BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of Verizon's Objection, Protest and Request for Investigation in Response to Qwest's Recent Filing of its Revised Access Service Tariff Sheets 13, 13.1 and 16	**))))))**	**DOCKET NO. 08-2430-01**

RESPONSIVE TESTIMONY

OF

PATRICK H. MERRICK

ON BEHALF OF

MCI COMMUNICATIONS SERVICES, INC.
d/b/a VERIZON BUSINESS SERVICES

May 28, 2009

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Patrick H. Merrick. My business address is 22001 Loudoun County Parkway, Ashburn, Virginia 20147.

Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

A. I am employed by MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon Business") as a Group Manager in the Finance Department. My responsibilities include financial analysis and negotiations in support of Verizon Business's legal and regulatory proceedings covering a wide range of access-related issues. My organization receives, processes, audits and pays all telecommunications invoices on behalf of Verizon Business.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I earned a Bachelor of Science Degree in Business Administration from Northern Arizona University, a Masters of Business Administration Degree with an emphasis in Finance from Illinois Benedictine College, and a Juris Doctor degree from DePaul University College of Law.

Q. PLEASE DESCRIBE YOUR RELEVANT TELECOMMUNICATIONS WORK EXPERIENCE.

A. I began my employment with Verizon Business (formerly MCI) in November of 2004 and assumed my current position at that time. Prior to November 2004, I was employed for 20 years by AT&T. I began my employment at AT&T in 1984 as a manager for AT&T's Computer System Division ("CSD"). During my six years with CSD, I held a variety of positions with numerous responsibilities, including internal financial analysis, sales support, contract negotiations and product management. In 1990, I transferred to AT&T Financial Regulatory Matters where I was responsible for analysis and the reporting of financial regulatory results for Illinois, Minnesota and North Dakota. In 1993, I transferred to the Law and Public Policy organization and was responsible for supporting AT&T's advocacy of access services issues with the Federal Communications Commission ("FCC") and state commissions. In 1996, I transferred to Central Region, Law and Government Affairs where I was responsible for cost analysis and policy implementation related to AT&T's arbitration proceedings in the states of Illinois, Indiana, Michigan, Ohio and Wisconsin. In April, 1999, I became the Director – Federal Regulatory Affairs for AT&T in Washington D.C., responsible for access and universal service related issues and held that position until November of 2004.

Q. HAVE YOU APPEARED OR FILED TESTIMONY IN CASES BEFORE ANY STATE REGULATORY COMMISSIONS?

A. Yes. I have presented information or testified on behalf of AT&T in Michigan, Illinois, Indiana, Ohio, and Wisconsin, and filed testimony on behalf of Verizon Business in Colorado regarding a similar tariff filing by Qwest in that state.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I will explain Verizon Business's concerns regarding Qwest's proposal to amend its switched access tariff in Utah. That tariff would change the way Qwest determines the jurisdiction of, and applies the proper rate to, various types of communications traffic. I will show that Qwest's revised practice would improperly subject certain traffic -- in particular, international calls that originate outside of North America and terminate in Utah -- to intrastate switched access rates. This is objectionable because Qwest's intrastate switched access rates are much higher than its interstate access rates that properly apply to international calls. Qwest's proposal would disproportionately affect a company such as Verizon Business that is a major provider of international communication services.

I will also address the 5 percent "floor" included in Qwest's proposed tariff. Qwest intends to impose intrastate access rates on traffic above that level for which Qwest claims it cannot identify the jurisdiction. I will explain that Qwest established the level of the floor in an arbitrary manner, the floor was set unreasonably low, and allowing Qwest to employ that benchmark would lead to results that are inappropriate and unfair. Finally, I will explain that a key rationale relied upon by Qwest to support its proposed tariff changes – that it is simply "following the lead" of other carriers like Verizon and AT&T that have allegedly implemented similar billing practices, "impose" similar percent of interstate use ("PIU") floors and "treat unidentified traffic in the same manner that Qwest proposes here"– is incorrect. In fact, neither Verizon nor AT&T has implemented such tariff procedures and neither company is actually billing interexchange carriers ("IXCs") using the practices Qwest proposes to implement here.

Q. PLEASE DESCRIBE BRIEFLY VERIZON BUSINESS.

A. Verizon Business provides a number of domestic and international voice and data long-distance communication services. Those services are available to large and small business customers, state and federal government agencies, and residential consumers. Many of our enterprise business and government customers have operations in many states, as well as in other countries. Many of our residential customers have friends and family in other parts of the world. To serve our diverse customer base, Verizon Business has a global network with operations in more than 150 countries worldwide. Accordingly, calls on our network may originate anywhere in the world, from Provo to Peking. Verizon Business routes the calls over our network to whatever destination the calling party has chosen. Because Verizon Business is a major provider of international communication services, our network likely carries more international calls than most other interexchange carriers.

