DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

DESCRIPTION

PU-04-620
New Edge Network, Inc./Qwest Corporation.
Commercial Line Sharing Agreement
Service Agreement(s) 04
Filed 11/22/2004 **Closed 11/2/2005**

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Case No. PU-04-620**
Commercial Line Sharing Agreement
Service Agreement(s)

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **3rd day of November, 2005,** she deposited in the United States Mail, Bismarck, North Dakota **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Corrected Order

The envelope was addressed as follows:

Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver CO 80202
Cert. No. 7003 2260 0001 3516 0983

Sharon Helbling further deposes and says that on the **3rd day of November, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Dir-Interconnection Compliance
Qwest Corporation
1801 California St Rm 2410
Denver CO 8020

Rob McMillin
New Edge Network Inc
3000 Columbia Blvd Ste 106
Vancouver WA 98661

Mel Kambeitz
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Wellman

Subscribed and sworn to before me
this **3rd day of November, 2005.**

Sandra L Scott
Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

APPROVED
DATE: 11-2-05
KMF

MOTION

November 2, 2005

New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Case No. PU-04-620

I move the Commission adopt the Corrected Order in this proceeding

PJF/sdh

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Case No. PU-04-620**
Commercial Line Sharing Agreement
Service Agreement(s)

CORRECTED ORDER

October 18, 2005

Preliminary Statement

On November 22, 2004 Qwest Corporation (Qwest) filed a copy of two Commercial Line Sharing Arrangements (CLSAs) negotiated with New Edge Network. Inc. (New Edge). The CLSAs set forth rates, terms or conditions under which Qwest will provision the high frequency portion of the copper loop, a service known as line sharing. The first CLSA is for line sharing orders placed up to and including October 1, 2004. The second CLSA is for line sharing orders placed after October 1, 2004. Line sharing involves simultaneous use of both the high frequency and low frequency portions of the copper wire or "loop" that connects an end user to a telecommunications network.

On January 26, 2005 the Commission issued a Notice of Opportunity for Hearing inviting comments and requests for hearing by March 1, 2005. The notice stated that the issue to be considered in this proceeding was whether the CLSAs are interconnection agreements subject to state regulatory Commission approval under section 252 of the Telecommunications Act of 1996 (Act). The Commission notice stated that the same issue was under consideration in Case No. PU-04-402 and may set precedent.

On February 28, 2005 Qwest filed a request for a hearing. Qwest also provided comments supporting its contention that the CLSAs are not interconnection agreements, nor are they amendments to an existing interconnection agreement, and that the Commission has no jurisdiction to review, approve, or reject the CLSAs.

On June 16, 2005 Qwest filed a copy of a June 9, 2005 order of the United States District Court for the District of Montana and an April 19, 2005 order of the Washington State Utilities and Transportation Commission.

On August 25, 2005 the Commission held an informal hearing on the issue in this proceeding.

Discussion

Section 251(c) of the Act requires incumbent local exchange carriers (ILECs) to provide interconnection of its network to other networks and to provide access to unbundled network elements (UNEs).

Section 252 of the Act provides that negotiated or arbitrated interconnection agreements must be submitted to state public utility commissions for approval.

In 1999, the Federal Communications Commission (FCC) ruled that line sharing is a UNE under section 251(c)(3).[1]

In its August 2003 Triennial Review Order (*TRO*)[2], the FCC concluded, subject to a transition period, that ILECs would no longer be required to provide line sharing as a UNE under section 251(c)(3). Under the transition period, ILECs were required to provide line sharing as a UNE through October 1, 2004. For line sharing orders after October 1, 2004, ILECs were relieved from their obligation to provide line sharing as a UNE.[3]

Qwest agrees that the CLSA with New Edge for line sharing orders placed through October 1, 2004 is an interconnection agreement that must be submitted to the Commission for approval.

In its *USTA II*[4] decision, the D.C Circuit upheld the FCC *TRO* concerning line sharing. As a result, for line sharing orders place after October 1, 2004, Qwest argues that line sharing is no longer a network element under sections 251 or 252 of the Act. Qwest states that when a service such as line sharing is no longer required by section 251, there is no section 252 obligation to file the privately-negotiated agreement with a state commission, nor is there a section 252 power in the state commission to review and approve the agreement.

Section 252(e)(1) of the Act, requiring approval of any interconnection agreement adopted by negotiation or arbitration, is premised on the agreement being for services or elements required to be provided under section 251 as noted in section 252(a)(1) of the Act. We agree that line sharing is no longer a UNE within the meaning of section 251(c)(3) of the Act and that no approval is required for agreements providing only services not required by section 251.

We conclude that the agreement under which Qwest will provide line sharing to New Edge is not an interconnection agreement subject to Commission approval under section 252 of the Act.

Another question to consider is whether all negotiated agreements should be filed with the Commission for review to determine the need for Commission approval or rejection

In its *Declaratory Order*,[5] the FCC states that "[b]ased on their statutory role provided by Congress and their experience to date, state commissions are well

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[1] *Third Report and Order, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*)

[2] *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (*TRO*)

[3] *TRO* ¶ 255, *et seq*

[4] *United States Telephone Ass'n v FCC*, 359 F 3d 554 (D C Cir 2004)

[5] Memorandum Opinion and Order, *In the Matter of Qwest Communications International Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No 02-89, WC Docket No 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929, FCC 02-276 (October 4, 2002) (*Declaratory Order*)

positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement' and, if so, whether it should be approved or rejected."[6]

We find that it is appropriate for the Commission to continue to review and determine whether individual agreements between competitive local exchange companies (CLECs) and ILECs require state approval under the Act. Qwest should continue to file their agreements that concern the provisioning of network elements.

Order

The Commission orders:

1. The Commercial Line Sharing Arrangement between New Edge Network and Qwest Corporation for line sharing orders placed after October 1, 2004 is not an interconnection agreement subject to Commission approval under section 252 of the Telecommunications Act of 1996.

2. Qwest is required to continue to file for review its agreements with CLECs, such as the agreement at issue here, that refer to past, present, or future obligations imposed on ILECs under the Telecommunications Act of 1996.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

[6] *Id* at ¶ 10

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Case No. PU-04-620**
Commercial Line Sharing Agreement
Service Agreement(s)

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **19th day of October, 2005,** she deposited in the United States Mail, Bismarck, North Dakota **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

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Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver CO 80202
Cert. No. 7005 0390 0001 4590 7503

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Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Dir-Interconnection Compliance
Qwest Corporation
1801 California St Rm 2410
Denver CO 8020

Rob McMillin
New Edge Network Inc
3000 Columbia Blvd Ste 106
Vancouver WA 98661

Mel Kambeitz
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **19th day of October, 2005.**

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

APPROVED

DATE: 10-18-05
KMF

MOTION

October 18, 2005

New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Case No. PU-04-620

I move the Commission adopt the Order in this proceeding.

PJF/sdh

15 PU-04-620 Pages 1

Motion

by Public Service Commission
10/18/2005 CC Comm Legal Illona Pat Annette

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Case No. PU-04-620

ORDER

August 10, 2005

Preliminary Statement

On November 22, 2004 Qwest Corporation (Qwest) filed a copy of two Commercial Line Sharing Arrangements (CLSAs) negotiated with New Edge Network. Inc (New Edge). The CLSAs set forth rates, terms or conditions under which Qwest will provision the high frequency portion of the copper loop, a service known as line sharing. The first CLSA is for line sharing orders placed up to and including October 1, 2004. The second CLSA is for line sharing orders placed after October 1, 2004. Line sharing involves simultaneous use of both the high frequency and low frequency portions of the copper wire or "loop" that connects an end user to a telecommunications network.

On January 26, 2005 the Commission issued a Notice of Opportunity for Hearing inviting comments and requests for hearing by March 1, 2005. The notice stated that the issue to be considered in this proceeding was whether the CLSAs are interconnection agreements subject to state regulatory Commission approval under section 252 of the Telecommunications Act of 1996 (Act). The Commission notice stated that the same issue was under consideration in Case No. PU-04-402 and may set precedent

On February 28, 2005 Qwest filed a request for a hearing. Qwest also provided comments supporting its contention that the CLSAs are not interconnection agreements, nor are they amendments to an existing interconnection agreement, and that the Commission has no jurisdiction to review, approve, or reject the CLSAs.

On June 16, 2005 Qwest filed a copy of a June 9, 2005 order of the United States District Court for the District of Montana and an April 19, 2005 order of the Washington State Utilities and Transportation Commission.

On August 25, 2005 the Commission held an informal hearing on the issue in this proceeding.

Discussion

Section 251(c) of the Act requires incumbent local exchange carriers (ILECs) to provide interconnection of its network to other networks and to provide access to unbundled network elements (UNEs).

Section 252 of the Act provides that negotiated or arbitrated interconnection agreements must be submitted to state public utility commissions for approval.

In 1999, the Federal Communications Commission (FCC) ruled that line sharing is a UNE under section 251(c)(3).[1]

In its August 2003 Triennial Review Order (*TRO*)[2], the FCC concluded, subject to a transition period, that ILECs would no longer be required to provide line sharing as a UNE under section 251(c)(3). Under the transition period, ILECs were required to provide line sharing as a UNE through October 1, 2004. For line sharing orders after October 1, 2004, ILECs were relieved from their obligation to provide line sharing as a UNE.[3]

Qwest agrees that the CLSA with New Edge for line sharing orders placed through October 1, 2004 is an interconnection agreement that must be submitted to the Commission for approval.

In its *USTA II*[4] decision, the D.C. Circuit upheld the FCC *TRO* concerning line sharing. As a result, for line sharing orders place after October 1, 2004, Qwest argues that line sharing is no longer a network element under sections 251 or 252 of the Act. Qwest states that when a service such as line sharing is no longer required by section 251, there is no section 252 obligation to file the privately-negotiated agreement with a state commission, nor is there a section 252 power in the state commission to review and approve the agreement.

Section 252(e)(1) of the Act, requiring approval of any interconnection agreement adopted by negotiation or arbitration, is premised on the agreement being for services or elements required to be provided under section 251 as noted in section 252(a)(1) of the Act. We agree that line sharing is no longer a UNE within the meaning of section 251(c)(3) of the Act and that no approval is required for agreements providing only services not required by section 251.

We conclude that the agreement under which Qwest will provide line sharing to New Edge is not an interconnection agreement subject to Commission approval under section 252 of the Act.

Another question to consider is whether all negotiated agreements should be filed with the Commission for review to determine the need for Commission approval or rejection.

In its *Declaratory Order*,[5] the FCC states that "[b]ased on their statutory role provided by Congress and their experience to date, state commissions are well

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[1] *Third Report and Order, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 20912 (1999) (*Line Sharing Order*)

[2] *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (*TRO*)

[3] *TRO* ¶ 255, *et seq*

[4] *United States Telephone Ass'n v FCC*, 359 F 3d 554 (D C Cir 2004)

[5] Memorandum Opinion and Order, *In the Matter of Qwest Communications International Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1),* WC Docket No 02-89, WC Docket No 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929, FCC 02-276 (October 4, 2002) (*Declaratory Order*)

positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement' and, if so, whether it should be approved or rejected."[6]

We find that it is appropriate for the Commission to continue to review and determine whether individual agreements between competitive local exchange companies (CLECs) and ILECs require state approval under the Act. Qwest should continue to file their agreements that concern the provisioning of network elements

Order

The Commission orders:

1 The Commercial Line Sharing Arrangement between New Edge Network and Qwest Corporation for line sharing orders placed after October 1, 2004 is not an interconnection agreement subject to Commission approval under section 252 of the Telecommunications Act of 1996.

2. Qwest is required to continue to file for review its agreements with CLECs, such as the agreement at issue here, that refer to past, present, or future obligations imposed on ILECs under the Telecommunications Act of 1996.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

[6] *Id* at ¶ 10

Service Date. September 22, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF Commercial Line Sharing Agreement for DSL Services Provisioned After October 1, 2004, Between Qwest and DIECA Communications, Inc. d/b/a Covad Communications Company	)))))	UTILITY DIVISION DOCKET NO. D2004 6 89 ORDER NO 6572a

FINAL ORDER AND

ORDER ON RECONDSIDERATION

A. Introduction and Procedural Background

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act)[1] was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange markets The 1996 Act sets forth methods by which local competition may be encouraged in historically-monopolistic local exchange markets. The 1996 Act requires companies like Qwest Corporation (Qwest) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U S.C §§ 251 and 252.

2. On May 19, 2004, Qwest and DIECA Communications, Inc., d/b/a/ Covad Communications (Covad) filed their Commercial Line Sharing Agreement with the Commission, stating in a cover letter that the filing was being made for "informational purposes" only[2] On June 3, 2004, the Commission issued an Order to Show Cause and Request for Information, seeking comments on why the agreement between Covad and Qwest should not be filed under 47 U S.C. § 252 as a negotiated interconnection agreement[3]

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[1] Telecommunications Act of 1996, Pub L No 104-104, 110 Stat 56 (codified as amended in scattered sections of 47 U S C)

[2] On the same date, Qwest and Covad filed a separate agreement, titled "Commercial Line-Sharing Amendment to Interconnection Agreement," which was submitted to the Commission under §252 of the Act

[3] PSC Order No 6572 in D2004 6 89, issued June 3, 2004

3. Several parties, including Qwest, filed comments in response to the Commission's Show Cause Order, and Qwest filed Reply comments, responding to comments filed by other parties.

4 Having considered the comments received, the Commission voted to treat the agreement filed by Qwest and Covad as a negotiated interconnection agreement, and subsequently issued a Notice of Filing and Opportunity to Intervene and Comment on July 9, 2004, setting the agreement on the 90 day procedural schedule set forth in the Act. 47 U S C. §252(e)(4).

5. The July 9, 2004 Notice of Application for Approval and Notice of Opportunity to Intervene and Comment gave public notice of the requirements that the Commission must approve the Agreement unless it finds the Agreement discriminates against other telecommunications carriers not parties to the agreement, or is not consistent with the public interest, convenience and necessity. The notice stated that no public hearing was contemplated unless requested by an interested party by August 3, 2004 The notice further stated that interested persons could submit limited comments on whether the agreements met these requirements no later than August 16, 2004

6. On July 29, 2004, Qwest filed a motion for reconsideration of the Commission's decision to treat the negotiated agreement between Covad and Qwest as an interconnection agreement subject to the filing requirement of 47 U.S.C. §252(a)(1)

7. No hearing has been requested and no comments, other than Qwest's motion for reconsideration, or requests for intervention were received.

B. Applicable Law and Commission Decision

1. Decision to treat the Qwest – Covad filing as a negotiated interconnection agreement subject to the filing requirements of 47 U.S.C. §252

a. The Declaratory Ruling

8. On April 23, 2002, Qwest filed a petition for a declaratory ruling with the Federal Communications Commission (FCC), seeking a ruling on the scope of the mandatory filing

requirement set forth in section 252(a)(1) of the Act (Declaratory Ruling).[4]

9. In its petition to the FCC, Qwest argued that under Section 252(a)(1) a negotiated agreement should be filed for state commission approval only if it includes (i) a description of the service or network element being offered, (ii) the various options available to the requesting carrier and any binding contractual commitments regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option. Declaratory Ruling, ¶2.

10 Qwest argued in its petition to the FCC that agreements regarding elements that have been removed from the national list of elements subject to mandatory unbundling should not be required to be filed under 252(a)(1) Declaratory Ruling ¶3

11 In the Declaratory Ruling the FCC declined to establish an exhaustive, all-encompassing "interconnection agreement standard" and encouraged state commissions to decide in the first instance which sorts of agreements fall within the statutory standard. Declaratory Ruling, ¶10-11

12. The FCC found that agreements containing an ongoing obligation relating to Section 251(b) or (c) must be filed under 252(a)(1) Declaratory Ruling, footnote 26

13 The agreement between Qwest and Covad contains a description of the service or element being offered (Section 2.1.1 "Description"), options available to the requesting carrier and performance quality commitments (Section 2 1 6 "Performance Measures"), and rate structures and elements (Section 2.1.3 "Rate Elements").

b. The Triennial Review Order

14 Pursuant to its statutory authority contained at 47 U.S C. §251(d), on August 21, 2003, the FCC issued its Triennial Review Order (TRO), in which it declined to make the high

[4] Qwest Communications International Inc , *Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No 02-89, released October 4, 2002

frequency portion of the loop available as an unbundled network element.[5]

15. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its decision on the appeals taken from the TRO, upholding the FCC's decision with respect to line sharing, finding that "even if the CLECs are right that there is some impairment with respect to the elimination of mandatory line sharing, the Commission reasonably found that other considerations outweighed any impairment. And again, we note the ambiguous state of the record on the price-constraining effect of CLEC DSL service." [6]

16 Since the decision of the D.C. Circuit Court of Appeals was issued in USTA II, two of the eleven CLECs offering UNE-P in Montana have withdrawn or stopped marketing their services in Montana.[7]

17. Petitions for a grant of a writ of certiorari from the United States Supreme Court to the D.C. Circuit for review of its decision in USTA II regarding line sharing have been filed by at least three parties: the National Association of Regulatory Utility Commissioners (NARUC), AT&T, and The California Public Utility Commission Those petitions are pending

c. Notice of Apparent Liability

18 On March 12, 2004, the FCC issued a Notice of Apparent Liability For Forfeiture (NAL) against Qwest, in which the FCC found that fines in the amount of 9 million dollars were appropriate for Qwest's failure to file interconnection agreements with state commissions as required by 47 U S.C. §252. In the NAL, the FCC interpreted its Declaratory Ruling of 2002, and reiterated that "on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions " (NAL ¶11, citing Declaratory Ruling ¶8)

19 In the NAL the FCC imposed fines on Qwest in part for Qwest's failure to file an

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[5] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No 01-338 (TRO), ¶¶255 – 271

[6] *United States Telecom Association v Federal Communications Commission et al*, 359 F 3d 554 (D C Cir 2004) (USTA II)

[7] As of 1/31/04, Qwest informed the Commission that the CLECs purchasing UNE-P in Montana were Three Rivers, Excel Telecommunications, Ionex, MCI Metro, McLeod, New Access, NOS Communications, One Eighty (Avista), OptiCom, Vartec, and Z-Tel Since March of 2004, Z-Tel informed the Commission it would no longer be offering service in Montana, and MCI has ceased marketing its services in Montana

Internetwork Calling Name Delivery Service Agreement (ICNAM) for review and approval, as required by §252(a) NAL ¶13 The FCC concluded that the ICNAM agreement was required to be filed because it did not appear on its face to fall within one of the filing requirement exceptions set forth in the Commission's Declaratory Ruling, and accordingly it should have been filed for review and approval by the appropriate state commission NAL, ¶13.

20 In the NAL the FCC stated that while §252(a)(1) is explicit in its filing requirements, the declaratory ruling provided certainty to those requirements by stating that any agreement creating an ongoing obligation and pertaining to the requirements of §251 is an interconnection agreement that must be filed with the state commission. NAL ¶22

21. The FCC stated that interconnection agreements must be filed with the state commissions so that Qwest's competitors are able to opt into these agreements, and concluded that "Section 252(a)(1) is not just a filing requirement. Compliance with Section 252(a)(1) is the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors " NAL, ¶¶31, 46.

d. Arguments of the Parties and Commission Decision

22. In its motion for reconsideration, Qwest argues that the agreement is not subject to the filing requirements of Section 252 because. 1) line sharing is not an element that is required to be made available under Section 251, 2) the declaratory ruling sets out explicit standards governing circumstances under which ILEC and CLEC agreements must be filed, and 3) the FCC preempts filing of private contracts with state commissions

23 The Commission finds that the agreement between Covad and Qwest is subject to the filing requirements of 47 U S C §252(a)(1) In reaching this conclusion, the Commission has not made a determination with regard to the status of line sharing as an element that is required to be offered under 47 U S.C §251 Qwest has argued that it is not obligated to offer line sharing as an unbundled network element pursuant to the TRO and the decision in USTA II The Commission does not reach that argument. Regardless of Qwest's obligations under the TRO and USTA II, the agreement between Qwest and Covad is a public contract that pertains to the

obligations of 47 U S.C §251 The agreement sets forth a description of services and elements to be offered; it contains performance measurements and obligations; and it contains rate structures and elements According to Qwest's own arguments to the FCC in its petition for a Declaratory Ruling, these sections satisfy the obligation Qwest has to file the agreement with the state commission for review and approval.

24 Qwest argues that the Declaratory Ruling sets out explicit standards governing the circumstances under which agreements between an ILEC and a CLEC must be filed with state commissions.[8] The Commission rejects Qwest's interpretation of the Declaratory Ruling. Contrary to Qwest's argument, the FCC stated in its Declaratory Ruling that "we believe that the state commissions should be responsible for applying in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements " Declaratory Ruling ¶7. The FCC declined to establish an exhaustive, all-encompassing interconnection agreement standard, leaving it to the state commissions to decide in the first instance whether a specific agreement should be filed under §252 Declaratory ruling ¶10.

25. The fact that the FCC in exercising its authority under 47 U S C §251(d)(3) has concluded that line sharing is not an element that is currently required to be offered under 47 U.S.C. §251(c)(3) does not persuade the Commission that the agreement is therefore not subject to the filing requirements of §252. In the NAL the FCC concluded that an ICNAM agreement was subject to the filing requirements of §252 and imposed fines on Qwest for failing to make the requisite filing under §252 Calling Name Delivery has no greater relationship to the obligations of an ILEC under §251 than line sharing, and in fact, probably a lesser relationship. Consequently, requiring an agreement relating to line sharing to be filed under §252 is well within the range of agreements that are subject to the §252 filing requirements.

26. The agreement between Qwest and Covad pertains to the obligations a carrier has under §251, and that is all that is required for an agreement to be subject to the filing requirements of §252 Line sharing is not currently on the list of required elements that is established by the FCC. However, it was on that list until June 15, 2004 and it may be there

[8] Qwest brief page 6, Section C

agaın, contıngent on the outcome of appeals and current petıtıons to the FCC Wıthout question, lıne sharıng, regardless of ıts current status of beıng on or off the lıst of requıred elements, ıs related to the obligatıons set forth ın §251. The FCC has stated that an agreement relatıng to §251(b) or (c) must be filed wıth a state commıssıon for approval (Declaratory Ruling footnote 26) and that any agreement pertaınıng to unbundled network elements must be filed pursuant to §252(a)(1) (NAL ¶22, cıtıng the declaratory ruling ¶8.)

27. Whether an agreement must be filed under §252 depends on whether the agreement ıs related to any of the obligatıons an ILEC has under §251(b) and (c) to make ıts network available to ıts competıtors. The controllıng factor ıs whether the agreement pertaıns to the obligatıons contained ın §251(b) or (c). The agreement between Qwest and Covad for lıne sharing unquestionably pertaıns to the obligatıons Qwest has to open ıts network to ıts competıtors under §251, and as a result the agreement ıs a public agreement subject to the fılıng requırements of §252 The dıspositıve ıssue ıs whether the agreement relates to Qwest's obligatıons under §251, and the answer to that questıon is yes. Consequently the agreement must be filed under §252

28 Fınally, the FCC has clearly left ıt to each state commıssıon to determıne ın the first ınstance whether a specıfic agreement ıs to be filed under §252. Declaratory ruling ¶7, ¶¶10-11. In Montana two of eleven UNE-P provıders have exıted the market sınce the issuance of the D.C. Cırcuıt Court of Appeals decısıon ın USTA II The Commıssıon finds that Qwest ıs requıred to submıt ıts agreement wıth Covad to the Commıssion for approval, and that the agreement is thereby available to competıtors as a matter of law. Requırıng the agreement to be filed under §252 accomplıshes the objectıves of the Act, as reıterated by the FCC ın ıts NAL, that fılıng of ınterconnectıon agreements under §252 ıs the first and strongest protection under the Act agaınst dıscrımınatıon by the incumbent LEC agaınst ıts competıtors. The Commıssıon finds that ıt ıs crıtıcal to ensure this protection ıs afforded to competıtors operatıng ın the Montana market, and consequently finds that the agreement between Qwest and Covad must be filed under §252, resultıng ın ıts avaılabılıty to all of Qwest's competıtors as a matter of law.

2. Approval of the Qwest – Covad agreement

29. Having concluded that the agreement filed with the Commission on May 19, 2004 is an interconnection agreement, the Commission has reviewed the agreement for compliance with the Act The standards for approving an interconnection agreement differ, depending on whether the agreement has been voluntarily negotiated or has been arbitrated by a state commission. 47 U.S C. § 252(e)(2). The Agreement submitted for approval in this proceeding was negotiated voluntarily by the parties and thus must be reviewed according to the provisions in 47 U S.C. § 252(e)(2)(A).

30. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U S.C § 252(e)(1). Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by voluntary negotiation.

> (2) GROUNDS FOR REJECTION. – The State commission may only reject –
>
> (A) an agreement (or any portion thereof) adopted by negotiation under [47 U S.C § 252(a)] if it finds that
>
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or
>
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity[.]

