price list intrastate switched access rates. The discounts are not reflected in the price lists filed by the Respondent CLECs, and were not offered or furnished to QCC, which (as to some of the Respondents) continues to pay rates higher than provided to other IXCs. The facts specific to each of the Respondents are discussed in turn.

**A. BullsEye Telecom**

BullsEye offers intrastate switched access service via a price list filed with the Commission.[2] BullsEye's price list rate is $.041 for switched access in Florida. It also charges a flat rate of $.0055 for each 8XX database query.[3] It is undisputed that BullsEye charged its price list rates to QCC.[4] Section 5.1 of BullsEye's price list states that BullsEye may enter into ICB ("special contract arrangements") agreements, but the price list promises that such "[s]ervice shall be available to all similarly situated Customers for a fixed period of time following the initial offering to the first contract Customer as specified in each individual contract."[5]

BullsEye entered into a secret switched access agreement with AT&T effective October 21, 2004.[6] Pursuant to the agreement, *which remains in effect by BullsEye's own choice*,[7] AT&T receives a heavy discount off of BullsEye's price list rates. AT&T pays BullsEye only [redacted]

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2 Hearing Exhibit 44 (BullsEye Price List).

3 TR 72, Easton Direct.

4 TR 72, Easton Direct; TR 265-266, Canfield Direct; Hearing Exhibit 60 (BullsEye Overcharge Analysis Detail); TR 655, LaRose Rebuttal.

5 Hearing Exhibit 44 (BullsEye Price List). Section 5.1 of the BullsEye price list also specifies that the "terms of the [ICB] contract may be based partially or completely on the term and volume commitment, type of access arrangement, mixture of services, or other distinguishing features." The BullsEye agreement at issue in this case is premised on none of these "distinguishing" criteria.

6 TR 72, Easton Direct; Hearing Exhibit 37 CLEC Agreement Rates); Hearing Exhibit 42 (BullsEye-AT&T agreement); TR 655-656, LaRose Rebuttal.

7 TR 685-687, LaRose Cross. The BullsEye-AT&T agreement had an initial term of [redacted] Hearing Exhibit 42, p.2 (BullsEye-AT&T Agreement, Sec. B.1.). Contrary to its mantra that the agreement is void and unenforceable (TR 663-666, LaRose Rebuttal; TR 685, LaRose Cross), [redacted] BullsEye continues to this day to operate under the agreement. Despite its vehement disdain for AT&T's practices, BullsEye voluntarily continues (six years after it was contractually bound to do so) to provide AT&T preferential rate treatment. BullsEye's conduct does not match its rhetoric.

[redacted] for Florida switched access. AT&T only pays BullsEye [redacted] for each 8XX database query.[8] Had BullsEye provided equivalent rate treatment to QCC since entering into the AT&T agreement, QCC would have been charged [redacted] less than it was actually charged, through March 2012.[9] QCC was charged [redacted] more than AT&T would have been charged for the same volume of services. In rebuttal testimony, BullsEye witness Peter LaRose generally stated disagreement with "the financial analyses presented by Qwest," but offered no specific computational or methodological critiques of QCC's analysis.[10] QCC asked for specific criticisms through discovery, but BullsEye offered no specifics and stated that the existence of computational errors is "entirely irrelevant."[11]

QCC became aware of the BullsEye-AT&T agreement when a redacted copy was provided under seal in August 2008 pursuant to a Colorado Commission subpoena. QCC did not become aware of the Florida-specific terms of the agreement until AT&T responded to this Commission's subpoena in May 2010. QCC is not aware and no evidence was presented to show that BullsEye filed the agreement with this Commission, appended the agreement to its price list, modified its price list to reflect the discounts provided to AT&T, advised QCC of the existence of the agreement or offered QCC equivalent rate treatment. There is no evidence that BullsEye ever even sought permission from AT&T to share a copy with QCC.[12]

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[8] Hearing Exhibit 42, p. 6 (BullsEye-AT&T Agreement, Schedule A.); Hearing Exhibit 37 (CLEC Agreement Rates).

