In other words, they are  
9 creating a situation that causes a potential for billing problems.

10  
11 **Q. ARE YOU SAYING THAT IF THEY PROVIDED YOU WITH ANI ON YOUR  
12 INTERCONNECTION TRUNKS THAT YOU COULD GIVE THEM ALL THE  
13 INFORMATION THEY NEED TO VALIDATE THE BILLING AND ADDRESS  
14 ALL OF THEIR CONCERNS?**

15 A. Absolutely. It is a common practice in the industry to swap or provide EMI files if there  
16 is a billing dispute.

17  
18 **Q. WHAT WOULD IT COST THEM TO PROVIDE YOU THE ANI?**

19 A. Nothing. It is just a Class of Service change on our trunk group. They simply type a few  
20 commands into the computer.

21  
22 **Q: QWEST HAS TAKEN THE POSITION THAT THEY CAN ONLY TAKE PEG  
23 COUNTS OF MF TRAFFIC AND NOT ACTUAL USAGE, IS THAT TRUE?**

24 A: Absolutely not. Let me explain. A PEG counter is a simplistic way to count call totals.  
25 All Central Office ("Cos") on the Qwest network follow the Telcordia Document LATA  
26 Switching System Generic Requirements ("LSSGR"). One of those requirements is the  
27 switch has a Call Detail Recording ("CDR"). In other words, every outbound and  
28 inbound call that is made or received is electronically recorded with all the call details.

1 **Q. HAVE YOU INTERCONNECTED WITH ANOTHER CARRIER BY MF OVER**  
2 **LOCAL INTERCONNECTION TRUNKS AND SENT CALLING PARTY**  
3 **INFORMATION?**

4 A. Yes. Other carriers have provided us with the information, and we have provided the  
5 information to other carriers. They even had the same type of switch that Qwest has on  
6 their network.

7  
8 **Q. WHY WON'T QWEST PROVIDE IT TO YOU WHEN THEY HAVE THE**  
9 **CAPABILITY?**

10 A. This is a simple trunk configuration. I suspect they are doing it in an attempt to force us  
11 to switch to SS7. SS7 will significantly increase our cost in each market. Frankly, even  
12 if only our switch was SS7, the monthly fees to support SS7 would make us unprofitable.  
13 Qwest knows this. They want us to switch to SS7 because then they can charge us for the  
14 SS7 links and the queries. So by forcing us to switch to SS7, they give themselves  
15 another profit center.

16  
17 **Q. HAS QWEST PROVIDED ANY PROOF TO SUPPORT ITS STATEMENT THAT**  
18 **THE LUCENT AND NORTHERN TELECOM CENTRAL OFFICES CANNOT**  
19 **PROVIDE ANI ON INTERCONNECTION TRUNKS?**

20 A. No and we have asked. This is our third arbitration over this issue and they still haven't  
21 provided the name of a single individual at those companies to support these claims.

22  
23 **Q. HAVE OTHER CARRIERS THAT HAVE THE SAME CENTRAL OFFICES AS**  
24 **QWEST PROVIDED NCC WITH ANI OVER LOCAL INTERCONNECTION**  
25 **TRUNKS?**

26 A. Yes. Frontier, Verizon and Pymatuning Telephone Company have provided it to us.  
27  
28

CONVERSION TO SS7

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**Q. WHAT IS THE LIFESPAN OF YOUR CENTRAL OFFICES?**

A. The lifespan in the industry is generally 20 to 30 years for a central office.

**Q. QWEST WOULD LIKE NCC TO SWITCH TO SS7. IS THAT FAIR?**

A. We agreed to interconnect by MF, and MF is still a supported industry standard. It isn't fair to make us throw away our equipment. Qwest has a lot more resources than we do. They knew the lifespan of central office switches when they signed the interconnection agreement. Just because they installed SS7-capable switches when they got rid of their older CO switches doesn't mean we should have to get rid of our switches. Our switches have many years of useful life left. Qwest operates under a double standard. It was fine to have MF in the agreement when they had MF only switches, but when we do, it is no longer fine. A perfect analogy is that new switches support SIP, G.729, GSM, and ISDN and lots of other standards. All of these are out of band signaling.