31. Notwithstanding the limited grounds for rejection in 47 U S C § 252(e)(2)(A), the Commission's authority is preserved in § 252(e)(3) to establish or enforce other requirements of Montana law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to § 253 of the 1996 Act, which does not permit states to impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

32 Unlike an agreement reached through arbitration, a voluntarily negotiated agreement need not comply with standards set forth in §§ 251(b) and (c) 47 U.S.C. §§ 251(b), 252(c) and 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and that are not determined according to the pricing standards included in § 252(c) of the Act, as would be

required in the case of arbitrated rates set by the Commission.

33. By approving this Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that §§ 252(a) and (c) prevent the Commission from addressing such issues in this proceeding

34 No comments have been received that indicate the Agreement does not comply with federal law as cited above or with state telecommunications requirements. The Montana Consumer Counsel, who represents the consumers of the State of Montana, has not intervened in this approval proceeding, and has not filed comments to indicate that any portion of the Agreement is not consistent with the public interest, convenience and necessity. There have been no objections raised that the Agreement discriminates improperly or is not consistent with the public interest, convenience and necessity

35 The Commission finds that the terms in the Agreement appear to conform to the standards required by the Act and should be approved In approving this Agreement, the Commission is guided by provisions in state and federal law that have been enacted to encourage the development of competitive telecommunications markets. Section 69-3-802, MCA, for example, states that it is the policy of the State of Montana to encourage competition in the telecommunications industry and to provide for an orderly transition to a competitive market environment

36. Covad and Qwest can agree that nothing in their Agreement prohibits certain conduct, but if that conduct otherwise violates the law, the provision in the Agreement that sanctions such conduct is void §§ 28-2-604, 28-2-701, 28-2-702, MCA Any provision or term of this Agreement that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and not in the public interest

37 The Commission rejects those portions of the agreement that do not conform with the requirements the Commission has imposed on previous interconnection agreement as being in the public interest. Specifically, the following section of the agreement is rejected

Section 3.2.3 is rejected as it requires only ten days notice prior to disconnection.

The Montana Commission has consistently rejected this language as contrary to the public interest, and has required carriers to provide at least thirty days notice prior to disconnecting services

C. Conclusions of Law

1 The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA Qwest is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2 The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub.L No 104-104, 110 Stat. 56 (*amending scattered sections of the* Communications Act of 1934, 47 U S.C §§ 151, *et seq*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA

4 Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA

5 The Commission finds that the agreement between Covad and Qwest is a negotiated interconnection agreement subject to the requirements of 47 U S C §252(a)(1) and the Commission has treated the filing made on May 19, 2004, as a negotiated interconnection agreement filed with the Commission subject to §252(a)(1).

6. The Commission has jurisdiction to approve the agreement negotiated by the parties and submitted to the Commission according to § 252(e)(2)(A). Section 69-3-103, MCA

7. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements Section 252(e)(4) requires the Commission to approve or reject the Agreement by August 17, or the Agreement will be deemed approved.

8. The Commission may reject a portion of a negotiated agreement and approve the remainder of the agreement if such action is consistent with the public interest, convenience and necessity and does not discriminate against a carrier not a party to the agreement. 47 U.S.C. § 252(e)(2)(A).

Order

THEREFORE, based upon the foregoing, it is ORDERED that the Agreement of the parties submitted to this Commission for approval pursuant to the 1996 Act is approved subject to the following condition

Section 3.2.3 is rejected subject to the terms and conditions set forth in Paragraph 37 of this Order The remainder of the agreement is approved

The parties shall file subsequent amendments to the Agreement with the Commission for approval pursuant to the 1996 Act.

IT IS FURTHER ORDERED that the Motion for Reconsideration is denied

DONE AND DATED this 17th day of August 2004, by a vote of 4 to 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman, dissenting (dissent attached)

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision A motion to reconsider must be filed within ten (10) days. See ARM 38 2 4806.

Statement of Chairman Rowe
Docket 2004.6 89, Covad – Qwest Interconnection Agreement

Line sharing is an entry path that competitive data providers have used successfully and which several continue to rely upon, including but not limited to Covad Many disagree with the Federal Communications Commission's decision to remove line sharing from the list of required elements (possibly including a majority of FCC Commissioners) However, the FCC's decision as to line sharing is not subject to any stay, and at present has the effect of law If it is revised by the FCC's or reversed through litigation then an agreement such as the one before us would clearly have to be filed under Section 252

Narrowly, the issue to be decided is whether the Montana Public Service Commission has the authority to impose the Section 252 requirements on this specific voluntarily-negotiated line sharing agreement The question of when Section 252 filing is required is likely to recur, but the answer will probably be very fact-specific and case-specific during this period of vertiginous flux There are countervailing arguments However, on balance, as to the present facts, the more direct analysis leads to the conclusion that this specific agreement does not come within the ambit of Section 252 of the federal law

Less narrowly, the issue is how should the Commission use any discretion it has as to Section 252 filing requirements in order to facilitate the execution of voluntary agreements for de-listed elements Apart from any public interest concerns with the agreement identified by the Commission, it would not be necessary to answer the question of whether filing is required In an environment of substantial legal and economic uncertainty and disruption, the Commission almost has no choice but to identify new ways to facilitate the achievement of commercially feasible wholesale agreements Rather than leaping with both feet into the jurisdictional bogs of Lake Serbonis, the Commission could have identified its policy goals and developed a strategy best calculated to achieve them, given the current state of the law There is more than slight risk that the Montana Commission's action to require Qwest to file under Section 252 an agreement it was not required to enter under Section 251 will trigger an equal and opposite reaction, discouraging the very behavior we all agree is valuable, if not essential

In this case, Qwest voluntarily entered into facilitated mediation with Covad, reached a voluntary commercial agreement, made an informational filing of the agreement with the Montana PSC, posted the agreement to the web, and makes the agreement available for other wholesale customers to "opt in " In the absence of a legal requirement that line sharing (or other currently de-listed elements) be made available, this is conduct to be encouraged Intending to promote access to wholesale service, the Commission may unintentionally thwart such access

Instead of its current problematic course, I suggest the Commission make the following declarations

1. In the absence of an unbundling requirement, the PSC strongly encourages voluntary negotiations
2. The Commission is especially concerned that small facilities-based CLECs, such as those serving much of Montana, are able to reach commercially viable agreements
3. CLECs should have sufficient commercial certainty about the terms that will be available to them that they may execute their business plans
4. The Commission expects voluntary agreements to be made publicly available, both by informational filing with the Commission and by posting to the web
5. The Commission expects Qwest to be neutral as between wholesale customers, and to make this and any other non-Section 251 agreements available on neutral terms to other wholesale customers

RESPECTFULLY SUBMITTED this 20th day of September, 2004

_____

BOB ROWE, Chairman

INFORMAL HEARING AGENDA

August 25, 2005

PU-04-620 New Edge Network, Inc /Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

12 PU-04-620 Pages 1

Informal Hearing held

by Public Service Commission
08/25/2005

Public Service Commission
Receipt of Payment

Receipt# 6345

Received 8/8/2005 Check# 116240 for $105 71

Subject Utility Valuation

Docket # PU-04-620

New Edge Network, Inc.
3000 Columbia House Blvd, Ste 106
Vancouver WA 98661-2969

11 **PU-04-620** Pages 1

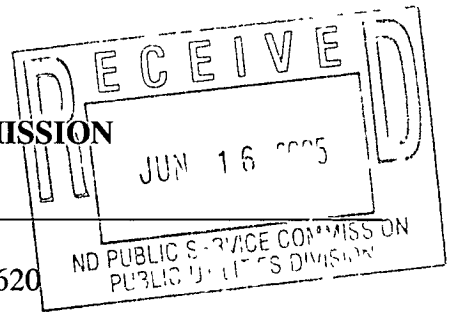
Receipt# 6,345 $105 71

by New Edge Network, Inc

08/08/2005

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION



New Edge Network, Inc./Qwest Corporation Commercial Line Sharing Service Agreements

PU 04-620

NOTICE OF SUPPLEMENTAL AUTHORITIES

Qwest Corporation ("Qwest") hereby respectfully submits the attached Orders from the United States District Court for the District of Montana and the Washington State Utilities and Transportation Commission, and states:

1. On November 16, 2004, Qwest and New Edge Network, Inc. ("New Edge") entered into a commercial agreement entitled the "Terms and Conditions for Commercial Line Sharing Arrangements" (the "Commercial Agreement"). In February 2005, Qwest filed a Request for Hearing, Comments, and Motion to Dismiss from Docket the Agreement titled "Terms and Conditions for Commercial Line Sharing."

2. To assist the Commission in its review of this case, Qwest hereby respectfully submits an *Order on Qwest's Motion for Judgment on Appeal* from the United States District Court for the District of Montana. The Court issued its decision on June 9, 2005, vacating the decision by the Montana Public Service Commission that required Qwest and Covad Communications Company to submit their commercial line sharing agreement for review and approval by the Commission. The Court concluded that the commercial agreement did not concern an ongoing obligation relating to section 251(b) or (c) of the Federal Telecommunications Act of 1996 and that it was not required to be filed under section 252 for commission review and approval.

3. The Montana District Court cited *Order No. 2 Dismissing Petition* from the Washington State Utilities and Transportation Commission, which Qwest has attached for the Commission's information. The Washington Commission issued this Order on April 19, 2005, holding that a commercial line sharing agreement between Qwest and Multiband Communications, Inc. did not require commission approval under sections 251 and 252.

RESPECTFULLY SUBMITTED this 16th day of June, 2005.

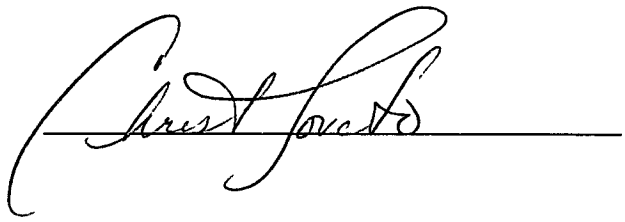
Melissa K. Thompson
QWEST SERVICES CORPORATION
1005 17th Street, Suite 200
Denver, CO 80202
(303) 896-1518

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2005, an original and 7 copies of the foregoing **QWEST CORPORATION'S NOTICE OF SUPPLEMENTAL AUTHORITY** was served upon the following party:

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Utilities Commission
600 East Boulevard Avenue – 12th Floor
Bismarck, ND 58505-0480



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

QWEST CORPORATION, a Colorado corporation,	CV-04-053-H-CSO
Plaintiff,	**ORDER ON QWEST'S MOTION FOR JUDGMENT ON APPEAL**
vs.	
THOMAS J. SCHNEIDER, GREG JERGESON, MATT BRAINARD, JAY STOVALL, and BOB ROWE in their official capacities as Commissioners of the Montana Public Service Commission, and THE MONTANA PUBLIC SERVICE COMMISSION, a regulatory agency of the State of Montana,	
Defendants.	

Plaintiff Qwest Corporation ("Qwest") initiated this action seeking declaratory and injunctive relief against the Montana Public Service Commission ("PSC") and the PSC Commissioners in

their official capacities. Qwest challenges a PSC order concerning an agreement between Qwest and DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"). Qwest generally alleges that the PSC exceeded its authority under the Federal Telecommunications Act of 1996 ("FTA") by requiring Qwest to file the agreement, and by ordering a substantive change to its terms and conditions.[1]

In seeking federal judicial review of the PSC's decision, Qwest relies upon 47 U.S.C. § 252(e)(6) of the FTA,[2] and relies upon that provision and 28 U.S.C. § 1331 in invoking the Court's jurisdiction.[3] By Order filed February 22, 2005, Chief Judge Molloy, with the parties' consent, assigned this case to the undersigned for all purposes.[4]

Before the Court is Qwest's Motion for Judgment on Appeal.[5]

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[1]Complaint ("Cmplt.") (Court's Doc. No. 1) at 1, 12-23

[2]Id. at 3. 47 U.S.C. § 252(e)(6) provides, in relevant part

> (e) Approval by State commission
>
> * * *
>
> (6) Review of State commission actions
>
> In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

[3]Cmplt. at 3.

[4]Court's Doc. No. 28.

[5]Plaintiff Qwest Corporation's Motion for Judgment on Appeal ("Qwest's Mtn.") (Court's Doc. No. 31)

On June 1, 2005, following submission of the parties' briefs,[6] the Court heard oral argument on Qwest's motion. Having reviewed the record, and having considered the parties' arguments, the Court is prepared to rule.

I. THE TELECOMMUNICATIONS ACT OF 1996.

"Congress passed the [FTA] to foster competition in local and long distance telephone markets by neutralizing the competitive advantage inherent in incumbent carriers' ownership of the physical networks required to supply telecommunications services."[7] To accomplish this objective, Congress, through the FTA, changed significantly the regulatory scheme that governed local telephone service. The FTA "restructured local telephone markets by eliminating state-granted local service monopolies," and replaced exclusive state regulation of local monopolies with a competitive scheme set forth in 47 U.S.C. §§ 251 and 252.[8]

The FTA, under sections 251 and 252,[9] requires established

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[6]On March 2, 2005, Qwest filed Qwest Corporation's Opening Brief in Support of Judgment on Appeal ("Qwest's Opening Brief") On April 29, 2005, Defendants filed their Response Brief of Defendants Montana Public Service Commission and Bob Rowe, Thomas J Schneider, Matt Brainard, Jay Stovall and Greg Jergeson ("PSC's Brief") (Court's Doc. No. 34). On May 17, 2005, Qwest filed Qwest Corporation's Reply Brief in Support of Judgment on Appeal ("Qwest's Reply") (Court's Doc. No 35)

[7]Pacific Bell v Pac-West Telecomm , Inc., 325 F 3d 1114, 1117-18 (9th Cir. 2003) (citations and footnotes omitted).

[8]MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania, 271 F 3d 491, 498 (3d Cir. 2001)("MCI Telecomm ")(citing AT&T Corp v Iowa Utilities Board, 525 U S 366, 370 (1999) ("Iowa Util "))

[9]Hereafter, all references to code sections are to sections of Title 47 of the United States Code unless otherwise indicated.

incumbent local exchange carriers ("ILECs") (defined in 47 U.S.C. § 251(h)(1)) to allow competitive local exchange carriers ("CLECs") access to the ILECs' existing networks or services to permit the CLECs to compete in providing local telephone services.[10]

Generally, both ILECs and CLECs have the duty under section 251(a) "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers[.]"[11] Sections 251 and 252 also set forth specific requirements.

Section 251(b) imposes requirements on both ILECs and CLECs. It requires them to: (1) allow resale of their telecommunications services; (2) provide number portability; (3) provide dialing parity; (4) provide access to rights-of-way; and (5) establish reciprocal compensation arrangements.[12]

Section 251(c) imposes requirements applicable only to ILECs. It requires ILECs to: (1) provide interconnection of the ILEC's network to other networks; (2) provide access to unbundled network elements ("UNEs")[13]; (3) allow CLECs to resell services at wholesale rates; and (4) provide for collocation of CLEC

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[10] Pacific Bell, 325 F.3d at 1118, see also US West Communications v. MFS Intelenet, Inc., 193 F.3d 1112, 1116 (9th Cir. 1999).

[11] Section 251(a)(1).

[12] Sections 251(b)(1)-(5).

[13] UNEs are discrete components of an existing ILEC's network. US West Communications v. Jennings, 304 F.3d 950, 954 (9th Cir. 2002).

equipment in ILEC buildings.[14] Also, section 251(c)(1) requires ILECs to "negotiate in good faith" the "terms and conditions of agreements" that permit CLECs to share the network and to provide service.[15]

Section 252 governs the process for establishing interconnection agreements between ILECs and CLECs, and provides that negotiated or arbitrated interconnection agreements must be submitted to state public utility commissions for approval. Section 252 provides, in relevant part, as follows:

> (a) Agreements arrived at through negotiation
>
> (1) Voluntary negotiations
>
> Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.
>
> * * *
>
> (e) Approval by State commission
>
> (1) Approval required

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[14]Sections 251(c)(2)-(4) and (6).

[15]Section 251(c)(1)

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.[16]

Congress empowered the Federal Communications Commission ("FCC") to promulgate regulations to implement the FTA's requirements.[17] "[T]he FCC's implementing regulations ... must be considered part and parcel of the requirements of the [FTA]."[18]

II. BACKGROUND.

The parties do not dispute the underlying facts.[19] Under the FTA, Qwest is an ILEC and Covad is a CLEC. In early 2004, Qwest and Covad successfully negotiated a line-sharing agreement.[20] Line sharing involves simultaneous use of both the high frequency and low frequency portions of the copper wire or "loop" that connects an end user to a telecommunications network.[21] Companies like Qwest provide high-speed access to the Internet through a service known as a Digital Subscriber Line

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[16]Sections 252(a)(1) and 252(e)(1)

[17]Section 251(d)(1); Iowa Util., 525 U.S. at 384

[18]Jennings, 304 F 3d at 957

[19]See Qwest's Preliminary Pretrial Statement (Court's Doc. No 23) at 2; Preliminary Pretrial Statement of Defendants (Court's Doc No. 22) at 3.

[20]Complaint Exhibit ("Cmplt ex.") 2; PSC's Brief at ex 5

[21]Qwest's Opening Brief at 14

("DSL"). DSL service is provided by equipment that splits the frequency of the loop, allowing simultaneous use of the high frequency portion for connection to the Internet, and the low frequency portion for voice communications. The line sharing agreement between Qwest and Covad gives Covad access to line sharing in Qwest's 14-state region for a period that commenced on October 2, 2004.[22]

On May 19, 2004, Qwest and Covad filed with the PSC their agreement, which is titled "Terms and Conditions for Commercial Line Sharing Arrangements" ("Commercial Line Sharing Agreement" or "CLSA").[23] In a separate letter,[24] Qwest informed the PSC that it filed the agreement "for informational purposes only," and that it was not filing the agreement for approval under section 252's requirement that agreements be submitted to state commissions for approval.

On June 3, 2004, the PSC issued an Order to Show Cause and Request for Information[25] directing Qwest and Covad, and allowing any interested parties, to comment about why the CLSA should not be filed and considered by the PSC under sections 251 and 252.

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[22]Id at 18

[23]Cmplt. ex. 2

[24]Cmplt ex 1

[25]Cmplt. ex 3

On June 18, 2004, Qwest, Covad and others filed comments.[26]

On July 9, 2004, the PSC entered a Notice of Application for Approval of Commercial Line Sharing Agreement for DSL Services ("Notice").[27] In the Notice, the PSC concluded that the CLSA "is a negotiated agreement pursuant to §§ 251 and 252 of the [FTA,]" stated that it requires PSC approval prior to implementation and set a procedural schedule for considering whether to approve or reject the CLSA. On July 28, 2004, Qwest filed with the PSC a Motion for Reconsideration and to Dismiss.[28]

On September 22, 2004, the PSC issued its Final Order and Order on Reconsideration ("Final Order").[29] The PSC approved the CLSA with the exception of one provision that dealt with the timing of notice required before disconnection of services.

On October 21, 2004, Qwest filed the instant action.[30] Qwest seeks: (1) a declaratory ruling that the Final Order violates section 252; and (2) entry of a permanent injunction to prevent the PSC from enforcing the Final Order against Qwest with

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[26]Cmplt. exs. 4 (Qwest's comments), 5 (Covad's comments) and 6 (Qwest's reply comments). Other entities' comments are found in the Notice of Transmittal of Administrative Record (Court's Doc. No. 14).

[27]Cmplt. ex. 7.

[28]Cmplt. ex. 8.

[29]Cmplt. ex. 9.

[30]Cmplt. at 1.

respect to the CLSA.[31]

III. STANDARD OF REVIEW.

The Court must consider de novo the Montana PSC's interpretation of the FTA and of the FCC's implementing regulations.[32]

IV. DISCUSSION.

The narrow legal issue before the Court is whether the CLSA is an "interconnection agreement" that must be submitted to the PSC for approval under the FTA. The issue of whether the PSC may require agreements to be filed is not before the Court, and the Court takes no position herein on that issue.[33]

The parties agree that line sharing does not fall within the obligations of an ILEC as set forth in sections 251(b) and (c), i.e., line sharing is not a UNE under section 251(c)(3).[34] The

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[31]Qwest's Opening Brief at 1, Cmplt. at 16-23.

[32]US West Communications v. MFS Intelenet, Inc., 193 F 3d at 1117 (citing Orthopaedic Hosp. v. Belshe, 103 F 3d 1491, 1495 (9th Cir. 1997), for proposition that state agency's interpretation of a federal statute is considered de novo)

[33]See, e.g., Order Directing Qwest to File Commercial Agreements, In the Matter of the Commission Investigation Regarding the Status of the Commercial Line Sharing Agreement Between Qwest Corporation and DIECA Communications d/b/a Covad, 2004 WL 2465819 (Minn. PUC, September 27, 2004)(Minnesota Public Utilities Commission directing "Qwest to file its commercial agreements with the Commission, whether or not those agreements constitute 'interconnection agreements' for purposes of the [FTA]" noting, *inter alia*, that "[r]eviewing such agreements will provide the Commission with information about the evolution of competition in the state generally.")

[34]Counsel for the PSC conceded this point at oral argument. The PSC's concession is consistent with the FCC's determination that ILECs are not

parties disagree, however, with respect to the issue of whether the line sharing agreement between Qwest and Covad is nevertheless an interconnection agreement that must be submitted to the PSC for approval.

Qwest generally argues that it has no obligation to file any agreements that relate to services that it, as an ILEC, is not required to provide,[35] and that state commissions have no authority to impose requirements upon ILECs that the FTA does not impose. Qwest argues that the PSC, in taking action with respect to Qwest's CLSA with Covad, "improperly asserted authority over an agreement that does not address a section 251(b) or (c) service or element and hence is not an 'interconnection agreement' governed by that section of the [FTA]."[36]

It is Qwest's position that "[a] simple analysis of the interplay between sections 251 and 252 demonstrate[s] that there is no statutory basis to conclude that the [CLSA] must be filed."[37] Specifically, Qwest argues that there are only two

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required to provide line sharing as an unbundled network element under section 251(c)(3), Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978, ¶¶ 255, et seq (2003)("Triennial Review Order" or "TRO"), a conclusion that the D C Circuit Court of Appeals has expressly upheld United States v Telecom Ass'n v FCC, 359 F.3d 554, 584-85 (D C Cir. 2004) ("USTA II").

[35]Qwest's Opening Brief at 7

[36]Id at 10

[37]Id at 24-25

provisions of section 252 that discuss the obligation of parties to file agreements with state commissions, and neither requires submission of the CLSA to the PSC.

The first provision is section 252(a)(1). Qwest argues that the provision's requirement that an agreement be submitted to the state commission is expressly premised on the agreement being for services or elements provided "pursuant to section 251." Because line sharing is not a service or element provided pursuant to section 251, Qwest argues, the CLSA need not be submitted to the PSC for approval.

The second provision is section 252(e)(1). As noted *supra*, it provides that any "interconnection agreement adopted by negotiation ... shall be submitted to the State commission." Qwest argues that the reference to agreements "adopted by negotiation" refers to section 252(a)(1) agreements which, as already discussed, relate only to services or elements provided pursuant to section 251. Again, because line sharing is not a service or element provided pursuant to section 251, Qwest argues, the CLSA need not be submitted to the PSC for approval.

In sum, Qwest argues that because it and Covad were not obligated to submit their CLSA to the PSC for approval, the PSC exceeded its authority when it took action on the CLSA.

The PSC first argues that section 252's plain language

dictates that the CLSA must be submitted to it for approval.[38] The PSC argues that the purpose of section 252(a)(1)'s first sentence "is to reward carriers for independently contracting for interconnection and provisioning of goods and services" and to relieve them from the substantive requirements of sections 251(b) and (c).[39] The sentence, the PSC argues, does not relieve carriers entering voluntary agreements from submitting their agreements to the state commissions for approval. Also, the PSC argues that "[n]othing in section 252(e)(1) limits the filing requirement of interconnection agreements to those that implement duties contained in §§ 251(b) and (c)."[40]

Second, the PSC argues that FCC orders support its position that the CLSA must be submitted to it for approval. The PSC argues that the FCC, in its order on the scope of section 252(a)(1)'s requirement for submission of agreements to state commissions for approval, encouraged state commissions to decide in the first instance which sorts of agreements must be submitted.[41] The PSC argues that the FCC, in a subsequent order, "reiterated the role of state commissions in determining in the

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[38]PSC's Brief at 8-14

[39]Id at 9

[40]Id at 12

[41]Id. at 14-18 (citing Memorandum Opinion and Order, In the Matter of Qwest Communications International, Inc , Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No 02-89, 17 FCC Rcd 19337, 2002 WL 31204893 (Oct 4, 2002) ("Declaratory Order"))

first instance what interconnection agreements must be filed."[42]

Third, the PSC argues that the CLSA is subject to section 252's submission requirement because the networks of Qwest and Covad are physically linked. This physically linking, the PSC argues, makes the CLSA an "interconnection agreement" under section 251, and thus subject to submission to the PSC under section 252.

