DIVIDER

STATE OF NORTH DAKOTA

□INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

PU-05-165
DIECA Communications, Inc.
Interconnection Arbitration
Application 05
Filed 3/15/2005 **Closed** 5/15/2006

63 PU-05-165 Filed 06/28/2013 Pages: 1808
Archived File - Roll No. 618
Public Service Commission

Public Service Commission
Receipt of Payment

Receipt# 6591

Received: 6/12/2006 Check# 420001670? for $276.05

Subject: Utility Valuation

Docket # PU-05-165

Qwest Corporation
1801 California Street, Suit
Denver CO 80202

61	**PU-05-165**	Pages: 1
	Receipt# 6,591 $276.05	
	by Qwest Corporation	
	06/12/2006	

Public Service Commission
Receipt of Payment

Receipt# 6590

Received: 6/12/2006 Check# 340455 for $276.05

Subject: Utility Valuation

Docket # PU-05-165

Covad Communications Company
110 Rio Robles
San Jose CA 95134

60	**PU-05-165**	Pages: 1
	Receipt# 6,590 $276.05	
	by Covad Communications Company	
	06/12/2006	

APPROVED
DATE: 5-24-06

MOTION

May 24, 2006

DIECA Communications, Inc.
Interconnection Arbitration
Application

Case No. PU-05-165

I move the Commission bill DIECA Communications, Inc. and Qwest Corporation for costs incurred to date in Case No. PU-05-165, DIECA Communications, Inc., Interconnection Arbitration, Application.

59 PU-05-165 Pages: 3
Utility Valuation Motion/Letter/Billing Statement
by Public Service Commission
05/24/2006 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

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, 2006

Patrick W Durick
Pearce & Durick
PO Box 400
Bismarck ND 58502-0400

Scott Macintosh
Qwest Corporation
220 N 5th St
Bismarck ND 58501

RE: Case No. PU-05-165
DIECA Communications, Inc.
Interconnection Arbitration
Application

Enclosed is a copy of the statement approved at the May 24, 2006 Public Service Commission meeting for the expenses incurred to date in Case No. PU-05-165.

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: Gregory Diamond
Covad Communications Company
7901 Lowry Blvd
Denver CO 80230

Linda Miles
Qwest Corporation
1600 7th Ave Rm 3007
Seattle WA 98191

John Devaney
Mary Rose Hughes
Perkins Coie
607 14th St NW Ste 800
Washington DC 20005-2011

Billing Statement

May 24, 2006

DIECA Communications, Inc.
Interconnection Arbitration
Application

Case No. PU-05-165

Bill To:

DIECA Communications, Inc. $276.05
Qwest Corporation 276.05

Expenses Incurred to Date:

Advertising Costs	$552.10

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

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc **Case No. PU-05-165**
Interconnection Arbitration
Arbitration

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **13th day of April, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Approving Arbitrated Agreement

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick PLLP
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 3206

Linda Miles
Qwest Corporation
1600 7th Ave RM 3007
Seattle WA 98191
Cert. No. 7004 2510 0004 8815 3213

Gregory Diamond Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver CO 80230

Cert. No. 7004 2510 0004 8815 3220

John Devaney
Mary Rose Hughes
Perkins Coie LLP
607 14th St N W Ste 800
Washington DC 20005-2011
Cert. No. 7004 2510 0004 8815 3237

Kent Blickensderfer
Qwest Corporation
220 N 5th St
Bismarck ND 58501
Cert. No. 7004 2510 0004 8815 3244

Jason Topp
Qwest Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402
Cert. No. 7004 2510 0004 8815 3251

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

Subscribed and sworn to before me
this **13th day of April, 2006**.

Notary Public

SEAL

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

MOTION

APPROVED
DATE: 4-12-06
KmF

April 12, 2006

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

I move the Commission adopt the Order Approving Arbitrated Agreement in DIECA Communications, Inc.'s Interconnection Agreement Arbitration with Qwest Corporation in Case No. PU-05-165.

PJF/sdh

57 PU-05-165 Pages: 1
Motion
by Public Service Commission
04/12/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

ORDER APPROVING ABRITRATED AGREEMENT

April 12, 2006

Preliminary Statement

On March 14, 2005 DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed a Petition for Arbitration to establish an interconnection agreement (ICA) with Qwest Corporation (Qwest).

On March 22, 2005, Covad filed a Substitute Exhibit "A" to its Petition for Arbitration.

On April 8, 2005, Qwest filed its Response to Covad's Petition for Arbitration. Qwest stated that through extensive and lengthy negotiations Covad and Qwest had resolved all but one issue regarding the proposed interconnection agreement. The single remaining issue relates to the obligation of Qwest to provide access to certain unbundled network elements (UNEs) at cost-based rates under Section 271 to the Telecommunications Act of 1996 (Act) and state law.

On April 10, 2005, Covad's counsel advised the Public Service Commission (Commission) via e-mail that Covad and Qwest agreed to resolve the one remaining issue by presenting it directly to the Commission rather than going through the arbitration process. The parties agreed to submit simultaneous briefs and agreed to present oral arguments if the Commission desired to have them do so.

Simultaneous opening and reply briefs were filed on May 13, 2005 and May 27, 2005 and on October 18, 2005, Covad and Qwest presented oral arguments before the Commission.

On November 10, 2005, pursuant to the Commission's request at the oral arguments, the parties submitted supplemental briefs on the issue of Commission authority under North Dakota law to compel Qwest to provide unbundled UNEs under Section 271 at cost-based rates.

56 PU-05-165 Pages: 3
Order Approving Abritrated Agreement
by Public Service Commission
04/12/2006 CC: Comm Legal Illona, Pat, Annette . .

On February 8, 2006, the Commission issued its Order approving Qwest's proposed language for the disputed sections of the interconnection agreement and ordering the parties to file the final interconnection agreement with the Commission for approval.

On March 16, 2006, Qwest filed a final Interconnection Agreement incorporating the required language changes.

On March 20, 2006, the Commission issued a Notice of Opportunity to File Comments on DIECA Communications, Inc.'s Interconnection Agreement with Qwest Corporation allowing written comments to be received until April 6, 2006. No written comments were received by the Commission.

Background

In deciding whether to approve or reject the Agreement, the Commission follows certain directives set forth in the Telecommunications Act of 1996 ("Act"), 47 U.S.C. § 151 et seq.

The Act sets forth the procedures for negotiation, arbitration, and approval of interconnection agreements between telecommunications providers. Notably, 47 U.S.C. §§ 252(a) and (e) mandate that all interconnection agreements between providers shall be submitted to the State commission (e.g., the North Dakota Public Service Commission) for review. The State commission may approve or reject any submitted agreement in accordance with the standards listed in 47 U.S.C. § 252(e)(2) which provides that a Commission may reject an agreement adopted by arbitration only if it discriminates against a telecommunications carrier not a party to the agreement, is not consistent with the public interest, convenience and necessity, or does not comply with the requirements of § 251 or § 252(d) of the Act.

In pertinent part, 47 U.S.C. § 251 requires that a telecommunications carrier interconnect with the facilities and equipment of another. 47 U.S.C. § 251(a). The Act further imposes upon all local exchange carriers certain duties concerning resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. 47 U.S.C. § 251(b). Additionally, the Act obligates incumbent local exchange carriers to negotiate in good faith the particular terms and conditions of interconnection agreements for the transmission and routing of telephone exchange service and exchange access. 47 U.S.C. § 251(c).

Part 47 U.S.C. § 252(d) addresses pricing standards and provides that rates for interconnection and network elements and transportation and termination of traffic must be just and reasonable, nondiscriminatory, and be based on the cost of providing the interconnection or network element or service.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

Findings of Fact

1. The Commission finds that none of the terms of the Agreement violate 47 U.S.C. § 251.

2. With respect to 47 U.S.C. § 252(d), the Commission finds that the prices set forth in the agreement have not been shown to violate § 252(d) of the Act.

3. The Commission finds that the Agreement does not discriminate against a telecommunications carrier not a party to the agreement and that the implementation of the agreement is consistent with the public interest, convenience and necessity and therefore finds that the Agreement does not violate § 252(e) of the Act.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over this matter.

2. The Agreement between DIECA Communications, Inc. and Qwest Corporation does not violate the pertinent provisions of the Act and should be approved.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders:

1. The Interconnection Agreement between DIECA Communications, Inc. and Qwest Corporation filed on March 16, 2006 is approved.

2. Any objection or motion not previously addressed is rejected or denied.

3. The Agreement shall not be assigned without the approval of the Commission.

PUBLIC SERVICE COMMISSION

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

RECEIVED
APR - 7 2006
ND PUBLIC SERVICE COMMISSION
SECRETARY

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, DIECA Communications,

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 3 day of April 20 06.

Kim Hilzendeger

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

55 PU-05-165 Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

04/07/2006 CC: Comm Legal Illona, Pat, Annette . .

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED
APR - 7 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

INVOICE

Order **21800-06034PP0** Invoice # **69696**

April 6, 2006

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.#:

Amount Due **$552.10**

Amount Paid

Please detach and return this portion with your payment

Public Utilities Division Invoice # 21800-06034PP0-69696

Ad Size	*Rate Type*	*Rate*	*Total*	*Discount*	*(%)*	*Caption*	*Page*	*Run Date*
Bismarck Tribune (Bismarck ND)								
84.00	SPR2	0.68	57.12	0.00		DIECA		03/23/06
Devils Lake Daily Journal (Devils Lake ND)								
92.00	SPR2	0.62	57.04	0.00		DIECA		03/24/06
Dickinson Press (Dickinson ND)								
100.00	SPR2	0.57	57.00	0.00		DIECA		03/24/06
Fargo, The Forum (Fargo ND)								
74.00	SPR2	0.76	56.24	0.00		DIECA		03/27/06
Grand Forks Herald (Grand Forks ND)								
71.00	SPR2	0.71	50.41	0.00		DIECA		03/23/06
Jamestown Sun (Jamestown ND)								
91.00	SPR2	0.58	52.78	0.00		DIECA		03/23/06
Minot Daily News (Minot ND)								
106.00	SPR2	0.54	57.24	0.00		DIECA		03/23/06
Valley City Times-Record (Valley City ND)								
83.00	SPR2	0.64	53.12	0.00		DIECA		03/23/06
Wahpeton Daily News (Wahpeton ND)								
111.00	SPR2	0.49	54.39	0.00		DIECA		03/23/06
Williston Herald (Williston ND)								
86.00	SPR2	0.66	56.76	0.00		DIECA		03/23/06

Gross Advertising	552.10	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	552.10	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	552.10

If you would like to pay this invoice with a credit card, please contact Rhonda at 701-223-6397.