[9] TR 266, Canfield Direct; Hearing Exhibits 59 (BullsEye Overcharge Analysis Summary) and 60 (BullsEye Overcharge Analysis Detail). As Mr. Canfield explained in his Direct Testimony, his calculations were compiled through March 2012, and need to be updated to reflect the full amount of the overcharge.

[10] In rebuttal testimony, BullsEye witness Peter LaRose generally stated disagreement with "the financial analyses presented by Qwest," but offered no specific computational or methodological critiques of QCC's analysis.TR 673, LaRose Rebuttal.

[11] Hearing Exhibit 14, at Bates No. 348.

[12] Despite making significant and burdensome demands on QCC in discovery in this matter (culminating in a motion to compel filed on the eve of the evidentiary hearing), BullsEye refused to respond to even these most basic questions. Instead, BullsEye obfuscated, and refused to answer. Hearing Exhibit 13, at Bates Nos. 321-322, 324-325. There is no record evidence demonstrating (or even suggesting) that BullsEye gave any notice of the existence of its agreement with AT&T.

## B. Ernest Communications, Inc.

Ernest offers intrastate switched access service via a price list filed with the Commission.[13] Ernest's price list rate is $.0200 for originating switched access and $.0280 for terminating switched access. It also charges a flat rate of $.0055 for each 8XX database query.[14] It is undisputed that Ernest charged QCC its price list rates.[15]

Ernest entered into two secret switched access agreements with [redacted] effective [redacted].[16] Pursuant to the agreements, the latter of which is [redacted],[17] [redacted] receives a significant discount off of Ernest's price list rates. [redacted][18] Had Ernest provided equivalent rate treatment to QCC since entering into the [redacted] agreements, QCC would have been charged [redacted] less than it was actually charged, through March 2012.[19] QCC was charged [redacted] more than [redacted] would have been charged for the same volume of services. Ernest offered no testimony responding in any way to QCC's calculations, and chose not to respond to discovery or participate in the evidentiary hearing. Thus, QCC's overcharge calculation is unrebutted.

QCC became aware of the Ernest-[redacted] agreements when redacted copies were provided under seal in August 2008 pursuant to a Colorado Commission subpoena. QCC did not become aware of the applicability of the agreements to Florida until [redacted] responded to this Commission's subpoena in May 2010. QCC is not aware and there is no evidence to show that Ernest filed the agreements with this Commission, appended the agreements to its price list,

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13 Hearing Exhibit 48 (Ernest Price List).

14 Id. (secs. 3.9.3, 3.9.4.); TR 75-76, Easton Direct.

15 TR 75, Easton Direct; TR 273, Canfield Direct; Hearing Exhibit 62 (Ernest Overcharge Analysis Detail).

16 TR 75, Easton Direct; Hearing Exhibits 45-46 (Ernest [redacted] Agreements).

17 Hearing Exhibit 37 (CLEC Agreement Rates), p. 3.

18 TR 75, Easton Direct; Hearing Exhibits 45-46 (Ernest [redacted] Agreements); Hearing Exhibit 37 (CLEC Agreement Rates), p. 3.

19 TR 273, Canfield Direct; Hearing Exhibits 61 (Ernest Overcharge Analysis Summary) and 62 (Ernest Overcharge Analysis Detail). Mr. Canfield's calculations require updating through the date of the final order herein, and do not include interest.

modified its price list to reflect the discounts provided to [redacted], advised QCC of the existence of the agreements or offered QCC equivalent rate treatment. There is no evidence that Flatel ever even sought permission from [redacted] to share copies with QCC.[26]

**D. Navigator Telecommunications, LLC**

Navigator offers or offered intrastate switched access service via a price list filed with the Commission.[27] Navigator's price list rates changed over time, and Mr. Easton summarizes those rates in his Direct Testimony.[28] It is undisputed that Navigator charged QCC its price list rates.[29]

