commitments. [redacted] More importantly, a volume discount should only be relevant to determining whether two customers are similarly situated in the case where the cost of providing a service decreases as volume increases. There is no evidence in this case that, in the provision of switched access, there is any marginal cost difference between providing a particular IXC one minute of use or providing it 1000 minutes of use. Dr. Weisman addresses this in more detail in his testimony but, put simply, there is no cost savings associated with increased switched access volume sales and, therefore, no basis for offering a volume-based discount for switched access services. Further, because the vast majority of the agreements contain no volume or revenue commitments, this is clearly a red herring. As the Colorado Commission found:

> Further, we find most persuasive QCC's argument that none of the unfiled off-tariff agreements ties the discount to the IXC to the purchase of specific volumes of switched access service. To the contrary, all of the unfiled agreements at issue in the instant proceeding grant the discount in unlimited fashion, regardless of how much switched access a favored IXC purchases. This alone is fatal to the claim that differences in size or traffic volumes justify price differentiation in this case. [4]

Q. WHAT IS MR. WOOD'S SECOND CATEGORY OF AGREEMENTS?

A. Mr. Wood's second category includes agreements based on historic traffic levels and future traffic projections. I did find one agreement [redacted] that stated that if the IXC volumes exceeded a certain amount, the specified rates in the agreement applied. However, the agreement was unclear as to what rates applied if the volume levels were not exceeded. As was the case with the first category, from a CLEC's perspective there

[4] *Order Addressing Exceptions and Motion to Reopen the Record.* Public Utilities Commission of the State of Colorado. Decision No. C11-1216. October 17, 2011.

is no cost savings related to a particular IXC maintaining or exceeding a specified volume of traffic and therefore no basis for offering a discount based on specified volumes.

Q. WHAT IS MR. WOOD'S THIRD CATEGORY OF AGREEMENTS?

A. Mr. Wood's third category includes agreements containing payments from CLEC to IXC and from IXC to CLEC. I am unclear as to specifically what terms Mr. Wood's is referring to in this category other than his statement that "the *quid pro quo* goes beyond switched access services and includes other services and payments." Without knowing what the specific terms are, it cannot be determined whether QCC would be willing to agree to them. Regardless, to the extent that they include services beyond switched access services they do not meet the threshold of being switched access cost based distinctions and thus do not provide a basis for determining that QCC is not similarly situated.

Q. PLEASE DISCUSS MR. WOOD'S FOURTH CATEGORY OF AGREEMENTS.

A. Mr. Wood's fourth category includes agreements with provisions concerning "network integration." Mr. Wood cites the specific example of Direct End Office Trunk requirements. Some of the remaining Joint CLEC agreements contain language related to direct end office trunks. In every case, the requirements related to Direct End Office Trunks were very general requirements such as:

[redacted]

REDACTED

These requirements are clearly no more than would be expected from any IXC. As I noted in my Direct Testimony it is in the best interest of any IXC to establish direct trunks where volumes are such that it makes economic sense.

Q. ARE THERE OTHER NETWORK REQUIREMENTS IN THE JOINT CLEC AGREEMENTS?

A. Perhaps, although that may be somewhat of an overstatement. There is a general statement in one of the agreements **[BEGIN LAWYERS ONLY CONFIDENTIAL]** [redacted] **[END LAWYERS ONLY CONFIDENTIAL]** that:

> **[BEGIN LAWYERS ONLY CONFIDENTIAL]** [redacted] **[END LAWYERS ONLY CONFIDENTIAL]**

This language doesn't really place a specific or unusual burden on either company, and I would expect that QCC would have agreed to such a broad principle had it been made aware of the secret agreements.