Fourth, the PSC argues that its interpretation of section 252 is entitled to the Court's deference under Chevron USA Inc. v. Natural Resources Defense Council, Inc.[43] The PSC argues that because its interpretation of section 252 is reasonable, the Court should afford that interpretation deference.

Finally, the PSC argues that section 252's requirement for submission of agreements is not limited to agreements that contain the FCC's current list of unbundled network elements. The PSC argues that it and other state commissions are permitted to expand the list of network elements that must be made available to CLECs "as long as state requirements are consistent with and do not substantially prevent implementation of § 251 and the purposes of the [FTA]."[44]

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[42]Id. (citing In the Matter of Qwest Corporation Apparent Liability for Forfeiture, File No. EB-03-IH-0263 (March 12, 2004)("NAL")).

[43]Id at 22-26 (citing Chevron, 467 U S 837, 842-43 (1984))

[44]Id. at 27

Having considered all of the parties' arguments, the Court concludes that section 252's language limits the requirement that agreements be submitted to state commissions for approval to those agreements that contain section 251 obligations. Because line sharing, which is the subject of Qwest's CLSA with Covad, is not an element or service that must be provided under section 251, there is no obligation to submit the CLSA to the PSC for approval under section 252.

As Qwest argues, section 252(a)(1)'s requirement that an agreement be submitted to a state commission is expressly premised on the agreement being for interconnection, services or network elements provided "pursuant to section 251 " Here, as the parties agree and as relevant authority establishes, line sharing is not a service or element provided pursuant to section 251. Therefore, Qwest's CLSA with Covad is not the type of agreement contemplated in section 252(a)(1) that must be submitted to the PSC for approval.

Similarly, section 252(e)(1) requires submission to the state commission any "interconnection agreement adopted by negotiation ...." The reference to any agreement "adopted by negotiation" refers to section 252(a)(1) agreements which, as noted, involve only those services provided "pursuant to section 251." Again, line sharing is not a service or element provided pursuant to section 251. Thus, the CLSA at issue is not an "interconnection agreement" as contemplated in section 252, and

thus need not be submitted to the PSC for approval. The PSC's argument that section 252's language dictates a contrary result is unpersuasive.

The Court believes that its conclusion that the CLSA at issue need not be submitted to the PSC for approval is consistent with the FCC's interpretation of the statute's language. In the Declaratory Order, the FCC expressly concluded that "only those agreements that contain an *ongoing obligation relating to section 251(b) or (c)* must be filed under section 252(a)(1)."[45] The PSC's argument that the FCC's orders support its position ignores the clear language of the Declaratory Order, and thus fails.

The Court notes that its conclusion that the CLSA need not be submitted to the PSC for approval is consistent with the conclusion of a another state commission that recently addressed the issue. The commission for the state of Washington recently concluded that an agreement markedly similar to the CLSA submitted to the PSC here is not subject to section 252.[46] Although this decision is not binding on the Court, it is instructive with respect to how another state regulatory body views line sharing agreements in relation to section 252.

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[45]Declaratory Order, ¶ 8, n.26 (emphasis in original).

[46]See Order No. 02 Dismissing Petition, In the Matter of the Petition of Multiband Communications, LLC, for Approval of Line Sharing Agreement with Qwest Corporation Pursuant to Section 252 of the Telecommunications Act of 1996, Docket No UT-053005 (WUTC April 19, 2005)("Washington commission order")(attached to Qwest's Reply at attachment 1).

Finally, the Court believes that its conclusion herein is consistent with the intent of the FTA. Congress, in enacting the FTA, sought to promote competition by removing unnecessary impediments to commercial agreements entered between ILECs and CLECs, and also to recognize certain ongoing obligations for interconnection agreements. The result reached here is not at odds with either of Congress' purposes in enacting the FTA.[47]

V. CONCLUSION.

Based on the foregoing, the Court concludes that the CLSA is not a negotiated interconnection agreement that must be submitted to the PSC for approval under section 252. Accordingly,

IT IS ORDERED that Qwest's Motion for Judgment on Appeal[48] is GRANTED in part and DENIED in part as follows:

1. The CLSA[49] at issue herein is not subject to review and

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[47]The Court finds unpersuasive the PSC's argument that the physical linking of Qwest's and Covad's networks makes the CLSA an "interconnection agreement." The CLSA concerns only line sharing which, as already noted, is not a service or element that must be included in an interconnection agreement.

The Court also declines to afford the PSC's decision Chevron deference. The Ninth Circuit has ruled that a state commission's interpretations of the FTA are subject to de novo review US West Communications v. MFS Intelenet, 193 F.3d at 1117 The Court declines the PSC's invitation to "revisit the standard of review that should be applied to a state commission's authority to require an interconnection agreement to be filed "

Finally, the Court finds moot the PSC's argument that it may add to the list of required UNEs Even if this argument had a legal basis, there is no evidence before the Court that the PSC has formally decided to add line sharing to the list of UNEs Thus, the issue is moot

[48]Court's Doc. No 31

[49]Cmplt. ex 2

approval by the Defendants under section 252 of the FTA.

2. The PSC's Final Order and Order on Reconsideration[50] issued on September 22, 2004, is therefore VACATED.

3. All other requested relief is DENIED. The Court determines that Qwest's request for prospective injunctive relief is overly broad and goes beyond the narrow issue presented in this action.

The Clerk of Court shall enter Judgment accordingly.

DATED this 9th day of June, 2005.

Carolyn S. Ostby
United States Magistrate Judge

CERTIFICATE OF MAILING
DATE 6/10/05 BY:
I hereby certify that a copy of this order was mailed to:
James Caine
Fred Smith
Monica Pearl

[50] Cmplt ex. 9.

[Service Date April 19, 2005]

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-053005
MULTIBAND COMMUNICATIONS, LLC	)	
	)	ORDER NO. 02:
For Approval of Line Sharing Agreement With Qwest Corporation Pursuant to Section 252 of the Telecommunications Act of 1996	)	DISMISSING PETITION

Synopsis: *The Commission concludes as a matter of law that an agreement between Qwest Corporation and Multiband Communications, LLC, which provides that Qwest will provide line sharing in response to orders placed by Multiband after October 1, 2004, does not require Commission approval under section 252 of the Telecommunications Act of 1996. The Commission determines that Qwest must continue to file its commercial agreements with competitive local exchange carriers for examination by the Commission*

1 **PROCEEDINGS:** On September 30, 2004, Qwest Corporation entered into a Commercial Line Sharing Arrangement (LSA) with Multiband Communications, LLC. The agreement is effective for a three-year term that commenced on October 2, 2004.[1]

2 Qwest filed the LSA "for the Commission's information" on October 26, 2004 Qwest asserted that the agreement does not need to be filed for the Commission's approval pursuant to section 252 of the Telecommunications Act of 1996 (Act) On January 18, 2005, however, in response to a request from the

[1] The filed document is entitled "Terms and Conditions for Commercial Line Sharing Arrangements provided by Qwest Corporation to Multiband Communications, LLC "

Commission's regulatory staff (Commission Staff or Staff) Multiband filed with the Commission a petition for approval of the LSA.[2]

3 The matter came before the Commission at its regularly scheduled Open Meeting on February 23, 2005 Staff recommended that the Commission approve the LSA under sections 251 and 252 of the Act. Qwest and Multiband argued that the LSA does not require Commission approval and that the matter should be held over for further process

4 The Commission set the disputed question for hearing, and conducted a prehearing conference before Administrative Law Judge Dennis J. Moss on March 10, 2005 Qwest and Staff filed Initial Briefs on March 24, 2005, and Reply Briefs on March 31, 2005. Commission Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, Commissioner Philip B. Jones, and Administrative Law Judge Moss heard oral argument from all parties on April 4, 2005.

5 **PARTY REPRESENTATIVES:** C. Douglas Jarrett, Keller and Heckman LLP, Washington, D C., represents Multiband Lisa Anderl, Qwest Corporation, Seattle, Washington, represents Qwest. Shannon Smith, Assistant Attorney General, Olympia, Washington, represents Commission Staff

6 **COMMISSION DETERMINATIONS:** The Commission determines that the LSA does not require Commission approval under sections 251 and 252 of the Act. The Commission concludes as a matter of law that Multiband's petition should be dismissed The Commission also determines that Qwest must continue to file its commercial agreements with competitive local exchange carriers for examination by the Commission

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[2] Multiband's counsel, at prehearing, described the company's position as being between the proverbial rock and hard place Multiband did not file a brief in this proceeding

MEMORANDUM

I. Background and Procedural History.

7 The subject of this proceeding is an agreement between Qwest and Multiband, the exclusive purpose of which is to give Multiband access to the high frequency portion of the "loops" Qwest owns and maintains to connect end use customers' premises to a central office "switch."[3] This is called "line sharing" because Qwest uses the low frequency portion of the loop to provide voice communication to the customer while Multiband uses the high frequency portion to provide the customer with a high-speed broadband connection to the Internet The service Multiband provides is known as digital subscriber line (DSL) service [4]

8 The issue before the Commission in this proceeding is whether the agreement between Qwest and Multiband is an "interconnection agreement" subject to approval by the Commission under subsection 252(e)(1) of the Federal Telecommunications Act of 1996.[5] Subsection 252(e)(1) provides that:

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement

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[3] The loop, often referred to as the "telephone line," is most commonly a pair of copper wires that runs from the customer's home or business to the central switch The switch is a computer that provides dial tone, typically to several thousand end use customers through a like number of individual loops The switch routes a customer's call to its intended destination through "interoffice facilities," which are connections that link Qwest's switches together and that connect Qwest's network to the networks of other telecommunications companies

[4] DSL requires the installation of a frequency splitter at each end of the loop so that it can be used simultaneously for voice communication and high-speed connection to the Internet The DSL equipment separates the low frequency portion of the loop (LFPL) from the high frequency portion (HFPL) and directs the LFPL to the public switched telephone network and the HFPL to the Internet

[5] Pub L 104-104, 110 Stat 56

> is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

Qwest provided a copy of the LSA to the Commission on October 26, 2004, for informational purposes. Qwest described in a cover letter to its submission why it did not believe the arrangement constituted an interconnection agreement under section 252.[6] Staff did not pursue the question of Commission jurisdiction at the time. Later, Staff asked Multiband to file the LSA for approval. Multiband filed the agreement with the Commission on January 18, 2005, as requested. Multiband, however, agrees with Qwest that state approval under section 252 is not required.

9 The matter was docketed and scheduled for the Commission's Open Meeting on February 23, 2005. Commission Staff recommended in an Open Meeting Memorandum that the Commission approve the LSA under section 252. Qwest and Multiband both argued at the Open Meeting that the matter should be deferred for further consideration. Qwest also presented argument on the merits, recommending that the Commission either take no action, or affirmatively declare that the agreement is not subject to filing and approval requirements under the Act. The Commission requested briefing on the issues.

10 Qwest and Staff filed Initial Briefs on March 24, 2005, and Reply Briefs on March 31, 2005. The Commission heard oral argument from all parties on April 4, 2005

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[6] The LSA at issue here is a form of agreement Qwest has entered into with other competitive local exchange carriers (CLECs), including Covad, in Washington and other states. Qwest states that it has provided the LSA to all 14 of the commissions in the states where it operates. Minnesota and New Mexico have considered the LSA and have determined that it is not a section 252 agreement. Montana determined to the contrary. Qwest has appealed the Montana decision in Federal District Court. In addition, the Staff of the Colorado Commission has requested that Qwest file the Commercial Agreement for approval, and Arizona has opened a docket to consider the issue. Other states have simply taken no action on the Commercial Agreement

II. Discussion and Decision

A. Introduction

11 By passing the Telecommunications Act of 1996, Congress meant to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition "[7] DSL, which both Qwest and Multiband offer in Washington, is one such technology.

12 Congress acted in an environment in which a limited number of companies, the so-called regional Bell operating companies (RBOCs), dominated the industry.[8] These RBOCs, each of which was the largest incumbent local exchange carrier (ILEC) in its respective legacy states, owned and controlled much of the local exchange infrastructure by which telecommunications services were provided to individual customers throughout the United States To promote the early development of local exchange competition in this environment, Congress established requirements for carriers to interconnect their networks and for ILECs, like Qwest, to offer services at wholesale rates for resale by competitors. Congress also required ILECs to lease individual components of their networks (*i e*, network elements) to competitive local exchange carriers (CLECs), a significant number of which emerged in the wake of the Act [9] The network

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[7] H R Conf Rep No 104-458, 104th Cong 2d Sess 113 (1996)

[8] The AT&T Bell System, long recognized as a "natural monopoly," lost that status in 1984 The Bell System was broken up into eight regional companies that would provide local exchange service in their respective service territories, and one long distance company AT&T Pacific Northwest Bell, which became U S WEST Communications, and later Qwest, is one of the legacy companies that survive today Qwest operates in a 14 state region, including Washington, where it is the largest incumbent local exchange carrier

[9] 47 U S C § 251(c)(3)

elements that ILECs are obligated to provide are referred to in the Act as "unbundled network elements "[10]

13 The Act requires the FCC to determine what network elements ILECs are required to provide on an unbundled basis pursuant to section 251 of the Act [11] The FCC makes its determination under the "necessary and impair," or simply "impairment," standard, asking whether a competitor's access to a given proprietary network element is necessary, and whether the competitor's ability to compete with ILECs would be impaired without access to the element.

14 The FCC initially identified line sharing as an unbundled network element under section 251.[12] Qwest and other ILECs appealed that determination. Pending the outcome of the appeal, Qwest began providing line sharing to CLECs via interconnection agreements that were approved by various state authorities, including the Commission

15 On appeal, the D.C Circuit found that the FCC had failed to properly apply the Act's impairment standard for line sharing [13] The Court vacated and remanded the *Line Sharing Order*. The FCC consolidated the remand of the *Line Sharing*

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[10] The term "network element" is defined at 47 U S C 153(29) The subset of required network elements referred to in 47 U S C § 251(c)(3) as "unbundled network elements" is established by the FCC pursuant to 47 U S C § 251(d)(2), which is sometimes referred to as the "impairment standard "

[11] 47 U S C § 251(d)(2)

[12] The FCC ruled that line sharing is a UNE under section 251(c)(3) in 1999 *Third Report and Order, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*)

[13] *United States Telecom Ass'n v FCC*, 290 F 3d 415 (D C Cir 2002) ("*USTA I*") The court concluded that the FCC had "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite) " *Id* at 429

Order into the agency's Triennial Review docket.[14] The FCC issued its Triennial Review Order (*TRO*) in August 2003.[15]

16 In the *TRO*, the FCC applied the principles of *USTA I* and concluded that there was no impairment for line sharing. Given the lack of impairment, the FCC ruled—subject to a transition period—that ILECs are not required to provide line sharing as an unbundled network element under subsection 251(c)(3).[16]

17 The FCC rules implementing this determination provide in relevant part that "[b]eginning on the effective date of the [*TRO*], the high frequency portion of a copper loop [*i e*, line sharing] shall no longer be required to be provided as an unbundled network element, subject to . . . transitional line sharing conditions. "[17] The FCC transition rules "grand father" line sharing provided to customers that were signed up prior to October 2, 2003 (*i e*, the effective date of the *TRO*, meaning that line sharing must continue to be provided at the prices set by state commissions until the grand fathered end user "cancels or otherwise discontinues its subscription to the digital subscriber line service . . ."[18] For new line sharing orders made from October 2, 2003, through October 1, 2004, ILECs are required to provide line sharing as a UNE, but at prices that escalate over a three-year period.[19] Finally, for new orders placed after October 1, 2004, ILECs are relieved from their prior obligation to provide line sharing as an unbundled network element pursuant to section 251 of the Act.

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[14] The Triennial Review docket was created to determine whether UNEs that the FCC previously required ILECs to provide still met the impairment standard. The FCC, in the Triennial Review docket, considered the issues remanded from the Line Sharing Order.

[15] *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003). In *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), the Court vacated and remanded the TRO in part, but expressly upheld the FCC's non-impairment decision on line sharing. *Id.* at 585.

[16] *TRO* ¶ 255, *et seq.*

[17] 47 C.F.R. § 51.319 (a)(1)(i).

[18] *Id.* § 51.319 (a)(1)(i)(A).

[19] *Id.* § 51.319 (a)(1)(i)(B).

18 The agreement at issue here pertains only to new line sharing orders placed by Multiband after October 1, 2004.

B. Argument

1. Plain Meaning

19 Staff argues that its "position that the LSA should be submitted to the Commission for its approval is consistent with the plain language of the federal Act."[20] Qwest argues that "a simple analysis of the interplay between sections 251 and 252 demonstrates that there is no statutory basis to conclude that the [LSA] must be filed."[21] Thus, although the parties would have us reach opposite results, they agree that the familiar rules of statutory interpretation require us, among other things, to first consider the plain meaning of the statute.[22]

20 Subsection 252(a)(1) of the Act states

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be

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[20] Staff Initial Brief at ¶ 24

[21] Qwest Opening Brief at ¶ 47

[22] *Waste Management of Seattle, Inc , v Utilities and Transp Comm'n,* 123 Wn 2d 621, 869 P 2d 1034 (1994), *State Dep't of Transp v State Employees' Ins Bd* , 97 Wn 2d 454, 645 P 2d 1076 (1982)

> submitted to the State commission under subsection (e) of this section.[23]

Subsection 252(e)(1) states.

> Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.[24]

21 Staff's argument is grounded in the clause in the first sentence of subsection 252(a)(1) that states ILECs and CLECs "may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers *without regard to the standards set forth in subsections (b) and (c) of section 251* " Staff contends that the emphasized language means any negotiated agreement that provides for a network element—whether or not it is a required network element under subsection 251(c)(3)—is within the scope of subsection 252(a)(1). In other words, Staff argues subsection 252(a)(1) permits parties to negotiate voluntary agreements "for unbundled network elements that ILECs are not compelled to provide."[25] Staff states that line sharing is one such unbundled network element [26] It follows, according to Staff, that the LSA is an interconnection agreement adopted by negotiation that must be submitted for approval under subsection 252(e)(1)

22 Qwest argues that Staff's analysis ignores important qualifying language in Subsection 252(a)(1) Specifically, Qwest argues, Staff does not acknowledge that the negotiated agreements described in subsection 252(a)(1) are "expressly

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[23] 47 U S C § 252(a)(1)
[24] 47 U S C § 252(e)(1)
[25] Staff Initial Brief at ¶ 16
[26] *Id* at ¶ 17

premised on the agreement being for services or elements provided 'pursuant to section 251.'"[27] That is, Staff ignores that the threshold event that triggers the requirements of subsection 252(a)(1) is a "request for interconnection, services, or network elements *pursuant to section 251* " Qwest contends that the only network elements that can be said to be "pursuant to section 251" are required network elements under subsection 251(c)(3). Line sharing is no longer a required network element pursuant to the FCC's clear determination on remand in the *TRO*. It follows, Qwest argues, that it need not file the LSA for approval.

23 Staff does not discuss the qualifying phrase "pursuant to section 251" in its Initial Brief. Qwest's argument in its Opening Brief focuses directly on the interplay between sections 251 and 252 to demonstrate that there is no statutory reason to file the line sharing agreement for approval. Nevertheless, Staff's Reply Brief does not address Qwest's argument on this point.[28] Staff did not resolve on oral argument the tension between Staff's reading of subsection 252(a)(1) to include all network elements and the provision's limiting language "network elements pursuant to section 251 " In sum, Staff offers no persuasive rebuttal to Qwest's argument concerning the meaning and significance of the quoted phrase in the context of section 252. It appears that Qwest is correct in asserting, "Staff's reading of the statute would eliminate the modifying clause 'pursuant to section

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[27] Qwest Opening Brief at ¶ 48

[28] About the closest Staff comes is its argument that

> Under the negotiation method, ILECs and CLECs may voluntarily enter into an agreement for network elements outside of the standards set forth in Section 251(b) or (c) Thus, the parties could agree that the ILEC would provide a CLEC with access to network elements that the ILEC is not compelled to provide pursuant to Section 251(c)

Staff Reply Brief at ¶ 4 Again, however, Staff ignores the point that the "negotiation method" to which it refers (*i e* , negotiation under sections 251 and 252) occurs only following a request by a CLEC for "a network element pursuant to section 251 " No such request is present under the facts before us

251' and require filing of agreements for de-listed elements that an ILEC is not otherwise obligated to provide."[29]

24 It is fundamental, however, that when reading statutes we must neither add to, nor subtract from, the language by which the legislators expressed their intent.[30] We must give meaning to all the words in the statute. Accordingly, we must consider carefully the important qualifying language in subsection 252(a)(1).

25 The requirements for provisioning network elements pursuant to section 251 are set out in subsection 251(c)(3), which describes "unbundled network elements." Subsection 251(d)(1), in turn, requires the FCC to implement subsection 251(c)(3) using the impairment standard to identify what network elements fall within the definition of unbundled network elements. It follows that "a request for . . . network elements pursuant to section 251" is a request for unbundled network elements—network elements that ILECs are required to provide under subsection 251(c)(3) [31]

26 Line sharing is no longer an unbundled network element within the meaning of subsection 251(c)(3). Indeed, it is undisputed that Qwest need not offer line sharing at all [32] Where, as here, the only network element a CLEC requests from an ILEC is one that the FCC has removed from the list of required elements

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[29] Qwest Reply Brief at ¶¶ 13, 14

[30] *Restaurant Development, Inc v Cananwill, Inc* , 150 Wn 2d 674, 80 P 3d 598 (2003), *Department of Licensing v Cannon*, 147 Wn 2d 41, 50 P 3d 627 (2002), *Mckay v Department of Labor and Industries*, 180 Wash 191 39 P 2d 997 (1934)

[31] Contrary to Staff's argument, the term "unbundled network element" is a term of art defined by subsection 251(c)(3) of the Act There is, within the meaning of the Act, no such thing as "unbundled network elements that ILECs are not required to provide " *Supra* ¶ 21 (citing Staff Initial Brief at ¶ 16)

[32] Although we do not reach Staff's policy arguments for purposes of our decision, we note here our belief that the potential for adverse consequences that might result from dampening Qwest's willingness to continue to make line sharing available to its direct competitors in the DSL market is as important a policy concern as the potential for benefits that arguably result from forcing competitive access via opt-in arrangements in the short term

under subsection 251(c)(3), the CLEC cannot be said to have made a request for a network element "pursuant to section 251." That is, because the agreement at issue concerns only line sharing, it is not an agreement within the meaning of subsection 252(a)(1). Hence, it is not "an interconnection agreement adopted by negotiation" within the meaning of subsection 252(e)(1). Therefore, the line sharing agreement between Qwest and Multiband is not one that requires our approval under the Act

27 We reach the same result below considering the FCC's declaratory ruling in 2002 concerning the filing requirements under sections 251 and 252.[33] Although not essential to our decision in light of our analysis and conclusion above, some brief discussion of the FCC's interpretation is appropriate in light of the parties' emphasis in their briefs on the *FCC Declaratory Order* and our recognition of the federal agency's primary jurisdiction under the Act.

2. FCC Interpretation

28 Staff contends that the FCC declined "to establish an exhaustive, all-encompassing 'interconnection agreement' standard" in response to Qwest's petition for a declaratory ruling on this subject several years ago [34] Staff argues the FCC left it to the states to determine which agreements are subject to the state commission filing and approval process under the Act Staff recognizes, however, that the *FCC Declaratory Order* did give important guidance to the states as they make that determination on a case-by-case basis. Staff refers to paragraph 8 of the *FCC Declaratory Order*, which establishes that an agreement that "creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection,

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[33] *In the Matter of Qwest Communications International, Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337, FCC 04-57 (2002) (*FCC Declaratory Order*)

[34] Staff Initial Brief at ¶ 11

unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)."[35] Although Staff does not say so, the FCC clarified in a footnote to this language that "only those agreements that contain an *ongoing obligation relating to section 251(b) or (c)* must be filed under section 252(a)(1)."[36]

29 Staff argues that the LSA "is an on-going agreement pertaining to a network element," and "is a voluntary agreement entered into without regard to the standards set forth in 47 U.S.C. § 251(c)(2) and (3)." It follows, Staff contends, that the LSA is subject to the filing and approval requirements in subsections 252(a)(1) and (e)(1). It is unclear whether Staff's references to an "ongoing *agreement*" rather than an "ongoing *obligation*," and to a "network element" as distinct from an "*unbundled* network element" are intentional. Assuming deliberate word choices, we cannot dispute the veracity of Staff's statement precisely as written, but from these precise premises, Staff's conclusion does not follow

30 The LSA is an ongoing agreement, but it does not reflect an ongoing obligation, Qwest is not obliged to offer line sharing at all after October 1, 2004. Though the LSA pertains to a network element, it does not pertain to an unbundled network element within the meaning of section 251 The LSA is, indeed, a voluntary agreement entered into without regard to subsections 251(c)(2) and (3); it is an agreement entered into without regard to section 251 at all

31 As Qwest contends, "the FCC has clearly stated that telecommunications carriers are only required to file 'interconnection agreements' with other carriers that relate to *ongoing obligations for services that ILECs have a duty to provide under sections 251(b) and (c) of the Act* "[37] Since Qwest does not have a duty to provide

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[35] *Id* at ¶ 8
[36] *Id* at ¶ 8, n 26
[37] Qwest Reply Brief at ¶ 3

line sharing under subsections 251(b) or (c), Qwest need not file the LSA for approval under subsection 252(e)(1).