Navigator entered into a secret switched access agreement with AT&T effective July 1, 2001.[30] Pursuant to the agreement, AT&T receives a heavy discount off of Navigator's price list rates. AT&T pays [redacted][31] Had Navigator provided equivalent rate treatment to QCC since entering into the AT&T agreement, QCC would have been charged [redacted] less than it was actually charged. QCC was charged [redacted] more than AT&T would have been charged for the same volume of services.[32] Navigator offered no testimony responding in any way to QCC's calculations, and chose not to participate in the evidentiary hearing. Thus, QCC's overcharge calculation is unrebutted.

QCC became aware of the Navigator-AT&T agreement when AT&T responded to this Commission's subpoena in June 2010. QCC is not aware and there is no evidence to show that Navigator filed the agreement with this Commission, appended the agreement to its price list,

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[26] Flatel ignored QCC's discovery in this proceeding. TR 76, Easton Direct; Hearing Exhibit 50 (QCC's discovery to Flatel).

[27] Hearing Exhibit 54 (Navigator Price List).

[28] TR 83-84, Easton Direct.

[29] TR 83, Easton Direct; TR 288-289, Canfield Direct; Hearing Exhibit 66 (Navigator Overcharge Analysis Detail).

[30] TR 82, Easton Direct; Hearing Exhibit 52 (Navigator-AT&T Agreement).

[31] TR 82-83, Easton Direct; Hearing Exhibit 52 (Navigator-AT&T Agreement); Hearing Exhibit 37 (CLEC Agreement Rates), p. 4.

[32] TR 289, Canfield Direct; Hearing Exhibits 65 (Navigator Overcharge Analysis Summary) and 66 (Navigator Overcharge Analysis Detail). Mr. Canfield's calculations do not include interest.

the AT&T agreement, QCC would have been charged [redacted] less than it was actually charged.[40] QCC was charged [redacted] more than AT&T would have been charged for the same volume of services.[41] Like BullsEye, TWT offered only generalized disagreement with QCC's calculations, but no specific computational critiques. While it presented legal arguments as to why QCC is not entitled to the relief it seeks, TWT did not assert that Mr. Canfield inaccurately compared TWT's billings to QCC with its billings to AT&T.[42]

QCC first became aware of the Florida-specific rate provisions of the TWT-AT&T agreement when AT&T responded to this Commission's subpoena in December 2011. While TWT claims that QCC became aware of the agreement when TWT filed a redacted copy of the agreement with the SEC in 2005, TWT acknowledges that the rate provisions (found in Appendix E) were redacted and not made public in that SEC filing.[43]

QCC is not aware and there is no evidence that TWT filed the agreement with this Commission, appended the agreement to its price list, modified its price list to reflect the discounts provided to AT&T, advised QCC of the existence of the agreements or offered QCC equivalent rate treatment. There is no evidence that TWT ever even sought permission from AT&T to share copies with QCC.[44]

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40 TR 298, Canfield Direct; Hearing Exhibits 67 (TW Telecom Overcharge Analysis Summary) and 68 (TW Telecom Overcharge Analysis Detail).

41 Id.

42 Hearing Exhibit 22 (TWT's responses to QCC's Second Set of Discovery), at Bates Nos. 476-77.

43 TR 638-639, 641, 645-646, Jones Cross.

44 Hearing Exhibit 19 (TWT response to QCC's First Set of Discovery), Bates Nos. 438-439, 441-442; Hearing Exhibit 21 (TWT supplemental response to QCC's First Set of Discovery), Bates No. 461. In answer to QCC's inquiries as to whether TWT advised QCC of the agreement, TWT responds with generalities about public notice and its SEC filing. TWT does not allege that the Florida-specific rates it charged AT&T under its secret agreement were publicly known or disclosed.