Q. WHAT IS MR. WOOD'S FIFTH CATEGORY OF AGREEMENTS?

A. The fifth category concerns "bill and keep" provisions in several of the off-price list agreements. Like Mr. Wood's other contract categories, the use of bill and keep for the exchange of local traffic has nothing to do with the cost of providing switched access service. Bill and keep is not a particularly unique term and condition when it comes to compensation for the exchange of local traffic, with many interconnection agreements specifying bill and keep. While Mr. Wood argues that the volumes of local traffic generated by QCC's CLEC would have to match the local traffic of the preferred IXC in access rates. According to Mr. Wood, the preferred IXCs were able to artificially create value to the CLECs by withholding payment and, as a result, were rewarded with lower switched access rates. This argument ultimately leads to the conclusion that the reason QCC is not similarly situated is because it paid its switched access bills, unlike the preferred IXCs. This makes no sense from an economics perspective and, from a public policy perspective, penalizes IXCs, like QCC, which pay their bills while rewarding those who don't.

Q. DO YOU HAVE A FINAL COMMENT ON MR. WOOD'S POSITION THAT THE FAVORABLE RATE TREATMENT IS INEXTRICABLY LINKED TO ADDITIONAL COMMITMENTS AND OBLIGATIONS UNDERTAKEN BY THE IXC?

A. Yes. Mr. Wood's position is undermined by the fact that several of the agreements grant the preferred IXC **[BEGIN LAWYERS ONLY CONFIDENTIAL]** [redacted] **[END LAWYERS ONLY CONFIDENTIAL]**While Mr. Wood would have the Commission believe that each agreement was carefully negotiated and crafted to include a delicately balanced exchange of benefits, this suggestion is undermined by the [redacted] provision. That provision makes clear that there is no real linkage between the switched access rate benefitting the preferred IXC (e.g. AT&T) and the other specific terms of that agreement. [redacted]

D. QCC CLEC AGREEMENTS

Q. MR. WOOD ARGUES THAT QCC HAS ENTERED INTO OFF-PRICE LIST AGREEMENTS MUCH LIKE THE AGREEMENTS THAT ARE THE SUBJECT OF THIS PROCEEDING (WOOD DIRECT TESTIMONY AT PAGES 56-59). PLEASE DESCRIBE THE AGREEMENTS MR. WOOD REFERS TO.

A. [BEGIN LAWYERS ONLY CONFIDENTIAL] [redacted]

[redacted]

REDACTED

[redacted]

REDACTED

[redacted] **[END LAWYERS ONLY CONFIDENTIAL]**

Q. WERE THE CPLA AGREEMENTS CONCEPTUALLY DIFFERENT THAN THE AGREEMENTS THE CLECS HAD WITH THE PREFERRED IXCS?

A. Yes. First, the CPLA agreement (which related to QCC's provision of unregulated wholesale long distance services) and the secret CLEC agreements (which related to the CLEC's provision of regulated intrastate switched access services) are entirely different types of agreements. Also, the intent, and result, of the CPLA language was not to advantage one wholesale customer over another, but to accommodate a CLEC's supposed inability to bill for switched access. Unlike the secret switched access agreements at issue in this case, the CPLA arrangement was designed to have neutral economic effect on the contracting parties. It was intended to offset lower wholesale long distance charges against switched access charges that were owed but allegedly couldn't be assessed. To the contrary, the secret switched access agreements were intended to benefit the IXC without any corresponding offset (aside from ensuring collectibles for the CLEC) benefiting the CLEC.

Q. WAS CPLA TAKEN INTO ACCOUNT IN MR. CANFIELD'S CALCULATIONS?

A. Yes. If a respondent CLEC actually waived some or all of its intrastate Florida switched access charges, the minutes and charges associated with such waiver would not be included in Mr. Canfield's calculations, as the calculations are based on actual billing records.

REDACTED

[redacted] **[END LAWYERS ONLY CONFIDENTIAL]**

Q. WHY WOULD A REASONABLE READING OF THE MOTION TO APPROVE THE GLOBAL MCI-AT&T SETTLEMENT LEAD ONE TO ASSUME THE SENTENCE MR. REYNOLDS CITES DEALS ONLY WITH UNE-P?

A. Paragraph 8 of the motion states that the parties were seeking "to resolve the foregoing disputes, including the UNE-P dispute, the Virginia Action, the Contempt Motion, the claims arising from the Executory Contracts, and the potential preference action" and then lists 8 sub-paragraphs lettered (a) thru (h) describing the settlement.[13] Buried as the third bullet point in the section addressing UNE-P disputes is the reference to the "bilateral switched access contracts" relied upon by MCI for its notice theory in this case. The structure of the motion could certainly cause a reasonable reader to assume that the disputes settled in the sealed agreement filed with the motion related solely to UNE-P issues.