C. Commission Determination

32 We need look no further than the language in sections 251 and 252 to determine that the LSA is not an agreement that requires our review and approval under the Act.[38] The LSA pertains only to Multiband's orders for the high frequency portion of Qwest's loops (*i e*, line sharing) after October 1, 2004. Multiband's request for an agreement with Qwest to provide for line sharing after that date was not a request made for a network element "pursuant to section 251" because line sharing is no longer an unbundled network element within the meaning of section 251.

33 Our reading of the statute is consistent with the FCC's interpretation of the relevant statutory language, and the standard it establishes to guide state determinations concerning whether particular agreements must be filed for approval. The FCC's interpretation, as discussed in the *FCC Declaratory Order*, is consistent with the Act's intent to promote competition by removing unnecessary impediments to commercial agreements between ILECs and CLECs while recognizing certain ongoing obligations for interconnection agreements. We find that the LSA does not create an ongoing obligation pertaining to an unbundled network element under section 251; the LSA contains no ongoing obligation relating to subsection 251(b) or (c).

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[38] We reject Staff's argument that the Commission's analysis in the MCIMetro proceeding late last year "applies to the LSA between Multiband and Qwest." Staff Initial Brief at ¶ 29, See *In the Matter of Request of MCI Metro Access Transmission Services, LLC and Qwest Corporation for Approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Docket Nos UT-960310 & UT-043084, Order No 1 (Oct 20, 2004) The interdependency between the Thirteenth Amendment to the Qwest/MCIMetro Interconnection Agreement and the Master Service Agreement for the Provision of Qwest Platform Service that was the controlling factor in the *MCIMetro* decision simply is not present here

34 We conclude as a matter of law that the LSA is not a negotiated interconnection agreement that requires our review and approval under subsection 252(e)(1). Accordingly, we determine that Multiband's petition for approval of the LSA should be dismissed.

35 Having made this determination, we also observe that it was entirely appropriate for this matter to have been brought before us and briefed for decision. The FCC's *Declaratory Order* unambiguously provides that the Commission, in the first instance, should review and determine whether individual agreements between CLECs and ILECs require state approval under the Act.[39] The Commission also has responsibilities under general provisions of state law to review the contracts of telecommunications companies and to prevent a telecommunications company from giving any undue or unreasonable preference or advantage to itself or any other person providing telecommunications service.[40] We can perform these functions only if Qwest and its CLEC counter parties continue to file their agreements that concern the provisioning of network elements that promote deployment of advanced telecommunications and information technologies and services to end use customers in Washington. We require that they continue to do so.

FINDINGS OF FACT

36 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

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[39] *Declaratory Order* at ¶ 10

[40] *See* RCW 80 36 186

37 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies

38 (2) Multiband owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington. Multiband is engaged in the business of furnishing telecommunications services within Washington State as a competitive local exchange carrier Multiband conducts business subject to the Commission's regulatory authority.

39 (3) Qwest owns, operates, and manages facilities used to provide telecommunications for sale to the general public in Washington and is engaged in the business of furnishing telecommunications services within Washington State as a public service company and as an incumbent local exchange carrier. Qwest conducts business subject to the Commission's regulatory authority

40 (4) On September 30, 2004, Qwest entered into a Commercial Line Sharing Arrangement (LSA) with Multiband, effective for a three-year term that commenced on October 2, 2004. The LSA pertains only to new line sharing orders placed by Multiband after October 1, 2004

41 (5) The LSA is not a negotiated agreement that follows from a request by Multiband asking that Qwest provide a network element pursuant to section 251 of the Telecommunications Act of 1996.

42 (6) The LSA is not an agreement that requires filing and approval pursuant to section 252 of the Telecommunications Act of 1996.

CONCLUSIONS OF LAW

43 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

44 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

45 (2) The LSA between Qwest and Multiband does not require Commission approval under sections 251 and 252 of the Telecommunications Act of 1996.

46 (3) Multiband's petition should be dismissed

47 (4) The Commission should continue to require that Qwest to file its commercial agreements with CLECs for examination by the Commission so that the Commission can determine its jurisdiction and otherwise carry out its statutory responsibility to regulate telecommunications companies in the public interest

48 (5) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

49 (1) Multiband's petition for approval of its line sharing agreement with Qwest is dismissed, being beyond the Commission's authority to approve pursuant to section 252 of the Telecommunications Act of 1996.

50 (2) Qwest is required to continue to file for review its agreements with CLECs, such as the agreement at issue here, that refer to past, present, or future obligations imposed on ILECs pursuant to the Telecommunications Act of 1996.

51 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 19th day of April 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Public Service Commission
Receipt of Payment

Receipt# 6269

Received 6/10/2005 Check# 1473817 for $105 71

Subject Utility Valuation

Docket # PU-04-620

Qwest Corporation
1801 California Street, Suite 5100
Denver CO 80202

9 **PU-04-620** Pages 1

Receipt# 6,269 $105 71

by Qwest Corporation

06/10/2005

APPROVED
DATE: 5-24-05
KMF

MOTION

May 24, 2005

New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Case No PU-04-620

I move the Commission bill New Edge Network, Inc. and Qwest Corporation for costs incurred to date in Case No. PU-04-620, New Edge Network, Inc./Qwest Corporation, Commercial Line Sharing Agreement, Service Agreement(s).

Public Service Commission
State of North Dakota

600 E Boulevard Ave Dept 408
Bismarck, North Dakota 58505-0480
web www psc state nd us
e-mail ndpsc@state nd us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

May 24, 2005

Robert McMillin
New Edge Network Inc
3000 Columbia Blvd Ste 106
Vancouver WA 98661

Scott Macintosh
Qwest Corporation
PO Box 5508
Bismarck ND 58502-5508

RE: Case No. PU-04-620
New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Enclosed is a copy of the statement approved at the May 24, 2005 Public Service Commission meeting for the expenses incurred to date in Case No. PU-04-620.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved

Please make your check payable to the *Public Service Commission*.

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

c: Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver CO 80202

Dir – Interconnection
Compliance
Qwest Corporation
1801 California St Rm 2410
Denver CO 80202

Billing Statement

May 24, 2005

New Edge Network, Inc./Qwest Corporation
Commercial Line Sharing Agreement
Service Agreement(s)

Case No. PU-04-620

Bill To:

New Edge Network, Inc. $105.71
Qwest Corporation $105.71

Expenses Incurred to Date:

Advertising Costs	$211.42

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

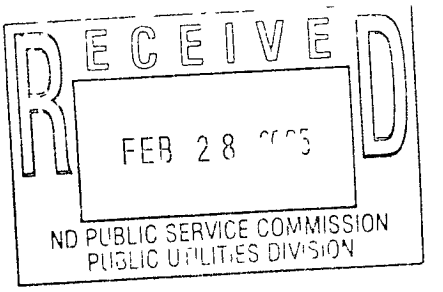
Federal Tax ID 45-0309764

Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303 383 6643
Facsimile 303 296 3132
Melissa Thompson@qwest com

Melissa Thompson
Senior Attorney

Qwest
Spirit of Service™

February 28, 2005



Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, North Dakota 58505-0480

Re. Case No. PU-04-620

Dear Ms Jeffcoat-Sacco

Please find enclosed an original and seven copies of a Request for Hearing, Comments, and Motion to Dismiss from Docket the Agreement Titled "Terms and Conditions for Commercial Line Sharing" for filing in Case No PU-04-620 We are submitting an electronic copy of the filing as well If you have any questions or concerns, please feel free to contact me

Thank you.

Sincerely,

Melissa K. Thompson

cc: Scott Macintosh
Mel Kambeitz

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

New Edge Network, Inc /Qwest Corporation Commercial Line Sharing Service Agreements	PU 04-620 REQUEST FOR HEARING, COMMENTS, AND MOTION TO DISMISS FROM DOCKET THE AGREEMENT TITLED "TERMS AND CONDITIONS FOR COMMERCIAL LINE SHARING"

In response to the Notice of Opportunity for Hearing dated January 26, 2005 issued by the North Dakota Public Service Commission (the "Commission") in this docket, Qwest Corporation ("Qwest") respectfully asks the Commission to set this matter for hearing The commercial line sharing agreements at issue here are distinct from the commercial Master Services Agreements also referenced in the Notice of Opportunity for Hearing. The distinctions between the agreements warrant separate proceedings and separate consideration by the Commission Indeed, commissions in other states have agreed with Qwest's position that the agreement titled, "Terms and Conditions for Commercial Line Sharing", is not an interconnection agreement and does not need to be filed with state commissions for review and approval under section 252.

Qwest respectfully submits the following Comments to the Commission and Qwest respectfully moves the Commission for an order dismissing the agreement titled "Terms and Conditions for Commercial Line Sharing" from this docket

I. BACKGROUND AND INTRODUCTION

On November 16, 2004, Qwest and New Edge Network, Inc ("New Edge") entered into a commercial agreement entitled the "Terms and Conditions for Commercial Line Sharing Arrangements" (the "Commercial Agreement") under which Qwest agreed to provide access to the high frequency portion of its local loops so that New Edge may offer advanced data services simultaneously with Qwest's voice band service The Commercial Agreement pertains only to line sharing orders placed after October 1, 2004 As a result of the D.C Circuit's decision in *United States Telecom Association v FCC* (*"USTA II"*), Qwest is no longer required to provide line sharing as a network element under sections 251 or 252 of the Act for line sharing orders placed after October 1, 2004.[1] The Commercial Agreement does not amend or alter the terms and conditions of existing interconnection agreements between Qwest and New Edge In fact, all amendments to the interconnection agreement have been filed with the Commission under section 252

Also on November 16, 2004, Qwest and New Edge entered into an amendment to the parties' interconnection agreement titled "Commercial Line Sharing Amendment to the Interconnection Agreement Between Qwest Corporation and New Edge Networks, Inc. dba New Edge Networks for the State of North Dakota" (referred to hereinafter as the "Line Sharing Amendment") Qwest has filed that agreement for review and approval by the Commission. In contrast to the Line Sharing Amendment, the Commercial Agreement does not create any terms or conditions for services that Qwest must provide under section 251(b) or (c), and, therefore, it is not an interconnection agreement or an amendment to the existing interconnection agreement between Qwest and New Edge Qwest submitted the Commercial Agreement to the Commission

[1] *United States Telephone Ass'n v FCC,* 359 F 3d 554 (D C Cir 2004)

for informational purposes only and outlined its reasons for doing so in a detailed cover letter It is important to note that Qwest made the terms and conditions of the Commercial Agreement available to any carrier who assumed the same obligations as New Edge

Notwithstanding the public nature of the Commercial Agreement and the continuing offer to make it available to all other carriers, Qwest disputes that the Commercial Agreement falls within the section 252 filing obligation and that the Commission has jurisdiction to review, approve or reject the Commercial Agreement. Accordingly, for the reasons that follow, Qwest respectfully moves for an order dismissing the Commercial Agreement from this docket

II. ARGUMENT

A. The Authority of the Commission to Review and Approve Agreements Under the Federal Act is Governed by Federal Law.

Whether the Commission has the power to review and approve the Commercial Agreement is a question of federal law governed by the provisions of the 1996 Federal Telecommunications Act (the "Act") and the controlling federal authorities construing the Act The controlling authorities that must be examined are the provisions of the Act, Federal Communications Commission ("FCC") decisions, rules adopted by the FCC, and rulings by federal courts reviewing the Act. In this particular case, there are three primary controlling authorities. The first is the decision of the United States Court of Appeals for the District of Columbia in *USTA II*, which controls and defines several relevant aspects of the FCC's Triennial Review decisions. The second is the October 2002 FCC decision in a declaratory ruling docket brought by Qwest ("Declaratory Order") that defines "the scope of the mandatory filing requirement set forth in section 252(a)(1) "[2] And finally, the third is the portion of the FCC's

[2] Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual*

Triennial Review Order ("TRO") relating to line sharing [3] Read together, these authorities definitively establish that the Commercial Agreement is not subject to sections 251 and 252 and is therefore not subject to review and approval by the Commission

B. The Commercial Agreement Relates to Services That Are No Longer Required to Be Unbundled Pursuant to Sections 251 or 252 of the Act.¶

The D.C. Circuit's recent decision in *USTA II* may have created a false impression that the Court overturned the entire TRO. That is not the case In fact, major portions of the TRO were not appealed by any party and are in force With respect to other issues, including line sharing, *USTA II* affirmed the decision of the FCC in the TRO ¶

In the TRO, the FCC determined that there was no impairment with regard to the high frequency portion of the loop and, thus, it declined to make it available as an unbundled network element ("UNE") [4] In section 51 319(a)(1)(i) of its rules, the FCC determined that "[b]eginning on the effective date of the [TRO], the high frequency portion of a copper loop shall no longer be required to be provided as an unbundled network element, subject to . . transitional line sharing conditions . ."[5] One portion of the transitional line sharing rules required ILECs to provide line sharing for new orders placed within one year of the effective date of the TRO, at which point the ILECs' obligation to provide line sharing as a UNE to new customers would cease.[6] October 1, 2004 was the one-year anniversary of the effective date of the TRO. Thus, for line sharing orders placed on or after October 2, 2004, Qwest has no obligation to provide line sharing as a UNE under sections 251 and 252.

Arrangements under Section 252(a)(1), WC Docket No 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) ¶ 1

[3] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket 01-338 (FCC rel August 21, 2003) ("TRO") ¶ ¶ 255-269

[4] TRO, ¶ 255 *et seq*

[5] 47 C F R § 51 219(a)(1)(i)

[6] 47 C F R § 51 219(a)(1)(i)(B)

Under section 251(d)(2) of the Act, before an incumbent local exchange carrier such as Qwest can be required to unbundle network elements, the FCC must first lawfully determine, at a minimum, that "access to such network elements as are proprietary in nature is *necessary*" and that "the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer "[7] Absent such a lawful determination, there is no obligation to unbundle under section 251 of the Act

Section 251 itself makes this clear. Section 251(b)(3) states that ILECs must make network elements available to CLECs, subject to the "necessary" and "impair" standards of section 251(d)(2). Section 251(c)(3) authorizes unbundling only "in accordance with the requirements of this section [251],"[8] – that is, only if the FCC determines that the "impairment" test of section 251(d)(2) has been satisfied As the United States Supreme Court and D.C. Circuit have held, the section 251(d)(2) requirements reflect Congress' decision to place a real upper bound on the level of unbundling that regulators may order [9]

Congress explicitly assigned the task of applying the section 251(d)(2) impairment test and "determining what network elements should be made available for purposes of subsection [251](c)(3)" to the FCC [10] The Supreme Court confirmed that as a precondition to unbundling, section 251(d)(2) "requires the [Federal Communications] Commission to determine on a

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[7] 47 U S C § 251(d)(2)
[8] 47 U S C § 251(c)(3)
[9] *See AT&T Corp v Iowa Utilities Board,* 525 U S 366, 390 (1998) ("We cannot avoid the conclusion that if Congress had wanted to give blanket access to incumbents' networks on a basis as unrestricted as the scheme the [FCC] has come up with, it would not have included § 251(d)(2) in the statute at all "), *USTA v FCC,* 290 F 3d 415, 418, 427-28 (quoting *Iowa Utilities Board's* findings regarding congressional intent and Section 251(d)(2) requirements, and holding that unbundling rules must be limited given their costs in terms of discouraging investment and innovation)
[10] 47 U S C § 251(d)(2)

rational basis which network elements must be made available, taking into account the objectives of the Act and giving some substance to the 'necessary' and 'impair' requirements."[11]

As previously noted, the FCC determined in the TRO that line sharing is not required to be unbundled under section 251 of the Act [12] In *USTA II,* the D.C. Circuit affirmed the FCC's decision that the CLECs' "lack of separate access to the high frequency portion of [ILEC] copper loops" would not cause impairment and that line sharing need not be unbundled [13] In doing so, the Court expressly stated:

> We therefore uphold the Commission's rules concerning hybrid loops, FTTH, and line sharing on the grounds that the decision not to unbundle these elements was reasonable, even in the face of some CLEC impairment, in light of evidence that unbundling would skew investment incentives in undesirable ways and that intermodal competition from cable ensure the persistence of substantial competition in broadband [14]

Consequently, Qwest is no longer obligated to provide unbundled access to line sharing under section 251 of the Act for line sharing orders placed after October 1, 2004

As discussed in Part C below, the entire premise of the duty to file an agreement with a state commission under section 252 is based on the fact that the service or element provided is required by section 251(b) or (c).[15] Consequently, when a service such as line sharing is no longer required by section 251, there is no section 252 obligation to file a privately-negotiated

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[11] *Iowa Utilities Board,* 525 U S at 391-92
[12] *TRO,* ¶ ¶ 258-263, 642-44
[13] *USTA II,* 359 F 3d at 584-85
[14] *Id* at 585
[15] 47 U S C § 252(a)(1) ("Upon receiving a request for interconnection, services, or *network elements pursuant to section 251* an incumbent local exchange carrier may negotiate and enter into a binding agreement The agreement shall be submitted to the State commission under subsection (e) of this section ") (emphasis added)

agreement with a state commission nor is there a section 252 power in the state commission to review and approve the agreement [16]

C. In the Declaratory Order, the FCC Ruled that Agreements Like the Commercial Agreement Need Not Be Filed.

The 2002 Declaratory Order sets out explicit standards governing the circumstances under which agreements between an ILEC and CLEC must be filed with state commissions. The basic standard is that an ILEC must, pursuant to section 252(a)(1), file any agreement that "creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation."[17] The FCC characterized these requirements as properly balancing the right of CLECs "to obtain interconnection terms pursuant to section 252(i)" with the equally important policy of "removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs."[18]

With regard to the issue in this case, the FCC could not have been clearer that there is no requirement that an ILEC file all agreements

> We...disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier . Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1).[19]

It is undisputed that the FCC and *USTA II* eliminated the requirement that line sharing be provided as an unbundled network element under section 251(b) or (c) Thus, the Declaratory

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[16] The opening phrase of section 252 is instructive on this point It states that "[u]pon receiving as request for interconnection, services, or network elements *pursuant to section 251* " 47 U S C § 252(a)(1) (emphasis added) Thus, the obligations of section 252 come into being only if a section 251 service or element is the subject of the agreement

[17] *Declaratory Order* ¶ 8 (italics in original)

[18] *Id*

[19] *Id*, footnote 26 (italics in original)

Order stands for the clear proposition that Qwest has no obligation to file the Commercial Agreement and the Commission has no authority to review and approve it.

D. Contracts for Non-Section 251 Network Elements Are Subject to Federal Jurisdiction.

As shown above, only agreements pertaining to the provision of services required under section 251(b) or (c) of the Act constitute "interconnection agreements" that must be filed under section 252 The FCC has jurisdiction over contracts for non-section 251 network elements for the following reasons. (1) in many cases, certain network elements are required under federal law to be provided by RBOCs such as Qwest under section 271(c)(2)(B) of the Act, as a result, this obligation is federal, as is the jurisdiction to review the contracts for these elements; (2) network elements remain subject to federal jurisdiction even after they have been removed from the list of section 251(c)(3) elements, and (3) contracts between carriers for network elements that do not meet the "necessary" and "impair" tests also fall within express federal filing jurisdiction

First, in the case of Qwest (and other RBOCs), there is an independent investiture of federal jurisdiction under the Act Many of the elements that have been removed from the list of network elements must still be provided pursuant to section 271(c)(2)(B) of the Act.[20] The offering of access to loops, for example, pursuant to section 271(c)(2)(B)(vi) is subject to federal jurisdiction.[21] The filing and review (if any) of contracts entered into pursuant to section 271(c)(2)(B) of the Act is a federal matter.[22]

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[20] *TRO*, 18 FCC Rcd at 17383-84, ¶ 652

[21] The FCC, in the TRO, confirmed this jurisdiction, noting that it would enforce compliance with section 271 offerings (*id* at 17385-86, ¶ 655) and that it would apply sections 201 and 202 of the Act to such offerings (*id* at 17389, ¶ 663)

[22] Of course, state jurisdiction over section 271 issues is considerably more limited than is the case with section 251, and is advisory only *See* 47 U S C § 271(d)(2)(B)

Second, network elements made available under the Act are subject to the jurisdiction of the FCC, subject to specific exceptions [23] The FCC's jurisdiction is not diminished whenever a network element is removed from the FCC's list of unbundled elements.[24] The fact that the FCC's actions in removing line sharing orders from the list of section 251(c) services is deregulatory, not regulatory, is irrelevant, because deregulatory action by the FCC does not reduce either the federal jurisdiction pursuant to which the deregulation was accomplished or the FCC's ability to preempt inconsistent state regulations [25]

Third, some network elements, particularly line sharing, are used exclusively for the provision of services that fall within federal jurisdiction because they are interstate in nature Line sharing is within federal jurisdiction because DSL service is jurisdictionally interstate irrespective of any provisions of the Act [26]

Fourth, contracts between carriers for network elements that do not meet the "necessary" and "impair" test also fall within express federal filing jurisdiction That is, the FCC has the authority to require that all such contracts be filed with the agency and to enforce the non-discrimination requirements of section 202(a) of the Communications Act of 1934 with regard to them. As a matter of rule, the FCC has exempted non-dominant carriers from the federal filing obligations applicable to such contracts. No such exemption exists for contracts between ILECs (which are subject to dominant carrier regulation) and CLECs. Furthermore, unlike access services, the Commission has not directed the ILECs to provide these network

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[23] *TRO*, 18 FCC Rcd at 17100-01, ¶ ¶ 194-95, *USTA II,* 359 F 3rd at 594

[24] *AT&T Corporation v Iowa Utilities Board,* 525 U S 366, 385 (1999) "Congress has broadly extended its law into the field of intrastate telecommunications, but in a few specific areas (ratemaking, interconnection agreements, etc) has left the policy implications of that extension to be determined by state commissions "

[25] *See Computer and Communications Industry Association v FCC*, 693 F 2d 198, 217 (D C Cir 1982), *cert denied sub nom Louisiana Pub Serv Comm'n v FCC*, 461 U S 938 (1983)

[26] *In the Matter of GTE Telephone Operating Co ,* GTOC Tariff No 1, GTOC Transmittal No l 1148, *Memorandum Opinion and Order*, 13 FCC Rcd 22466, 22474-75 ¶ 16 (1998), *recon denied,* 17 FCC Rcd 27409 (1999)

elements as tariffed offerings. Therefore, these contracts must be filed with the FCC, but are not subject to prior FCC approval.

Section 211(a) of the Communications Act of 1934 requires that:

> Every carrier subject to this [Act] shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this chapter, in relation to any traffic affected by the provisions of this chapter to which it may be a party

This statutory language provides an affirmative grant of power to carriers to order their affairs with other carriers by way of contract unless the FCC's rules (or other provisions of the Communications Act) provide otherwise, even when the same business relationship with an end-user customer would need to be dealt with in a tariff.[27] It stands for the legal proposition that Qwest may enter into commercial negotiations with CLECs for the sale of network elements not subject to section 251(b) or (c), and may enter into binding agreements with those CLECs for the sale of those network elements (even though untariffed sales to end-user customers would generally not be lawful) Pursuant to section 211, Qwest has filed the Commercial Agreement with the FCC, thereby complying with that section and perfecting the FCC's jurisdiction over the Commercial Agreement.

The general prohibition against "unreasonable discrimination" applies to such contracts [28] Carriers may, of course, purchase services from the tariffs of another carrier or choose to tariff their inter-carrier offerings – section 211(a) provides carriers a choice in those instances where the FCC has not acted to actually require either a contract (network elements) or a tariff

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[27] *Bell Telephone of Pennsylvania v FCC,* 503 F 2d 1250, 1277 (3d Cir 1974) *See also In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking*, 11 FCC Rcd 7141, 7190 97 (1996), *In the Matter of the Applications of American Mobile Satellite Corporation, Order and Authorization*, 7 FCC Rcd 942, 945 15 (1992), *In the Matter of Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor, Notice of Proposed Rulemaking*, 84 FCC 2d 445, 481, 95 (1981)

[28] *MCI Telecommunications Corp v FCC,* 842 F 2d 1296 (D C Cir 1988)

(exchange access). In point of fact, the current structure whereby interexchange carriers purchase access to local exchange carrier facilities and services pursuant to tariff is of relatively recent origin,[29] and the access tariff regime replaced a system governed largely by inter-carrier contracts and partnerships.[30] The statutory federal filing requirements discussed in this section are important because they show a federal regulatory regime already in place that deals with the precise issue of the filing of contracts for interconnection services not covered by section 251(b) or (c).