Q. IS VERIZON BUSINESS SUBJECT TO QWEST'S ACCESS TARIFF?

A. Yes. All of the traffic I described above has to terminate somewhere. Calls that enter Verizon Business's long distance network and are destined for Qwest's end-user customers in Utah are routed by Verizon Business to Qwest for termination. As a local exchange carrier ("LEC"), Qwest provides a switched access service when it terminates interexchange traffic. Calls that originate outside of Utah and terminate in Utah are interstate calls, and the rates, terms and conditions in Qwest's interstate access tariff apply. That tariff is filed with the FCC and is designated Qwest Corporation Access Service Tariff F.C.C. No. 1. The access rates in Qwest's FCC tariff also apply to international calls that are terminated by Qwest in Utah. On the other hand, an interexchange call that both originates and terminates within Utah is an intrastate call, and is subject to the rates, terms and conditions in Qwest's intrastate access tariff. This tariff would apply, for example, to a call that originates in Moab and terminates in Salt Lake City.

Q. WHY IS IT NECESSARY TO DETERMINE THE PROPER JURISDICTION OF CALLS?

A. The rates that apply to calls vary depending on their jurisdiction. For example, I believe that a residential consumer generally understands that a local telephone call within the Salt Lake City metropolitan area may cost less than making a call from Salt Lake City to Orlando, Florida, and that it may cost even more to place a call from Salt Lake to Singapore. Similarly, Qwest charges different rates for essentially the same switched access service, depending on whether the long distance call is interstate or intrastate. Those rates may vary substantially, as evidenced by the rates Qwest charges interexchange carriers pursuant to its interstate switched access tariff on file with the FCC and its intrastate access tariff in Utah. For example, just looking at one rate element, local switching, the rate in Qwest's interstate tariff is $ 0.001974 per minute of use, whereas the rate for local switching in its intrastate tariff is nearly five times higher, or $ 0.009736 per minute. *See* Qwest Tariff F.C.C. No. 1, § 6.8.2.A; Qwest Access Service Tariff Utah, § 6.8.2.A. The average per-minute charge that Qwest bills Verizon Business for terminating an intrastate interexchange call in Utah is more than five times higher than the amount it bills Verizon Business for terminating an interstate long distance call. See Confidential Exhibit PHM-1. Verizon Business has a strong interest in ensuring that Qwest properly determines the jurisdiction of the traffic that it terminates and that it applies the correct rates. It is important that interstate and international calls be assessed the correct interstate access rate, and that the much higher intrastate access rate is not imposed. Otherwise, Qwest would be incorrectly billing the interexchange carrier.

Q. CAN COMMUNICATIONS CARRIERS GENERALLY DETERMINE THE PROPER JURISDICTION OF CALLS?

A. Yes. The jurisdictional assignment of calls involves a determination of the geographic origination and termination points of the call. Telephone companies obtain information primarily from SS7 signaling records, switch-based call records and other data bases to enable them to make those determinations. If a domestic POTS (Plain Old Telephone Service) number is available in the call records, the carrier will often utilize LERG (Local Exchange Routing Guide) and TPM (Terminating Point Master) databases to help with that determination. In the absence of such POTS telephone numbers or when SS7 data identifies traffic as wirelessly originated, Verizon Business relies on the best available information to determine the location for that end point. Depending on the type of call, this may include customer trunk information for Dedicated Access Line (DAL) connections, JIP (Jurisdictional Information Parameter), or the terminating equipment or customer location for an SS7 Point Code. As I will describe below, there are also certain “international indicators” that identify calls that originate internationally.

Having said that, I will also point out that interexchange carrier networks today are a complex array of technologies which bear little resemblance to the simple voice-based, 1+ long distance calling of 20 years ago. This reflects in part the growing complexity of customer requirements. For these and other reasons, there are circumstances in which there may not be sufficient information available in the signaling message to readily identify a call's jurisdiction. This is not a new, let alone unique, phenomenon. As Mr. Easton points out, "[a]ll local exchange carriers receive a certain amount of traffic for which the jurisdiction cannot be determined" (Easton Testimony at 5).

Q. DO YOU AGREE WITH MR. EASTON'S ASSERTION (ON PAGE 5 OF HIS TESTIMONY) THAT IN CASES WHERE THE CALLING PARTY INFORMATION LACKS A VALID CALLING PARTY NUMBER OR A CHARGE PARTY NUMBER, QWEST IS "UNABLE TO DETERMINE THE APPROPRIATE JURISDICTION OF THE TRAFFIC"?

A. No. As I stated above, a variety of information in addition to the Calling Party Number or a Charge Party Number is available and may be used by carriers to determine the jurisdiction of different types of calls. For example, I will describe later some of the information that may be used to determine the jurisdiction of international calls that originate outside of North America. Qwest's claim that it is unable to determine the appropriate jurisdiction of certain types of traffic is primarily a reflection of the internal processes it follows and the information it chooses to review.