It would be like me telling Qwest that they have to replace all their Lucent #5ESS and Northern Telecom Switches to support SIP. SIP is a lot more "efficient" than Time Division Multiplexing ("TDM") used by MF and SS7 trunks. SIP even supports video. This is what Skype and AIM/IChat use. Many wireless carriers use GSM compression.

If we switched to SS7, we would never make the money back. If we don't switch, under the proposed ICA, we won't be compensated by Qwest for interconnection. In either case, Qwest will force us out of business in Arizona. Indeed, the cost of this arbitration may force us out of business in Arizona.

**Q. QWEST WANTS YOU TO AGREE TO CONVERT TO SS7 IF YOU START MAKING CALLS. IS THIS NECESSARY?**

A. Absolutely not. AT&T, Verizon and Neutral Tandem are able to bill us for outbound calls on our MF trunk groups for local and long distance calls. Qwest is able to bill us on our long distance MF trunk groups. Saying they don't have the ability to do it for local calls is

1 simply untrue. They would have you believe that tracking and recording MF is a lost art.  
2 With all due respect, they have service contracts with Lucent and Northern Telecom. If  
3 they can't figure out how to do it, their service providers surely can. They have the  
4 resources. Clearly AT&T, Verizon and hundreds if not thousands of rural phone  
5 companies in the U.S. know how to do it.  
6

7 **Q. WHAT WOULD THIS FORCED CONVERSION ENTAIL?**

8 A. We would be required to scrap our entire network well in advance of its useful lifespan.  
9 This is completely unreasonable and prohibitively expensive.  
10

11 **Q. HOW DOES THE NEW AGREEMENT FORCE YOU TO CONVERT TO SS7?**

12 A. If we don't, we cannot do any outbound traffic and Qwest can terminate an unlimited  
13 amount of calls on our network but has to pay only for the first 10,000 minutes.  
14

15 **Q. WOULD SS7 TRUNKS REQUIRE YOU TO GET A NEW SWITCH?**

16 A. Yes.  
17

18 **Q. IS QWEST REQUIRING THE RURAL ILECS TO CONVERT TO SS7 TO**  
19 **INTERCONNECT WITH THEM?**

20 A. No. Nothing in the Telecom Act allows them to dictate that the trunks be configured  
21 using SS7. Again, they are the ones who decided to change their trunks from the MF  
22 trunks we both were using when we interconnected. Now they want to force us to convert  
23 to their technology, and they claim that the change is imperative even though for almost  
24 14 years there were almost no issues with MF signaling. Indeed, Qwest's conversion to  
25 SS7 in their last central offices was completed only recently. So Qwest sought to require  
26 our conversion before their conversion was complete. In addition, I suspect by the way  
27 they answered the discovery questions (or more accurately, failed to answer the discovery  
28 questions) that they still have MF trunks on their network; they just added SS7 service.

1 As between Qwest using the resources it has to properly track MF, and North County  
2 being forced to either convert to SS7 or receive nothing for the provision of its services,  
3 equity dictates that Qwest should bear the burden of its technology choices. This is  
4 particularly true where, as here, a small CLEC built its system based on Qwest's prior  
5 requirements and a valid ICA drafted by Qwest.  
6

7 **Q. DOES QWEST STILL HAVE MF TRUNKS IN THEIR CENTRAL OFFICES?**

8 A. I don't know. Qwest has refused to answer the question.  
9

10 **Q. DOES QWEST HAVE MF INTERCONNECTION TRUNKS WITH ANY OF THE**  
11 **ILECS THEY INTERCONNECT WITH?**

12 A. I don't know. Qwest has refused to answer the question. They only mentioned one ILEC  
13 that exclusively has MF trunks.  
14