E. Current Rulings in Other States Support Qwest's Position that the Commercial Line Sharing Agreement Need Not Be Filed For State Commission Review and Approval.

Of the three states that have ruled on the question of whether the Commercial Agreement must be filed with the state commission for review and approval, two of the three states have ruled in favor of Qwest's position The Minnesota Public Utilities Commission followed the recommendations of the Department and found persuasive the argument that the Commercial Agreement is ***not*** an interconnection agreement and does not have to be filed for commission approval under section 252(a)

Likewise, the New Mexico Public Regulation Commission, citing the Minnesota ruling, concluded that the Commercial Agreement is not subject to the filing requirements of section 252. In its Final Order dated December 23, 2004, the New Mexico Commission discussed the differences between the commercial line sharing and master services QPP agreements at length. It explained why the reasoning of the Washington State Utilities and Transportation Commission in its order on the Master Services Agreement does not apply to the Commercial Agreement

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[29] *See In the Matter of MTS and WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking,* 77 FCC 2d 224, 226-31 ¶ ¶ 12-35 (1980)

[30] *See In the Matter of MTS and WATS Market Structure, Third Report and Order,* 93 FCC 2d 241, 246 ¶ 11, 254 ¶ 39, 256-60 ¶ ¶ 42-55 (1983)

That is, the Commercial Agreement and the Line Sharing Amendment are stand-alone contracts, noted the New Mexico Commission, which makes them distinguishable from the Master Services Agreement and the amendment executed contemporaneously with the Master Services Agreement between Qwest and MCImetro Access Transmission Services, Inc.

Qwest has attached copies of the Minnesota and New Mexico decisions for the Commission's review The only state to rule against Qwest's position regarding the Commercial Agreement is Montana. The Montana Public Service Commission misread sections 251 and 252 of the Act and Qwest has appealed that Commission's decision to the United States District Court for the District of Montana

IV. CONCLUSION

For the reasons set forth herein, Qwest respectfully moves the Commission to issue an order dismissing the agreement titled "Terms and Conditions for Commercial Line Sharing" from this docket.

DATED this 28th day of February, 2005

Melissa K Thompson
QWEST SERVICES CORPORATION
1801 California Street, 10th Floor
Denver, CO 80202
(303) 383-6643

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

I certify that the original and seven copies of the foregoing **Request for Hearing, Comments, and Motion to Dismiss from Docket the Agreement Titled "Terms and Conditions for Commercial Line Sharing"** was served upon the following party on February 28, 2005:

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

And that a copy was served by U.S. Mail upon the following, as stated below

Rob McMillin
New Edge Network Inc
3000 Columbia Blvd Ste 106
Vancouver WA 98661

Debbie Dunning

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a Commission Investigation Regarding the Status of the Commercial Line Sharing Agreement Between Qwest Corporation and DIECA Communications d/b/a Covad

ISSUE DATE: September 27, 2004

DOCKET NO. P-5692, 421/CI-04-804

ORDER DIRECTING QWEST TO FILE COMMERCIAL AGREEMENTS

PROCEDURAL HISTORY

On May 14, 2004, Qwest Corporation (Qwest) and DIECA Communications d/b/a Covad (Covad) filed two agreements with the Commission. The parties offered one agreement, entitled "Commercial Line Sharing Agreement" (First Agreement), for Commission approval pursuant to the 1996 Act.[1] The parties offered the second agreement, entitled "Terms and Conditions for Commercial Line Sharing Agreement" (Second Agreement), for informational purposes only, and argue that the Commission need not take any action on it. The current docket addresses the Second Agreement

On June 21, 2004, AT&T Communications of the Midwest, Inc., and AT&T Local Services on behalf of TCG Minnesota, Inc., (AT&T) filed comments on this matter.

On July 20, 2004, the Commission received comments from both the Minnesota Department of Commerce (the Department) and Qwest

This matter came before the Commission on August 19, 2004.

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[1] See *In the Matter of the Joint Application for Approval of the March 14, 2004 Amendment to the Interconnection Agreement Between Qwest Corporation (Qwest) and DIECA Communications dba Covad Communications Company (Originally Approved in Docket No. P-5692, 421/CI-99-196); Regarding Commercial Line Sharing*, Docket No. P-5692, 421/IC-04-746.

Attachment 1

FINDINGS AND CONCLUSIONS

I. Background

Gongress adopted the Telecommunications Act of 1996[2] (the 1996 Act) to open all telecommunications markets to competition, including the local exchange market. (Conference Report accompanying S. 652) The 1996 Act opens markets by, among other things, requiring each incumbent telephone company to offer unbundled network elements (UNEs) – that is, offer to rent elements of its network to competitors without requiring the competitor to also rent unwanted elements – on just, reasonable, and nondiscriminatory terms.[3] The 1996 Act authorizes the Federal Communications Commission (FCC) to identify elements that are subject to unbundling [4] Agreements between telecommunications carriers for the provision of UNEs must be submitted for Commission review and approval.[5]

Also, to encourage cooperation by incumbent Bell operating companies (BOCs), the 1996 Act's § 271 provides for BOCs to gain authority to sell long-distance telecommunications service if they can demonstrate that they have opened their local markets to competition.

On October 2, 2003, the FCC's Triennial Review Order[6] took effect, revising the rules governing the provision of UNEs,[7] including the high-frequency portion of the local loop (HFPL).[8] Among other things, the Order states that incumbents need not accept new requests from competitors for the HFPL after October 1, 2004, and gradually phases out the obligation to serve some existing HFPL orders.

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[2] Pub L No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

[3] 47 U S.C. § 251(c)

[4] 47 U.S.C. § 251(d)(2)(B).

[5] 47 U.S.C. § 252(e).

[6] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (released August 21, 2003).

[7] 47 U.S.C. §§ 251(c)(3), 252(d)(1); 47 C F.R § 51 307 *et seq*

[8] Triennial Review Order ¶¶ 251-269 A "loop," or wire that connects a residence to a telecommunications carrier's office, permits the transmission of signals throughout a range of the electromagnetic spectrum simultaneously, much like competing radio stations can transmit signals at various frequencies simultaneously. Whereas voice signals use the low-frequency portion of the loop, other signals – especially high-capacity signals conveying internet traffic – can use the high-frequency portion of the loop, or HFPL. While a telephone company must still permit a competitor to lease a customer's loop, the Triennial Review Order reduces the company's obligation to lease the HFPL separately, "unbundled" from the loop

On March 2, 2004, a court vacated and remanded several of the Triennial Review Order's rules regarding UNEs, although not the parts pertaining to the HFPL specifically.[9] Given the unsettled state of the law, the FCC subsequently encouraged all telecommunications providers to voluntarily negotiate commercial agreements without awaiting final resolution of all parties' legal obligations.[10]

On May 14, 2004, Covad and Qwest filed the commercial agreements that initiated this docket. The First Agreement pertains to HFPL orders received by October 1, 2004; the Second Agreement pertains to HFPL orders received thereafter.

II. Comments of the Parties

A. AT&T

AT&T argues that the Commission has jurisdiction over the Second Agreement pursuant to the 1996 Act and Minnesota law to review the agreement,[11] approve or disapprove it,[12] and make its terms available to other carriers.[13]

This Commission has discretion to determine initially which agreements constitute "interconnection agreements" for purposes of the 1996 Act, AT&T argues, based on the following FCC finding:

> [S]tate commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and if so, whether it should be approved or rejected [14]

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[9] *United States Telecom Ass'n v. FCC*, 359 F 3d 553, 564-76 (D.C. Cir. 2004), *pets. for cert. filed*, Nos. 04-12, 04-15, 04-18 (June 30, 2004).

[10] See, for example, the FCC's "Press Statement of Commissioners Powell, Abernathy, Copps, Martin and Adelstein On Triennial Review Next Steps" (March 31, 2004).

[11] 47 U.S.C. § 252(e)(1).

[12] 47 U.S.C. § 252(e)(2).

[13] 47 U.S.C § 252(h) and (i).

[14] *Qwest Corporation International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, Memorandum Opinion and Order, FCC 02-276 (released October 4, 2002) ("Declaratory Order") at ¶ 10.

The FCC has offered guidance in this matter, however, ruling that any –

> agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an "interconnection agreement" that must be filed pursuant to [the 1996 Act].[15]

While the FCC acknowledges some exceptions to this general principle,[16] AT&T argues that none of these exceptions apply to the Second Agreement.

B. Qwest

Qwest acknowledges that the Commission has jurisdiction over the First Agreement, because it would create ongoing obligations between the parties regarding UNEs. In contrast, Qwest argues that the Commission lacks jurisdiction over the Second Agreement because it only pertains to orders for line sharing using the HFPL after October 1, 2004, and the HFPL is no longer a UNE subject to the 1996 Act. The FCC has ruled that "contracts that do not affect an incumbent LEC's ongoing obligations relating to Section 251 [of the 1996 Act] need not be filed"[17] and "...only those agreements that contain an ongoing obligation relating to Section 251(b) or (c) must be filed under 252(a)(1)" of the 1996 Act.[18]

Qwest disputes AT&T's claim that state law provides authority for reviewing the Second Agreement. Qwest asserts that the Commission has not previously reviewed commercial agreements between parties unrelated to the 1996 Act, and Qwest urges the Commission not to do so now.

C. The Department

The Department agrees with Qwest that the Commission need not approve or reject the Second Agreement However, the Department agrees with AT&T that the Commission has the authority under both federal and state law to require parties to file such agreements for Commission review, and that the Commission should exercise that authority

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[15] *Id.* at ¶ 8.

[16] *Qwest Corporation Apparent Liability for Forfeiture*, FCC Docket 04-57, Notice of Apparent Liability for Forfeiture (released March 12, 2004) at ¶ 23. Exceptions include 1) agreements addressing dispute resolution and escalation provisions, 2) settlement agreements that provide only retroactive relief, 3) forms used to obtain service, and 4) certain agreements entered into in bankruptcy.

[17] Declaratory Order, ¶ 8

[18] Declaratory Order, n. 26

The Department concludes that the Second Agreement is not an interconnection agreement. After thorough review, the Department concludes that the Second Agreement pertains only to orders for line sharing using the HFPL after October 1, 2004, and the HFPL is no longer a UNE. According to the Department, the Second Agreement does not create an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation, or otherwise contain an ongoing obligation relating to the 1996 Act. Consequently, the Department concludes that the Second Agreement does not require Commission approval.

Nevertheless, the Department recommends that the Commission direct Qwest to file agreements such as the Second Agreement for review. The Department notes that the Commission's authority to require disclosure is not limited to interconnection agreements. In particular, the Commission has authority to investigate matters related to telecommunications service[19] and to issue orders affecting the deployment of infrastructure [20]

Requiring Qwest to file such agreements would help the Commission to determine if the agreements require approval as interconnection agreements The FCC has determined that the states have the authority to determine which agreements require approval pursuant to the 1996 Act. The only way for the Commission to exercise this authority is to review the agreements that might potentially require review and approval.

Specifically, the Department recommends that the Commission direct Qwest to file agreements creating an ongoing obligations with competitors. These would include 1996 Act interconnection agreements, plus any other agreements that 1) are associated with elements of Qwest's network, 2) make reference to a UNE, 3) reflect a § 271 obligation, or 4) reflect a state obligation. State obligations include the obligation to file charges for telecommunications services and elements, and to refrain from discriminating in the provision of those services and elements.[21]

In this case the Second Agreement creates ongoing obligations between the parties and is associated with Qwest's 1996 Act obligations. Consequently, the Department argues, the Second Agreement warrants review. Moreover, because the FCC has not entirely eliminated HFPL obligations,[22] the Department recommends that any agreements related to HFPLs be filed for Commission review because they pertain to past HFPL UNE obligations

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[19] Minn. Stat. § 237.081.

[20] Minn. Stat § 237.082.

[21] Minn. Stat. §§ 237.07, 237.09.

[22] Triennial Review Order ¶¶ 264-69

III. Commission Action

Neither Covad nor Qwest has asked the Commission to review their agreement for compliance with the 1996 Act, and the Department concludes that the Commission need not address that question at this time. The Commission finds these arguments persuasive, and will decline to address that question here.

However, the Commission is persuaded of the merits of directing Qwest to file its commercial agreements with the Commission, whether or not those agreements constitute "interconnection agreements" for purposes of the 1996 Act Specifically, the Commission will direct Qwest to file agreements that –

- are associated with elements of Qwest's network,
- make reference to UNEs,
- reflect a § 271 obligation, or
- reflect a state obligation.

Reviewing such agreements will provide the Commission with information about the evolution of competition in the state generally. Also, the Commission finds that it must review agreements to determine whether or not they violate state prohibitions on discrimination or otherwise warrant approval (or rejection) pursuant to the 1996 Act. Failure to file the necessary agreements can harm the development of the competitive local exchange market.[23] By requiring Qwest to file such agreements, the Commission will provide itself and competing firms with the means to review the agreements' terms Competitors will then be able to advise the Commission whether or not the agreements warrant additional Commission action.

ORDER

1. Qwest Corporation (Qwest) shall file for review all agreements, such as the Qwest/Covad Line Sharing Agreement, that –

   - are associated with elements of Qwest's network,
   - make reference to UNEs,
   - reflect a § 271 obligation, or
   - reflect a state obligation.

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[23] See *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No P-421/C-02-197 ORDER ASSESSING PENALTIES (February 28, 2003), ORDER AFTER RECONSIDERATION ON OWN MOTION (April 30, 2003).

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN AGREEMENT BETWEEN QWEST CORPORATION AND COVAD ENTITLED "TERMS AND CONDITIONS FOR COMMERCIAL LINE SHARING ARRANGEMENTS"	)	**Case No. 04-00209-UT**

FINAL ORDER

This matter comes before the New Mexico Public Regulation Commission ("Commission") as a follow-up to this Commission's Order to Show Cause, issued on June 29, 2004

I. STATEMENT OF THE CASE

On May 14, 2004, Qwest Corporation ("Qwest") submitted to this Commission a letter relating to a document entitled "Terms and Conditions for Commercial Line Sharing Arrangements " ("Qwest's Letter") Qwest's Letter states that Qwest and Covad have signed two documents relating to the provisioning by Qwest to Covad of the high frequency portion of the loop The first document is entitled "Commercial Line-Sharing Amendment to the Interconnection Agreement" ("Line Sharing Amendment") signed April 14, 2004. Qwest's position is that the Line Sharing Amendment is not a final, binding agreement Nevertheless, without waiving that position, Qwest states in its Letter that it is formally filing the Line Sharing Amendment with this Commission for approval under section 252(e) of the Communications Act, as amended,[1] to eliminate any doubts about Qwest's compliance with the filing requirement [2]

[1] The Communications Act of 1934, as amended, by the Telecommunications Act of 1996 – Pub L No 104-104, 110 Stat 56, codified at 47 U S C § 151 *et seq* – is referred to hereafter as the "Act "

[2] Qwest filed the Line Sharing Amendment for Commission approval and it was approved by the Commission by Final Order in Case No 04-00168

The second document referred to in Qwest's Letter is entitled "Terms and Conditions for Commercial Line Sharing Arrangements" ("Commercial Line Sharing Agreement"), dated April 14, 2004 Qwest agrees that the Commercial Line Sharing Agreement is a final agreement, but contends that the Commercial Line Sharing Agreement is not within the section 252 filing requirement Qwest concludes that the Commercial Line Sharing Agreement is not subject to section 251(c)(3) or section 252, and thus it has not been filed formally. Covad apparently concurs with Qwest's position [3]

This Commission, in its Order to Show Cause, required Qwest and Covad to file pleadings explaining in more detail why the Commerical Line Sharing Agreement should not be filed. The Commission allowed interested parties to file responses to Qwest's and Covad's comments and allowed Qwest and Covad to file replies

Qwest and Covad filed their initial briefs.[4] The Telecommunications Staff of the Utility Division of this Commission ("Staff") and the New Mexico Attorney General ("AG") filed responses.[5]

On October 26, 2004, this Commission issued an order allowing MCImetro Access Transmission Services, LLC ("MCImetro") to intervene in this case This Commission allowed intervention based on its Final Order in Case No 04-00245-UT In Case No. 04-00245-UT, MCImetro filed its Master Services Agreement, entered into between MCImetro and Qwest, for approval by this Commission under section 252 Qwest moved to dismiss MCImetro's application for approval on the ground that the

[3] *See* Qwest's Letter at 3 (stating, "*We* believe that the second document, the Commercial Line Sharing Arrangements, which governs DSL services placed after October 1, 2004, is not subject to section 251(c)(3) or section 252, and thus it has not been filed formally ") (emphasis added)
[4] *See* Qwest Corporation's Response to Order to Show Cause ("Qwest's Brief") and Covad's Response to Order to Show Cause ("Covad's Brief"), both filed on July 30, 2004
[5] *See* Staff's Response to Qwest's and Covad's Responses to Order to Show Cause and Recommendation to Establish a Streamlined Interconnection Agreement Filing and Review Process ("Staff's Response") and Response of the New Mexico Attorney General ("AG's Response"), both filed on August 19, 2004

Master Services Agreement does not have to be filed with, or approved by, this Commission under section 252 This Commission's Final Order in Case No 04-00245-UT, issued on October 12, 2004, approved the Master Services Agreement, subject to this Commission's decision in this case, which will be determinative of whether Qwest has to file the Master Services Agreement Final Order, ¶ B In this Commission's order allowing MCImetro to intervene in this case, this Commission also took administrative notice of the pleadings filed in Case No 04-00245-UT

On October 26, 2004, MCImetro filed its Comments in this case

Qwest and Covad filed reply briefs [6]

II. BACKGROUND

A. Line Sharing

Line sharing occurs when a competitive local exchange carrier ("CLEC") provides digital subscriber line ("DSL") service over the same line that the incumbent local exchange carrier ("ILEC") uses to provide voice service, with the ILEC using the low frequency portion of the loop and the CLEC using the high frequency portion of the loop [7]

Before issuance of the Triennial Review Order, the FCC had determined that access to the high frequency portion of the loop was an unbundled network element

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[6] *See* Qwest Corporation's Reply Memorandum ("Qwest's Reply"), Covad's Reply to Responses and Comments of Qwest Corporation, Public Regulation Commission Staff, the New Mexico Attorney General and MCI ("Covad's Reply"), both filed on November 5, 2004

[7] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, ¶ 255, 18 FCC Rcd 16978 (2003), *corrected by* Errata, 18 FCC Rcd 19020 ("Triennial Review Order"), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v FCC*, 359 F 3d 554 (D C Cir 2004) (*USTA II*)

("UNE") [8] The FCC reversed that determination in the Triennial Review Order, subject to a grandfathering rule and a transition period The grandfathering rule requires ILECs to continue to provide the high frequency portion of the loop as a UNE to CLECs for the provisioning of DSL service that began before October 1, 2003 [9] A three-year transition period applies to DSL service provided via line sharing beginning on or after October 1, 2003 During the first year, CLECs may continue to obtain new line sharing customers at 25% of the state-approved recurring rates or the agreed-upon recurring rates in existing interconnection agreements for stand-alone copper loops for that particular location During the second year, the recurring charge for such access for those customers will increase to 50% of the state-approved recurring rate or the agreed-upon recurring rate in existing interconnection agreements for a stand-alone copper loop for that particular location. In the third year, the CLECs' recurring charge for access to line sharing for those customers obtained during the first year after release of the Triennial Review Order will increase to 75% of the state-approved recurring rate or the agreed-upon recurring rate for a stand-alone loop for that location After the transition period, any new customer must be served through a line splitting arrangement, through use of the stand-alone copper loop, or through an arrangement that a CLEC has negotiated with the ILEC to replace line sharing.[10]

B. The Line Sharing Amendment and the Commercial Line Sharing Agreement

The Line Sharing Amendment applies to DSL services placed by October 1, 2004. Qwest agrees the Line Sharing Amendment has to be filed under the Act and, in fact, has filed the Line Sharing Amendment with the Commission Qwest asserts that the Line

[8] *See id*, ¶ 257
[9] *See id*, ¶ 264, 47 C F R 51 319(a)(1)(i)(A)
[10] Triennial Review Order, ¶ 265, 47 C F R 51 319(a)(1)(i)(B)

Sharing Amendment is not a final agreement but, without waiving that assertion, has filed it to eliminate any doubt about Qwest's compliance with the section 252 filing requirement [11]

The Commercial Line Sharing Agreement applies to DSL services placed after October 1, 2004 Qwest argues, as explained in more detail *infra*, that the Commercial Line Sharing Agreement does not have to be filed under section 252 of the Act

Section 252(a)(1) of the Act states that, "upon receiving a request for interconnection, services, or network elements pursuant to section 251," an ILEC may negotiate and enter into a binding agreement with the requesting carrier "without regard to the standards set forth in subsections 251(b) and 251(c)" Section 252(a)(1) further states that any such agreement must be submitted to the state commission for approval

Section 251(b) of the Act imposes duties on all local exchange carriers relating to resale, number portability, dialing parity, access to rights-of-way and reciprocal compensation

Section 251(c) of the Act imposes the following additional duties on ILECs

> 1 The duty to negotiate in good faith the terms and conditions of agreements to fulfill the duties imposed by Section 251(b),
> 2 The duty to provide, for the facilities and equipment of any requesting carrier, interconnection with the LEC's network
> a for the transmission and routing of telephone exchange service and exchange access;
> b at any technically feasible point within the carrier's network,
> c that is at least equal in quality to that provided by the LEC to itself or to any subsidiary or to any other carrier to which the LEC provides interconnection, and
> d. on rates, terms and conditions that are just, reasonable and nondiscriminatory,

[11] *See* Qwest's Letter at 1-2

3 The duty to provide unbundled network elements ("UNEs") on rates, terms, and conditions that are just, reasonable, and nondiscriminatory;

4. The duty to offer for resale at wholesale rates any telecommunications service that the LEC provides at retail to non-carrier customers, and not to impose unreasonable or discriminatory conditions or limitations on such resale,

5. The duty to provide reasonable public notice of the information necessary for the transmission and routing of services using the LEC's facilities or networks;

6 The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation.

This Commission has held that an agreement must be filed for state commission approval if it is a "negotiated or arbitrated contractual arrangement between an incumbent LEC and a CLEC that is binding; relates to interconnection, services, or network elements pursuant to 47 U.S C. §§ 251(b) and (c), or defines or affects the prospective interconnection relationship between two LECs "[12]

III. POSITIONS OF THE PARTIES

A. Qwest

Qwest's position is that section 252 only requires the filing of agreements that create terms and conditions pertaining to services that an ILEC must provide under sections 251(b) and (c). Qwest relies in part on a declaratory ruling of the Federal Communications Commission ("FCC"), in which the FCC stated that "an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to

[12] Final Order Regarding Compliance with Outstanding Section 271 Requirements SGAT Compliance, Track A, and Public Interest, ¶ 285, Utility Case Nos 3269, 3537, 3495 & 3750, issued Oct 8, 2002, *modified on other grounds by* Order on Qwest's Motion for Rehearing, Case No 03-00108-UT, issued on Dec 9, 2003 ("Section 271 Final Order")

section 252(a)(1)"[13] Qwest argues that the Commercial Line Sharing Agreement concerns products and services that Qwest is *not* obligated to provide under section 251 and therefore does not have to be filed Qwest's Brief at 3, 7

Qwest asserts that the Commercial Line Sharing Agreement does not deal with resale, number portability, dialing parity, access to rights-of-way, or reciprocal compensation and therefore does not have to be filed under section 251(b) of the Act *Id* at 4-5 No party disagrees with Qwest on this point Qwest also asserts that the Commercial Line Sharing Agreement does not deal with resale or collocation under section 251(c) of the Act, and no party disagrees with Qwest on this point either

Qwest further asserts that the Commercial Line Sharing Agreement does not relate to the provisioning of a UNE because the FCC, in its Triennial Review Order, eliminated the obligation to provide the high frequency portion of the copper loop as a UNE, subject to certain transition conditions for line sharing orders placed within one year of the effective date of the Triennial Review Order Qwest's Brief at 5

Qwest asserts that the Commercial Line Sharing Agreement does not relate to "interconnection." In support of this assertion, Qwest cites to the FCC's First Report and Order, which states that interconnection "refers only to the physical linking of two networks for the mutual exchange of traffic"[14] and to this Commission's "Interconnection Facilities and Unbundled Network Elements" Rule, which states that interconnection "means the linking of two (2) networks for the mutual exchange of traffic, but does not

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[13] *In the Matter of Qwest Communications International, Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, ¶ 8, WC Docket No 02-89 (rel Oct 4, 2002) ("Declaratory Order")

[14] Qwest's Brief at 5 (citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, ¶ 176, CC Docket No 96-98 (Aug 8, 1996) ("First Report and Order"))

include the transport and termination of traffic "[15] Qwest's Brief at 5-6 Qwest argues that the Commercial Line Sharing Agreement contains no provision for the physical linking of Qwest's and Covad's networks for the mutual exchange of traffic, so it does not relate to interconnection *Id* at 6

Qwest asserts that the Commercial Line Sharing Agreement does not relate to a request for "services" under section 252(a)(1) because "services" refers only to services that an ILEC is required to provide pursuant to section 251(b) or (c) [16]

Qwest asserts that the Commission cannot require the filing of the Commercial Line Sharing Agreement under section 271 of the Act [17] Qwest argues that section 271 has no filing requirements for interconnection agreements and delegates no authority to state commissions to enforce the conditions and requirements of section 271 Moreover, Qwest states that there is no independent obligation under section 271 to provide the high-frequency portion of the loop Qwest's Brief at 8-9

B. Covad

Covad states that it does not believe that the Commercial Line Sharing Agreement affects Qwest's ongoing obligation to provide UNEs and therefore should not be subject to Commission approval under section 252. However, Covad further states that the Commercial Line Sharing Agreement creates other ongoing obligations, is associated with and makes reference to Qwest's section 251 obligations, and should be filed for Commission review to determine if approval is required. Covad's Brief at 5 In general, Covad recommends that the Commission require the filing of any agreement that

[15] 17 11 18 7(I) NMAC
[16] Qwest's Brief at 7 (citing Declaratory Order, ¶ 8)
[17] Section 271 of the Act allows an ILEC to apply for authority to provide in-region, interLATA service within a state To be eligible to provide in-region, interLATA services, an ILEC must satisfy the competitive checklist and other requirements of section 271 Section 271 Final Order at 1

- Is associated with elements of Qwest's network,
- Refers to a section 251 UNE,
- Reflects a section 271 obligation that is not (or is no longer) a section 251 obligation, or
- Reflects a state obligation that is not (or is no longer) a section 251 obligation.