exempt from 364.08 and .10 because CLECs are subject to diminished regulatory oversight in Florida.[71] In this regard, Mr. Wood conflates two very different concepts in an attempt to mischaracterize QCC's position in this case. There is no doubt that CLECs are subject to diminished oversight. There is also no doubt that CLEC rates are not set or regulated by the Commission. However, those facts do not equate to an implied exemption from statutes that the legislature very clearly declined to exempt CLECs from. Contrary to Mr. Wood's obfuscation, QCC is not asking the Commission to turn back the clock and retroactively set or regulate CLEC access rates. The Commission has no such authority, and needs no such authority for purposes of this case. Because Florida law did clearly require CLECs to provide non-discriminatory rate treatment, the Commission's concern should be focused not on absolute rate levels (be the rate $.02 or $.20 per minute), but on relative rate levels. If a CLEC believed it was reasonable to charge AT&T $.02 per minute for switched access, it was required to likewise charge QCC that same rate if QCC was under "like circumstances."

### B. The Respondents Have Admitted Differential Treatment.

As detailed in the Facts section above, each CLEC Respondent has on file with this Commission a price list establishing its rates for intrastate switched access services. It is beyond dispute that the Respondents charged QCC their price list rates. It is further beyond dispute that each Respondent charged one or more other IXCs lower rates for the identical bottleneck switched access service. While the magnitude of the discount varies from Respondent to Respondent and agreement to agreement, the Respondents overcharged QCC by between [redacted] relative to the preferred IXCs. As discussed above, the CLECs' price differentiation was not trivial whether expressed as a percentage or in dollars. Applying the preferential

[71] *See e.g.*, TR 488 ("Throughout their testimony, the Qwest witnesses assume that a regime of cost-based, highly regulated CLEC switched access rates exists in Florida – a regime that in reality does not exist and never has existed in Florida").

discounted rates enjoyed by the preferred IXCs to QCC's usage, QCC was overcharged – for Florida intrastate switched access services alone – by over [redacted] just by the remaining five Respondent CLECs. Through its complaint, QCC seeks refunds of those overcharged amounts, plus interest, as Florida law permits it to seek.[72]

### C. The Respondents Secreted Away the Discounts and Failed to Provide Equivalent Rate Treatment to QCC or other IXCs.

Throughout this proceeding, numerous Respondent CLECs (particularly BullsEye) have placed inordinate focus on their contention that AT&T coerced them into entering the discount agreements by refusing to pay the CLECs' tariff rates.[73] While the insufficiency of that motivation is discussed at greater length below, the argument misses the point. QCC's position is not that the Respondent CLECs violated Florida law by entering the agreements for this or any other reason. Instead, the violations of law stem from the Respondents' *subsequent* conduct.[74]

After entering into the agreements (for whatever reason), the Respondent CLECs were fully capable of abiding by Florida law by (a) providing non-discriminatory rate treatment to similarly-situated IXCs including QCC, or by (b) amending their price lists to offer all IXCs equivalent rate treatment. That is precisely what Level 3 did, as explained by QCC witness Bill Easton.[75] By doing so, Level 3 obviated the need to take further affirmative steps and protected itself from any claim of rate discrimination. Every CLEC in this case could have done exactly the same thing, but chose not to. Instead, the Respondent CLECs held the discounts secret, refusing to disclose the agreements or to advise other IXCs (including QCC) that such

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72 *See* Order No. PSC-10-0296-FOF-TP, Issued May 7, 2010, at p. 6 (discussed at greater length regarding Issue 9a below).

73 *See e.g.*, TR 655-657, LaRose Rebuttal; TR 678-679, LaRose Cross.

74 TR 135-136, Easton Cross.

75 TR 63, Easton Direct. As Mr. Easton recounts, in the parallel Colorado proceeding, Level 3 witness Mack Greene testified that after entering into an off-tariff switched access agreement with AT&T, it modified its state switched access tariffs to reflect the same rate as set forth in the AT&T agreement. Upon learning that Level 3 had modified its tariff to reflect the AT&T agreement rate, QCC voluntarily dismissed Level 3 as a respondent in the Colorado proceeding.

originating access service over the *identical* facilities to AT&T and QCC, QCC is charged a rate [redacted] higher than is AT&T.