55 **PU-05-165**

Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

04/07/2006 CC: Comm Legal Illona, Pat, Annette . .

Case No: PU-05-165

Notice of opportunity to file comments on Dieca Communications, Inc's interconnection agreement with Qwest Corporation

Published in:

3/23 – Bismarck

3/24 – Devils Lake

3/26 – Dickinson

3/27 – Fargo

3/23 – Grand Forks

3/23 – Jamestown

3/23 – Minot

3/23 – Valley City

3/23 – Wahpeton

3/23 – Williston

Scott, Sandi L.

From: Binek, William W.
Sent: Wednesday, March 29, 2006 4:59 PM
To: Scott, Sandi L.
Subject: FW: PU-05-165 DIECA Communications, Inc.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, March 29, 2006 3:45 PM
To: Binek, William W.
Cc: gdiamond@covad.com
Subject: PU-05-165 DIECA Communications, Inc.

Bill:

I contacted Mr. Greg Diamond and he advised me that DIECA Communications, Inc., accepts the Commission's ruling in the arbitration and the filed agreement is consistent with that ruling. Please let me know if you have any further questions.

Patrick W. Durick
P.O. Box 400
314 East Thayer Ave.
Bismarck, ND 58502-0400
(701) 333-0102 - Direct
(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick

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54 **PU-05-165** Pages: 1

Notice the DIECA accepts the Commission's ruling in the arbitration
by DIECA Communications, Inc. by
03/29/2006 CC: Comm Legal Illona, Pat, Annette . .

MOTION

APPROVED
DATE: 3-22-06
KMF

March 22, 2006

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

I move the Commission acknowledge the March 20, 2006 issuance of a Notice of Opportunity to File Comments on DIECA Communications, Inc.'s Interconnection Agreement with Qwest Corporation in Case No. PU-05-165.

PJF/sdh

53 **PU-05-165** Pages. 1

Motion Acknowledging issuance of Notice of Opportunity
by Public Service Commission
03/22/2006 CC: Comm Legal Illona, Pat, Annette

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc **Case No. PU-05-165**
Interconnection Arbitration
Arbitration

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **20th day of March, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

> **Notice of Opportunity to File Comments on DEICA Communications, Inc.'s Interconnection Agreement with Qwest Corporation**

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick PLLP
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 3046

Linda Miles
Qwest Corporation
1600 7th Ave RM 3007
Seattle WA 98191
Cert. No. 7004 2510 0004 8815 3053

Gregory Diamond Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver CO 80230

Cert. No. 7004 2510 0004 8815 3060

John Devaney
Mary Rose Hughes
Perkins Coie LLP
607 14th St N W Ste 800
Washington DC 20005-2011
Cert. No. 7004 2510 0004 8815 3077

Kent Blickensderfer
Qwest Corporation
220 N 5th St
Bismarck ND 58501
Cert. No. 7004 2510 0004 8815 3084

Jason Topp
Qwest Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402
Cert. No. 7004 2510 0004 8815 3091

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

Sharon Helding

Subscribed and sworn to before me
this **20th day of March, 2006**.

Sandra L Scott
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

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

AFFIDAVIT OF SERVICE BY REGULAR 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 **20th day of March, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by regular mail, fully prepaid, securely sealed, each containing a photocopy of:

> **Notice of Opportunity to File Comments on DEICA Communications, Inc.'s Interconnection Agreement with Qwest Corporation**

The envelopes were addressed as follows:

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 **20th day of March, 2006**.

Sandra L. Scott
Notary Public

SEAL

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

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co
Absaraka ND 58002

jlchapman@acomminc.com
Jerry Chapman
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510 1st Ave N Ste 203
Minneapolis MN 55403-0343

judy.messenger@paetec.com
Judy Messenger
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600 Willowbrook Office Pk
Fairport NY 14450

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305 6th Ave SE
Aberdeen SD 57402-0970

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Ron Harper
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1717 E Interstate Ave
Bismarck ND 58501-0564

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
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Derrick Bulawa
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

dan.meldazis@broadwing.com
Dan Meldazis
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Chicago IL 60601

sheba.chacko@btna.com
A Sheba Chacko
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11440 Commerce Park Dr
Reston VA 20191

diane.peters@globalcrossing.com
Diane Peters
Budget Call Long Distance Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

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Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

jean.houck@btitelecom.net
Jean Houck
Business Telecom Inc
7037 Old Madison Pike Ste 400
Huntsville AL 35806

astevens@czn.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

michael_nelson@cable.comcast.com
Michael Nelson
Comcast Business Communications Inc
183 Inverness Dr W
Englewood CO 80112

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Computer Telephone Corp
220 Bear Hill Rd
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Larry Manna
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1012 Industrial Blvd
South Lake Tahoe CA 96150

sheba.chacko@btna.com
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Reston VA 20191

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Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
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Mary Jane Rasher
DCI Group

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Troy Schilling
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PO Box 69
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tschilling@drtel.com
Troy Schilling
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PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
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Santa Clara CA 95051-0703

chopfinger @securustech.net
Curtis Hopfinger
Evercom Systems Inc
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Dallas TX 75254-7476

bgipson@vartec.net
Becky Gipson
Excel Telecommunications Inc
2440 Marsh Lane
Carrollton TX 75006

astevens@czn.com

Frontier Communications of America Inc
4 Triad Ctr Ste 200
Salt Lake City UT 84180

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Glenn Richards
Glenn Richards
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Pittsford NY 14534

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Pittsford NY 14534

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Ray Brown
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P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
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Halstad MN 56548-0055

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Chris Stein
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Halstad MN 56548

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Fargo ND 58104

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Carl Wolf Billek
IDT America Corp
520 Broad St
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
855 45th St SW Ste 11
Fargo ND 58103-1036

gene.curtis@integratelecom.com
Gene Curtis
Integra Telecom of North Dakota Inc
745 45th St SW Ste C
Fargo ND 59103

marsha.pokorny@ildmail.com
Marsha Pokorny
Intellicall Operator Services

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

dave_read@inter-tel.com
Dave Read
Inter-Tel NetSolutions Inc
885 Trademark Dr
Reno NV 89511

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

francie@talk.com
Francie McComb
LDMI Telecommunications Inc
6805 Route 202
New Hoee PA 18938

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

gtaylor@matrixvalue.com
Greg Taylor
Matrix Telecom Inc
300 N Meridian Ste 200-North
Oklahoma City OK 73107

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

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Michel Singer-Nelson
MCI
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Bismarck ND 58502-2216

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Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
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Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary` FL 32746

Ridley Telephone Company LLC
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Smartnet Inc
649 4th Ave SW
Dickinson ND 58601

Smartstop Inc
333 SW Taylor St
Portland OR 97204-2446

Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Snip Link LLC
100-A Twinbridge Dr
Pennsauken NJ 08110

Souris River Telecommunications Company
P O Box 2027
Minot ND 58702-2027

Andrew Jones
Sprint Communications Company
6391 Print Pkwy
Overland Park KS 66251-6100

Sprint Spectrum LP
6160 Sprint Pkwy 4th Fl
KSOPHIO414
Overland Park KS 66251

Startec Global Licensing Company
1151 Seven Locks Rd
Potomac MD 20854-2968

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

TalkNow Inc
9775 Business Park Ave
San Diego CA 92313

TCPB Marketing Company Ltd
P O Box 40149
Bay Village OH 44140-0149

William Staycoff
Telcom Billing Services Inc
9243 E River Rd NW
Coon Rapids MN 55433-5722

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Donald Roudebush
Telecare Incorporated
444 Lafayette Rd
Noblesville IN 46060

TeleCents Communications Inc
8615 Richardson Rd Ste 200
Walled Lake MI 48390

Telecom Management Inc
563 Warren Ave
Portland ME 04103

Sue Weiske
Telecom Resources Inc
2020 Baltimore
Kansas City MO 64108-1914

Teleconnect Long Dist Sevices & Syste
Co
500 2nd Ave SE
Cedar Rapids IA 52401

Telefyne Incorporated
4286 Woodbine Rd Ste B
Pace FL 32571

Telenational Communications Inc
7310 Woolworth Ave
Omaha NE 68124

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telliss LLC
10142 Brooks School Rd Ste 198
Fishers IN 46038

Telrite Corporation
14500 Lochridge Blvd Ste D
Covington GA 30014-4941

TelVue Corporation
16000 Horizon Way
Mt Laurel NJ 08054

The Farm Bureau Connection
600 Maryland Ave SW Ste 800
Washington DC 20024-2520

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Total Call International Inc
707 Wilshire Blvd 9th Fl
Los Angeles CA 90017-3501

Touch I Communications Inc
100 Brookwood Rd
Atmore AL 36504-5751

Touchtone Communications Inc
16 S Jefferson Rd
Whippany NJ 07981

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

Transcom Communications Inc
1925 W John Carpenter Frwy Ste 500
Irving TX 75063

Tri-M Communications Inc
125 E DeLaGuerra Ste 203
Santa Barbara CA 93101

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

U S South Communications Inc
250 Williams St Ste M-100
Atlanta GA 30303-1032

Uni-Tel Communications Group Inc
47 E Chicago Ave Ste 328
Naperville IL 60540

US LEC Communications Inc
6801 Morrison Blvd Morrocroft III
Charlotte NC 28211

USA Digital Communications Inc
1603 SE 19th St Ste 120
Edmond OK 73013-6621

Rick Cantu
Value-Added Communications Inc
3801 E Plano Pkwy Ste 100
Plano TX 75074-1808

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

W2Com International LLC
3500 Park Ctr Dr
Dayton OH 45414

WebNet Communications Inc
20904 Winola Ter
Ashburn VA 20147-6482

Wholesale Carrier Services Inc
7200 W Camino Real Ste 303
Boca Raton FL 33433

Wireless Alliance LLC
P O Box 2000
Alexandria MN 56308-2000

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Jill Papenhausen
Zone Telecom Inc
3 Executive Campus Ste 520
Cherry Hill NJ 08002

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

Virgin Mobile USA LLC
10 Independence Blvd
Warren NJ 07059-6747

WDT World Discount Tele Co
13644 Neuton Rd
Dallas TX 75244

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

Working Assets Funding Services
101 Market St #700
San Francisco CA 94105-1533

X2Comm Inc
270 S Main St
Flemington NJ 08822

Yak Communications (America) Inc
300 Consilium Pl Ste 500
Toronto Ontario CA M1H 3G2

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Monday, March 20, 2006 9:14 AM
To: ndna
Subject: Attached Notice of Opportunity to File Comments, Case No. PU-05-165

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Opportunity to File Comments on DEICA Communications, Inc.'s Interconnection Agreement with Qwest Corporation published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item Only" article as well.