Id at 4-5

Covad asserts that the Commercial Line Sharing Agreement is not an interconnection agreement as defined by the FCC because it relates to a network element that Qwest does *not* have to unbundle and does not create ongoing obligations for Qwest's provisioning of section 251 elements Instead, according to Covad, the Line Sharing Agreement creates obligations and concerns the provisioning of elements independent of sections 251(b) and (c) Nevertheless, Covad recommends that any agreement that includes line sharing should be filed for Commission review to determine if approval is required. Covad makes this recommendation because, under the Triennial Review Order, Qwest *does* have to continue to provide line sharing as a UNE for customers who use line sharing before October 1, 2004 *Id* at 5-6

Covad further states that it believes that line sharing is a section 271 obligation and that this Commission can require the filing and review of line sharing agreements under section 271. *Id* at 7-12. However, Covad states that, because it has raised the issue of this Commission's authority to require unbundling under section 271 in another case, this issue should be deferred until the other case is resolved *Id* at 12

C. Staff

Staff argues that the Commercial Line Sharing Agreement is an interconnection agreement subject to filing with, and approval by, this Commission Staff's Brief at 5 In

support of this argument, Staff relies on this Commission's definition of "interconnection agreement", which appears in this Commission's Section 271 Final Order, quoted *supra*

In asserting that the Commercial Line Sharing Agreement falls within this Commission's definition of "interconnection agreement," Staff states, "It is difficult to imagine two companies being more interconnected than providing separate services to their respective customers over the same loop at the same time." Exhibit A to Staff's Response at 10. Staff asserts that, to effect their wholesale relationship, Covad and Qwest must interconnect their separate networks for the mutual exchange of traffic. *Id.*

Staff further argues that requiring the filing and review of the Commercial Line Sharing Agreement is consistent with other applicable law and the public interest. Staff points out that section 252(a) requires the filing of interconnection agreements "without regard to the standards set forth in subsections (b) and (c) of section 251." *Id* at 12. Staff also cites to state law and Commission regulations that encourage competition, and, more particularly, the provisioning of high-speed data services. *Id* at 13.

In general, Staff recommends a review procedure for interconnection agreements whereby:

- one original and one copy of an interconnection agreement are filed with the Commission in a numerically assigned docket with a notice of filing and proposed form of final order attached;
- service includes Commission Staff, the New Mexico Attorney General, and any party that requests electronic or paper copies of the filing;
- the public is notified of the filing by the posting of a notice of filing on the Commission's website and the posting of a notice of filing and the entire agreement on the LEC's website;
- the filing is subject to a 15-day review period for review and protest by Staff and any interested party;
- the filing, if not protested, is permitted to take effect by operation of law by order of the Commission at an open meeting, which simultaneously closes the docket; and
- if protested, the filing is subject to formal Commission proceedings.

Id at 4-5

D. AG

The AG limits her response to the issue of whether this Commission can require the filing of the Commercial Line Sharing Agreement under section 271 She takes no position as to whether the Commission can require filing of the Commercial Line Sharing Agreement under section 252, but reserves the right to take a position on that issue at a later time AG's Response at 1

IV. DISCUSSION

This Commission is persuaded by the reasoning of the Minnesota Public Utilities Commission ("Minnesota PUC") in its Order Directing Qwest to File Commercial Agreements [18] In that case, the Minnesota PUC considered whether the Commercial Line Sharing Agreement between Covad and Qwest has to be approved by the Minnesota PUC under section 252(e) [19] In that case, as in this case, Qwest argued that a state commission lacks jurisdiction over the Commercial Line Sharing Agreement because it pertains to the provisioning of a network element that no longer has to be unbundled Minnesota Order at 4

The Minnesota Department of Commerce ("the Department"), one of the parties in the case, argued, consistent with Qwest, that the Commercial Line Sharing Agreement is not an interconnection agreement because it pertains only to orders for line sharing using the high frequency portion of the loop after October 1, 2004, when the high

[18] Order Directing Qwest to File Commercial Agreements ("Minnesota Order"), filed in Docket No P-5692, 421/CI-04-804, on September 27, 2004

[19] The Commercial Line Sharing Agreement submitted in New Mexico indicates that it also applies in Minnesota See Terms and Conditions for Commercial Line Sharing Arrangements, attached to Qwest's Letter

frequency portion of the loop is no longer a UNE The Department further argued that the Commercial Line Sharing Agreement does not create an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation, or otherwise contain an ongoing obligation relating to the Act Thus, the Department concluded that the Commercial Line Sharing Agreement did not have to be approved by the Minnesota PUC under section 252 *Id* at 5 Nevertheless, the Department recommended that the Minnesota PUC direct Qwest to file agreements such as the Commercial Line Sharing Agreement to assist the Commission in determining whether agreements such as the Commercial Line Sharing Agreement require approval as interconnection agreements *Id*

In its Order, the Minnesota PUC followed the recommendations of the Department and required Qwest to file its commercial agreements with the Commission, whether or not those agreements constitute "interconnection agreements" for purposes of the Act Specifically, the Commission directed Qwest to file agreements that

- are associated with elements of Qwest's network,
- make reference to UNEs,
- reflect a § 271 obligation, or
- reflect a state obligation.

Id. at 6 The Commission explained that.

> Reviewing such agreements will provide the Commission with information about the evolution of competition in the state generally. Also, the Commission finds that it must review agreements to determine whether or not they violate state prohibitions on discrimination or otherwise warrant approval (or rejection) pursuant to the 1996 Act Failure to file the necessary agreements can harm the development of the competitive local exchange market. By requiring Qwest to file such agreements, the Commission will provide itself and competing firms with the means to review the agreements' terms Competitors will then be able

to advise the Commission whether or not the agreements warrant additional Commission action

Id

The Minnesota PUC chose not to address whether the Commercial Line Sharing Agreement complies with the Act because neither Covad nor Qwest had asked for Commission approval of the Commercial Line Sharing Agreement and because the Department had concluded that the Commission need not address the question at that time *Id*

The Minnesota Order is consistent with this Commission's Order on Qwest's Motion for Rehearing of this Commission's Section 271 Final Order ("Order on Qwest's Motion for Rehearing").[20] This Commission's Section 271 Final Order resolved numerous issues involving Qwest including the Commission's recommendation that Qwest be granted authority to provide in-region, interLATA service originating in New Mexico, subject to certain FCC determinations. The Section 271 Final Order also dealt with issues of Utility Case No 3750 including adoption of a definition of the term "interconnection agreement" and requirements for filing interconnection agreements under section 252(a)(1)

Qwest's Motion for Rehearing of this Commission's Section 271 Final Order ("Qwest's Motion for Rehearing") argued, in part, that the Section 271 Final Order's requirement that all agreements "related to rates" be filed under the Act conflicted with, and was preempted by, the FCC's Declaratory Order Qwest cited to language in the

[20] *See* Order on Qwest's Motion for Rehearing, Case No 03-00108-UT, issued on December 9, 2003

FCC's Declaratory Order that states that "settlement contracts that do not affect an incumbent LEC's ongoing obligations relating to section 251 need not be filed "[21]

This Commission, in its Order on Qwest's Motion for Rehearing, agreed with Qwest that requiring the filing of all agreements relating to rates conflicted with the FCC's Declaratory Order Order on Motion for Rehearing at 8 Consistent with the FCC's Declaratory Order, this Commission held that settlement agreements need not be filed as interconnection agreements unless they affect an ILEC's ongoing obligations relating to section 251 *Id* at 10. This Commission adopted a prefiling review process to review a local exchange carrier's ("LEC") claim that a settlement agreement does not affect its ongoing obligations and does not need to be filed

Under the prefiling review process established by the Order on Motion for Rehearing, if a LEC enters into what it views as a settlement agreement, and if the LEC believes that such agreement does not affect an ILEC's ongoing obligations relating to section 251, the LEC shall submit (not file) the agreement under seal to Staff for Staff's analysis of whether the agreement affects an ongoing obligation Staff may recommend, within 15 days of submission of the agreement, that the agreement be filed as an interconnection agreement. A LEC may file a response to Staff's recommendation, and the Commission shall then determine whether the agreement should be filed as an interconnection agreement. If Staff, after reviewing the agreement, decides to not recommend that the agreement be filed, then Staff shall take no further action, and the agreement shall not be filed or submitted to the Commission for review. *Id.* at 11-12

In adopting this prefiling review process, this Commission observed that the FCC's Declaratory Order seems to contemplate a state commission prefiling review

[21] *See* Declaratory Order, ¶ 12

process This Commission observed that, while the FCC order defines the basic class of agreements that should be filed, it makes clear that the state commissions are to determine whether a particular agreement falls within a particular class of agreements that should be filed. This Commission quoted as follows from the FCC's Declaratory Order

> Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis *whether a particular agreement is required to be filed as an interconnection agreement"* and, if so, whether it should be approved or rejected

Id. at 11 (quoting FCC's Declaratory Order, ¶ 10 (emphasis added))

Similarly, if a LEC enters into an agreement that it believes is not an interconnection agreement because it pertains to a network element that it is not required to unbundle, the LEC shall submit (not file) the agreement to Staff for Staff's analysis of whether the agreement is an interconnection agreement If Staff believes that the agreement should be filed as an interconnection agreement, it shall file, within fifteen days of submission of the agreement, a motion stating why Staff believes that the agreement should be filed as an interconnection agreement. The LEC shall have thirteen days from service of the motion to file a response. The Commission shall then determine whether the agreement should be filed as an interconnection agreement If Staff believes, pursuant to the Final Order in this case and pursuant to this Commission's Follow-Up to Final Order in Case No 04-00245-UT, that the agreement is not an interconnection agreement and does not file a Motion, no further action shall be taken.

The Commission appreciates Staff's concerns with this type of prefiling review process Staff observes that this process will create a dual and often overlapping review

process for section 251 and section 271 agreements, while shifting the burden to the Commission to decide on a case-by-case basis what filing standard and procedures should apply to a given agreement [22] However, as this Commission observed in its Order on Motion for Rehearing, the FCC seems to contemplate such a prefiling review process

This Commission agrees with Staff that this Commission should consider whether a more efficient process exists for reviewing whether an agreement is an interconnection agreement and for reviewing those agreements that are interconnection agreements [23] Such consideration should occur in a rulemaking, which the Commission intends to initiate after the FCC issues its final rules in its pending rulemaking relating to ILECs' unbundling obligations [24]

The Commercial Line Sharing Agreement in this case does not have to be filed under section 252(a). The Commercial Line Sharing Agreement is not an interconnection agreement because, for the reasons stated by Qwest, is does not create an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation.

Holdings of the Washington State Utilities and Transportation Commission ("WUTC")[25] and the United States District Court for the Western District of Texas ("Texas District Court")[26] are not applicable to this case. In the case before the WUTC, the WUTC considered whether a "Master Services Agreement" between Qwest and MCI

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[22] Staff's Brief at 3
[23] *See id* at 5
[24] *See In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No 04-313, CC Docket No 01-338
[25] *See In the Matter of Request of MCIMetro Access Transmission Services, LLC and Qwest Corporation for approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Order Approving Negotiated Interconnection Agreement in Its Entirety, Docket Nos UT-96-310 & UT-043084, issued on Oct 20, 2004
[26] *Sage Telecom v Public Utility Comm'n*, 2004 WL 2428672 (W D Tex , Oct 7, 2004)

had to be filed as an interconnection agreement The subject of the Master Services Agreement was Qwest's provisioning to MCI of Qwest Platform Plus ("QPP") services, consisting primarily of local switching and shared transport Washington Order, ¶ 5 n 2, ¶ 8 At the same time that Qwest and MCI entered into the Master Services Agreement, they also entered into an amended agreement ("Amended Agreement") governing Qwest's provisioning to MCI of the local loop element. In the case before the WUTC, Qwest argued that the Master Services Agreement did not have to be filed under section 252 because it concerns products and services that Qwest is not required to provide under section 251

The WUTC found it unnecessary to determine whether section 252(a)(1) and (e) would apply to an agreement that pertained solely to the provision of a network element that is not required to be unbundled because it concluded that the Master Services Agreement and the Amended Agreement are part of "one integrated agreement pertaining to matters that indisputably are subject to the section 252 filing and approval requirements for negotiated interconnection agreements " Washington Order, ¶ 21

In reaching its conclusion, the WUTC noted that Qwest conceded that the Amended Agreement is a fully negotiated interconnection agreement. *Id*, ¶ 22. The WUTC explained that both the Amended Agreement and the Master Services Agreement state that Qwest and MCI contemporaneously entered into the Master Services Agreement and the Amended Agreement to provide MCI with services equivalent to the UNE-P arrangements between the companies as they existed on June 14, 2004 It explained that the combination of network elements known as UNE-P includes not only the port, switching and transport elements, but also the local loop, which ILECs are still

required to unbundle under section 251 The WUTC identified the whole purpose of the Master Services Agreement as being to provide the port, switching, and shared transport elements in combination with the local loop element, which is provided under Qwest's existing interconnection agreement with MCI Thus, the WUTC concluded that there can be no serious question that the ongoing obligations concerning rates, terms and conditions for the provision of network elements in the Amended Agreement and the Master Services Agreement are part of a single integrated, non-severable agreement *Id*, ¶ 26.

The Texas District Court similarly concluded that an agreement between Southwestern Bell, L.P. d/b/a SBC Texas ("SBC") and Sage Telecom, L P ("Sage") had to be filed with, and reviewed by, a state commission under section 252 of the Act Under the agreement, SBC agreed to provide Sage products and services subject to the requirements of the Act, as well as certain products and services not governed by either section 251 or section 252 SBC and Sage argued that they did not have to file those portions of the agreement that they contended were outside the scope of the Act's coverage *Southwestern Bell v Sage*, slip op at 3 The Texas District Court held that the agreement was a fully integrated agreement and had to be filed in its entirety *See id* at 11-12.

In contrast, the Commercial Line Sharing Agreement appears to be stand-alone. No party has identified any provision of the Commercial Line Sharing Agreement, analogous to provisions identified by the WUTC in the Master Services Agreement, that cause it to be part of an interconnection agreement between Covad and Qwest. The Commercial Line Sharing Agreement does require Covad to have interconnection tie

pairs as part of its interconnection agreement with Qwest, before ordering line sharing through the Commercial Line Sharing Agreement Exhibit A to Commercial Line Sharing Agreement. Tie pairs are copper wires that run between two points in the central office After the loop is terminated in Qwest's central office, the tie cable carries the signals to Covad's splitters, which separate the voice signals from the data signals Thus, while a tie cable facilitates the provisioning of line sharing, its existence in the interconnection agreement between Covad and Qwest does not render the Commercial Line Sharing Agreement and the interconnection agreement a single integrated agreement

Staff raises a concern that Qwest might not be honoring the terms of its current interconnection agreements, as it promised to do in Case Nos 03-00403-UT and 03-00404-UT. Staff cites to an October 13, 2004, letter from Bruce Throne, attorney for Cyber Mesa Computer Systems, Inc ("Cyber Mesa"), to the Commission, in which Mr Throne complains of matters relating to the terms and conditions on which Qwest is offering line sharing to Cyber Mesa Staff's Response at 3 In addition, Staff states that it believes that currently Qwest might not be permitting competitors to opt into its Statement of Generally Available Terms or Commission-approved interconnection agreements that address mass market switching, enterprise loops, and dedicated transport, unless competitors sign a Qwest TRO-USTA II Amendment *Id* at 3 This case is not the proper place to address Staff's concerns. If Staff or a CLEC seeks Commission review of these or similar concerns, it should do in a separately filed petition or, perhaps, in Case Nos. 03-00403-UT and 03-00404-UT.

In this Commission's Order to Show Cause, it ordered Qwest and Covad to address whether the Commission can require the filing of the Commercial Line Sharing Agreement under section 271 of the Act Order to Show Cause at 4, ¶ A. Qwest argues that the Commission lacks such authority Qwest's Brief at 8-9 The Attorney General, Staff, and Covad argue that the Commission does have such authority[27] Covad, however, suggests that this Commission defer ruling on this issue, pending a Commission decision in Case No. 04-00208-UT Covad's Brief at 12, Covad's Reply at 2. The subject of Case No 04-00208-UT is Covad's Petition for this Commission to arbitrate the terms and conditions of a proposed interconnection agreement between Covad and Qwest.[28] One of the arguments made by Covad in Case No 04-00208-UT is that this Commission has authority under section 271 to impose unbundling requirements on Qwest *See* Covad's Petition for Arbitration at 7-11 The Commission agrees with Covad that it should defer, pending a decision in 04-00208-UT, whether it has authority under section 271, to require filing of the Commercial Line Sharing Agreement A prerequisite to deciding whether the Commission has authority to require the filing of the Commercial Line Sharing Agreement under section 271 is whether the Commission can impose unbundling obligations under section 271. If the final order in Case No 04-00208-UT indicates that this Commission can require Qwest to provide line sharing under section 271 of the Act, then this Commission may consider, in a future proceeding, whether it can require the filing of agreements, such as the Commercial Line Sharing Agreement, under section 271

THIS COMMISSION FINDS AND CONCLUDES·

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[27] AG's Response at 2-6, Staff's Brief at 6, Covad's Brief at 7-12

[28] *See* Petition of Dieca Communications, Inc , d/b/a Covad Communications Company, for Arbitration ("Covad's Petition for Arbitration"), filed on June 22, 2004

1 The Commercial Line Sharing Agreement is not an interconnection agreement subject to the filing requirements of section 252 of the Act

2 The Statement of the Case, Background, Positions of the Parties, and Discussion, set forth above in this Final Order, are adopted as Findings and Conclusions of the Commission

3 This Commission should adopt a prefiling review process to review a LEC's claim that an agreement is not an interconnection agreement because it pertains to network elements that Qwest is not required to unbundle

Consistent with the above Findings and Conclusions, THIS COMMISSION ORDERS·

A This Docket is closed

B. This Commission adopts a prefiling review process to review a LEC's claim that an agreement is not an interconnection agreement because it pertains to network elements that the LEC is not required to unbundle. When a LEC submits such an agreement to the Commission, the agreement shall not be assigned a docket number, unless and until Staff files a motion alleging that the agreement is an interconnection agreement

C. This Order shall be served on all persons on this Commission's Telecommunications Service List

D This Order is effective immediately

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 23rd day of December, 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION

HERB H. HUGHES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

TELEPHONICALLY APPROVED

LYNDA M. LOVEJOY, COMMISSIONER

TELEPHONICALLY APPROVED

E. SHIRLEY BACA, COMMISSIONER

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

   PSC, PU-04-620, PU-05-7, PU-05-25, 1 time(s)
   as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 8 day of February 20 05

Kim Arman

KIM ARMAN
Notary Public
State of North Dakota
My Commission Expires July 14, 2009

6 ✓ **PU-04-620** Pages 1

Affidavit of Publication

by North Dakota Advertising Service Inc

6 **PU-05-7** Pages 1

Affidavit of Publication

by North Dakota Advertising Service Inc

6 **PU-05-25** Pages 1

Affidavit of Publication

by North Dakota Advertising Service Inc

02/10/2005

NDNA NORTH DAKOTA NEWSPAPER ASSOCIATION

orth Dakota Newspaper Associ. .on
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

INVOICE

Order **20169-05021PP1** Invoice # **50982**

February 9, 2005

Attn: ILLONAA. JEFFCOAT-SACCO
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice 701-328-4076

Advertiser **Public Utilities Division**

P.O.#. **PU-04-620; 05-7, 25, 28**

Amount Due **$634.27**

Amount Paid

Please detach and return this portion with your payment

Public Utilities Division Invoice # 20169-05021PP1-50982 PO# PU-04-620; 05-7, 25, 28

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
			DAILY					
Bismarck Tribune (Bismarck ND)								
98 00	SPR2	0 64	62 72	0 00		New Edge - OrbitCom		02/02/05
Devils Lake Daily Journal (Devils Lake ND)								
101 00	SPR2	0 63	63 63	0 00		New Edge - OrbitCom		02/02/05
Dickinson Press (Dickinson ND)								
108 00	SPR2	0 57	61 56	0 00		New Edge - OrbitCom		02/02/05
Fargo, The Forum (Fargo ND)								
89 00	SPR2	0 71	63 19	0 00		New Edge - OrbitCom		02/07/05
Grand Forks Herald (Grand Forks ND)								
94 00	SPR2	0 69	64 86	0 00		New Edge - OrbitCom		02/03/05
Jamestown Sun (Jamestown ND)								
112 00	SPR2	0 54	60 48	0 00		New Edge - OrbitCom		02/02/05
Minot Daily News (Minot ND)								
118 00	SPR2	0 54	63 72	0 00		New Edge - OrbitCom		02/02/05
Valley City Times-Record (Valley City ND)								
98 00	SPR2	0 61	59 78	0 00		New Edge - OrbitCom		02/02/05
Wahpeton Daily News (Wahpeton ND)								
139 00	SPR2	0 51	70 89	0 00		New Edge - OrbitCom		02/02/05
Williston Herald (Williston ND)								
104 00	SPR2	0 61	63.44	0 00		New Edge - OrbitCom		02/02/05

Gross Advertising	634.27	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0 00	Adjustments	0 00
Other Discount	0.00	Total Billed	634 27	Payment Date	
Service Charge	0 00	Unbilled	0 00	Balance Due	634 27

6 **PU-04-620** Pages 1

Affidavit of Publication

6 **PU-05-7** Pages 1

Affidavit of Publication

by North Dakota Advertising Service, Inc

02/10/2005

6 **PU-05-25** Pages 1

Affidavit of Publication

by North Dakota Advertising Service, Inc

02/10/2005

State Of North Dakota
Public Service Commission
Notice Of Opportunity For Hearing
Case No: PU-04-620
January 26, 2005

Bismarck	2-2
Devils Lake	2-2
Dickinson	2-2
Fargo	2-7
Grand Forks	2-3
Jamestown	2-2
Minot	2-2
Valley City	2-2
Wahpeton	2-2
Williston	2-2

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Commercial Line Sharing Agreement** **Service Agreement(s)**	**Case No. PU-04-620**
ACN Communicatin Services, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-7**
OrbitCom, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-25**

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that

she is over the age of 18 years and not a party to this action and, on the **27th day of January, 2005,** she deposited in the United States Mail, Bismarck, North Dakota **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity for Hearing

The envelope was addressed as follows

Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver CO 80202
Cert. No. 7003 2260 0001 3517 9404

Sharon Helbling further deposes and says that on the **27th day of January, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Dir-Interconnection Compliance
Qwest Corporation
1801 California St Rm 2410
Denver CO 8020

Dave Spevanovksi
ACN Communication Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Rob McMillin
New Edge Network Inc
3000 Columbia Blvd Ste 106
Vancouver WA 98661

Brad Van Leur President
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

Mel Kambeitz
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me
this **27th day of January, 2005.**

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Commercial Line Sharing Agreement** **Service Agreement(s)**	**Case No. PU-04-620**
ACN Communicatin Services, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-7**
OrbitCom, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-25**

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that.

she is over the age of 18 years and not a party to this action and, on the **27th day of January, 2005,** she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and/or e-mailed a copy of:

Notice of Opportunity for Hearing

To

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **27th day of January, 2005.**

Sandra L. Scott
Notary Public

SANDRA L SCOTT
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Ann Faught
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Absaraka ND 58002

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Farmington Hills MI 48334

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Santa Rosa CA 95404-4920

Arch Paging
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Eden Prairie MN 55344

Kimberly Nielsen
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7277 164th Ave NE RTC-1
Redmond WA 98052

Jack Medaris
Atlas Communications LTD
P O Box 807
Conshohocken PA 19428-0807

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Bell Atlantic Communications Inc
1320 N Court House Rd 9th Fl
Arlington VA 22201

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6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330
Oak Park MI 48237

C12 Inc
200 Galleria Pkwy Ste 1200
Atlanta GA 30339

Scott Geston
Cable One of Fargo
P O Box 10624
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Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

Robert Fallan
Coast International
14303 W 95th St
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Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

Computer Integrated Communications Inc
8502 Bells Mill Rd
Potomac MD 20854-4071

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Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

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D D D Calling Inc
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William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Easton Telecom Services Inc
3046 Brecksville Rd #A
Richfield OH 44286-9399

Regulatory Dept
Essential.com Inc
5 Bragdon Ln Ste 200
Kennebunk ME 04043

Evercom Systems Inc
8201 Tristar Dr
Irving TX 75063-2824

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

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Charlotte NC 28202-2695

Lawrence Freedman
Fleischman & Walsh
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Washington DC 20006-3420

France Telecom Corporate Solutions LL
2300 Corporate Park Dr Mailstop SPO60
Herndon VA 20171

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2609 Cameron St
Mobile AL 36607-3104

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150
Northbrook IL 60062

Granite Telecommunications LLC
234 Copeland St
Quincy MA 02169

Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

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2201 W Bdwy Ste 1
Council Bluffs IA 51501

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Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

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Longmont CO 80503-6493

David A. Huberman
Intrado Communications Inc
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Nanette Edwards
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Groton SD 57445

KMC Telecom V Inc
1545 Rt 206
Bedminster NJ 07921

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St Louis Park MN 55426

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Michel Murray
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MCImetro Access Transmission Services
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McLeodUSA
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Cedar Rapids IA 52406-3177

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Brad Van Leur
OrbitCom Inc
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Sioux Falls SD 57107

Jeff Walker
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Dallas TX 75001

Premiere Network Services Inc
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DeSoto TX 75115

Primus Telecommunications Inc
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Scott Lee
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Randy Burckhard
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Tel Tech Inc
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Sioux Falls SD 57108-2885

William Staycoff
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Public Communications Services Inc
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Kristin L Smith
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Denver CO 80202

Qwest Interprise America Inc
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Denver CO 80202

Reliant Communications Inc
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Lake Mary FL 32746

Sandra Adams
NewPath Holdings Inc
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Des Moines IA 50322

Arthur H Paquette
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North Haven CT 06510-1719

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Telera Communications Inc
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P O Box 701028
Dallas TX 75370-1028

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Trinsic Communications Inc
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Tampa FL 33602-5925

Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

United Communications HUB Inc
10390 Commerce Ctr Dr Ste 250
Rancho CA 91730-5860

Kenneth Carlson
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Dennis Houston
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Orange CA 92867

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Molli Harper
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Mick Grosz
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Bellevue WA 98006

Carolyn Fodor
Winstar Communications
21290 Melrose Ave
Southfield MI 48075-7901

WTC Competitive Services Inc
P O Box 129
Park River MN 56594

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Helbling, Sharon D.