15 **Q. DO YOU KNOW IF QWEST HAS MF TRUNKS WITH ANY OTHER CLEC?**

16 A. I don't know. Qwest has refused to answer the question.  
17

18 **Q. SHOULD THAT ILEC BE PERMITTED TO INTERCONNECT WITH QWEST**  
19 **ON A TWO-WAY BASIS WHILE NCC IS PROHIBITED FROM**  
20 **INTERCONNECTING IN THE SAME FASHION?**

21 A. No. The Telecom Act prohibits Qwest from discriminating against CLECs.  
22

23 **Q. QWEST SAYS SS7 IS THE INDUSTRY STANDARD FOR INTERCONNECTION.**  
24 **IS THIS CORRECT?**

25 A. No, it is simply one of several acceptable industry standards, as is MF. In fact, one of the  
26 new standards of interconnection between carriers is SIP. Qwest refuses to interconnect  
27 by SIP and Voice over Internet Protocol ("VoIP"). SIP would also address all of Qwest's  
28 concerns. We have the capability to interconnect by SIP. We would like to interconnect

1 using ISDN or SIP; however, Qwest refuses to interconnect using either of those  
2 standards. Again, Qwest is simply trying to force NCC to bear the burden of Qwest's  
3 technology choices. In fact, we just interconnected with Neutral Tandem a few months  
4 ago using MF.

5  
6 **Q. IS IT UNREALISTIC FOR NCC TO MAINTAIN ITS MF TECHNOLOGY AND**  
7 **NOT CONVERT TO "NEWER" TECHNOLOGY?**

8 A. While new technology may be introduced, Qwest doesn't get to dictate when the  
9 technology changes and to what. This is why the agreement required negotiations but not  
10 arbitration. We have a joke in the industry when we talk about computers and when  
11 someone says a computer is slow. We always respond: It is as fast as the day we bought  
12 it. It does the job it was designed to do. There is always new technology, but one party  
13 doesn't get to decide when to make the leap to change. I remember when we used to  
14 receive magnetic billing tapes from Qwest. We asked them to send them via the Internet,  
15 CD or even a floppy disk – floppy disks had been out for over 15 years by then – but they  
16 wouldn't do it. We had to go buy some antiquated mag tape reader that cost \$5,000. We  
17 would love to connect to Qwest with SIP. Most carriers in the country are moving to  
18 VoIP networks, but Qwest won't allow us to interconnect that way. I'm almost certain  
19 that Qwest's long distance network even has VoIP-to-VoIP circuits on it. We would love  
20 to have compression on our circuits. This would be a lot more efficient use of bandwidth,  
21 but they won't allow that either.

22  
23 **Q. DOES THE TELECOM ACT ALLOW QWEST TO DICTATE THE**  
24 **INTERCONNECTION STANDARD?**

25 A. No, just like NCC can't force Qwest to interconnect with us using SIP.

26  
27 **Q. HAVE YOU OFFERED ANY OTHER SOLUTIONS FOR QWEST?**

28 A. Yes, NCC offered to interconnect with them through a third party tandem provider such as

1 Neutral Tandem. The third party would connect to Qwest using SS7 and connect with us  
2 using MF. Everyone should be happy.

3  
4 **ARBITRARY BILLING CAP**

5 **Q. HOW MANY MINUTES COULD YOUR LINES SUPPORT PER MONTH?**

6 A. One million minutes per T1. So under Qwest's proposal, they could terminate millions of  
7 minutes on our networks and only pay for 10,000. The cap is just a completely fabricated  
8 and arbitrary cap to allow Qwest to use our network for free.