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

If you have any questions, please let me know.

Thank you.

Sharon Helbling
Public Utilities Division

notcie of
-165.doc (

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Notice emailed to NDNA requesting publication by Public Service Commission
03/20/2006 CC: Comm Legal Iliona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

NOTICE OF OPPORTUNITY TO FILE COMMENTS ON DEICA COMMUNICATIONS, INC.'s INTERCONNECTION AGREEMENT WITH QWEST CORPORATION

March 20, 2006

The Telecommunications Act of 1996 (Telecommunications Act), provides that local exchange telephone companies provide interconnection with other telecommunications carriers and enter into negotiations with those telecommunications carriers for terms, conditions and rates for interconnection. Qwest Communications (Qwest) has been negotiating with DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) for such interconnection. On March 14, 2005 Covad filed a petition requesting that the Commission arbitrate unresolved issues related to its on-going interconnection. On February 8, 2006 the Commission issued its order directing that the parties file a final interconnection agreement. The final interconnection agreement was filed on March 17, 2006.

The Telecommunications Act requires that any interconnection agreement adopted by negotiation or agreement be submitted for approval to the Commission. Under section 252(e)(2)(A), the Commission may only reject an agreement (or portion thereof) adopted by negotiation if it finds that:

1. the agreement (or portion thereof) discriminates against a telecommunications carrier that was not a party to the agreement;
2. the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

Under section 252(e)(2)(B) the Commission may only reject an agreement (or portion thereof) adopted by arbitration if it finds that:

1. the agreement does not meet the requirements of section 251 relating to interconnection, including regulations prescribed by the Commission;
2. the agreement does not meet the standards prescribed under section 252(d) relating to pricing.

In addition, the Commission may include in its review state requirements which do not constitute barriers to entry under section 253.

Section 252(e)(4) requires that the Commission approve or reject an agreement within thirty (30) days after submission by the parties of an agreement adopted by arbitration.

The Commission will receive written comments on the Interconnection Agreement until **April 6, 2006**. Anyone who intends to file written comments may contact the Commission to receive a copy of the Interconnection Agreement.

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**

200 South 5th Street, Room 2200
Minneapolis, Minnesota 55402

Qwest Corporation
Law Department
(612) 672-8905-Phone
(612) 672-8911-Fax

Jason D. Topp
Corporate Counsel

Qwest
Spirit of Service™

March 16, 2006

RECEIVED
MAR 16 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

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

Re: In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation
Case No. PU-05-165

Dear Ms. Jeffcoat-Sacco:

Pursuant to the Commission's Order on February 8, 2006, enclosed for filing are the original and seven copies of the Wireline Interconnection Agreement regarding the above-referenced matter.

Very truly yours,

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

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Cover letter re filing of Interconnection Agreement
by DIECA Communications, Inc.
03/16/2006 CC: Comm Legal Illona, Pat, Annette . .

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2006, the original and seven copies of the foregoing **Wireline Interconnection Agreement** were served upon the following party:

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

and copies sent electronically or via U.S. mail, addressed to the following:

Patrick W. Derrick
Pearch & Derrick, PLOP
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502
pwd@pearce-durick.com

Gregory Diamond
Covad Communications Co.
7901 Lowry Boulevard
Denver, CO 80230
gdiamond@covad.com

Kent Blickensderfer
Qwest Corporation
220 North 5th Street
P.O. Box 5508
Bismarck, ND 58501
Kent.Blickensderfer@qwest.com

Dianne Barthel

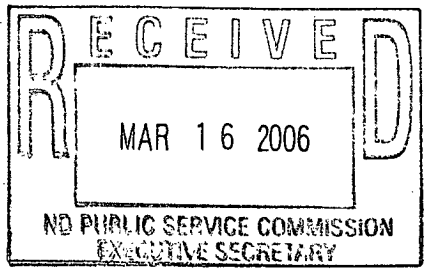
AGREEMENT FOR TERMS AND CONDITIONS FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES, AND RESALE OF TELECOMMUNICATIONS SERVICES PROVIDED BY

QWEST CORPORATION

FOR

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY

IN THE STATE OF NORTH DAKOTA



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Interconnection Agreement

by DIECA Communications, Inc. by

03/16/2006 CC: Comm Legal Illona, Pat, Annette . .

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EXHIBIT J Intentionally Left Blank

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EXHIBIT M Interim Advice Adoption Letter

Section 1.0 - GENERAL TERMS

1.1 This Agreement for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("CLEC"), a Virginia corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 Intentionally Left Blank.

1.3 This Agreement sets forth the terms, conditions and pricing under which Qwest will provide to CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of North Dakota, for purposes of providing local Telecommunications Services.

1.4 Intentionally Left Blank.

1.5 Intentionally Left Blank. .

1.6 Intentionally Left Blank.

1.7 Once this Agreement is approved , any amendment to the Agreement by the Parties will be accomplished through Section 252 of the Act. This Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in the SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the Change Management Process (CMP). CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and Billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options unless the Commission orders otherwise.

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, and CLEC wishes to purchase such new product prior to execution of an Amendment with different terms and conditions, CLEC agrees to abide by the terms and conditions defined by Qwest for such new product on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 CLEC may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, contained in an existing Interconnection Agreement or SGAT, Qwest may require CLEC to accept Legitimately Related provisions to ensure that the opted into provision retains the context set forth in the Interconnection Agreement or this Agreement. The expiration date of the Interconnection Agreement from which the opted into provision was selected or the expiration date specified in the SGAT respectively, whichever is closer to the present date, shall be considered Legitimately Related. In all other instances, Qwest bears the burden of establishing that an Interconnection Agreement or SGAT provision is Legitimately Related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are Legitimately Related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are Legitimately Related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not Legitimately Related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.2.1 Nothing in this Agreement shall preclude CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such provision or agreement itself resulted from an opting in by CLEC that is a party to it.

1.8.3 If Qwest has identified additional provisions that Qwest believes are Legitimately Related and has specified provisions in the proposed amendment to which those provisions are not Legitimately Related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are Legitimately Related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) Days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, 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 metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorneys' fees and costs in prosecuting/defending the action. However, if either Party is found by the Commission to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorneys' fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission

Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successor) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of Telecommunications industry administrative or technical standards.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as of October 3, 2003 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendancy of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60)

Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be resolved by the arbitrator(s) during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendancy of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.2.1 In addition to, but not in limitation of, 2.2 above, nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the FCC's decision and rules adopted in *In the Matter of 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 and 98-147, FCC 03-36, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, nor rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same (Decision(s)). Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decision should be changed, vacated, dismissed, stayed or modified.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between this Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates terms and conditions of this Agreement shall prevail.

2.3.1 Intentionally Left Blank.

Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. The Parties shall complete Qwest's "New Customer Questionnaire," as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New Customer Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain Billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new New Customer Questionnaire; however, CLEC will update its New Customer Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this Agreement, which may include an amendment pursuant to Section 1.7.1.

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Section 4.0 - DEFINITIONS

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a Switch used to connect End Office Switches to interexchange Carrier Switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline Telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video Telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

"Applicable Law" means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and Interconnection for Telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in Switch technology that initially records telecommunication message information. AMA format is contained in the AMA

document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification" or "ALI" is the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Number Identification" or "ANI" is the Billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit Switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to End User Customers which provides the End User Customer with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such End User Customer to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

"Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User Customer and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Carrier Liaison Committee" or "CLC" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a Switch used to provide Telecommunications Services, including, but not limited to:

> "End Office Switches" which are used to terminate End User Customer station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and
>
> "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be considered Tandem Office Switch(es) to the extent such Switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch. A fact-based consideration by the Commission of geography should be used to classify any Switch on a prospective basis.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record Billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Centrex" shall have the meaning set forth in Section 6.2.2.9.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the Billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an

Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the State Regulatory Commission or Board with jurisdiction for the services provided pursuant to this Agreement. In the State of North Dakota, "Commission" means the North Dakota Public Service Commission.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, Customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data" means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Data Local Exchange Carrier" or "DLEC" is a CLEC interconnecting primarily for purposes of transporting data.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between Qwest Wire Centers, Qwest End Office Switches, and Qwest Tandem Switches to which CLEC is granted exclusive use. The path may operate at DS-1 or DS-3 transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated Cross Connection of Digital Signal Level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with Cross Connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated Cross Connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a

manual Cross Connection. Interconnection is between a DSX or LGX to a Switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay, or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

> "ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.
>
> "HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.
>
> "HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.
>
> "IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.
>
> "RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the loop and optimize the line rate for a given line quality.
>
> "SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission

technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Section 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Lists" shall have the meaning set forth in Section 10.6.1.1.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 5.2.1.

"Electronic Bonding" is a real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

"Enhanced Services" means any service offered over Common Carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve End User Customer interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Section 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access" (IntraLATA Toll) as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the Agreement shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the Local Calling Area as determined by the Commission.

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually-agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail Customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the Provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Individual Case Basis" or "ICB" shall have the meaning set forth in Exhibit I.

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"Integrated Digital Loop Carrier" means a subscriber Loop Carrier system, which integrates multiple voice channels within the Switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When CLEC signs and delivers a copy of this Agreement to Qwest pursuant to the notice provision of the Agreement, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(e) of the Act.