Second, the bottleneck nature of the service is identical whether the CLEC originates the call on behalf of QCC or AT&T. As confirmed by the FCC and numerous state commissions, CLECs (which typically lack monopoly power in downstream, retail markets) have bottleneck, monopoly control over switched access services they provide.[78] This is no less true for services provided to IXC AT&T than it is for services provided to IXC QCC. If dissatisfied by BullsEye's rate, whether on an absolute basis (because the rate is excessively high) or a relative basis (because QCC suspects that BullsEye is providing preferential rate treatment to QCC's competitor IXCs), QCC has no viable option to circumvent BullsEye's service because it is the end-user customer rather than the IXC that chooses the local exchange carrier. As such, with respect to seeking alternatives, QCC and AT&T are identical.[79]

Third, and most critically, a CLEC's cost of providing switched access to QCC is identical to its cost of providing the service to AT&T. Price differentiation is permitted when the cost of providing the service varies between customers. This conclusion is supported as a matter of economics and as a matter of law. As a matter of economic theory, Dr. Weisman explains that discriminatory pricing refers to price differences that cannot be explained by cost differences.[80] If, for example, one of the Respondents demonstrated that its relevant economic cost of

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[78] TR 342-346, Weisman Direct.

[79] The CLECs appear to argue that CLEC-provided switched access is not a bottleneck because, like other IXCs, QCC at times utilizes the services of underlying carriers ("ULCs") to carry long distance traffic and deliver it to terminating LECs. If the suggestion is that these ULCs provide QCC a meaningful alternative to CLEC-provided switched access, the CLECs miss the point. First, none of the traffic at issue in this case was handed to ULCs. QCC has only sought refunds relating to intrastate calls that it directly handed to the Respondent CLECs. Second, while it is true that QCC did not suffer discrimination as to calls handed by the ULCs (which are responsible for paying switched access to the LECs), the ULCs may have as the ULCs similarly had no competitive alternatives. In essence, there is only one gate to the end user, regardless of which IXC hands the call off for termination. TR 170-174, Easton Cross; TR 197, Easton Re-Direct; TR 332. Canfield Cross; TR 414-417, Weisman Cross.

[80] TR 351-361, Weisman Direct; TR 389-390, Weisman Summary; TR 408-409, Weisman Cross.

both QCC and BullsEye seem to agree, IXCs should not be encouraged to engage in self help.[93]

At hearing, Mr. LaRose agreed that the Commission should not encourage customers to simply withhold payment when those customers believe the utility's rates are too high.[94] While he showed disdain for AT&T's "predatory" conduct, BullsEye's advocacy asks the Commission to endorse this very conduct by finding that BullsEye was justified in denying QCC rate treatment equivalent to AT&T because, unlike AT&T, QCC did not engage in such self help. Adopting BullsEye's irreconcilable arguments would be incompatible with sound public policy goals such as ensuring fair treatment by public utilities, promoting competition, and encouraging compliance with statutory obligations.

2. AT&T's Purchase of Unrelated, Unregulated Services Does Not Justify TWT's Discriminatory Rate Treatment.

TWT premises its entire defense of QCC's complaint on the fact that AT&T agreed to purchase (on a "take or pay" basis) large sums of other services under the 2001 AT&T-TWT agreement. The agreement primarily focused on providing discounts on unregulated[95] "special access and direct transport" services in exchange for AT&T's agreement to meet a total revenue commitment. While TWT describes Florida intrastate switched access services as "integral" to the agreement and the revenue commitment, Ms. Jones admits that they accounted for [redacted] of commitment.[96] Because QCC was (according to TWT) not capable of meeting the same total revenue commitment, [redacted] of which related to services other than those at issue in this case, TWT concludes QCC and AT&T were not similarly situated with regard to TWT's provision of intrastate switched access in Florida. TWT's argument fails for numerous reasons.