Q. HAS QWEST DEMONSTRATED THAT THE JURISDICTION OF VIRTUALLY ALL TRAFFIC SHOULD BE READILY IDENTIFIABLE?

A. No. At page 4 of his testimony, Mr. Easton refers to "a study that Qwest conducted on IXC-bound traffic that its end-users originated." According to Mr. Easton, 100 percent of that traffic contained adequate information to determine the appropriate jurisdiction of the call. That result is hardly remarkable. Qwest's finding that there are no inherent technical problems with the Feature Group D ("FGD") signaling protocol that might contribute to the occasional lack of jurisdictional information also is of no import. In discovery, Qwest acknowledged that its "study" only considered FGD-originated calls placed by its local exchange customers that are connected to its own local switches. Given these parameters, it would be surprising if Qwest could *not* identify the geographic origination of 100 percent of such calls. Many calls do not originate in FGD format, which is generally associated with conventional "1+" long distance voice calls. Notably, the Qwest "study" did not include calls that were originated on other networks, outside of the country, on wireless devices, or over Dedicated Access Lines that do not use FGD signaling. Because Qwest did not evaluate any of those types of calls, its study revealed nothing of significance.

Q. HOW HAS THE INDUSTRY HANDLED CALLS WHOSE JURISDICTION CANNOT READILY BE DETERMINED?

A. Qwest's interstate access tariff is similar to that of other large LECs and reflects a standard practice that has existed within the industry for many years. Section 2.3.10 B.2 c. of its Tariff FCC No. 1 states that if Qwest "has sufficient call details to determine the jurisdiction for the call, [it] will bill the call minutes of use according to that jurisdiction." However, "[w]hen terminating details are insufficient to determine the jurisdiction for the call, the [interexchange carrier/access customer] may supply the projected PIU [Percent of Interstate Use] factor by LATA. The projected PIU factor will be used to apportion terminating call minutes for which call details were insufficient to determine jurisdiction between the interstate and intrastate jurisdictions." Finally, "[w]hen terminating call details are insufficient to determine the jurisdiction, and the customer does not supply a projected PIU factor by LATA, calls will be billed using a PIU of 50 (50% interstate – 50% intrastate)." The language in Qwest's current intrastate tariff is virtually identical, but it is these provisions that Qwest is proposing to change.

Verizon Business and other interexchange carriers file their PIU factors with Qwest and other LECs. As stated in Qwest's tariff, these PIU factors are used to assign jurisdiction to calls when there is insufficient call detail. If an IXC does not provide PIU factors, then Qwest's default PIU factor of 50 is applied.

Q. HAS QWEST EXPLAINED WHY IT IS NOW PROPOSING TO ABANDON THIS LONGSTANDING APPROACH AND RELIANCE ON PIU FACTORS?

A. No, it has not. After describing the current PIU process, Qwest's witness devotes only four sentences of his testimony to this important issue. According to Mr. Easton, "[t]he current method creates an incentive for arbitrage" (Easton Testimony at 6). Mr. Easton admits that Qwest's intrastate access rates are higher than its interstate access rates and concludes that this gives IXCs an incentive to have as much traffic as possible rated at interstate rates. But Mr. Easton ignores the obvious corollary, namely, that Qwest has an equally strong incentive to impose its higher intrastate access rates on as much traffic as possible, and thereby increase its revenues. Mr. Easton goes on to state that Qwest has identified some IXCs "that have abnormally high amounts" of unidentified FGD traffic. However, he does not explain how this phenomenon relates to his prior discussion about PIUs and their supposed effect on carriers' incentives. He asserts that the existence of such traffic is "a problem," and explains that "[i]n order to address this problem and to prevent it from occurring in the future," Qwest is proposing to modify its tariff and change its longstanding PIU process.

Q. HAS QWEST IDENTIFIED THE EXISTENCE OF ANY SPECIFIC PROBLEM?

A. No, it has not. Mr. Easton merely states that Qwest has observed some "abnormally high" amounts of unidentified traffic. He did not define normal or abnormal, or explain why one particular level of unidentified traffic necessarily demonstrates that a specific problem actually exists. By defining the "problem" in only an abstract way, Mr. Easton did not present any qualitative evaluation of the traffic in question. Standing by itself, a claim that the level of some unspecified carriers' unidentified traffic is "abnormally high" does not tell us very much.

Mr. Easton also did not indicate that Qwest had examined the traffic in question or evaluated the potential reasons why Qwest may not have been able to identify it. Nor did he show that the unidentified traffic was the result of arbitrage, intentional error, or manipulation by any IXC. Mr. Easton argues that the proposed tariff changes are "designed to deal with situations where an IXC inadvertently or intentionally attempts to avoid paying appropriate intrastate access rates by delivering traffic without identifying information" (Easton Testimony at 7), but he did not present any specific examples to demonstrate that such abuses are actually occurring. Instead, Qwest's premise appears to be based only on speculation or conjecture. In discovery, Verizon asked whether it was Qwest's position 1) that its inability to determine a call's jurisdiction "is the result of either intentional arbitrage or inadvertent error in the manner in which the IXC delivers the traffic," and 2) when an IXC delivers international calls to Qwest for termination that "the IXC is inadvertently or intentionally attempting to avoid paying appropriate intrastate access rates." In both instances, Qwest responded by stating that "Qwest is unaware of an IXC's motivation when delivering terminating traffic for which Qwest does not determine the call's jurisdiction."[1]

Q. DO YOU AGREE WITH MR. EASTON'S CLAIM (AT PAGE 12) THAT IXCS CURRENTLY HAVE NO INCENTIVE TO ENSURE THAT CPN INFORMATION IS APPROPRIATELY POPULATED AND THAT THE TARIFF CHANGES QWEST PROPOSES WOULD REVERSE THE INCENTIVES?