"Interexchange Carrier" or "IXC" means a Carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately Related" terms and conditions are those rates, terms, and conditions that relate solely to the individual Interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other Interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular Interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXCs to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP" shall have the meaning set forth in Section 10.2.1.1.

"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and Billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying Carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the technician performs work on a business Day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply when the technician performs work on either a Sunday or Qwest recognized holiday. These charges may be assessed by either Qwest or CLEC in accordance with 12.3.4.4.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one Carrier's responsibility for service begins and the other Carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" means an Interconnection between two (2) networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the Billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the Carrier in the call routing process immediately preceding the terminating Carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an

automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for Maintenance and Repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element (including all of its features, functions and capabilities) that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Section 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"Non-Qualifying Service" is a service that is not a Qualifying Service.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the basic numbering plan for the Telecommunications networks located in the United States as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area,

and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit Switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and Billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the Billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility Provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where Technically Feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User Customers, its Affiliates or to any other party.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and IntraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop Concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

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

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7, including out of hours coordination.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider.

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Qualifying Service" is a Telecommunications Service that competes with a Telecommunications Service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, Local Exchange Service, such as plain old telephone service (POTS), and Access Services, such as Digital Subscriber Line services and high-capacity circuits. Services used solely as an input for CLEC to provide retail interexchange or information services are not Qualifying Services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center, and 2) the corresponding geographic area which is associated with one or more particular NPA-NNX codes which have been assigned to a LEC or its provision of Telephone Exchange Service.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes, but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the Central Office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for Provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Premises" means all Qwest Premises, other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User Customer and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital Loop Carriers, fiber hubs, DSLAMs, etc.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

1) Message Transfer Part (MTP), which provides functions for basic routing of signaling messages between signaling points;

2) Signaling Connection Control Part (SCCP), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;

3) Integrated Services Digital Network User Part (ISUP), which provides for transfer of call setup signaling information between signaling points; and

4) Transaction Capabilities Application Part (TCAP), which provides for transfer of non-circuit related information between signaling points.

"Signaling Transfer Point" or "STP" means a Packet Switch that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common channel Signaling (CCS) messages.

"Special Request Process" or "SRP" shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two (2) copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate

satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all Loop lengths, model Loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the Loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or "SATE" shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Technically Feasible." Interconnection, access to unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that

such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary Transaction Sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trouble Reports" means trouble reports received via MEDIACC, CEMR, or reported to one of Qwest's call or repair centers, and managed and tracked within Qwest's repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled accessor for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.[1]

"Unbundled Network Element Platform" or "UNE-P" is a combination of Unbundled Network Elements as set forth in Section 9.23.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network as required by the FCC, the Commission or this Agreement.

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

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[1] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

Section 5.0 - TERMS AND CONDITIONS

5.1 General Provisions

5.1.1 Intentionally Left Blank.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1 If such impairment is material and poses an immediate threat to the safety of either Party's employees, Customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other Party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates the provision or refuse to provide the same type of service if it reasonably appears that the particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other Party shall provide written notice within five (5) calendar Days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar Days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar Days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its End User Customers and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and order of the Federal Communications Commission and orders of the Commission.

5.2 Term of Agreement

5.2.1 This Agreement shall become effective on the date of Commission Approval ("Effective Date"). This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire on June 30, 2009.

5.2.2 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 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the term; or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses.

5.3 Proof of Authorization

5.3.1 Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all Applicable Laws and rules and shall be subject to any penalties contained therein.

5.4 Payment

5.4.1 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.

5.4.1.1 Qwest may send bills to CLEC or CLEC may send bills to Qwest, containing amounts found to be unbilled or underbilled ("Backbill(s)"), as follows:

5.4.1.1.1 Except as provided in Section 5.4.1.1.5 below, for erroneous failure to bill or underbilling of any charges incurred by the billed Party under this Agreement, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120) Days prior to the Backbill Date. For the purposes of this Section 5.4.1.1, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the Billing cycle in which the Billed Party used such service; or

5.4.1.1.2 For failure to bill or underbilling where data exchange with third party Carriers is required, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120)Days prior to the Backbill Date; or

5.4.1.1.3 Where Qwest or CLEC is required by regulatory agencies, arbitrators, courts, or legislatures to implement new pricing structures, Qwest may submit to CLEC, or CLEC may submit to Qwest, up to one hundred twenty (120) Days after the later of the implementation date required in the regulatory action, the date of the final, non-appealable arbitration or order, or the effective date of the legislation or Tariff (each such date hereinafter referred to as a "Governmental Requirement Date"), a Backbill for charges incurred by CLEC, or incurred by Qwest, as a result of, and since the applicable Governmental Requirement Date; or

5.4.1.1.4 Qwest and CLEC will exert commercially reasonable efforts not to send Backbills from their Billing systems outside the time periods defined in Section 5.4.1.1.1 through 5.4.1.1.3, above. In any event, except as provided in Section 5.4.1.1.5 below, neither CLEC nor Qwest will be liable for charges contained in Backbills that are sent outside the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3.

5.4.1.1.5 The Billing Party may send Backbills outside of the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3, but otherwise subject to the limitations in this Agreement applicable to Billing disputes, for charges incurred by the billed Party where the failure to bill or underbilling is caused

solely by the acts, failure or refusal to act, errors or omissions of the billed Party, and the billed Party shall be liable for such Backbilled charges. Where such failure to bill or underbilling is caused in part by the billed Party and in part by the Billing Party, the Parties may agree upon other time periods for Backbilling.

5.4.2 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 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. 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.

5.4.3 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 5.4.4 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 reconnect charge set forth in Exhibit A required to reconnect each resold 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 will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 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.

5.4.4 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. To the extent that either Party disputes any charges or monthly billing pursuant to this Section 5.4.4, the Party's

withholding of such disputed charges pursuant to this Section 5.4.4 shall not constitute a default under Section 5.13 until such dispute is resolved. Nothing in this Section shall be construed to restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall be subject to the time limits set forth in Section 5.18.5.

5.4.4.1 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.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, 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.

5.4.4.3 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 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or Commission rules.

5.4.5 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 this Section 5.4 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 of undisputed amounts 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 if allowed by the applicable Commission regulations, 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.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission 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.

5.4.7 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 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 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 Customers to make other arrangements for such non-paid services.

5.5 Taxes

5.5.1 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.

5.6 Insurance

5.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding $10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the $10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than $100,000 each

accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than $1,000,000 each occurrence and $2,000,000 general aggregate limit.

5.6.1.3 Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than $1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of $10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is $11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the Premises or Remote Premises.

5.6.2 Each Party will initially provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificates upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar Days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by the other Party; and (4) acknowledge severability of interest/cross liability coverage.

5.7 Force Majeure

5.7.1 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.

5.8 Limitation of Liability

5.8.1 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. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.

5.8.2 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. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

5.8.3 Intentionally Left Blank.

5.8.4 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.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 Intentionally Left Blank.

5.9 Indemnity

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

5.9.1.1 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.

5.9.1.2 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 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.

5.9.1.3 Reserved for Future Use.

5.9.1.4 For purposes of Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS Splitter: "End User Customer" means the DSL provider's End User Customer for claims relating to DSL and the voice service provider's End User Customer for claims relating to voice service.

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 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.

5.9.2.2 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.

5.9.2.3 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.

5.10 Intellectual Property

5.10.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to Telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement.

Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than Qwest services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause End User Customers to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes End User Customer confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective Owners. The Parties shall comply with all Applicable Law governing Marks worldwide and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

5.11 Warranties

5.11.1 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.

5.12 Assignment

5.12.1 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.

5.12.2 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) Days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission'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. Qwest will provide notice to CLEC after all required state and federal approvals for the transfer have been issued. 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.

5.12.3 Nothing in this section is intended to restrict CLEC's rights to opt into interconnection agreements under § 252 of the Act.

5.13 Default

5.13.1 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.

5.14 Disclaimer of Agency

5.14.1 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.

5.15 Severability

5.15.1 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.

5.16 Nondisclosure

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party shall from that time forward, treat such information as Proprietary Information. To the extent permitted by Applicable Law, either Party may disclose to the other proprietary or confidential customer, technical or business information.

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. Each Party shall use the other Party's Proprietary Information only in connection with this Agreement and in accordance with Applicable Law, including but not limited to, 47 U.S.C. § 222. In accordance with Section 222 of the Act, when either Party receives or obtains Proprietary Information from the other Party for purposes of providing any Telecommunications Services, that Party shall use such information only for such purpose, and shall not use such information for its own marketing efforts. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. Violations of these obligations shall subject a Party's employees to disciplinary action up to and including termination of employment. If either Party loses, or makes an unauthorized disclosure of, the other Party's Proprietary Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

b) is or becomes publicly known through no wrongful act of the receiving Party; or

c) is rightfully received from a third Person having no direct or indirect secrecy or

confidentiality obligation to the disclosing Party with respect to such information; or

d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; or

f) is approved for release by written authorization of the disclosing Party; or

g) is required to be disclosed by the receiving Party pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 Forecasts provided by either Party to the other Party shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to Qwest's legal personnel in

connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which CLEC provided it to Qwest under this Agreement, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Upon the specific order of the Commission, Qwest may provide the forecast information that CLEC has made available to Qwest under this Agreement, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to CLEC involved, in order to allow it to prosecute such procedures to their completion.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

5.17 Survival

5.17.1 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.

5.18 Dispute Resolution

5.18.1 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 5.18 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 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 pendancy of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the arbitrator, such decision shall supersede any provisional remedy.

5.18.2 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.

5.18.3 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 5.18.3.1. 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 5.18. 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 or in another mutually agreeable location. 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). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty-eight (48) hours of the determination to arbitrate.

5.18.3.1 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 5.18.3.1, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 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.

5.18.3.3 Arbitrator's Decision

5.18.3.3.1 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.

5.18.3.3.2 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.

5.18.3.4 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 5.16 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.

5.18.4 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.

5.18.5 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. No

Dispute relating to bills submitted by either Party to the other Party may be brought more than one hundred twenty (120) Days after the date of the bill(s) at issue.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 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.

5.18.8 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.

5.19 Controlling Law

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota .

5.20 Responsibility for Environmental Contamination

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the Work Locations or (ii) the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement or equipment placement activities undertaken by CLEC, which are not in accordance with Technical Publication 77350, that result in the release of respirable asbestos from asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

5.21 Notices

5.21.1 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 below:

Qwest Corporation
Director - Interconnection Compliance
1801 California Street, Suite 2410
Denver, CO 80202
Phone: 303-965-3029
Fax: 303-896-7077
Email: 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:

Covad Communications
Mr. Jim Kirkland
Senior Vice President and General Counsel
110 Rio Robles
San Jose, CA 95134-1813
Phone: (408)952-6400
Fax: (408)952-7539
Email: kirkland@covad.com

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 5.21.

5.22 Responsibility of Each Party

5.22.1 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.

5.23 No Third Party Beneficiaries

5.23.1 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.

5.24 Reserved for Future Use

5.24.1 Reserved for Future Use.

5.25 Publicity

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

5.26 Executed in Counterparts

5.26.1 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.

5.27 Compliance

5.27.1 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.

5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

5.29 Cooperation

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance,

Provisioning and Billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

5.30 Amendments

5.30.1 Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar Days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

5.30.2 Intentionally Left Blank.

5.30.3 The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Agreement may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

5.31 Entire Agreement

5.31.1 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.

5.32 Intentionally Left Blank

5.33 None of the terms and conditions contained herein shall be construed, interpreted or applied to limit or in any way impede the full and complete execution upon, or enforceability of, any separate or independent agreement entered into by the Parties relating to the purchase of services or other network components that are not required to be included under this Agreement or any other agreement that must be filed pursuant to Section 252 of the Act. Any separate or independent agreement entered into by the Parties that creates a filing obligation pursuant to Section 252 must be filed as an interconnection agreement with the appropriate state commissions(s). The Parties enter into this Agreement without waiving any current or future legal rights and without prejudicing any position either Party may take on issues before state or federal regulatory or legislative bodies or courts of competent jurisdiction.

Section 6.0 – RESALE

This agreement does not include resale or resale commingling. In the event CLEC wishes to order resale or resale commingling, the Parties will negotiate an amendment to this agreement, subject to Applicable Law.

Section 7.0 - INTERCONNECTION

CLEC does not intend to order Interconnection; however in the event CLEC wishes to order Interconnection, the Parties will negotiate an appropriate amendment to this Agreement.

Section 8.0 – COLLOCATION

8.1 Description

8.1.1 Collocation allows for the placing of equipment by CLEC at Qwest's Premises, where Technically Feasible and space is legitimately available, that is necessary for accessing Unbundled Network Elements (UNEs), ancillary services or Interconnection. Collocation includes the leasing to CLEC of physical space in Qwest Premises, as well as the resources necessary for the operation and economical use of collocated equipment, such as the use by CLEC of power; heating, ventilation and air conditioning (HVAC); and cabling in Qwest's Premises. Collocation also allows CLEC to access Interconnection Distribution Frames (ICDF) for the purpose of accessing and combining Unbundled Network Elements and accessing ancillary services. There are currently eight (8) standard types of Collocation available pursuant to this Agreement – Virtual, Caged Physical, Shared Caged Physical, Cageless Physical, Interconnection Distribution Frame, Adjacent Collocation, Common Area Splitter Collocation, and Remote Collocation. Other types of Collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of Collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this Agreement. Nothing in this Agreement shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the Parties or ordered by the state Commission or any other competent authority

8.1.1.1 Virtual Collocation -- A Virtual Collocation arrangement requires CLEC to purchase and deliver to Qwest CLEC's own equipment for Qwest to install, repair, and maintain in Qwest's Premises. CLEC does not have physical access to its virtually collocated equipment in the Qwest Premises.

8.1.1.2 Caged Physical Collocation -- allows CLEC to lease caged floor space for placement of its equipment within Qwest's Premises for the purpose of interconnecting with Qwest Finished Services or accessing Unbundled Network Elements. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within the cage.

8.1.1.3 Cageless Physical Collocation -- is a non-caged area within a Qwest Premises. Qwest shall provide such space in an efficient manner that minimizes the time and costs. In Wire Centers, space will be made available in single frame bay increments. Qwest shall provide space, where available, in existing Qwest line ups, under existing cable racking and ironwork, where there is existing HVAC and proximately available power supplies, subject to the reservation guidelines set forth in Section 8.2.1.16. In Wire Centers, the current minimum square footage is nine (9) square feet per bay, however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly. Space will be provided utilizing industry standard equipment bay configurations in which CLEC can place and maintain its own equipment. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within CLEC's leased Collocation space. CLEC may elect to share its Cageless Collocation space (e.g.

sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, provisioning, repairing, maintaining, and billing for equipment, cross-connects, and services in its Collocation space.

8.1.1.4 Shared Caged Physical Collocation -- allows two (2) or more CLECs to share or sublease a single Collocation enclosure. Under Shared Physical Collocation, one (1) CLEC obtains a Caged Physical Collocation arrangement from Qwest pursuant to this Agreement or an approved Interconnection agreement, and another CLEC, pursuant to the terms of its Agreement or approved Interconnection agreement, may share use of that space, in accordance to terms and conditions of a sublease agreement between the two (2) CLECs. Shared Collocation may also be established through joint Application by CLECs in which Qwest will have a separate Billing relationship with each applicant and will look to each collocating CLEC for payment of its proportionate share of the charges relating to the Collocation space. Qwest will prorate the charge for site conditioning and preparation undertaken by Qwest to construct the Shared Collocation cage or condition the space for Collocation use, regardless of how many Carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating CLEC (and billed directly to each such CLEC) based on the percentage of the total space utilized by that CLEC as per the Collocation Application. Qwest shall not place unreasonable restrictions on CLEC's use of a Collocation cage, such as limiting CLEC's ability to contract with other CLECs to share CLEC's Collocation cage in a sublease-type arrangement. In addition, if two (2) or more CLECs who have Interconnection agreements with Qwest utilize a Shared Collocation arrangement, Qwest shall permit each CLEC to order UNEs to and provision service from that Shared Collocation space, regardless of which CLEC was the original collocator, directly from Qwest. Qwest shall make Shared Collocation space available in single-bay increments or their equivalent.

8.1.1.5 Interconnection Distribution Frame (ICDF) Collocation -- is offered for the purpose of facilitating CLEC's combining of Unbundled Network Elements and ancillary services. Under ICDF Collocation, CLEC need not collocate equipment in the Qwest Wire Center. With ICDF Collocation, CLEC will have access to the Qwest Wire Center and an ICDF to combine UNEs and ancillary services. The ICDF connects through tie cables to various points within the Wire Center (e.g., MDF, COSMIC™ or DSX, etc.) providing CLEC with access to UNEs and ancillary services.

8.1.1.5.1 The ICDF is a distribution frame shared by multiple providers. If CLEC desires a dedicated distribution frame for the purpose of facilitating CLEC's combination of UNEs and ancillary services, CLEC may do so through the placement of a CLEC-owned Cross Connection device collocated in the Qwest Wire Center through either Caged or Cageless Physical Collocation.

8.1.1.6 Adjacent Collocation – is available in those instances where space is legitimately exhausted in a particular Qwest Premises to accommodate Physical Collocation. Qwest shall make space available in adjacent controlled environmental vaults, controlled environmental huts, or similar structures to the extent Technically Feasible. Qwest shall permit CLEC to construct or otherwise procure such an adjacent structure on property owned, leased or otherwise controlled by Qwest, subject only to applicable OSHA, EPA, federal, state, and local safety and maintenance requirements. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's

approval, which approval may not be unreasonably withheld or delayed. Qwest must provide power and Physical Collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other Physical Collocation arrangement. Qwest must permit CLEC to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and Telecommunications equipment, in adjacent facilities constructed by Qwest, by CLEC itself, or a third party.

8.1.1.7 Common Area Splitter Collocation – See Section 9.4 for a description.

8.1.1.8 Remote Collocation – allows CLEC to collocate equipment in or adjacent to a Qwest Remote Premises. The terms for Remote Collocation are set forth more fully in Section 8.2.7 and 8.4.6.

8.1.1.8.1 With respect to Cross Connections for access to Subloop elements in multi-tenant environments (MTE), and field connection points (FCP), the provisions concerning Subloop access and intervals are contained in Section 9.3. This type of access and Cross Connection is not Collocation.

8.1.2 Collocation – Available Inventory

8.1.2.1 Collocation Available Inventory provides the terms and conditions under which (1) CLEC can purchase returned Collocation sites and elements ("Qwest Postings") and (2) CLEC may post CLEC controlled sites that are available for a Transfer Of Responsibility ("CLEC Postings"). Available sites will be posted on the "Collocation Classified" web site: http://www.qwest.com/cgi-bin/wholesale/collocation.cgi.

8.1.2.1.1 Qwest Postings: Collocation sites available on the Qwest Available Inventory list may be totally or partially completed before being returned to Qwest inventory. Both caged and cageless sites will be offered on the inventory list. Sites will be offered "AS IS, WHERE IS."

8.1.2.1.2 CLEC Postings: Available sites listed in the "CLEC Postings" section of the Collocation Classifieds are eligible for Transfer to an assuming CLEC with or without working circuits as described in the Collocation Transfer of Responsibility Product offering.

8.1.2.1.3 The "Collocation Classified" web site refers to a tool used by CLEC and Qwest to post listings of available collocation sites. The site contains Qwest Postings and CLEC Postings.

8.1.3 Collocation – Joint Testing

8.1.3.1 Qwest's Joint Testing at the Interconnection Distribution Frame (ICDF) allows a CLEC to request Qwest to participate in Joint Testing of CLEC terminations at the ICDF once CLEC's equipment has been placed in CLEC's Collocation.

8.1.4 Collocation – DC Power Reduction

8.1.4.1 Qwest's Power Reduction Procedure offers CLEC the option to reduce power on an existing feed. It allows a CLEC to reserve a fuse or breaker position on the

power board or Battery Distribution Fuse Bay (BDFB) when reducing a multiple feed to zero. CLEC's payment of the Monthly Power Maintenance charge will provide an option to hold the existing power cabling and fuse position for the CLEC's future power augment requests as described in Section 8.2.11.6 below.