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93 TR 61-63, Easton Direct.

94 TR 683, LaRose Cross.

95 TR 557, Wood Witness Summary ("The terms and conditions of this contract include a commitment from AT&T to purchase large volumes of unregulated services....").

96 TR 623, Jones Direct.

dedicated and special access services on the one hand and switched access on the other hand, the Commission should be wary to accept TWT's explanation. If this agreement could truly only exist for one IXC (AT&T) – and the reason for that is that AT&T is the only IXC to purchase such large levels of the unrelated service that comprises [redacted] of the revenue commitment required under the agreement – it is clearly unreasonable to disadvantage all other Florida IXCs as to the pricing of switched access on that basis. This Commission's purview is to enforce the statutory non-discrimination requirements of Florida statute as they pertain to CLEC-provided switched access. As the Colorado Commission found, TWT should not be able to obscure those statutory mandates on the basis of one customer's willingness to purchase large amounts of unrelated and unregulated services. To do so would be to glorify form over substance. QCC is not, contrary to TWT's argument at hearing, asking the Commission to award QCC a preferential deal which would treat "tw and AT&T unfairly and unreasonably."[104] It is seeking the non-discriminatory rate treatment for intrastate switched access services guaranteed by statute. That TWT chose to dress up its discount to AT&T by combining it with AT&T's purchase of entirely unrelated services does not, as TWT suggests, absolve TWT of its statutory obligations, and does not divest QCC of its entitlement to equivalent rate treatment.

3. The CLECs' Other Justifications Fail as Well.

While BullsEye and TWT primarily focus on the issues of coercion and the purchase of other services, a handful of other *post hoc* rationalizations are also floated. In their Prehearing Statements, the CLECs include the following assertion: "[t]he circumstances of each transaction may vary for any number of reasons, such as the volume and type of services being provided, the expected volume of switched access traffic, the term length, pending disputes between the parties, and the parties' respective bargaining skills. Because Qwest ignores such factors, it fails

[104] TR 39, TWT Opening Statement; TR 558-559, Wood Witness Summary.

to demonstrate any 'unreasonable discrimination.'"

Most of these justifications are left entirely unexplained, and seem to make no sense. As to the "type of service provided," it is established and uncontested that the switched access the Respondents provide to QCC is identical in all respects (except as to price) to the switched access it provides to AT&T and other IXCs. The services provided to QCC use the identical facilities and cost the CLEC exactly the same as the services provided to AT&T. Barring any further specificity as to how the "types of services" differ (which specificity cannot be found in the record evidence), the Commission should reject this curious argument.

As to traffic volumes, this argument too lacks any credibility or evidentiary support. There is no evidentiary basis to conclude that the volume of switched access purchased by AT&T alters the CLECs' cost of providing the service to AT&T and/or that such costs were even considered by the contracting parties. Neither BullsEye's nor TWT's agreements tie the discount to be received by AT&T [redacted] Thus, reliance on "volumes" as a distinguishing feature is inapt. The Colorado Commission found the absence of volume commitments to be fatal to the CLECs' argument that "traffic volumes" rendered QCC and the preferred IXCs sufficiently dissimilar to justify the CLECs' discriminatory rate treatment.[106]

In addition, as Dr. Weisman explains, there is no theoretical or quantifiable basis to

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105 Hearing Exhibits 42 (BullsEye-AT&T agreement) and 55 (TWT-AT&T agreement). TR 62, Easton Direct.