A. No, I do not. As I explain in my testimony, many calls do not contain "CPN" information, including certain international traffic. Leaving aside that technical

[1] Qwest's Responses to Verizon 1-007 and 1-008 in the companion tariff proceeding in Oregon, UT 157.

distinction, I disagree with the implication that IXCs have an incentive somehow not to transmit information about the origination of calls. In the case of Verizon Business, when we receive traffic from another network – and we receive traffic from hundreds of other service providers, both domestically and internationally -- we pass along all of the call detail information we receive; Verizon Business does not strip, add, mask or otherwise manipulate any of the call detail information that we receive from other service providers. Thus, contrary to Mr. Easton's suggestion, the proposed tariff changes would have no effect on Verizon Business's existing practice, which is to pass along all information about the origination of traffic that it delivers to Qwest.

Q. HAS QWEST DEMONSTRATED THAT ITS PROPOSED SOLUTION WOULD REDUCE INCENTIVES FOR "ARBITRAGE"?

A. No. In fact, Qwest's theory that the potential for arbitrage leads to a high amount of "unidentified" traffic is inconsistent with Qwest's own historical study of traffic data across its 14-state region. According to Mr. Easton, the current system "creates an incentive for arbitrage." (Easton Testimony at 6). He states that because intrastate access rates are generally higher than interstate rates, IXCs have "an incentive to have as much traffic as possible rated at interstate rates" and "have no incentive to ensure that CPN information is appropriately populated" (Easton Testimony at 6 and 8). However, Qwest presented an analysis of historical traffic data in Confidential Exhibit WRE-1.2 that provides no evidentiary support for that position. Of particular note, Qwest is required by state law in New Mexico to charge the same rates for intrastate switched access as it charges for interstate access. Because intrastate and interstate rates are the same, there is no opportunity or incentive for arbitrage in that state. Yet, the results of the traffic termination studies shown in Confidential Exhibit WRE-1.2 reveal that New Mexico has the *highest* percentage of traffic of "unknown jurisdiction" throughout Qwest's 14-state service area. Moreover, the percentage of traffic of "unknown jurisdiction" in New Mexico is from 60 to 162 percent higher than the percentage of such jurisdictionally unknown traffic in seven of the 14 states. Qwest's own traffic study does not demonstrate any correlation between the potential for arbitrage because of disparate rates and the volume of jurisdictionally unidentified traffic. There is no rational basis to reach a counter-conclusion that the absence of a rate disparity somehow creates an incentive for carriers to transmit larger volumes of traffic without sufficient information to determine its jurisdiction. Among other things, this would suggest that IXCs make a determination about the information they transmit on a state-by-state basis, but such a scenario is even less plausible.

Q. ASSUMING QWEST CAN DEMONSTRATE THE EXISTENCE OF AN ACTUAL PROBLEM, IS THE "SOLUTION" REPRESENTED BY THE PROPOSED TARIFF CHANGES THE ONLY RECOURSE AVAILABLE TO IT?

A. No, of course not. As I explained before, for a number of years, Qwest's tariffs, like those of other large LECs, have relied on PIU factors for determining the jurisdiction of traffic that carriers cannot readily identify. Qwest's FCC tariff includes provisions that enable Qwest to question, and ultimately audit, an IXC's reported PIU factors. If Qwest believes that a particular IXC is reporting incorrect PIUs or intentionally providing erroneous or insufficient information, its tariff already provides it with a process to address those concerns. Mr. Easton did not explain, however, why Qwest has not been able to address any such situations that might have occurred through the existing tariff processes. In fact, while Verizon Business and Qwest have had several disagreements over time, Verizon Business has offered several times during the past year to meet with Qwest to cooperatively address those issues. While no such meetings have yet taken place, Verizon Business continues to believe that the cooperative process previously agreed to by the two companies along with existing tariff procedures provide an appropriate means for addressing mutual concerns.

If Qwest is genuinely concerned about "arbitrage" given the wide discrepancy between its interstate and intrastate switched access rates in Utah, Qwest can readily eliminate that problem by bringing its intrastate rates into line with its interstate rates. The company has already done this in New Mexico, where its interstate and intrastate rates are at parity. Perhaps it was because its interstate and intrastate access rates are aligned in New Mexico that Qwest has not proposed to make similar changes to its access tariff there. The problem with Qwest's proposal here is that it would potentially subject more interstate and international traffic to high intrastate rates.