8.1.5 Collocation – Cancellation of Collocation Application

8.1.5.1 Cancellation of Collocation Request. CLEC may cancel a Collocation request prior to the completion of the request by Qwest. CLEC does so by submitting a written request by certified mail to the Qwest account manager. CLEC shall be responsible for payment of all costs incurred by Qwest up to the point when the cancellation is received.

8.1.5.1.1 Cancellation is available for all Collocation sites under a particular Billing Authorization Number (BAN) for which the CLEC has NOT received notification of completion from Qwest. A Cancellation will only occur upon request by the canceling CLEC.

8.1.5.2 Cancellation is offered for all types of Collocation.

8.1.5.3 A request for Cancellation is irrevocable once Qwest has accepted the application.

8.1.6 Collocation – Decommissioning of Collocation Space

8.1.6.1 Decommissioning refers to the deactivation of a Collocation site occupied by CLEC and removal of CLEC equipment there from.

8.1.6.2 Decommissioning is offered for all types of Collocation.

8.1.6.3 A request for Decommissioning is irrevocable once Qwest accepts the application.

8.1.7 Collocation – Transfer of Responsibility

8.1.7.1 Transfer of Responsibility refers to the transfer of a Collocation site to an assuming CLEC or from a vacating CLEC subject to the conditions set forth herein. A Transfer of Responsibility Collocation site is identified via the vacating CLEC's 11 character CLLI™ code.

8.1.7.2 Transfer of Responsibility is offered for Caged Physical, Cageless Physical, Shared Caged and Virtual Collocation.

8.1.7.3 All other types of Collocation to be transferred will be handled on an

Individual Case Basis (ICB) by contacting the appropriate Qwest Wholesale Project Manager (WPM).

8.1.7.4 There are two types of Transfer of Responsibility:

8.1.7.4.1 Transfer of Responsibility without working circuits – there are no active terminations (e.g., Digital Signal Level 0 (DS0), Digital Signal Level 1 (DS1)) for the Collocation site to be transferred.

8.1.7.4.2 Transfer of Responsibility with working circuits – active terminations (e.g., DS0, DS1) are associated with the Collocation site to be transferred.

8.1.7.5 Transfer of Responsibility with working circuits is offered if only administrative changes are required and the transfer does not involve translations activity that need to be processed in conjunction with the transfer. If the CLEC's transfer plans allow for the completion of the Transfer of Responsibility prior to the translation activity, then the transfer request would be permissible within the product offering.

8.1.7.6 A request for Transfer of Responsibility is irrevocable upon one hundred percent (100%) payment by the assuming CLEC of the nonrecurring Collocation transfer charges reflected on the quote.

8.2 Terms and Conditions

8.2.1 Terms and Conditions - All Collocation

8.2.1.1 Qwest shall provide Collocation on rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall provide Collocation in accordance with all applicable federal and state laws.

8.2.1.1.1 In accordance with the FCC rules regarding combinations of Unbundled Network Elements and Commingling of facilities and services which are addressed in Sections 9.1 and 9.23, Qwest will not Commingle services or Network Elements that are offered to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

8.2.1.1.1.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

8.2.1.1.1.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

8.2.1.2 Collocation of Switching Equipment. CLEC may collocate any equipment that is necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.2.1 Digital Subscriber Line Access Multiplexers (DSLAMS) always meet this legal standard.

8.2.1.2.2 Asynchronous Transfer Mode (ATM) or Packet Switching equipment also meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL or VoDSL. Equipment used predominantly to support DSLAMs and ATMs, such as routers and concentrators, as well as testing and network management equipment also meet this legal standard. Before any equipment that includes switching functionality is installed, CLEC must provide a written inventory to Qwest of all switching equipment and how it will be used for Interconnection or access to Unbundled Network Elements. Once CLEC establishes that it will use a certain type of equipment for Interconnection or access to Unbundled Network Elements, Qwest will allow future Collocations of similar equipment without requesting a written justification unless and until Qwest can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Qwest will complete the Collocation within the appropriate interval unless granted relief by the Commission.

8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Local Exchange Service.

8.2.1.2.4 Except as provided for in Sections 8.2.1.2.1 through 8.2.1.2.3 above, CLEC may not collocate equipment that is not necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.3 CLEC must identify what transmission and Cross Connection equipment will be installed and the vendor technical specifications of such equipment so that Qwest may verify the appropriate power, floor loading, heat release, environmental particulate level, HVAC, and tie cables to CLEC-provided Cross Connection device.

8.2.1.4 Demarcation Points for Unbundled Network Elements (UNEs) and ancillary services. The Demarcation Point for Unbundled Network Elements and ancillary services is that physical point where Qwest shall terminate its Unbundled Network Elements and ancillary services for access by CLEC. There are two (2) standard Demarcation Points where Unbundled Network Elements and ancillary services may be delivered to CLEC. CLEC shall specify its choice of standard Demarcation Points for its access to UNEs and ancillary services. One available Demarcation Point is at CLEC-provided Cross Connection equipment in CLEC's Physical or Virtual Collocation space. Alternatively, the Demarcation Point can be at an Interconnection Distribution Frame (ICDF) or may be established at a location jointly agreed to by CLEC

and Qwest. To the extent CLEC selects a Demarcation Point outside of its collocated space, CLEC shall provide and Qwest shall install the tie cables from CLEC's collocated equipment to the Demarcation Point. Alternatively, Qwest shall provide and install these tie cables, at CLEC's expense. CLEC shall be provided with access to all test access points on the ICDF or at the first test point in the Qwest network at which CLEC's cables terminate on the ICDF or on the MDF in offices where there is no ICDF.

8.2.1.5 Qwest will provide a connection between Unbundled Network Elements and ancillary services and a Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). The Demarcation Point shall be:

a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation space; or

b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF;

d) at a direct connection point of termination as described in Section 8.3.1.11.2; or

e) at another Demarcation Point mutually-agreed to by the Parties.

8.2.1.6 CLEC may purchase Qwest's finished Private Line or Switched Access Services via applicable Tariff terms and conditions. These services will be terminated at the Demarcation Point.

8.2.1.7 For Caged and Cageless Physical Collocation, Shared Caged Physical Collocation and Virtual Collocation, CLEC must lease space for the placement of CLEC's equipment within Qwest's Premises. Qwest will provide the structure that is necessary in support of Collocation including physical space, a cage (for Caged Physical Collocation), required cabling between equipment and other associated hardware.

8.2.1.8 All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards. Qwest shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Qwest imposes on its own equipment located on its Premises. Applicable documents are available via the PCAT.

8.2.1.9 Space Availability Report -- Upon request by CLEC, Qwest will submit to a requesting CLEC within ten (10) calendar Days of CLEC's request, a report for each requested Premises, that includes:

a) available Collocation space in a particular Qwest Premises (including new collocation space as well as available inventory collocation space);

b) number of collocators;

c) any modifications in the use of the space since the last report;

d) measures that Qwest is taking to make additional space available for Collocation;

e) whether sufficient power is available to meet the specific CLEC request;

f) number of CLECs in queue at the Premises, if any;

g) whether the Wire Center is equipped with DS3 capability; and

h) the number and description of Qwest and its Affiliates and CLEC reservations of space.

8.2.1.9.1 A Space Availability Report Charge in Exhibit A will apply to each Space Availability Report requested by CLEC and shall apply on per Premises basis.

8.2.1.9.2 Inventory Report – Remote Premises. The locations of the Remote Premises (e.g., Feeder Distribution Interfaces, "FDI") and the Customer addresses served by each Remote Premises are available to CLECs through the Raw Loop Data Tool. Remote Premises with Digital Loop Carrier and Pair Gain equipment will be provided on the web site in the ICONN database. (ICONN is available through the Qwest web site located at http://www.qwest.com/iconn.). If CLEC is unable to determine the information it seeks regarding Remote Premises after using such database tools, Qwest will provide CLEC with a report that contains the information. The Parties agree that a charge may apply to such report, based on time and material, unless the database information is inaccurate or unusable for the Remote Premises then no charge would apply. Qwest will provide CLEC access to relevant plats, maps, engineering records and other data in accordance with Section 10.8.2.4. In addition, CLEC can request a copy of Qwest's distribution area map associated with the Remote Premises, with a charge for time and material.

8.2.1.10 Collocation is offered on a first-come, first-served basis. Requests for Collocation may be denied due to technical infeasibility and/or the legitimate lack of sufficient space in a Qwest Premises for placement of CLEC's equipment. If Qwest determines that the amount of space requested by CLEC for Caged Physical Collocation is not available, but a lesser amount of space is available, that lesser amount of space will be offered to CLEC for Caged Physical Collocation. Alternatively, CLEC will be offered Cageless Physical Collocation (single frame bay increments), or Virtual Collocation as an alternative to Caged Physical Collocation. In the event the original Collocation request is not available due to lack of sufficient space, and CLEC did not specify an alternative form of Collocation on the original order form, CLEC will be required to submit a new order for CLEC's preferred alternative Collocation arrangement. If CLEC identifies alternate choices for Collocation on its original Collocation request, Qwest will determine the feasibility of the next preferred option in the event CLEC's first choice is not available. To the extent possible, Qwest shall make contiguous space available to CLEC when it seeks to expand its existing Collocation space. Where adjoining space is not available, Qwest will engineer a route for CLEC to provide facilities between the non-adjoining CLEC Collocation spaces as part of the Collocation order. When planning renovations of existing facilities or constructing or leasing new facilities, Qwest shall take into account projected demand for Collocation of

equipment. In rendering its determination as to whether space is available to fulfill a CLEC request for new collocation, collocation augment or Available Inventory Collocation, Qwest will review the application to determine whether there is new, vacated, returned or abandoned space, offered "as is" or modified, that may fill the CLEC's requirement.

8.2.1.10.1 Space Denial Queue – Qwest will maintain a list of denied Collocation requests, in order of the date of receipt (Space Denial Queue), for each Premises where Qwest has exhausted Collocation space. A separate queue will be maintained for each Premises. When space becomes available in a Premises in which a queue has developed, Qwest will inform CLECs in the queue that space for Collocation has become available. If there is insufficient space to accommodate all CLECs in queue, Qwest shall notify CLECs of the availability of space in accordance with CLEC's position in the queue. CLEC must respond within fifteen (15) calendar Days of receipt of notification from Qwest with a new Collocation Application. If CLEC does not provide a Collocation Application within fifteen (15) calendar Days of receipt of notification, or if CLEC responds that it no longer requires the Collocation space, CLEC shall be removed from the queue and the available space shall be offered to the next CLEC in the queue. If the space made available to a CLEC in the queue is not sufficient to meet such CLEC's needs, such CLEC may deny the space that becomes available and keep its position in the queue.