9  
10 **Q. ARE YOU ALLOWED TO BLOCK QWEST'S TRAFFIC?**

11 A. No. To maintain the ubiquity of the telephone network, all carriers are required to pass  
12 traffic.

13  
14 **Q. SO YOU WOULD HAVE TO TERMINATE THE MILLIONS OF MINUTES OF  
15 CALLS FROM QWEST'S CUSTOMERS?**

16 A. Yes.

17  
18 **Q. AND QWEST COULD CHARGE ITS CUSTOMERS FOR THOSE MILLIONS OF  
19 MINUTES AND PAY NCC FOR ONLY 400,000 MINUTES PER MONTH PER  
20 DS1?**

21 A. Yes.

22  
23 **Q. IS THERE ANY JUSTIFICATION FOR THIS RATE CAP?**

24 A. No. The Telecom Act says there is reciprocal compensation. It doesn't put a cap on it.  
25 Frankly, I think this would be unconstitutional for the Commission to order this. It would  
26 likely be a takings issue. A T1 can handle 1 million minutes. To put a cap lower than that  
27 makes no sense. Qwest doesn't limit the amount they will charge a residential or a  
28 business customer who has lines from them. If you make a hundred calls, you are billed

1 for a hundred calls. If you make a thousand calls, you are billed for a thousand calls. If  
2 one of their customers makes a thousand calls to NCC, why should Qwest be allowed to  
3 bill their customer but not pay us?  
4

5 **RUF FACTOR**

6 **Q. IS QWEST ATTEMPTING TO CHANGE THE RELATIVE USE FACTOR AND**  
7 **START BILLING YOU FOR CIRCUITS FOR TRAFFIC ORIGINATING FROM**  
8 **THEIR CUSTOMERS?**

9 A. Yes, in Oregon. We don't have any ISP traffic in Arizona. I don't believe this matter  
10 should be in the ICA because it is completely illogical. Relative Use Factor is used to  
11 allocate the amount of traffic flowing between carriers – e.g., if 20% of the total traffic  
12 comes from NCC to Qwest and 80% comes from Qwest to NCC, then the cost of the  
13 relevant circuits is split 20/80 because that's how much each carrier's customers are using  
14 the circuits. Right now essentially 100% of the flow of traffic is from Qwest to NCC.  
15 Thus, all of the circuits are solely being used by Qwest's customers dialing out to NCC's  
16 customers. What Qwest is attempting to do is simply fabricate a way to arbitrarily modify  
17 the formula so that it does not have anything to do with the relative use. Qwest is  
18 attempting to "count" calls from Qwest's customers to NCC's ISP customers, if it had any  
19 in Arizona, as inbound calls to Qwest. To repeat, Qwest customers would be using the  
20 circuits to call NCC's ISP customers. Qwest wants to change the formula so these calls  
21 are "counted" as if NCC's customers are making calls to Qwest.

22 The FCC ISP order already sets a rate that is below voice traffic for reciprocal  
23 compensation. There is simply no justification to have NCC pay for the circuit when a  
24 Qwest customer calls one of our customers. AT&T and Verizon – the two largest carriers  
25 in the country – don't calculate circuits this way; the Arizona Commission shouldn't allow  
26 Qwest to do this either.  
27  
28

1 **Q: WHY WOULD QWEST WANT TO DO THIS?**

2 A: It's simply a way to arbitrarily change the formula so they make more money. But the  
3 change has no basis in reality. It is Qwest's customers who are using the circuits. The  
4 relative use of the circuits is 100% Qwest and 0% NCC. NCC's customers are not using  
5 the circuit.

6  
7 **Q. DOES IT MATTER THAT ISP CALLS ARE CONSIDERED INTERSTATE IN**  
8 **NATURE?**

9 A. No. First, the calls are intra-state in fact. They are all between Qwest customers in  
10 Arizona and NCC customers in Arizona. Second, if Qwest believes that ISP calls should  
11 not be used in calculating the RUF, then when you take those calls out, the relative use of  
12 the circuits is still 100% Qwest and 0% NCC.