From: Helbling, Sharon D
Sent: Thursday, January 27, 2005 7 43 AM
To: ndna
Subject: Notice of Opportunity for Hearing, Case Nos PU-04-620, PU-05-7, PU-05-25 and PU-05-28

Colleen Park
North Dakota Newspaper Association

Colleen

Please have the two attached Notices of Opportunity for Hearing published as legal publications in the next issue of the ten North Dakota daily newspapers, and run them as "news item only" articles as well.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes

If you have any questions, let me know

Thank you.

Sharon Helbling
Public Utilities Division


1-26-05 of Opportu **1.doc (40 KB)**

4 **PU-04-620** Pages 1

1 Notice e-mailed to NDNA requesting publication by Public Service Commission

01/27/2005

APPROVED
DATE: 1-26-05

MOTION

KmF January 26, 2005

New Edge Network, Inc./Qwest Corporation — **Case No. PU-04-620**
Commercial Line Sharing Agreement
Service Agreement(s)

ACN Communication Services, Inc./Qwest Corporation — **Case No. PU-05-7**
Master Service Agreement
Service Agreement(s)

OrbitCom, Inc./Qwest Corporation — **Case No. PU-05-25**
Master Service Agreement
Service Agreement(s)

I move the Commission issue a Notice of Opportunity for Hearing in the captioned applications for approval of service agreements

PJF/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

New Edge Network, Inc./Qwest Corporation **Commercial Line Sharing Agreement** **Service Agreement(s)**	**Case No. PU-04-620**
ACN Communication Services, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-7**
OrbitCom, Inc./Qwest Corporation **Master Service Agreement** **Service Agreement(s)**	**Case No. PU-05-25**

NOTICE OF OPPORTUNITY FOR HEARING

January 26, 2005

On November 22, 2004 Qwest Corporation (Qwest) filed a copy of two Commercial Line Sharing Arrangements negotiated with New Edge Networks (New Edge) The Commercial Line Sharing Arrangements set forth rates, terms or conditions under which Qwest will provision the high frequency portion of the copper loop, a service known as line sharing, Case No PU-04-620

On January 6, 2005 Qwest filed a copy of a Master Services Agreement negotiated with ACN Communications Services Inc (ACN) This Master Services Agreement sets forth rates, terms or conditions under which Qwest agrees to provide Qwest Platform Plus (QPP) Service, Case No PU-05-7

On January 13, 2005 Qwest filed a copy of a Master Services Agreement negotiated with OrbitCom, Inc (OrbitCom) This Master Services Agreement sets forth rates, terms or conditions under which Qwest agrees to provide Qwest Platform Plus (QPP) Service, Case No PU-05-25

The Commercial Line Sharing Arrangements with New Edge and the Master Services Agreement with ACN and OrbitCom have been posted on the Commission website

In separate proceedings the Commission is reviewing other Master Services Agreements Qwest/MCIMetro Access Transmission Services, LLC (MCI) filed August 2, 2004, Case No PU-04-402, Qwest/Northstar Telecom, Inc filed October 29, 2004, Case No PU-04-572, and Qwest/Z-Tel Communications Inc filed October 29, 2004, Case No PU-04-576 In those proceedings as well as the proceeding noticed in this document, Qwest asserts that the Master Services Agreement is for services that Qwest is no longer required to provide under Section 251 or 252 of the Act Therefore, Qwest asserts, the Master Services Agreement is not an interconnection agreement subject to section 252 filing obligations and MCI's application for approval should be dismissed MCI asserts that section 252(e) requires that a voluntarily negotiated agreement be filed with state commissions for review and approval

The issue to be considered in these proceedings is whether the Master Services Agreements and the Commercial Line Sharing Arrangements are interconnection agreements

subject to state regulatory Commission approval under section 252 of the Act The same issue is being considered in Case No PU-04-402 and may set precedent for Case No PU-04-572, PU-04-576, PU-04-620, PU-05-7, and PU-05-25

Those interested are invited to comment in writing Persons desiring a hearing must file a written request identifying their interest in the proceeding and the reasons for requesting a hearing **Comments and requests for hearings must be received by March 1, 2005** If deemed appropriate, the Commission can determine the matter without a hearing

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400, or Relay North Dakota 1-800-366-6888 TTY If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona A Jeffcoat-Sacco, Executive Secretary

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

Qwest
Spirit of Service

Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303 383 6643
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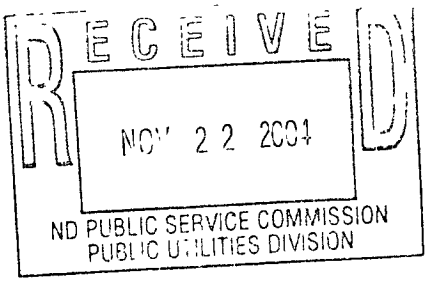
Melissa Thompson
Senior Attorney

November 19, 2004



Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, ND 58505-0480

Re: Qwest/New Edge Networks Agreements

Dear Ms. Jeffcoat-Sacco:

Qwest Corporation ("Qwest") and New Edge Networks ("New Edge") have signed two documents relating to the provisioning by Qwest to New Edge of the high frequency portion of the loop. New Edge uses the high frequency portion of the loop to provide digital subscriber line (DSL) services to its end user customers. Both of these documents are available for public inspection; there are no confidentiality provisions for either. I am writing to you to provide additional information as to whether the section 252 filing obligation under the Telecommunications Act applies to these two documents.

The document entitled "Terms and Conditions for Commercial Line Sharing Arrangements," dated April 14, 2004 ("Commercial Line Sharing Arrangements"), is not within the section 252 filing requirement of the Telecommunications Act and, thus, Qwest has not filed it with the Commission formally under section 252. Qwest is attaching a copy of the Commercial Line Sharing Arrangements to this letter for the Commission's information.

The FCC's Triennial Review Order (TRO) and the resulting Rules eliminate the obligation under section 251(c) to provide the high frequency portion of a copper loop beginning the effective date of the TRO, subject to the transitional line sharing conditions set forth in the TRO and the Rules. Rule 51.319(a)(1)(i). The transitional rules apply where the requesting telecommunications carrier begins providing DSL service to a particular end-user customer on or before one year after the effective date of the TRO. Rule 51.319(a)(1)(i)(B). For new DSL services provisioned after one year after the effective date of the TRO, the transitional rules do not apply, and under the TRO and Rules, the incumbent LEC has no obligation under section 251(c)(3) to unbundle the high frequency portion of the loop.

In sum, under the TRO and the Rules, section 251(c)(3) may apply for new DSL services provisioned within one year after the effective date of the Order, which was October 1, 2004. But for new DSL services provisioned after October 1, 2004, Qwest as the incumbent LEC does not have a section 251(c)(3) obligation to provide the high frequency portion of the loop.

Service Agreement with New Edge
Network, Inc.
by Qwest Corporation by

As stated by the FCC, the section 252 filing obligation applies to "an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation." *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, para. 8 (emphasis that of the FCC).

Combining the analysis of the TRO with the FCC's Declaratory Ruling regarding section 252, the filing requirement may apply to an incumbent LEC's provisioning of the high frequency portion of the loop for new DSL orders placed by October 1, 2004. In contrast, for new DSL services placed after October 1, 2004, there are no section 251(c) obligations upon the incumbent to provide the high frequency portion of the loop as an unbundled network element and, thus, there are no section 252 filing obligations.

To be consistent with the structure of the TRO, the transitional rules, section 251(c)(3) and section 252, Qwest and New Edge negotiated one agreement for new DSL services placed by October 1, 2004, and a second to govern new DSL services placed after October 1, 2004. An agreement addressing DSL services placed by October 1, 2004 is an amendment to the parties' interconnection agreement and, thus, Qwest is filing the Line Sharing Amendment with the Commission under section 252. Qwest believes that the second document, the Commercial Line Sharing Arrangements, which governs DSL services placed after October 1, 2004, is not subject to section 251(c)(3) or section 252 and, thus, it has not been filed formally.

For the Commission's information, we have attached a copy of the Commercial Line Sharing Arrangements for DSL services placed after October 1, 2004. Qwest also will post a copy of that agreement on its wholesale website for public review, and Qwest is making that agreement available to any telecommunications carrier that assumes all of its terms and obligations.

Please contact me with any questions you may have.

Sincerely,

Melissa K. Thompson

Enclosure

cc: Scott Macintosh w/o enclosures
Rob McMillin w/o enclosures

TERMS AND CONDITIONS FOR COMMERCIAL LINE SHARING ARRANGEMENTS

This Agreement together with this signature page, the general terms and conditions, annexes, addenda, Rate Sheet, and exhibits attached hereto or incorporated herein by reference (collectively the "Agreement") is entered into between Qwest Corporation ("Qwest") and New Edge Network Inc dba New Edge Networks (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties") This Agreement may be executed in counterparts This Agreement is effective on the date Qwest duly executes it following Qwest's receipt of a copy of the Agreement executed by CLEC. The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

QWEST CORPORATION:

By L T Christensen
Name L T Christensen
Title Director
Date 11/16/04

NEW EDGE NETWORK INC. DBA NEW EDGE NETWORKS:

By Robert Y. McMillin
Name Robert Y. McMillin
Title Senior Director - Interconnection
Date 11/15/04

APPLICABLE SERVICES:

Qwest agrees to offer and CLEC intends to purchase the Services indicated below by CLEC's signatory initialing on the applicable blanks

X **COMMERCIAL LINE SHARING**

Qwest Corporation
Director - Commercial Agreements
1801 California Street, Suite 2400
Denver, CO 80202
E-mail· INTAGREE@QWEST.COM

With copy to.
Qwest Law Department
Attention Corporate Counsel, Interconnection
1801 California Street, 10th Floor
Denver, CO 80202

and to CLEC at the address shown below.

New Edge Network Inc. dba New Edge Networks
Rob McMillin, Sr. Director
3000 Columbia Blvd. Suite 106
Vancouver, WA 98661
Phone: 360-639-9703
Email: rmcmillin@newedgenetworks com

APPLICABLE STATES:

Qwest agrees to offer and CLEC intends to purchase commercial line sharing in the states indicated below by CLEC's signatory initialing on the applicable blanks

X **Arizona**
X **Colorado**
X **Idaho**
____ **Iowa**
____ **Minnesota**
____ **Montana**
____ **Nebraska**
X **New Mexico**
X **North Dakota**
X **Oregon**
____ **South Dakota**
X **Utah**
X **Washington**
____ **Wyoming**

TERMS AND CONDITIONS FOR COMMERCIAL LINE SHARING ARRANGEMENTS PROVIDED BY QWEST CORPORATION TO New Edge Network Inc. dba New Edge Networks

WHEREAS New Edge Network Inc. dba New Edge Networks desires to acquire and Qwest Corporation ("Qwest") desires to provide commercial line sharing arrangements outside of and without regard to the standards and limitations set forth in sections 251, 252, and 271 and other relevant provisions of the Act and the implementing rules and regulations of the Federal Communications Commission ("the FCC");

WHEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, New Edge Network Inc. dba New Edge Networks and Qwest (each a "Party" and together "the Parties") agree to the following terms and conditions for commercial line sharing as follows:

Section 1.0 – PREAMBLE

1.1 The Parties acknowledge and agree that this Agreement was negotiated and entered into on commercial terms and conditions mutually agreed upon and without regard to the standards set forth in Sections 251, 252, 271 and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 This Agreement is being made available by Qwest to set forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting competitive local exchange carrier ("CLEC") nondiscriminatory access to commercial line sharing arrangements, provided that, the requesting CLEC agrees to each and every term and condition set forth herein, each of which the Parties agree is an essential, necessary, and inextricable term and condition of the Agreement

1.3 CLEC represents and covenants that upon execution of this Agreement, it expressly agrees that the terms and conditions contained herein shall be its exclusive means for ordering line shared loops during the term of this Agreement.

Section 2.0 – COMMERCIAL LINE SHARING

2.1 Commercial Line Sharing

2.1.1 Description

Commercial Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing end user customer's analog voice-grade ("POTS") service provided by Qwest on a single copper loop referred to herein as "Commercial Shared Loop" by using the frequency range above the voice band on a copper loop. This frequency range will be referred to herein as the High Frequency Portion of the loop ("the HFPL"). A splitter separates the voice and data traffic and allows the copper loop to be used for simultaneous data transmission and Qwest POTS service. The splitter must be provisioned prior to ordering

Commercial Line Sharing. The POTS service must be provided to the end user customer by Qwest.

2.1.1.1 Qwest agrees to provide Line Sharing on a commercial basis as set forth below.

2.1.1.1.1 **Three Year Agreement Period.** CLEC may order Commercial Line Sharing arrangements during the period beginning on October 2, 2004 and ending on October 1, 2007 ("Commercial Line Sharing") in accordance with the provisions of this subsection. The monthly recurring charge for any Commercial Line Sharing arrangement shall apply as set forth below.

(a) During the period beginning on October 2, 2004 and ending on October 1, 2007, the monthly recurring charge for any Commercial Line Sharing arrangement shall be as provided in Exhibit A. The monthly recurring charge shall be adjusted based on the annual additional net volume of new Commercial Line Shared arrangements provided by Qwest in Qwest's service territory The volume calculation to determine the rates on October 2, 2004 shall include the net additions of all new line share arrangements ordered by CLEC between October 1, 2003 and September 30, 2004 provided that such arrangements were ordered pursuant to the commercial line-sharing provisions of the interconnection agreement amendment dated April 14, 2004.

1. To determine the annual additional net volume of Commercial Line Shared services ("New Incremental Growth"), Qwest will subtract the total number of Commercial Line Shared arrangements in service as of September 30, of the immediate previous year from the total number of Commercial Line Shared arrangements in service as of September 30, of the current year.

2. The monthly recurring rate for all new and embedded Commercial Shared Loops (those acquired on or after October 2, 2003 or otherwise rolled into this Agreement pursuant to Section 2.1.1.1.1.3) for the full following twelve months shall be established by the volume range identified in Exhibit A.

2.1.1.1.1.2 **Discontinuation of Voice Service.** Notwithstanding anything herein to the contrary, if Qwest disconnects an end user customer's voice service in accordance with Applicable Law, then CLEC shall have the option to purchase the entire loop being disconnected if it wishes to continue providing DSL service to such end user customer; provided that, if CLEC does not exercise such option, both the DSL and voice services provisioned over the line will be disconnected by Qwest.

2.1.1.1.1.3 **Conversion of Existing Line Sharing Arrangements.** CLEC may convert any existing line sharing arrangements under its Interconnection Agreement or any amendment thereto to Commercial Line Sharing during the

term of this Agreement, provided that, such conversions shall not be included as New Incremental Growth for purposes of determining pricing of Commercial Line Sharing under Exhibit A. A separate, cost-based conversion charge may apply.

2.1.2 Terms and Conditions

2 1 2 1 General

2.1 2.1.1 To order the HFPL, CLEC must have a splitter installed in the Qwest wire center that serves the end user customer as provided for in this Section. Splitters may be installed in Qwest Wire Centers per the Collocation Section of CLEC's interconnection agreement with Qwest Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination. The end user customer must have dial tone originating from a Qwest Switch in that Wire Center. CLEC must provide the end user customer with, and is responsible for, the installation of a splitter, filter(s) and/or other equipment necessary for the end user customer to receive separate voice and data service across a single copper loop.

2.1.2.1.2 Any requests with due dates on or after October 2, 2004 for Commercial Line Sharing arrangements or repair of Commercial Line Sharing arrangements shall be deemed to have been ordered pursuant to this Agreement and shall not be subject to performance assurance plan remedies, or any other service quality standards or remedies applicable to Qwest. On or after October 2, 2004, changes to the operations support systems and other processes required to support Commercial Line Sharing shall not be subject to and shall be exempt from any otherwise applicable provisions of the change management process (CMP).

2.1.2.1.3 CLEC may use the HFPL to provide any xDSL services that will not interfere with analog voiceband transmissions and otherwise in accordance with Applicable Law. Such services currently include but may not be limited to ADSL, RADSL, Multiple Virtual Lines (MVL) and G.lite In the future, additional services may be used by CLEC to the extent those services are deemed acceptable for Commercial Line Sharing deployment under Applicable Law or governing industry standards.

2.1.2 1 4 CLEC may not order the HFPL on a given copper loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the end user customer provides authorization to the new provider to perform the disconnect of the incumbent provider's DSL or other service using the high frequency spectrum.

2.1 2.1.5 CLEC may request, and Qwest shall provide, required conditioning on up to 5% of the Commercial Shared Loops arrangements ordered by CLEC in a calendar year. Conditioning shall mean the removal of load coils and interfering bridged taps, but shall not include any line moves or special construction. UDC removal and line moves may be provided by Qwest on Commercial Shared Loop arrangements in accordance with Qwest's facility provisioning and routine network modification processes; notwithstanding the

foregoing, Qwest may modify or discontinue such processes pursuant to Applicable Law Any conditioning above the 5% cap shall be subject to the charges for loop conditioning in Exhibit A. Qwest shall perform requested conditioning, including de-loading and removal of interfering bridged taps, unless Qwest demonstrates in advance that conditioning a Commercial Shared loop will significantly degrade the end user customer's analog voice-grade POTS service. Based on the pre-order make-up of a given copper loop, CLEC can make a preliminary determination if the loop can meet the technical parameters applicable to the data service it intends to provide over the loop.

2 1 2.1.3.1 Qwest may conduct an annual audit to determine the sum of conditioned Commercial Line Shared loops in the preceding calendar year (January through December), if any, that exceeded the 5% cap on conditioning The number that exceed the 5% cap shall be assessed a non-recurring charge to be assessed for all conditioning performed above the 5% cap described in section 2.1.2.1.5 of this Agreement. CLEC shall pay such charges within thirty (30) days of receiving notice of them.

2.1.3 Rate Elements

2.1.3.1 Recurring Rates for Commercial Shared Loop.

2 1.3 1.1 Commercial Shared Loop Charge - A monthly recurring charge for the use of the Commercial Shared Loop shall apply This charge shall be inclusive of any charges to recover modification or upgrade costs to Qwest Operations Support Systems (OSS) required to accommodate line sharing, whether such charges are recovered by Qwest as recurring or non-recurring charges. Notwithstanding the foregoing, OSS development, enhancement, and maintenance costs applicable to all UNEs may be recovered through a separate cost-based charge pursuant to Applicable Law.

2 1.3.1.2 Interconnection Tie Pairs - Two Interconnection Tie Pairs (2 ITPs), 1 for voice and 1 for combined voice/data, per connection.

2.1.3.2 Nonrecurring Rates for the Commercial Shared Loop.

2 1.3.2.1 Basic Installation Charge for Commercial Shared Loop – A nonrecurring charge for each Commercial Shared Loop installed shall apply. As provided in Section 2.1.2.1.5, Conditioning shall be included in this charge, subject to the 5% cap on conditioning.

2.1.3.2.2 If the conditioning significantly degrades the voice services on the loop such that it is unacceptable to the end user customer, CLEC shall pay the conditioning charge in Exhibit A to recondition the loop.

2.1.3.2.3 A separate Conditioning charge may apply pursuant to Section 2.1.2.1.5 above.

2.1.3.2.4 Any Miscellaneous work performed by Qwest at the request of CLEC will be billed according to current Qwest's federal access tariff, and CLEC

agrees to pay such charges

2.1.3 2 5 A separate cost-based charge for Conversions of existing line sharing arrangements pursuant to section 2.1 1.1.1.3 may apply. If the Parties cannot mutually agree upon such charge, Qwest shall apply a conversion charge on an ICB basis, and CLEC agrees to pay such charges.

2.1.3.3 Nonrecurring Rates for Maintenance and Repair.

2.1.3.3 1 Trouble Isolation Charge – A nonrecurring charge for trouble isolation shall be applied in accordance with Qwest's federal access tariff.

2.1.3.3.2 Additional Testing – CLEC may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A nonrecurring charge will apply in accordance with Qwest's current federal access tariff

2.1.4 Ordering Process

2.1.4.1 Commercial Shared Loop

2.1.4 1 1 As a part of the pre-order process, CLEC may access loop characteristic information through the loop information tool provided as part of Qwest's OSS. CLEC shall determine, at its sole discretion, whether to order the HFPL across any specific copper loop. CLEC shall indemnify and hold harmless Qwest for any damage or liability relating to the suitability of the loop to provide the services to end users that CLEC seeks to provide.

2.1.4 1.2 The appropriate splitter Meet Points dedicated to the splitters will be provided on the Line Sharing Actual Point of Termination (APOT) form one (1) day prior to the Ready for Service date or at an interval agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to splitters. Qwest will administer all cross-connects/jumpers on the COSMIC™/MDF and ICDF.

2.1.4.1.3 Basic Installation "lift and lay" procedure will be used for all Commercial Shared Loop orders. Under this approach, a Qwest technician "lifts" the loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's collocated equipment in the same Wire Center.

2.1.4.1.4 Qwest will provision the Commercial Shared Loop within the standard unbundled loop provisioning interval as defined in Exhibit C.

2.1.4.1.4.1 Synchronization Testing ("Sync Testing") is an option associated with collocation space and Commercial Line Sharing service requests. For more information refer to Synchronization Testing at the Supporting Documentation Section:

http //www.qwest com/wholesale/pcat/collocation html

Sync Testing shall be performed as part of the standard provisioning and repair processes for Commercial Line Sharing requests in central offices where such capability has been requested The Sync Test shall be performed in lieu of an electrical continuity test performed on the data side of the circuit. The electrical continuity test shall still be performed if the Sync Test is not requested. When Sync Testing is performed, CLEC will be notified if there is a problem in their equipment and if the test fails, the service request will be placed in a jeopardy status.