Q. IS THE FACT THAT QCC DID NOT OBJECT TO THE MCI-AT&T GLOBAL SETTLEMENT AGREEMENT IN THE WORLDCOM BANKRUPTCY CASE RELEVANT HERE?

A. No. As noted above, QCC had no reason to pay particular attention to the MCI-AT&T global settlement in the context of the WorldCom Bankruptcy Case, and is certainly not asking the Commission to unwind the Bankruptcy Court's approval. More to the point, QCC does not object to the settlement itself; it objects to MCI's subsequent failure to comply with Florida law once the agreement was approved. The fact remains that MCImetro did not comply with its regulatory obligations under Florida law to make the terms available to other IXCs, including QCC. It could have easily done so by lowering

[13] Exhibit PHR-1, Section 8(h).

REDACTED

Therefore, any agreement by AT&T to lower its access rates to a common rate was not much of a compromise. On the other hand, an MCI agreement to lower its access rates to the same rate was far more significant. Thus, from this uneven starting point, the MCI-AT&T agreement was not truly reciprocal in any balanced sense, contrary to Mr. Reynolds' assertion. As I discussed in my Direct Testimony, there is nothing truly reciprocal about the MCI AT&T agreements.

[BEGIN LAWYERS ONLY CONFIDENTIAL] [redacted] **[END LAWYERS ONLY CONFIDENTIAL]**

Q. COULD QCC HAVE ENTERED INTO A "RECIPROCAL" AGREEMENT WITH MCI TO PROVIDE SWITCHED ACCESS SERVICES?

A. Certainly. As I noted in my Direct Testimony, although QCC did not provide switched access between the years 2004 and 2007, QCC was certificated to provide local exchange service in nearly every state (including Florida) during that period. The availability of discounted switched access rates would certainly be a relevant factor in any decision regarding the offering of switched access services. Because MCI did not make the AT&T terms available to QCC, QCC was deprived of the opportunity to consider whether to offer switched access (assuming that was even a legitimate prerequisite for the discount afforded by MCI to AT&T) and the potential benefits such an offering may have brought.

REDACTED

the knowledge of the agreements outside of the Minnesota litigation. Clearly if MCI's preference had been to handle this matter through company to company negotiations, as opposed to the current litigation, it was free at any time to offer the more favorable switched access rates to QCC. Further, MCI's argument seems to suggest that a regulated company (here, MCI) can limit this Commission's authority and obligation to enforce Florida statutes and resolve disputes by the unilateral inclusion of a dispute resolution provision in its price list. While I defer to counsel to brief the appropriateness of MCI's suggestion, principles of public policy do not support limiting the Commission's authority as MCI suggests.

V. SUMMARY/CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The major thrust of both Mr. Wood's and Mr. Reynolds' testimony is that QCC is not similarly situated to the preferred CLECs. However, both fail to address or identify any cost based distinctions between QCC and the IXCs they favored with the secret switched access agreements. Neither offers any evidence that there was any such cost basis for the rate discrimination. In Mr. Wood's testimony he argues that QCC must be willing and able to accept each and every term in the preferred IXC agreement in order to be "similarly situated" for purposes of a rate discrimination analysis. Yet clearly not every distinction serves to render two customers dissimilarly situated and the agreements "additional commitments and obligations" cited by Mr. Wood appear to be merely an after the fact justification for the discriminatory rate treatment. Mr. Reynolds' arguments that QCC was not similarly situated to MCI are equally unconvincing. Mr. Reynolds' claim that the AT&T agreements with MCI were reciprocal is belied by the fact that the agreements resulted **[BEGIN LAWYERS ONLY CONFIDENTIAL]** [redacted]

REDACTED

[redacted] **[END LAWYERS ONLY CONFIDENTIAL]** Ultimately, the testimony of both the Joint CLECs and MCI fail to offer a credible and legal justification for the discriminatory behavior engaged in by the respondent CLECs and must be rejected.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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