106 Colorado Order on Exceptions, para. 75 ("[W]e 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.").

**ISSUE 8g:** **Are Qwest's claims barred or limited, in whole or in part, by the intent, pricing, terms or circumstances of any separate agreements between Qwest and any CLEC?**

**QCC's Position:** ** No. The Respondent CLECs have failed to demonstrate that the terms of other agreements justify their discriminatory treatment of QCC or serve to bar QCC's Complaint or the relief it seeks. **

**Argument**

Having little or no defense or justification for *their own* discriminatory and anticompetitive conduct, the CLECs dedicate inordinate focus to whether QCC also entered into switched access agreements *as a customer*. CLEC counsel asked in excess of 25 questions on cross examination about the issue of the CPLA agreements disclosed by QCC in the course of discovery. Despite counsel's hyper-vigilant interest, these agreements have no bearing on the central question – whether BullsEye violated Florida law in *its provision* of intrastate switched access to QCC. The Commission should not allow BullsEye to distract the Commission from the core issues in this case.[143]

Even if the Commission was inclined to consider the CPLA agreements, those agreements were entirely distinct from the discount agreements at issue in this proceeding. [redacted] the CLECs granted large, secret discounts on Florida switched access. The agreements were designed to confer a clear benefit to the IXC, and were also designed to guard the secrecy of the switched access discounts.

[143] QCC's entry into agreements with *other* CLECs is wholly irrelevant to determining whether the Respondent CLECs violated Florida law. The record evidence revealing that BullsEye preferred AT&T (vis-à-vis QCC) in its pricing of intrastate access services without reasonable justification is essentially uncontested. The reasonableness and lawfulness of BullsEye's preferential rate treatment is not informed in any way by information concerning QCC's contractual dealings with other LECs. As discussed above, the Commission's discrimination analysis involves determining whether the Respondent provided differential rate treatment to similarly situated customers without reasonable justification. That inquiry focuses entirely on the relationship between that Respondent and QCC, as well as the relationship between the Respondent and the preferred IXC. QCC's relationship with *other providers* is entirely irrelevant.

### B. QCC's Civil Complaint Against AT&T Does Not Preclude This Complaint.

The CLECs ask the Commission to bar any relief to QCC "as a matter of policy" because, in 2007, QCC sought civil relief against AT&T in a Minnesota state court complaint. That complaint was dismissed (as the CLECs know), and QCC was awarded no relief whatsoever against AT&T.[146]

BullsEye in particular is preoccupied with the fact that QCC's unsuccessful civil complaint alleged that the AT&T agreements were void and unenforceable.[147] The Court did not enter findings based on this allegation, and there is no legal or other basis to conclude that QCC is estopped or otherwise precluded from now seeking relief based on the CLECs' violation of Florida law. As noted in QCC's supplemental response to BullsEye's discovery, after the Minnesota state court dismissed QCC's complaint, QCC shifted its focus from AT&T to the CLECs which violated state discrimination laws. Whether or not QCC once believed or alleged that the agreements were unenforceable is entirely irrelevant. If the CLECs wished to have the lawfulness of the agreements tested or scrutinized, they had every right to bring a civil action or to simply stop performing under the agreement, forcing AT&T to bring a breach of contract action. But they did not do so, and instead continued performing under the agreements by providing large discounts, even well after the initial terms of the agreements expired.

Whether or not the agreements were or are "illegal and unenforceable" is a matter for the courts, and a matter of import only to the contracting parties. QCC's concern is the significantly lower rates that the CLECs charged QCC's similarly situated IXC competitors. As a matter of

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[146] As the CLECs note, QCC and AT&T did subsequently reach a settlement of the civil complaint, as well as numerous claims by AT&T against QCC's affiliates. The settlement resulted in QCC [redacted]. See, Hearing Exhibit 18. Entry of the multi-issue settlement certainly does not preclude QCC from pursuing a regulatory remedy against the CLECs for their violation of Florida statute.

[147] *See* TR 665, LaRose Rebuttal. BullsEye even filed a motion to compel QCC to reveal whether it presently contends the CLEC agreements are void and to explain when and why it changed its position. Hearing Exhibit 83 (QCC's Supplemental Response to BullsEye's Discovery).