8.2.1.11 If Qwest denies a request for Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to tour the entire Premises escorted by Qwest personnel within fourteen (14) calendar Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed floor plans for the Premises with CLEC during the tour, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact, it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Collocation Application Date for determining RFS unless both Parties agree to a revised date.

8.2.1.12 Qwest shall submit to the Commission, subject to any protective order as the Commission may deem necessary, detailed floor plans or diagrams of any Premises where Qwest claims that Physical Collocation is not practical because of space limitations.

8.2.1.13 Qwest will maintain a publicly available document, posted for viewing on the Internet, (http://www.qwest.com/wholesale/notices/collo/spaceavail.html) indicating all Premises that are full, and will update this document within ten (10) calendar Days of the date at which a Premises runs out of physical space and will update the document within ten (10) calendar Days of the date that space becomes available. In addition, the publicly available document shall include, based on information Qwest develops through the Space Availability Report process, the Reservation Process, or the Feasibility Study Process:

a) Number of CLECs in queue at the Premises, if any;

b) Premises that have not been equipped with DS3 capability;

c) Estimated date for completion of power equipment additions that will lift the restriction of Collocation at the Premises; and

d) Address of the Remote Premises that have been inventoried for Remote Collocation, and if the Remote Premises cannot accommodate Collocation.

Notwithstanding the foregoing, the Qwest web site will list and update within the ten (10) Day period, all Wire Centers that are full, whether or not there has been a CLEC requested Space Availability Report.

8.2.1.14 Reclamation and Reconditioning of Space

8.2.1.14.1 Reclamation of Space -- Reclamation of space is performed by Qwest removing unused, obsolete Qwest equipment to make space for equipment use. The cost of removal of the obsolete unused equipment shall be borne by Qwest.

8.2.1.14.1.1 If CLEC issues a forecast or reservation for Collocation, Qwest shall use its best judgement to determine whether it would be appropriate to reclaim space and or equipment to meet expected Collocation requirements.

8.2.1.14.1.2 If CLEC issues a Collocation Application and unused, obsolete equipment must be removed to provide the requested Collocation, Qwest will affirmatively remove such unused, obsolete equipment as necessary to fulfill the Collocation request within the applicable interval set forth in section 8.4.

8.2.1.14.2 Reconditioning of Space -- Reconditioning of space is the remodeling of space for equipment use, such as, but not limited to, adding HVAC. The Collocation feasibility study will identify whether reconditioning of space is available and necessary to meet CLEC needs for Collocation. If requested by CLEC, Qwest will assess the cost of such reconditioning, provide a quote to CLEC for the costs, and upon Acceptance of quote by CLEC, perform the necessary work to recondition the space. For reconditioned space, CLEC is responsible for prorated charges based on the amount of space requested.

8.2.1.15 Intentionally left blank.

8.2.1.16 Qwest may retain a limited amount of floor space for its own specific future uses, provided, however, that neither Qwest nor any of its Affiliates may reserve space for future use on terms more favorable than those that apply to CLEC's reservation of Collocation space for CLEC's own future use. Qwest shall relinquish any space held for future use before denying a request for Virtual Collocation on the grounds of space limitations, unless Qwest proves to the Commission that Virtual Collocation at that point is not Technically Feasible.

8.2.1.17 In addition to the requirements of Section 8.2.1.8, all Collocation installation and structures shall meet applicable earthquake safety rating requirements

comparable to and to the same extent that Qwest installations and structures meet earthquake rating requirements as contained in the Network Equipment Building System (NEBS) - BR GR-63-CORE document. A list of Qwest Premises and the applicable related earthquake ratings is available for review on the Qwest website at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.2.1.18 Qwest will review the security requirements, issue keys, ID cards and explain the access control processes to CLEC. Applicable documents are contained in the Collocation PCAT and are titled "Qwest Premises Access. The access control process includes but is not limited to the requirement that all CLEC approved personnel are subject to trespass violations if they are found outside of designated areas and approved areas and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) or if they provide access to unauthorized individuals. Likewise, Qwest personnel are subject to trespass violations if they are found to be wrongfully inside CLEC physical caged collocated areas or if they wrongfully provide access to unauthorized individuals.

8.2.1.18.1 Qwest will take all reasonable measures to insure that CLEC equipment collocated in Qwest Premises is afforded physical security at parity with Qwest's similarly situated equipment. Should an event occur within a Qwest Premises that suggests vandalism, theft of, or other tampering with CLEC's equipment, Qwest will, at CLEC's request, vigorously and thoroughly investigate the situation. CLEC shall cooperate in the investigation as requested by Qwest. Qwest will keep CLEC apprised of the progress of any investigation, and report any conclusions in a timely manner. Qwest will take all reasonable action, consistent with standard Qwest procedures, to deter, to the extent possible, further tampering, vandalism or theft of CLEC equipment.

8.2.1.18.2 Qwest shall have fifteen (15) calendar days to remedy any legitimate safety violation identified by CLEC.

8.2.1.19 Qwest shall provide access to CLEC's collocated equipment, authorized CLEC testing points as described in Section 8.2.1.18 above, existing eyewash stations, bathrooms, and drinking water within the Premises on a twenty-four (24) hours per day, seven (7) Days per week basis for CLEC personnel and its designated agents. Such access shall be permitted without requiring either a security escort of any kind or delaying CLEC's employees entry into Qwest Premises. Qwest shall provide CLEC with access to other basic facilities, including parking, where available on a first-come, first-served basis.

8.2.1.20 CLEC shall be restricted to corridors, stairways, and elevators that provide direct access to CLEC's space, or to the nearest restroom facility from CLEC's designated space and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) and such direct access will be outlined during CLEC's orientation meeting. Access shall not be permitted to any other portion of the building.

8.2.1.21 Nothing herein shall be construed to limit CLEC's ability to obtain more than one form of Collocation (i.e., Virtual, Caged, Shared and Cageless Physical Collocation or ICDF Collocation) in a single Premises, provided space is available.

8.2.1.22 Termination of Collocation Arrangement.

8.2.1.22.1 Collocation Cancellation. The canceling CLEC may only submit a Cancellation Application if a Collocation quote has been accepted and the initial payment has been paid. The collocation Cancellation may only be initiated if the Collocation job is in progress and not yet complete.

8.2.1.22.1.1 Intentionally Left Blank

8.2.1.22.1.2 Qwest will stop work on a job in progress upon receipt and acceptance by Qwest of a valid Cancellation Application.

8.2.1.22.1.3 Based on when the Cancellation Application is received by Qwest, the completion status of the Collocation job and the determination of the amount paid to Qwest, the following will occur: Qwest will cancel the Collocation job in progress, conduct an inventory, and issue a final revised quote setting forth the amount due or the appropriate adjustments. The revised final quote will be issued within 30 calendar days of Qwest's acceptance of the Cancellation Application.

8.2.1.22.1.4 The Quote Preparation Fee (QPF) for the original Collocation Request must be paid, if the job is cancelled.

8.2.1.22.1.5 Intentionally left blank.

8.2.1.22.1.6 In the event Splitter Collocation with the BAN of the collocation site is to be canceled, such Splitter Collocation will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.1.7 In the event that CLEC has requested Direct CLEC-to-CLEC with the BAN of the collocation site to be cancelled, such Direct CLEC-to-CLEC will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.2 Collocation Decommissioning.

8.2.1.22.2.1 A Collocation site will be considered eligible for decommissioning at any time after the site is built-out and accepted by CLEC.

8.2.1.22.2.2 Qwest requests the vacating CLEC remove equipment prior to submitting a Decommissioning Request. If CLEC does not remove its equipment within thirty (30) calendar days from Qwest's acceptance of the Decommissioning Application, Qwest will send a notification stating the equipment is considered abandoned.

8.2.1.22.2.2.1 Upon receiving notification of abandonment from Qwest, CLEC will have fifteen (15) calendar days to notify Qwest that the equipment is not abandoned and remove the

equipment, unless CLEC receives authorization from Qwest to extend the removal date.

8.2.1.22.2.2.2 In the case of Virtual Collocation, Qwest will automatically remove all equipment within ninety (90) calendar days from receipt of the Decommissioning Request.

8.2.1.22.2.2.3.1 Qwest will negotiate with CLEC for the pick up of the equipment.

8.2.1.22.2.2.3.2 For Virtual Collocation, there will be no cost for the removal of CLEC equipment.

8.2.1.22.2.3 Prior to submitting a Decommissioning Request, financial obligations with respect to the collocation site to be decommissioned must be current, with the exception of formally disputed charges.

8.2.1.22.2.3.1 CLEC financial obligations include payment of 100% of all non-recurring quoted charges and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.1.22.2.4 CLEC must disconnect all services from the Collocation site to be decommissioned prior to submitting the Decommissioning Request. Services to be disconnected by CLEC include, but are not limited to: Unbundled Network Elements (UNE), administrative lines, finished services, and line sharing services. Services will need to be disconnected via Access Service Request (ASR)/Local Service Request (LSR). If CLEC does not disconnect services, all charges with respect to such site will continue to accrue and the Decommissioning Application will be rejected.

8.2.1.22.2.4.1 Prior to disconnecting the circuits associated with the Collocation site CLEC must notify, in writing, all current affected End User Customers of the discontinuation of service.

8.2.1.22.2.4.2 CLEC must submit an e-mail notification attached to the Decommissioning Request representing to Qwest that all End User Customers have been properly notified. Failure to include such representation will result in the rejection of the Decommissioning Request.

8.2.1.22.2.5 When submitting a Decommissioning Request for a Collocation site that also has a Direct CLEC-to-CLEC arrangement:

8.2.1.22.2.5.1 Qwest requires that the Direct CLEC-to-CLEC Connection be disconnected at the same time that Qwest performs the decommissioning.