Q. IN VERIZON BUSINESS'S EXPERIENCE, WHAT ARE THE PRIMARY SOURCES OF "UNIDENTIFIED TRAFFIC"?

A. To answer this first requires an understanding of the phrase "unidentified traffic." Qwest's proposed tariff changes focus on traffic that it claims lacks "sufficient call detail to determine jurisdiction." According to Mr. Easton, Qwest's business practice is to determine whether a valid Calling Party Number ("CPN") or Charge Party Number ("ChPN") is present; if not, Qwest states it "is unable to determine the appropriate jurisdiction of the traffic" (Easton Testimony at 4-5). On that basis, Qwest classifies traffic for which the originating number information lacks a valid CPN or ChPN as "unidentified." Qwest's tariff defines "Calling Party Number" as "the calling party's ten digit telephone number … [which] consists of the Numbering Plan Area (NPA) plus the seven digit telephone number." Qwest Utah Access Service Tariff § 6.3.1.Q.

Mr. Easton acknowledges that "[a]ll local exchange carriers receive a certain amount of traffic for which the jurisdiction cannot be determined" (Easton Testimony at 5). There are several types of bona fide traffic that fall in this area. As I will discuss more fully, many internationally-originated calls do not follow the 10-digit format described above (NPA plus seven digits), and are thus, by definition, "unidentified" under Qwest's business practice. Calls placed by business customers that originate over dedicated access lines connected to PBXs also may not include CPN or ChPN; instead, an IXC historically may have identified that traffic by its Dedicated Access Line trunk group, as opposed to a 10-digit POTS number.

Q. PLEASE DESCRIBE BRIEFLY THE NUMBERING PLANS THAT APPLY TO INTERNATIONAL TELEPHONE CALLS.

A. For purposes of this discussion, it is important to distinguish between two categories of international calls. International telephone calls that originate in Canada and most of the Caribbean follow the North American Numbering Plan ("NANP"), as does the United States. Calls within the NANP use the "NPA NXX" format, where NPA represents the area code (such as 801) and NXX denotes the serving end office. The NPA NXX is followed by four digits that identify the local subscriber. Thus, a valid NANP number has ten digits, such as 801-530-6700. International calls that originate outside of the NANP area ("NANPA"), *i.e.*, the rest of the world, follow a different numbering plan adopted by the International Telecommunications Union, in particular ITU-T Recommendation E.164. The structure of an international E.164 number does not follow the NPA NXX format, nor does it use that term. An international telephone number includes a country code that may consist of one, two or three digits. An international number may have fewer than ten digits, and it may have as many as 15 digits, including the country code. Most areas of Mexico are not within the North American Numbering Plan, so calls from those areas fall within the second category of international calls, *i.e.*, non-NANPA originated.

Q. PLEASE EXPLAIN THE MANNER IN WHICH QWEST TREATS INTERNATIONAL CALLS THAT ORIGINATE IN NORTH AMERICA.

A. Qwest has informed Verizon Business that its billing systems handle international calls that originate within the NANPA just like any other NANP call that originates and terminates within the United States. Accordingly, if the Calling

Party Number of a call that is originated in Canada is a 10 digit telephone number and has a valid NPA NXX, my understanding is that Qwest will be able to identify the jurisdiction of the call and apply the appropriate rates. If such a call originates in Canada and terminates in Utah, Qwest would identify it as an international call and charge its interstate access rates. As Qwest explained in its response to one of Verizon Business's data requests, "[v]alid NPA NXX traffic that is international is billed as interstate and is indistinguishable from interstate domestic traffic." Verizon Business agrees that this is the correct approach for international calls that originate within the North American Numbering Plan.

Q. DOES QWEST TREAT INTERNATIONAL CALLS THAT ARE ORIGINATED OUTSIDE OF THE NORTH AMERICAN NUMBERING PLAN IN A DIFFERENT MANNER?

A. It certainly does. Qwest's business practices essentially ignore all international calls that originate outside of the NANP area. It is this different treatment that lies at the heart of Verizon Business's concerns with the tariff changes Qwest is proposing. Qwest explained in its response to a data request, "[t]he method used [by Qwest] to determine jurisdiction is a multi-step process involving the comparison of originating and terminating NPA/NXX." As I explained before, under its business rules, Qwest attempts to determine whether there is a valid CPN, which it defines as a ten digit telephone number consisting of the Numbering Plan Area ("NPA") plus a seven digit telephone number. Because international calls that originate outside of the NANPA do not follow this numbering protocol, Qwest automatically classifies *all* such calls to be of "unidentified" jurisdiction. In fact, because Qwest's business practice is to look for a valid NPA NXX, it does not even examine internationally-originated calls that do not follow that format. This is evidenced by Qwest's response to the following Verizon Business data request:

> "Does Qwest attempt to identify the jurisdiction of international calls that are originated outside of the North American Numbering Plan area?"