13  
14 **Q. DOES QWEST EVEN ATTEMPT TO ARGUE THAT THEIR PROPOSED RUF**  
15 **FACTOR IS MEANT TO REFLECT ACTUAL RELATIVE USE?**

16 A. No. They have admitted that less than 1% of outbound traffic is from NCC, yet they want  
17 to pretend that their outbound traffic is really inbound traffic. There is no justification for  
18 that fabrication other than to allow Qwest to take money from NCC. Verizon and AT&T  
19 don't bill us the way Qwest is attempting to do it under their proposed agreement. The  
20 industry standard is for the carrier that originates the calls to pay for the circuit to deliver  
21 those calls. This is the way Verizon, AT&T, and every other ILEC I have dealt with does  
22 it. The proposed language should be rejected in its entirety, and the RUF should be based  
23 on actual inbound and outbound calls.

24

25 **VNXX**

26 **Q: QWEST STATES THERE IS NO ISSUE REGARDING VNXX, IS THAT**  
27 **ACCURATE?**

28 A: No. It is unclear if Qwest's definition of VNXX is the same as the Arizona Commission's

1 definition. To the extent Qwest's ban on "VNXX" traffic is broader than a ban by the  
2 Commission, Qwest's request should be denied. Qwest's definition of VNXX traffic  
3 should mirror the Commission's definition of VNXX traffic and any associated rules that  
4 the Commission sets. It doesn't seem necessary to put a Qwest definition for VNXX in  
5 the ICA. If the Commission does wish to use Qwest's definition, it should be noted that  
6 Qwest currently offers Remote Call Forwarding ("RCF"), and Qwest and NCC agreed in  
7 Oregon and Washington that RCF is not VNXX traffic.

8  
9 **Q: DOES NCC HAVE ANY VNXX TRAFFIC IN ARIZONA?**

10 **A:** No.

11  
12 **CNAM**

13 **Q. IS QWEST DISCRIMINATING AGAINST NCC AS A CLEC IN OTHER WAYS?**

14 **A.** Yes. They are refusing to purchase our CNAM data. In other words, when one of our  
15 customers calls a Qwest customer, our customer's name won't show up on the caller ID.  
16 This is one of the main reasons we don't send outbound calls over our interconnection  
17 trunks in Arizona and/or convert to SS7. We use other carriers to route the calls to Qwest.  
18 Many business customers want their name displayed on the caller ID displays of the  
19 people they call. NCC requested that Qwest buy NCC's data under the same terms and  
20 conditions Qwest was selling us its data, but Qwest refused. What I find is even more  
21 shocking is Qwest appears to make a distinction between its obligation to purchase  
22 CNAM data from ILECs versus the obligation to purchase from CLECs.

23  
24 **PROPOSED ICA**

25 **Q. WHY DIDN'T YOU JUST SIGN THEIR PROPOSED ICA?**

26 **A.** We are in a Catch-22 situation. If we sign the agreement Qwest proposed, we would be  
27 out of business due to the immediate increase in expenses or loss of income. If we don't  
28 sign it, Qwest forces us into a costly arbitration that will probably force us out of business

1 in Arizona. Qwest is using its size and unlimited resources to bully a small CLEC into  
2 submission (or put it out of business entirely).

3  
4 **Q. DID QWEST TELL YOU WHY THEY WANTED A NEW ICA?**

5 A. Yes. They said they were updating the terms.

6  
7 **Q. DID YOU QUESTION THEM ON THIS?**

8 A. Yes, it didn't make sense to me. We've been operating under our agreement for 13 years  
9 without any problems. We've designed the entire NCC network based on the terms of the  
10 longstanding agreement. It's obvious that Qwest's new agreement contains significant  
11 substantive changes that burden North County to the benefit of Qwest. If that were not the  
12 case, Qwest would not be trying to replace our long-standing agreement with this new  
13 untested agreement.

14  
15 **Q. DID QWEST INITIALLY DISCLOSE THE MATERIAL CHANGES TO THE**  
16 **ICA?**

17 A. No. I asked them to tell me all the material differences between the current ICA that we  
18 have had for 13 years and the new proposed one they wanted to use and they refused.