2.1.4.1 5 CLEC shall not place initial orders for Commercial Shared Loops until all infrastructure work necessary to provision Commercial Line Sharing in a given Qwest Wire Center, including, but not limited to, splitter installation and tie cable reclassification or augmentation has been completed. Upon CLEC request at any time, including before placing an order, Qwest will arrange for a Wire Center walkthrough to verify the Commercial Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

2.1.4.1.6 Prior to placing an LSR for Commercial Shared Loop, CLEC must obtain a Proof of Authorization from the end user customer in accordance with the Proof of Authorization Section

2.1.5 Repair and Maintenance

2.1.5.1 Qwest will allow CLEC to access Commercial Shared Loops at the point where the combined voice and data loop is cross connected to the splitter.

2.1.5.2 Qwest will be responsible for repairing voice services provided over Commercial Shared Loops and the physical line between Network Interface Devices at end user customer premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at end user customer premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end user customers. CLEC will be responsible for repairing data services provided on Commercial Shared Loops and is entitled to test the entire frequency range of the loop facility Qwest and CLEC each will be responsible for maintaining its equipment. The entity that controls the splitters will be responsible for their maintenance, unless CLEC has opted to self-provision splitter card maintenance.

2.1.5.3 Qwest shall provide Maintenance and Repair for Commercial Line Sharing in accordance with the procedures in the the methods and procedures section of the Line Sharing product catalog that is made available on Qwest's website:

http://www qwest com/wholesale/pcat/interconnection.html

2.1.5.3.1 Qwest and CLEC are responsible for their respective end user customer base. Qwest and CLEC will have the responsibility for resolution of any service trouble report(s) initiated by their respective end user customers.

2 1.5 4 Qwest and CLEC will work together to address end user customer initiated repair requests and to prevent adverse impacts to the end user customer.

2.1.5 5.1 Any Miscellaneous work performed by Qwest at the request of the CLEC will be billed according to current Qwest federal access tariff and CLEC agrees to pay such charges

2.1.6 Performance Metrics

2 1.6.1 Installation and Repair metrics for performance are contained in Attachment B of this Agreement.

2.1.7 Intervals

2 1.7.1 Installation and Repair Intervals are contained in Exhibit C of this Agreement.

Section 3.0 – GENERAL TERMS AND CONDITIONS

3.1 Term of Agreement

3 1.1 This Agreement shall become effective on October 2, 2004 and shall expire on October 1, 2007 ("Effective Date").

3 1.2 Upon expiration of the term of this Agreement, this Agreement shall continue in full force and effect until superseded by a successor agreement in accordance with this Section or until notice is given pursuant to Section 3.1 3 below.

3 1.3 A Party shall provide ninety (90) days written notice to terminate the services under the Agreement upon or after expiration. Prior to expiration, a Party may terminate this Agreement only for cause and shall provide ninety (90) days' written notice to terminate the services under the Agreement. After receiving notice of expiration or termination, CLEC shall convert all Commercial Line Sharing arrangements to a line splitting arrangement, to a stand-alone unbundled loop, or to such other arrangement as CLEC may have negotiated with Qwest to replace such Commercial Line Sharing arrangement. Qwest and CLEC shall work cooperatively to develop a schedule for this transition. Notwithstanding the foregoing, if CLEC fails to convert the services under the Agreement after the ninety (90) day notice period, Qwest may refuse any new Commercial Line Sharing orders and/or, at its sole option, disconnect the Commercial Line Sharing arrangements or immediately charge CLEC for the applicable unbundled loop rate contained in a tariff or interconnection agreement then in effect.

3.2 Payment

3.2.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) calendar days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a business day, the payment shall be due the next business day.

3 2.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section

3 2.1 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar days following the payment due date. The Party rendering a bill for services ("the Billing Party") will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance.

3 2.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 3.2.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar days following the payment due date. The billed Party will pay the applicable Basic Installation Charge set forth in Exhibit A required to reconnect each end user customer line disconnected pursuant to this paragraph The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party may request a deposit (or recalculate the deposit) as specified in Section 3.2.5 and 3.2.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

3.2.4 Should CLEC or Qwest dispute, in good faith, any portion of the nonrecurring charges or monthly billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

3.2.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the Billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second bill date following the resolution. If the disputed

charges have been withheld and the dispute is resolved in favor of the disputing Party, the Billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second bill date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the Billing Party, no further action is required.

3 2 4 2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 3.2.4.3, and the dispute is resolved in favor of the disputing Party the Billing Party shall, no later than the second bill date after the resolution of the dispute. (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

3 2.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in Section 3.2.4, the Party may dispute the bill at a later time through an informal process or through the Dispute Resolution provision of this Agreement.

3.2.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet If a Party has not established satisfactory credit with the other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous nonpayment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the payment due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months for all services. The deposit may be a surety bond, a letter of credit with terms and conditions acceptable to the Billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) calendar days after demand.

3 2.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable regulations. Cash deposits and accrued interest will be credited to the billed Party's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with the Billing Party, which will generally be one full year of timely payments of undisputed amounts in full by the billed Party. Upon a material change in financial standing, the billed Party may request and the Billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

3.2.7 The Billing Party may review the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 3.2.5.

3 2.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with applicable law.

3.2.9 Each Party shall be responsible for notifying its end user customers of any pending disconnection of a non-paid service by the billed Party, if necessary, to allow those end user customers to make other arrangements for such non-paid services.

3.3 Taxes

3.3.1 Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party ("the Contesting Party") contests the application of any tax collected by the other Party ("the Collecting Party"), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

3.4 Force Majeure

3.4.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

3.5 Limitation of Liability

3.5.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict

liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises.

3.5.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result

3.5.4 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees

3 5.5 Nothing contained in this Section 3.5 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 3.5 limit a Party's liability for failing to make any payment due under this Agreement.

3.6 Indemnity

3.6 1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

3.6.1.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

3.6.1.2 In the case of claims or loss alleged or incurred by an end user customer of either Party arising out of or in connection with services provided to the end user customer by the Party, the Party whose end user customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's end user customers regardless of whether the underlying service was provided or Unbundled Network Element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's end user customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or

destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party

3 6.2 The indemnification provided herein shall be conditioned upon:

3.6.2.1 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

3.6.2.2 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

3.6.2 3 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party In the event the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

3.7 Warranties

3.7.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

3.8 Assignment

3.8.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate Affiliate or an entity under its common control; without the consent of the other Party, provided that the performance of this Agreement by any such assignee is guaranteed by the assignor. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

3 8 2 In the event that Qwest transfers to any unaffiliated party exchanges including end user customers that CLEC serves in whole or in part through facilities or services provided by Qwest under this Agreement, the transferee shall be deemed a successor to Qwest's responsibilities hereunder for a period of ninety (90) calendar days from notice to CLEC of such transfer or until such later time as an applicable regulatory authority may direct pursuant to the authority's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest shall use its best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Qwest's obligations pursuant to the terms of this Agreement.

3.9 Default

3 9.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

3.10 Disclaimer of Agency

3.10.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

3.11 Severability

3.11 1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

3.12 Survival

3.12.1 Any liabilities or obligations of a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

3.13 Dispute Resolution

3.13 1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 3.13 shall be the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Nothing in this Section 3.13 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 3.13. However, once a decision is reached by the arbitrator, such decision shall supersede any provisional remedy.

3.13.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

3.13 3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar days after the Resolution Request pursuant to the terms of Section 3.13.3 1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the Telecommunications industry unless the Dispute involves amounts exceeding five million ($5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S /Endispute, at the election of the Party that initiates dispute resolution under this Section 3 13. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver,

Colorado metropolitan area. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s)

3 13 3 1 All expedited procedures prescribed by the AAA or J A.M.S /Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 3.13.3.1, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

3 13.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the arbitrator to an understanding and determination of the Dispute Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the arbitrator The arbitrator shall resolve any Disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

3.13.3 3 Arbitrator's Decision

3 13 3 3.1 The arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the arbitrator's findings of fact and conclusions of law.

3 13.3.3.2 An interlocutory decision and award of the arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the arbitrator shall remain in effect, but the enjoined Party may make an application to the arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

3.13.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 3.16 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to

disclose the information shall first provide fifteen (15) calendar days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator Except as the Parties otherwise agree, or as the arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

3.13.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

3.13.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

3.13.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J A M S /Endispute, this Agreement shall be controlling.

3.13.8 This Section does not apply to any claim, controversy or Dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

3.14 Controlling Law

3.14.1 This Agreement shall be governed by and interpreted in accordance with the laws of the state law of Colorado, without regard to conflicts of law.

3.15 Notices

3.15.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, or by email where specified in this Agreement to Qwest and CLEC at the addresses shown on the cover sheet.

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact Person and/or address using the method of notice called for in this Section 3.15.

3.16 Responsibility of Each Party

3.16.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely

responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

3.17 No Third Party Beneficiaries

3.17.1 The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

3.18 Publicity

3.18.1 The Parties agree to cooperate in drafting and releasing jointly and simultaneously the initial press release or other form of publicity to disclose the execution and contents of this Agreement and hereby consent to such joint release. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

3.19 Executed in Counterparts

3.19 1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

3.20 Compliance

3.20 1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

3.21 Amendments

3.21.1 This Agreement may be amended only by a written instrument duly executed by the Parties.

3.22 Entire Agreement

3.23.1 This Agreement (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Agreement.

Exhibit A				Recurring	Non-Recurring
Shared Services					
209 4 Line Sharing					
209 4 1	Shared Loop, per Loop (footnote 1)				
	209 4 1 1	**Rate Groups for determining RC rate for Line Installed 10/2/2004-9/30/2005**			
		209 4 1 1 1	Previous Year New Incremental Growth totaling 15,000 Lines or more	$5 00	$35 00
		209 4 1 1 2	Previous Year New Incremental Growth totaling 12,500-14,999 Lines(Gt 12,500	$6 00	$35 00
		209 4 1 1 3	Previous Year New Incremental Growth totaling 7,500-12,499 Lines(Gt 7,500 ra	$7 00	$35 00
		209 4 1 1 4	Previous Year New Incremental Growth totaling less that 7,500 Lines	$8 00	$35 00
	209 4 1 2	**Rate Groups for determining RC rate for Line Installed 10/1/2005-10/1/2007**			
		209 4 1 2 1	Previous Year New Incremental Growth totaling 17,500 Lines or more	$5 00	$35 00
		209 4 1 2 2	Previous Year New Incremental Growth totaling 12,500-17,499 Lines(Gt 12,500	$6 00	$35 00
		209 4 1 2 3	Previous Year New Incremental Growth totaling 7,500-12,499 Lines(Gt 7,500 ra	$7 00	$35 00
		209 4 1 2 4	Previous Year New Incremental Growth totaling less that 7,500 Lines	$8 00	$35 00
209 4 2	OSS - Per Line - Per Month			$0 00	
209 4 3	Conversion Charge				ICB
209 4 4	Deloading				$300 00
	The following elements must be included in your Interconnection Agreement before ordering Line Sharing from your Commercial Agreement				
	Interconnection Tie Pairs (ITP) – Per Termination				
	DS0				
	DS1 Per each Termination				
	DS3 Per each Termination				
	Splitter Shelf Charge				
	Splitter TIE Cable Connections				
			Splitter in the Common Area–Data to 410 block		
			Splitter in the Common Area—Data direct to CLEC		
			Splitter on the IDF—Data to 410 block		
			Splitter on the IDF—Data direct to CLEC		
			Splitter on the MDF—Data to 410 block		
			Splitter on the MDF—Data direct to CLEC		
	Engineering				
	Existing Bay				

1 Beginning in October 2, 2004 the RC will be adjusted based on annual volumes from the previous year To determine the annual additional net volume of Line Shared services, Qwest will subtract the total number of Line Shared services in service as of September 30, of the immediate previous year from the total number of Line Shared services in service as of September 30, of the current year

EXHIBIT B TO COMMERCIAL LINE SHARING AGREEMENT

1. All of CLEC's Line Sharing arrangements ordered pursuant to this Agreement, shall not be subject to performance assurance plan remedies or any other service quality standards or remedies applicable to Qwest.

In lieu of these performance provisions, Qwest shall provide performance reporting on the following commercial line sharing metrics:

- Firm Order Commitments On Time
- Installation Commitments Met
- Order Installation Interval
- Out of Service Cleared within 24 Hours
- Mean Time to Restore
- Trouble Rate

The business rules for the foregoing metrics are attached and are subject to change upon written notice to CLEC. In addition, Qwest shall provide CLEC with ad hoc data showing the monthly Repeat Trouble rate for Commercial Line Sharing arrangements in a reasonable form and manner for the term of the Agreement in any month that CLEC makes a written request for such ad hoc data.

Line Sharing Commercial Measurement Definitions

Version 1.2

FOC-1 – Firm Order Confirmations (FOCs) On Time

Purpose:
Monitors the timeliness with which Qwest returns Firm Order Confirmations (FOCs) to CLECs in response to LSRs received from CLECs, focusing on the degree to which FOCs are provided within specified intervals.

Description:
Measures the percentage of Firm Order Confirmations (FOCs) that are provided to CLECs within the intervals specified under "Standards" below for FOC notifications.

- Includes all LSRs that are submitted through IMA-GUI and IMA-EDI interfaces that receive an FOC during the reporting period, subject to exclusions specified below. (Acknowledgments sent separately from an FOC (e.g., EDI 997 transactions are not included.)
- LSRs will be evaluated according to the FOC interval categories shown in the "Standards" section below, based on the number of lines/services requested on the LSR or, where multiple LSRs from the same CLEC are related, based on the combined number of lines/services requested on the related LSRs.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting: Individual CLEC	**Disaggregation Reporting:** Regional level.

Formula:

FOC-1 = {[Count of LSRs for which the original FOC's "(FOC Notification Date & Time) - (Application Date & Time)" is within the intervals specified for the service category involved] ÷ (Total Number of original FOC Notifications transmitted for the service category in the reporting period)} x 100

Exclusions:

- LSRs involving individual case basis (ICB) handling based on quantities of lines, as specified in the "Standards" section below, or service/request types, deemed to be projects
- Hours on Weekends and holidays
- LSRs with CLEC-requested FOC arrangements different from standard FOC arrangements
- Records with invalid product codes
- Records missing data essential to the calculation of the measurement per the measure definition.
- Duplicate LSR numbers (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s)
- Invalid start/stop dates/times

Product Reporting:		
Line Sharing		

	Standard FOC Intervals Product Group [NOTE 1]		FOC Interval
	Line Sharing loops	1-24 shared	**24 hours**
Availability: TBD			
	Notes: LSRs with quantities above the highest number specified for each product type are considered ICB.		

ICM-1 - Installation Commitments Met

Purpose:
Evaluates the extent to which Qwest installs services for Customers by the scheduled due date.

Description:
Measures the percentage of orders for which the scheduled due date is met.

- All inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period are measured, subject to exclusions specified below Change order types included in this measurement consist of all C orders representing inward activity (with "I" and "T" action coded line USOCs) Also included are orders with customer-requested due dates longer than the standard interval
  - Completion date on or before the Applicable Due Date recorded by Qwest is counted as a met due date The Applicable Due Date is the original due date or, if changed or delayed by the customer, the most recently revised due date, subject to the following· If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the customer-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any

Reporting Period: One month	**Unit of Measure**: Percent

Reporting: Individual CLEC	**Disaggregation Reporting:** Regional level • Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving ICM-1A Dispatches (Includes within MSA and outside MSA); and ICM-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: ICM-1C Interval Zone 1 and Interval Zone 2 areas

Formula:
[(Total Orders completed in the reporting period on or before the Applicable Due Date) ÷ (Total Orders Completed in the Reporting Period)] x 100

Exclusions:

- Disconnect, From (another form of disconnect) and Record order types
- Due dates missed for standard categories of customer and non-Qwest reasons. Standard categories of customer reasons are. previous service at the location did not have a customer-requested disconnect order issued, no access to customer premises, and customer hold for payment. Standard categories of non-Qwest reasons are Weather, Disaster, and Work Stoppage
- Records involving official company services
- Records with invalid due dates or application dates
- Records with invalid completion dates
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

Product Reporting			
MSA-Type:			
Line Sharing			
Zone-Type:			
Availability: TBD	**Notes:**		

OII-1 - Order Installation Interval

Purpose:
Evaluates the timeliness of Qwest's installation of services for CLECs, focusing on the average time to install service.

Description:
Measures the average interval (in business days) between the application date and the completion date for service orders accepted and implemented

- Includes all inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period, subject to exclusions specified below. Change order types for additional lines consist of all C orders representing inward activity.
- Intervals for each measured event are counted in whole days the application date is day zero (0); the day following the application date is day one (1).
- The Applicable Due Date is the original due date or, if changed or delayed by the CLEC, the most recently revised due date, subject to the following If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the CLEC-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any NOTE 1
- Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date, as applied in the formula below, are calculated by subtracting the latest Qwest-initiated due date, if any, following the Applicable Due Date, from the subsequent CLEC-initiated due date, if any. NOTE 1

Reporting Period: One month	**Unit of Measure**: Average Business Days

Reporting: Individual CLEC	**Disaggregation Reporting:** Regional level • Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving OII-1A Dispatches (Includes within MSA and outside MSA); and OII-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: OII-1C Interval Zone 1 and Interval Zone 2 areas

Formula:
Σ[(Order Completion Date) – (Order Application Date) – (Time interval between the Original Due Date and the Applicable Date) – (Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date)] ÷ Total Number of Orders Completed in the reporting period

Explanation: The average installation interval is derived by dividing the sum of installation intervals for all orders (in business days) by total number of service orders completed in the reporting period.

Exclusions:

- Orders with CLEC requested due dates greater than the current standard interval.
- Disconnect, From (another form of disconnect) and Record order types.
- Records involving official company services.
- Records with invalid due dates or application dates.

- Records with invalid completion dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition
- Orders involving individual case basis (ICB) handling based on quantities of lines, circuits or loops, or orders deemed to be projects.

Product Reporting:	
MSA-Type -	**Reported As:**
Line Sharing	Average business days
Zone-Type -	
•	

Availability:	**Notes:**
TBD	1. According to this definition, the Applicable Due Date can change, per successive CLEC-initiated due date changes or delays, up to the point when a Qwest-initiated due date change occurs At that point, the Applicable Due Date becomes fixed (i e., with no further changes) as the date on which it was set prior to the first Qwest-initiated due date change, if any Following the first Qwest-initiated due date change, any further CLEC-initiated due date changes or delays are measured as time intervals that are subtracted as indicated in the formula. These delay time intervals are calculated as stated in the description. (Though infrequent, in cases where multiple Qwest-initiated due date changes occur, the stated method for calculating delay intervals is applied to each pair of Qwest-initiated due date change and subsequent CLEC-initiated due date change or delay The intervals thus calculated from each pairing of Qwest and CLEC-initiated due dates are summed and then subtracted as indicated in the formula) The result of this approach is that Qwest-initiated impacts on intervals are counted in the reported interval, and CLEC-initiated impacts on intervals are not counted in the reported interval

OOS24-1 - Out of Service Cleared within 24 Hours

Purpose:
Evaluates timeliness of repair for specified services, focusing on trouble reports where the out-of-service trouble reports were cleared within the standard estimate for specified services (i.e., 24 hours
for out-of-service conditions)

Description:
Measures the percentage of out of service trouble reports, involving specified services, that are
cleared within 24 hours of receipt of trouble reports from CLECs or from retail customers.

- Includes all trouble reports, closed during the reporting period, which involve a specified service that is out-of-service (i.e., unable to place or receive calls), subject to exclusions specified below.
- Time measured is from date and time of receipt to date and time trouble is indicated as cleared.

Reporting Period: One month	**Unit of Measure:** Percent

Reporting:	**Disaggregation Reporting:** Regional level.
Individual CLEC	• Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving OOS24-1A Dispatches (Includes within MSA and outside MSA); and OOS24-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations OOS24-1C Interval Zone 1 and Interval Zone 2 areas

Formula:
[(Number of Out of Service Trouble Reports closed in the reporting period that are cleared within 24
hours) ÷ (Total Number of Out of Service Trouble Reports closed in the reporting period)] x 100

Exclusions:

- Trouble reports coded as follows
  - For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action, Non-Telco Plant; Trouble Beyond the Network Interface, No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
  - For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE).
- Subsequent trouble reports of any trouble before the original trouble report is closed
- Information tickets generated for internal Qwest system/network monitoring purposes.
- Time delays due to "no access" are excluded from repair time for products/services listed in

Product Reporting under "Zone-type Disaggregation".

- For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.
- Records involving official company services
- Records with invalid trouble receipt dates.
- Records with invalid cleared or closed dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

Product Reporting:		
MSA-Type -		
• Line Sharing		
Zone-Type -		
•		
Availability: TBD	**Notes:**	

MTTR-1 - Mean Time to Restore

Purpose:
Evaluates timeliness of repair, focusing how long it takes to restore services to proper operation.

Description:
Measures the average time taken to clear trouble reports

- Includes all trouble reports closed during the reporting period, subject to exclusions specified below
- Includes customer direct reports, customer-relayed reports, and test assist reports that result in a trouble report
- Time measured is from date and time of receipt to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Hours and Minutes

Reporting:	**Disaggregation Reporting:** Regional level.
Individual CLEC	• Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: MTTR-1A Dispatches (Includes within MSA and outside MSA); and MTTR-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: MTTR-1C Interval Zone 1 and Interval Zone 2 areas

Formula:
Σ[(Date & Time Trouble Report Cleared) – (Date & Time Trouble Report Opened)] ÷ (Total number of Trouble Reports closed in the reporting period)

Exclusions:

- Trouble reports coded as follows.
  - For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action, Non-Telco Plant; Trouble Beyond the Network Interface, No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
  - For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE)
- Subsequent trouble reports of any trouble before the original trouble report is closed
- Information tickets generated for internal Qwest system/network monitoring purposes
- Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation".
- For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.
- Records involving official company services.
- Records with invalid trouble receipt dates.
- Records with invalid cleared or closed dates.

- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

Product Reporting:		
MSA-Type – Line Sharing		
Zone-Type -		
•		
Availability: TBD	**Notes:**	

TR-1 - Trouble Rate

Purpose:
Evaluates the overall rate of trouble reports as a percentage of the total installed base of the service or element.

Description:
Measures trouble reports by product and compares them to the number of lines in service

- Includes all trouble reports closed during the reporting period, subject to exclusions specified below.
- Includes all applicable trouble reports, including those that are out of service and those that are only service-affecting.

Reporting Period: One month	**Unit of Measure**: Percent
Reporting Individual CLEC	**Disaggregation Reporting**: Regional level.

Formula:
[(Total number of trouble reports closed in the reporting period involving the specified service grouping) ÷ (Total number of the specified services that are in service in the reporting period)] x 100

Exclusions:

- Trouble reports coded as follows
  - For products measured from MTAS data (products listed for MSA-type, trouble reports coded to disposition codes for· Customer Action, Non-Telco Plant, Trouble Beyond the Network Interface, No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider)
  - For products measured from WFA (Workforce Administration) data (products listed for Zone-type) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE)
- Subsequent trouble reports of any trouble before the original trouble report is closed
- Information tickets generated for internal Qwest system/network monitoring purposes
- Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type".
- For products measured from MTAS data (products listed for MSA-type, trouble reports involving a "no access" delay)
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.
- Records involving official company services.
- Records with invalid trouble receipt dates.
- Records with invalid cleared or closed dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

Product Reporting:	
MSA Type:	
• Line Sharing	
Zone Type:	
•	
Availability: TBD	**Notes:**

Qwest Communications®
Service Interval Guide For

Exhibit C
Shared Loop/Line Sharing

V1.0

Product	Activity/Features	Services Ordered	FOC Guidelines	Installation Guidelines	Repair Guidelines
Shared Loop/Line Sharing	No conditioning		24 hours	Three (3) Business Days	24 hours OOS 48 hours AS
	With conditioning			Fifteen (15) Business Days	
	With Line Move / UDC Removal			Five (5) Business Days	

PU-04-620

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to.

Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver Co 80202

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 11/7/5

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below. ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7003 2260 0001 3516 0983

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-04-620

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to.

Melissa K Thompson
Qwest Corporation
1801 California St 10th Fl
Denver Co 80202

COMPLETE THIS SECTION ON DELIVERY

A. ~~Signature~~
X [signature] ☐ Agent ☐ Addressee

B Received by (Printed Name) | C. Date of Delivery 10/21/5

D Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below ☐ No

3 Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D

4 Restricted Delivery? *(Extra Fee)* ☐ Yes

2 Article Number
(Transfer from service label) 7005 0390 0001 4590 7503

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540