In response, Qwest answered "No." Thus, if an international call has fewer or more than ten digits, or is not in the NPA NXX dialing format, Qwest takes the position that the calls lack "sufficient call detail to determine jurisdiction." Qwest did not inform Verizon Business that this was its business practice until March 16, 2009, in response to Verizon's data requests 01-010 and 01-011 in this proceeding. Because all non-NANPA originated international calls are labeled by Qwest as "unidentified," they would be included within the volume of traffic that would be considered when applying Qwest's proposed new "floor," above which amount these international calls would be subject to intrastate access rates. I will explain below how Qwest's failure to correctly jurisdictionalize this international traffic will cause it to improperly bill for these calls, if it is permitted to put its proposed tariff changes in effect.[2]

Q. CAN THE JURISDICTION OF INTERNATIONAL CALLS BE DETERMINED?

A. Yes. Again, my response focuses only on international calls originated outside of the North American Numbering Plan area. Merely because Qwest categorizes

[2] Exhibits WRE-1.3 and WRE-1.4 contain briefing papers prepared by the staff of two other state commissions. Those papers were prepared before Qwest revealed its practices with respect to the handling of non-NANPA originated international calls. Because there was no discovery in those other state proceedings, this critical information was not made known to those commissions.

such traffic as "unidentified" or of "an indeterminate jurisdiction" does not mean that the jurisdiction of these calls cannot be identified. International calls typically include, as part of the SS7 signaling message, a "country code" plus additional digits, or an "international indicator" that will indicate that it is an incoming international call. Verizon Business uses this information to identify the jurisdiction of international calls and when developing our PIU factors. As the terminating LEC, Qwest receives the same signaling information on calls it terminates. However, Qwest has informed us that under its business practices it does not review these international indicators or use that information before determining the call's jurisdiction. Regardless of whether these practices might represent a generally appropriate balance, given the cost associated with these additional steps compared with their benefits, it would not be appropriate to punish carriers of international traffic for exchanging traffic that Qwest has simply chosen to label "unidentified."

Q. WHY DOES VERIZON BUSINESS OBJECT TO THE WAY QWEST TREATS THESE INTERNATIONAL CALLS?

A. As I stated at the outset, Verizon Business is a major provider of international communication services. Our worldwide network handles a tremendous volume of international calls, including those we terminate in Utah. If the jurisdiction of these calls is correctly identified and the proper rates are applied, Verizon Business would pay Qwest's interstate access rates. However, because Qwest's business practice is to automatically label all non-NANPA originated international calls as "unidentified," all of this traffic would potentially be subject to higher intrastate charges under the operation of Qwest's proposed tariff. Qwest has made the business decision not to evaluate the jurisdiction of any non-NANPA originated calls; it cannot then penalize Verizon Business for the consequences of that business decision. Verizon Business expects that, in an expanding global economy, the amount of international calling will increase over time. Indeed, I understand that even before he was named Ambassador to China, Governor Huntsman had been actively engaged in promoting increased trade and commerce between Utah and Asian markets. As those opportunities expand over time, they will be accompanied by a growing need for reliable international communications. It is not a reasonable practice to simply treat all such international calls as "unidentified," and thereby subject them to potentially higher intrastate rates, when the only valid rates that should be applied to such traffic are those contained in Qwest's interstate access tariff.

Because some of the so-called "unidentified" traffic will be non-NANPA originated international calls and Qwest will be collecting intrastate charges on them, Verizon Business is concerned that Qwest will begin charging it – inappropriately -- the higher intrastate rates for such calls and Verizon Business's expenses will increase as a result.

Verizon Business has reviewed the interexchange traffic that it delivered to Qwest in Utah in recent months. As part of that evaluation, Verizon Business determined the amount of non-NANP originated international calls, identified by using the international call indicators I referenced earlier. That analysis indicates that the amount of non-NANP originated international traffic that Qwest considers "unidentified" may be higher than the 5 percent floor that Qwest proposes to impose. See Confidential Exhibit PHM-2. This would mean that a portion of Verizon Business's non-NANPA originated international traffic would be billed the higher intrastate rates in Qwest's Utah tariff. This is neither appropriate, nor fair. It is possible that some amount of traffic that contains valid international indicators may lack or include other information in the signaling message that may raise questions about the actual point of origination. However, there is no indication that that amount is substantial, nor does it negate the serious problem I have already identified – the fact that Qwest's proposal would subject legitimate non-NANPA originated international traffic to higher intrastate access charges. Critically, Qwest's proposal, as currently structured, omits any process that would deal with these concerns.