19  
20 **Q. WOULD THEY TELL YOU WHAT WAS WRONG WITH THE EXISTING ICA?**

21 A. No. In fact, I wanted to work off our agreement but they refused.

22  
23 **Q. WHY DO YOU THINK QWEST IS DOING THIS?**

24 A. I simply don't know. They are not telling me the whole story. Our ICA has passed the  
25 test of time. They have refused to explain why the ICA must be scrapped and changed. I  
26 assume the obvious: that the new agreement is very long, very dense, and likely contains  
27 significant changes that cannot be easily identified. They want to force this untested and  
28 complex agreement upon North County and reap greater benefits from it.

1 Under contract law, the parties must have a meeting of the minds for their  
2 agreement to be binding. NCC lost an arbitration with Verizon in Oregon over that very  
3 issue. We felt the ICA clearly required Verizon to pay for ISP traffic. Verizon later  
4 disagreed, and the arbitrator ruled that because we didn't have a meeting of the minds on  
5 that point, the ICA wasn't a contract.

6 In addition, this new ICA is over 300 pages. Qwest won't even tell me why they  
7 wanted to change each provision or how they are interpreting each new provision. They  
8 have worked with us for 13 years. To say that they don't know how this new ICA will  
9 affect us is disingenuous.

10  
11 **Q. DID YOU EVER TRY TO WORK ON YOUR EXISTING ICA TO SEE WHAT**  
12 **CHANGES QWEST WANTED?**

13 A. Yes. Qwest refused.

14  
15 **Q. WHAT DID YOU DO THEN?**

16 A. Our existing agreement was written by Qwest. You can see the version numbers on the  
17 bottom of it. The new agreement they are proposing didn't just appear out of nowhere. I  
18 asked them for the redline version of our existing agreement and all the versions between  
19 the existing agreement and the proposed agreement.

20  
21 **Q. DID QWEST PROVIDE THIS TO YOU?**

22 A. No.

23  
24 **Q. WHAT DID YOU DO WHEN THEY REFUSED?**

25 A. I asked them to make a list of all the material changes to our existing agreement and to list  
26 all the reasons why they want to change it. They refused to do it and said that they would  
27 just request arbitration if I didn't look at their new agreement. They are a multi-billion  
28 dollar company, and they could easily tell by the amount of billing we do what our size

1 was. They assumed we'd just buckle rather than spend money fighting, and they have  
2 refused to provide us information with which we could adequately digest the 300-plus  
3 page agreement they're forcing upon us.

4  
5 **Q. ARE THERE THINGS YOU DON'T LIKE IN THE EXISTING ICA THAT YOU**  
6 **HAVE HAD TO DEAL WITH?**

7 A. Yes. Qwest charges NCC for call records where Verizon and AT&T give them to NCC  
8 for free. I believe the Commission should investigate the rates they are charging.  
9 Charging thousands of dollars a month to run a report that any tandem does automatically  
10 seems excessive. They won't give NCC ANI on MF trunks. They are interpreting the  
11 ICA to say that NCC has to pay for the installation of circuits to carry their customer's  
12 calls to NCC. They are interpreting the ICA to charge for MUX's even when the traffic is  
13 coming from Qwest, and the ICA allows for DS3 interconnection. These charges are  
14 currently being disputed by NCC. These are just a few things that I have had to deal with  
15 because I signed an agreement and am bound by it. If the Commission is going to look at  
16 these things, then they should look at that and also why Qwest should be able to  
17 discriminate against NCC on CNAM and LIDB. I believe that Qwest's purchasing my  
18 CNAM is an OSS (Operational Support System) function or issue. NCC customers can't  
19 make third party charges on the Qwest network because of this. NCC's caller ID names  
20 won't display on Qwest caller ID boxes. NCC customers can't receive collect calls from  
21 the Qwest network. This discriminatory impact is unacceptable and unlawful.