Q. HOW SHOULD QWEST HANDLE THESE NON-NANPA INTERNATIONAL CALLS?

A. Because Qwest's proposed tariff would subject "unidentified" traffic above a certain level to intrastate access charges, it is essential that legitimate non-NANPA originated international calls be excluded from that calculation. Verizon Business recommends that the Commission require Qwest to establish a process by which a carrier with a significant amount of non-NANPA originated international traffic may work with Qwest to have those calls removed from the category of "unidentified" traffic that is potentially subject to the proposed benchmark mechanism. For example, carriers could calculate the amount of international traffic that should be excluded from the calculation of traffic subject to the "floor," perhaps on an annual or semi-annual basis. This process would also provide a mechanism for removing from the "bucket" of legitimate international traffic any calls that have valid international call indicators but for other reasons may not be deemed to be valid international calling numbers.

Q. PLEASE DESCRIBE THE PROPOSED FLOOR IN QWEST'S PROPOSED TARIFF.

Q. Under Qwest's current FCC and Utah state tariffs, Qwest uses PIU factors to assign jurisdiction to calls when there is insufficient call detail. If an IXC does not provide PIU factors, then the default PIU factor of 50 is applied. Under its proposed tariff, Qwest would continue to apply the PIU factor if the percentage of terminating traffic without sufficient call detail to determine jurisdiction (that is, "unidentified traffic") is relatively small and does not exceed a newly-created "floor." If the percentage of "unidentified" terminating traffic is greater than the floor, then Qwest proposes to impose its intrastate switched access rates on all minutes that exceed the floor. Qwest included these tariff changes in A.L. 2008-T0l filed on October 30, 2008. In that initial filing, Qwest proposed to set the floor at 7 percent of an IXC's total FGD terminated traffic. Only three weeks later, on November 21, 2008, Qwest filed revisions to its tariff filing, and proposed to lower the floor to 5 percent.

Q. QWEST ATTEMPTS TO JUSTIFY ITS TARIFF PROPOSAL BY CLAIMING THAT IT IS FOLLOWING THE LEAD OF OTHER LECS THAT HAVE IMPLEMENTED SIMILAR TARIFFS AND HAVE IMPOSED SIMILAR PIU FLOORS. WHAT IS YOUR RESPONSE?

A. Mr. Easton makes those points repeatedly, but he is wrong in all respects. On the one hand, Qwest's proposal is not similar to the intrastate tariffs he cites (at pages 9-10). When the Verizon ILECs filed their intrastate tariffs, they contained an effective floor of 9 percent (7 percent plus a 2 percent "grace" amount), and the BellSouth tariffs contained a floor no lower than 7 percent. As a practical matter, there is a substantial difference between those levels and Qwest's desire to impose a much lower floor in Utah, as Qwest would impose its higher intrastate rates on a substantially greater amount of traffic than Verizon and BellSouth would have (had either company implemented those tariff provisions).

The more fundamental problem with Qwest's rationale is that Qwest is completely mistaken about the actual billing practices of the other two carriers upon whom it relies to support its own proposal. While Verizon and BellSouth each filed changes to their intrastate tariffs, neither company has made corresponding changes to the PIU sections of their interstate switched access tariffs. As discussed previously, PIU provisions appear in both sets of tariffs. This makes sense because PIUs are used to allocate traffic between the interstate and intrastate jurisdictions for purposes of applying the correct charges. PIU provisions in interstate access tariffs filed with the FCC authorize the use of PIU procedures to determine the charges that will be applied to interstate calls. I am informed that the Verizon ILECs have not implemented the billing procedures, including the "PIU floors," in their intrastate tariffs because they have not included those provisions in their interstate tariffs. My understanding is that intrastate tariff procedures such as those proposed by Qwest, standing alone, without corresponding provisions in the carrier's interstate access tariff, may not be enforceable.

I also know from Verizon Business's own experience that neither BellSouth nor Verizon has billed our company under the procedures Qwest cites. So, it is not correct that these local exchange carriers "impose[] PIU floors" in the two dozen states alleged by Mr. Easton (at page 9). None of the other AT&T ILEC affiliates, including SBC and Ameritech, have made similar tariff filings, at either the state or federal level. I do not know for certain, but can only surmise that, subsequent to BellSouth's acquisition by AT&T, AT&T decided not to implement these business practices in the BellSouth states.

For these reasons, Qwest cannot justify its proposed tariff changes by claiming that it is simply seeking to mimic what other carriers are already doing. Rather, its own unique proposal must be evaluated on its own merits. I will next discuss why Qwest's specific proposal in Utah is not reasonable or justified.

Q. DO YOU AGREE THAT QWEST HAS ESTABLISHED THE FLOOR AT AN APPROPRIATE LEVEL?

A. No, I do not. Qwest changed its original proposal and lowered the proposed floor from 7 percent to 5 percent, but did not provide any explanation for the change.

Lowering the floor would subject more of an IXC's so-called "unidentified" traffic to higher intrastate rates. As a result, the revised proposal would subject access customers to higher costs. Particularly in light of this vacillation, and especially given the very low, inflexible benchmark that it now proposes (5 percent overall, with no possible upward adjustment), Qwest bears a burden of justifying that benchmark. But Qwest has failed to provide adequate justification for the level it proposes.