22  
23 **Q. DOES NEUTRAL TANDEM CHARGE YOU AN INSTALLATION FEE OR**  
24 **MONTHLY FEE FOR THE CIRCUITS?**

25 A. No. Frankly it is the responsibility of the tandem provider to connect up to the end  
26 offices. Otherwise, it is simply another end office.

1 **Q. DOES NEUTRAL TANDEM CHARGE YOU FOR THE CALL RECORDS?**

2 A. No. Again, this is one of the main purposes of a tandem. I have never heard of anyone  
3 else charging for it.

4  
5 **Q. ARE THERE OTHER ISSUES YOU KNOW OF NOW THAT YOU BELIEVE**  
6 **SHOULD BE ADDED TO ANY NEW AGREEMENT?**

7 A. Yes. First, they should be required to send us ANI over MF. It is technically feasible and  
8 they have no justification not to do it.

9 Second, Qwest should pay for their MUX, installation and monthly costs to deliver  
10 their traffic to NCC. It shouldn't be NCC's responsibility to pay for Qwest's network  
11 equipment and configuration. NCC is not allowed to bill Qwest for a MUX on NCC's  
12 end.

13 Third, Qwest should pay for the SS7 links and be the party that orders them from  
14 NCC. It isn't fair that NCC should have to pay for something that Qwest wants; even if  
15 both parties want it, it should be a shared cost.

16 Fourth, I think Qwest should be required to DIP NCC's CNAM and caller ID  
17 database under the same terms and conditions NCC purchases Qwest's data. While this  
18 isn't clearly defined in the interconnection requirements, it prevents NCC from offering  
19 services to its customers and puts NCC at a disadvantage. The purpose of the Telecom  
20 Act of 1996 was to create parity between CLECs and ILECs. For example, LIDB is  
21 necessary for the completion of collect calls.

22 Fifth, Qwest should be required to give NCC the wireless and access transit  
23 records for free. No other carrier charges for it and their rates are excessive. Again this  
24 isn't clearly defined in the Act, but it is necessary to validate the billing.

25 Sixth, if Qwest wants to connect up to NCC using SS7, Qwest should be required  
26 to go through a third party tandem provider so NCC doesn't have to change its network.

27  
28

1 **Q. HOW HAS THIS ARBITRATION AFFECTED NCC?**

2 A. It is hurting us financially. We are a small company. We cannot afford to arbitrate a new  
3 agreement, and we cannot afford to replace our entire network to suit Qwest's recent  
4 whims. We have an agreement that has worked for 13 years, which is the same as the  
5 agreements in place with AT&T and Verizon. Those companies use the same equipment  
6 as Qwest. There is absolutely no reason to replace or modify the existing agreement,  
7 generally, or the signaling and billing requirements, specifically. We bill Qwest a  
8 relatively small amount per month in reciprocal compensation. This hardly justifies us  
9 scrapping our network or even the cost of this arbitration. Frankly, I am really  
10 disappointed that this Commission is allowing this arbitration to proceed.

11

12 **Q. DO YOU BELIEVE THE PROPOSED ICA IS UNLAWFUL, PREJUDICIAL, OR**  
13 **OTHERWISE INCONSISTENT WITH PUBLIC POLICY?**

14 A. The new ICA is completely prejudicial. The whole reason for the changes is to benefit  
15 Qwest and prejudice NCC. The SS7 requirement benefits Qwest and prejudices NCC.  
16 The fabricated RUF has nothing to do with reality and makes up a formula that benefits  
17 Qwest and prejudices NCC. The apparent application of the VNXX factor as discussed  
18 by Qwest benefits Qwest and prejudices NCC. Moreover, there is nothing in the law that  
19 allows Qwest to unilaterally determine the technology. There is nothing that allows  
20 Qwest to fabricate a RUF that does not reflect actual relative use. There is nothing in the  
21 law that allows Qwest to apply the VNXX factor inequitably. All of these things are  
22 against the public policy that CLECs and ILECs be treated equally and that ILECs be  
23 prohibited from using their size and resources to harm CLECs.