Q. HAS QWEST DEMONSTRATED WHY THE PROPOSED 5 PERCENT FLOOR IS REASONABLE?

A. No, it has not. To the extent Mr. Easton offers any justification for a specific "floor" in Utah, his testimony provides greater support for the original 7% figure proposed by Qwest than for any lower level. *See* Confidential Exhibit WRE-1.2 (line labeled "UT Total"). Mr. Easton's testimony refers to some Qwest traffic studies (at page 7), but the results he relies on are region-wide figures, which are different than the Utah-specific usage data shown on his Confidential Exhibit WRE-1.2 (Compare lines labeled "UT Total" and "Grand Total"). If the results of these traffic studies are to be relied on at all, only the Utah-specific usage should be considered.

There are additional problems with Qwest's methodology. To calculate the floor, Qwest divided the amount of jurisdictionally "unidentified" traffic by the total minutes of use. This formula merely produces an arithmetic average. According to Mr. Easton (at page 7), Qwest then excluded traffic from carriers that have more than 10 percent unidentified traffic, which had the result of reducing the figure to a level below the calculated average. Rather than throwing out data at both extremes, Qwest only excluded traffic volumes at the high end, but did not exclude any carriers that have low amounts of unidentified traffic. As the largest carrier in Utah, it is reasonable to assume that Qwest and its affiliates account for a substantial amount of FGD-terminated traffic. Moreover, Qwest has asserted that "100 percent" of its IXC-bound traffic contains adequate identifying information. (Easton Testimony at 4). By including its own traffic volumes in the "Total MOU," and thereby enlarging the denominator in the equation (unidentified MOU divided by total MOU), Qwest's approach likely skewed the calculated figure in a lower direction.

As stated above, Qwest set the floor by calculating an arithmetic average and then revising the figure downward. However, an average, by itself, does not indicate that the mid-point is reasonable; it is simply an average. By definition, there will always be some that are above the average (regardless of what is being measured) and others that are below it. That does not signify that those that are above the average are somehow suspect. Qwest provided no qualitative analysis to show that an amount above the calculated figure is, in fact, improper, inappropriate or unreasonable, and should be singled out for special consideration under its tariff. Qwest seeks to impose higher intrastate access rates on traffic only because it exceeds an average amount, but the methodology it used to justify this proposal is completely arbitrary. Moreover, having claimed that the proposed tariff changes are needed to combat what Qwest considers "abnormally high amounts" of unidentified traffic (Easton Testimony at 6), it is not reasonable to establish a solution that does not directly target those "abnormal" levels, but instead is based on a downwardly-biased arithmetic "average" of traffic that is carried by all other carriers. In other words, the solution is not directly aimed at addressing the perceived problem, and instead unfairly disadvantages other carriers that happen to be above the arithmetic average.

Establishing a tariff structure in which a higher rate will be imposed based on a statistical "average" is not reasonable. The Commission should not approve Qwest's proposed price floor based on the methodology it used.

Q. DOES THE PROPOSED DISPUTE RESOLUTION LANGUAGE REFERENCED ON PAGE 10 OF MR. EASTON'S TESTIMONY ALLEVIATE THE CONCERNS YOU HAVE EXPRESSED?

A. No. A dispute resolution process is obviously necessary, and carriers typically include them in their tariffs. However, in the context of Qwest's new tariff proposal, the process it proposes may not prove particularly helpful. As I have explained, a fundamental problem with the proposed tariff is that Qwest is trying to establish an arbitrary threshold above which it would charge intrastate access rates on what could be a substantial amount of international calls that originate outside of the NANP area. Rather than create a process for disputing bills after they are rendered and paid, it would be more efficient and useful to fix obvious foreseeable problems in advance. Verizon Business is more than willing to work with Qwest to establish such a process. If Qwest implements the type of process I described earlier to address the existence of non-NANP originated international traffic, those calls would never be included as so-called “unidentified” traffic in the calculation of traffic that exceeds the “floor” and they would not improperly be billed intrastate access charges. Eliminating the problem up front would avoid the need to pursue dispute resolution after-the-fact. Creating a dispute resolution process will not solve the underlying problems.

In addition, the dispute resolution process contemplated would be long and complicated. If Qwest improperly imposes intrastate access rates on legitimate non-NANPA originated international traffic, the IXC would first have to pay the amounts, then initiate a dispute, ask Qwest to provide backup documentation, and then negotiate corrected billings, before it eventually receives a credit or refunds of amounts that it should not have had to pay in the first place. While Qwest should bear the burden of showing that it is properly jurisdictionalizing and rating calls, in practice, the dispute process can shift that burden to the access customer, as Qwest may decide not to issue credits or refunds until it agrees that the dispute is valid. Moreover, the type of analysis contemplated – the production of backup documentation that proves how Qwest evaluated the traffic and calculated the amounts that exceeded the floor – is precisely the type of analysis that should take place *before* Qwest attempts to impose intrastate access charges on the international calls I have discussed.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.