24

25 **Q. WHAT ARE YOU ASKING THIS COMMISSION TO DO?**

26 A. I am asking for them to stand up for what is right. If this was a civil court and I signed an  
27 agreement without mandatory arbitration, I would not be required to arbitrate a resolution.  
28 The Commission shouldn't allow Qwest to bully its competitors. Look how many CLECs

1 have gone out of business since the Telecom Act of 1996. Qwest isn't stupid. They  
2 didn't arbitrarily change the words in the agreement. All the changes they are making are  
3 for their sole benefit. They obviously are not making changes that help CLECs or  
4 increase the amounts Qwest pays CLECs. And they are not negotiating in good faith  
5 when they fail to disclose the reasons why they are changing sections. Look how much  
6 we are fighting over just the few areas that we've been able to uncover. This document is  
7 over 300 pages long. There are probably lots of areas that have hidden negative  
8 consequences for NCC. I am sure there will be many conflicts over interpretation. We  
9 have worked through all the issues in the current ICA. It is a known quantity. The only  
10 thing we know about the proposed ICA is that Qwest has made significant changes solely  
11 for its benefit and refuses to identify or explain those changes. Qwest knew what it was  
12 doing when it proposed the agreement 13 years ago. So the Commission should reject the  
13 proposed ICA in its entirety. Specifically, the Commission should not allow Qwest to: (1)  
14 mandate SS7; (2) place a cap on the number of billable minutes; (3) set an arbitrary RUF  
15 that doesn't reflect actual usage; (4) define VNXX differently than the Commission; and  
16 (5) treat NCC differently than NCC treats Qwest in relation to CNAM.

17  
18 **Q. TO RECAP, WHAT WOULD HAPPEN IF THE COMMISSION SAID YOU HAD**  
19 **TO CONVERT TO SS7?**

20 A. We would instantly no longer be profitable and in a short time go out of business.

21  
22 **Q. WHAT WOULD HAPPEN IF THE COMMISSION ALLOWED THE**  
23 **ARBITRARY CAP ON BILLABLE MINUTES?**

24 A. We would likely become immediately unprofitable and it would permanently prevent us  
25 from ever being profitable without converting our entire network to SS7. It would allow  
26 Qwest a free ride on our network. They could bill their customers for millions of minutes  
27 and they would pay us for only 10,000.

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**Q. WHAT WOULD HAPPEN IF THE COMMISSION RULED IN FAVOR OF QWEST ON THE RUF ISSUE?**

A. We could no longer afford to have an ISP on our network. We would have to kick them off our network.

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

A. Yes.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have served the foregoing document this day upon all parties of record (listed below) in these proceedings by mailing a copy properly addressed with first class postage prepaid.

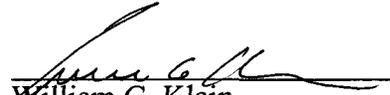
Norman G. Curtright QWEST CORPORATION 20 East Thomas Rd., 16 <sup>th</sup> Floor Phoenix AZ 85012	Janice Alward, Chief Counsel Legal Division ARIZONA COPORATION COMMISSION 1200 W Washington Street Phoenix AZ 85007
Steve Olea, Director Utilities Division ARIZONA CORPORATION COMMISSION 1200 W Washington Street Phoenix AZ 85007	Arizona Reporting Service, Inc. 2200 N Central Avenue, Suite 502 Phoenix AZ 85004-1481

An original and 15 copies of the foregoing hand-delivered to the Arizona Corporation Commission on the date below to the following address with first class postage prepaid.

Arizona Corporation Commission  
Utilities Division  
1200 W Washington Street  
Phoenix AZ 85004-1481

Dated this 15<sup>th</sup> day of December, 2010, in Phoenix, Arizona.

Respectfully submitted,

  
 William G. Klain  
 LANG, BAKER & KLAIN PLC  
 8767 Via de Commercio, Suite 102  
 Scottsdale, AZ 85258-3374