8.2.1.22.2.5.2 The CLEC submitting the Decommissioning

Request must:

8.2.1.22.2.5.2.1 Submit a Letter of Authorization (LOA) signed by both the vacating CLEC and partnering CLEC that authorizes Qwest to disconnect the installed Direct CLEC-to-CLEC cabling.

8.2.1.22.2.5.2.2 If a copy of the required Letter of Authorization is not attached to the Decommissioning Request; the application will be rejected as incomplete.

8.2.1.22.2.6 Vacating CLEC will be eligible for a potential refund for all elements defined as either reusable or reimbursable at the time of decommissioning, if and when acquired by another CLEC. An inventory will be completed by Qwest and furnished to CLEC within ninety (90) calendar days of the Collocation Decommission Application acceptance identifying the reimbursable and re-useable elements and the potential credit. If CLEC, reasonably and in good faith, disputes the total amount of the credit identified, Qwest will promptly evaluate CLEC's dispute and provide an updated credit amount, if it agrees with CLEC, or an explanation for the credit amount, if it disagrees with CLEC.

8.2.1.22.2.6.1 Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to collocation site, i.e. Express Fiber Entrances)These elements will be eligible for a potential refund for up to one (1) year after the date of decommissioning.

8.2.1.22.2.6.2 Reusable elements include Qwest inventoried components (e.g. cage, bays, HVAC, cable racking) to provision the original Collocation site. These elements will be available for a potential refund for up to three (3) years after decommissioning.

8.2.1.22.2.6.3 Upon assumption of the collocation space by an assuming CLEC, Qwest will issue the applicable credit within thirty (30) days to the vacating CLEC.

8.2.1.22.3 Collocation Transfer of Responsibility.

8.2.1.22.3.1 A Collocation site is considered eligible for Transfer of Responsibility only after Qwest completes the site build-out and the vacating CLEC has accepted the site.

8.2.1.22.3.2 The assuming CLEC is required to have an Interconnection Agreement with Qwest prior to the original CLEC submitting a Transfer of Responsibility request. Assuming CLEC will need to amend any previously-existing Interconnection Agreement prior to submitting a Transfer of Responsibility request if it does not contain the

Terms and Conditions and rate elements for the services that will be transferred.

8.2.1.22.3.2.1 If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with 11 U.S.C. Section 365.

8.2.1.22.3.3 Both vacating and assuming CLEC's Interconnection Agreements with Qwest must contain finalized terms and conditions associated with the Transfer of Responsibility of a Collocation site and all associated services.

8.2.1.22.3.4 The Collocation site referenced in the Transfer of Responsibility request generally will be transferred "as is" and in its entirety. This includes, but is not limited to, entrance facilities (from the Point of Interface (POI) utility hole), Splitters, cables, and working circuits (if applicable). Terms and conditions pertaining to the transfer of equipment between the vacating and assuming CLECs will be the responsibility of the vacating and assuming CLECs.

8.2.1.22.3.5 The assuming CLEC will provide the information Qwest will need to update the following items: Customer Name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), Customer address, phone number, billing and contact information, and contract number. The 11 character CLEC CLLI™ code will remain the same. The Transfer of Responsibility request may not include translations work for associated working circuits.

8.2.1.22.3.5(a) The Transfer of Responsibility request is available if there are no space requests pending by a CLEC or Qwest that could be satisfied by the space that CLEC seeks to transfer, or if the vacating and assuming CLEC were affiliate corporate entities prior to the proposed transfer, or the transfer is due to a bankruptcy court order. Collocation Transfer of Responsibility is not available if another CLEC and/or Qwest are in waiting queue for available space within the requested Central Office.

8.2.1.22.3.6 The negotiation of the transfer terms and conditions between the vacating CLEC and the assuming CLEC is the responsibility of those two Parties. Qwest will only manage the database and records transfer.

8.2.1.22.3.7 Qwest is not responsible for the physical condition of the CLEC's equipment, with the exception of equipment associated with a Virtual Collocation site, as set forth in CLECs' Interconnection Agreement.

8.2.1.22.3.8 If a CLEC submits a Transfer of Responsibility request for a site that has a related Splitter Collocation associated with it, the Splitter Collocation will be transferred as part of the Transfer of Responsibility.

8.2.1.22.3.9 Submission of new connect, change, and disconnect orders will be restricted from quote acceptance until the transfer of the working circuits is complete. If new connect, change, and disconnect orders need to be submitted between quote acceptance and the completion of the transfer, it will be handled on an ICB and could affect the Ready for Service (RFS) date.

8.2.1.22.3.10 Submission of Collocation augment orders will be restricted from the time that the Application for Transfer of Responsibility has been validated until the assuming CLEC has accepted the quote for the Transfer of Responsibility.

8.2.1.22.3.11 All work in progress related to the Collocation site and/or associated working circuits (if applicable) must either be completed or cancelled by vacating CLEC prior to quote acceptance.

8.2.1.22.3.12 If vacating CLEC does not lease another physical Collocation site at the specified Central Office at the time of the Transfer of Responsibility request, then vacating CLEC must relinquish security access to the building.

8.2.1.22.3.13 CLEC's obligations:

8.2.1.22.3.13.1 Prior to submitting a Transfer of Responsibility request, vacating CLEC's financial obligations to Qwest with respect to the Collocation site to be transferred must be met, with the exception of formally disputed charges. The vacating CLEC's financial obligations will include payment of one hundred percent (100%) of all undisputed nonrecurring charges and all undisputed recurring charges for the specific Collocation space that are more than 30 days past due.

8.2.1.22.3.13.2 Prior to submitting a Transfer of Responsibility request, the assuming CLEC's financial obligations to Qwest must be in good standing.

8.2.1.22.3.13.3 Prior to submitting a Transfer of Responsibility (without working circuits) request, vacating CLEC must ensure that no live circuits exist at the Collocation site to be transferred.

8.2.1.22.3.13.4 Prior to transferring a Collocation site with working circuits, vacating CLEC must notify, in writing, all of its current end-users and service customers that utilize its Transfer of Responsibility Collocation site equipment or facilities of the transfer of service to the assuming CLEC, unless vacating CLEC has a waiver from the FCC.

8.2.1.22.3.13.5 Vacating and/or assuming CLEC will be

responsible for submitting Local Service Request (LSR) orders for Unbundled Loops, Enhanced Extended Loops (EELs), Line Sharing, and Line Splitting. Orders to transfer Local Interconnection Service (LIS) trunks and ancillary services (e.g., SS7, 911, Operator Services) with no translation activity, as well as Dark Fiber, Private Line, and Access circuits, will be processed based on the information provided in the Transfer of Responsibility Spreadsheet found in the Product Prerequisite section of the Collocation General PCAT.

8.2.1.22.3.13.6 Assuming CLEC is responsible for Directory Assistance (DA), Operator Services (OS), Directory Listings (DL), Busy Line Verify/Busy Line Interrupt (BLV/BLI), and 911 changes, if applicable. Any additional SS7 changes will need to be made after the transfer is complete.

8.2.1.22.3.14 Required documentation:

8.2.1.22.3.14.1 Transfer of Responsibility Application Form.

8.2.1.22.3.14.2. Vacating CLEC must send Qwest an e-mail notification (if the transfer includes working circuits), along with the Transfer of Responsibility Application, representing to Qwest that all of its end-users and service customers have been properly notified (refer to section 2.14.4). An exception is if the CLEC has a waiver from the FCC, which would then need to be included with the Transfer of Responsibility request.

8.2.1.22.3.14.3 Vacating and assuming CLEC must provide Qwest, along with the Transfer of Responsibility Application, a signed Qwest Transfer Authorization Agreement. Required information on the Qwest Transfer Authorization Agreement: Qwest Central Office Name, applicable CLLI™ codes, Collocation BAN numbers, and charges (as provided by Qwest) for the transfer of the Collocation site.

8.2.1.22.3.14.4 If there are working circuits associated with the Collocation site to be transferred, the vacating or assuming CLEC must complete the Transfer of Responsibility Spreadsheet and submit it along with the Transfer of Responsibility Application.

8.2.1.22.3.14.5 If Collocation site being transferred has a CLEC-to-CLEC (Direct) arrangement, then the CLEC submitting the Transfer of Responsibility must submit a Letter of Authorization (LOA), along with the Transfer of Responsibility Application, signed by both the vacating CLEC and the CLEC partner authorizing the transfer of the CLEC-to-CLEC service to the assuming CLEC. A separate LOA is required, as a condition precedent, for each separate CLEC-to-CLEC relationship with respect to the facility that is the subject matter of the Transfer of

Responsibility Application.

8.2.1.22.3.14.6 Once Collocation site transfer is complete the vacating CLEC, assuming CLEC, and Qwest are all required to sign the Qwest Services Transfer Agreement.

8.2.1.23 Qwest shall design and engineer the most efficient route and cable racking for the connection between CLEC's equipment in its collocated spaces to the collocated equipment of another CLEC located in the same Qwest Premises; or to CLEC's own contiguous and non-contiguous Collocation space. The most efficient route generally will be over existing cable racking, to the extent Technically Feasible, but to determine the most efficient route and cable racking, Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection. CLEC shall have access to the designated route and construct such connection, using copper, coax, optical fiber facilities, or any other Technically Feasible method utilizing a vendor of CLEC's own choosing. CLEC may place its own fiber, coax, copper cable, or any other Technically Feasible connecting facilities outside of the actual Physical Collocation space, subject only to reasonable NEBS Level 1 safety limitations using the route specified by Qwest. CLEC may perform such Interconnections at the ICDF, if desired. CLEC may interconnect its network as described herein to any other collocating Carrier, to any collocated Affiliate of CLEC, to any end users premises, and may interconnect CLEC's own collocated space and/or equipment (e.g., CLEC's Physical Collocation and CLEC's Virtual Collocation on the same Premises). CLEC-to-CLEC Connections shall be ordered either as part of an Application for Collocation under Section 8.4, or separately from a Collocation Application in accordance with Section 8.4.7. CLEC-to-CLEC Cross Connections at an ICDF are available, as follows:

8.2.1.23.1 CLEC-to-CLEC Cross Connections at the ICDF:

8.2.1.23.1.1 CLEC-to-CLEC Cross Connection (COCC-X) is defined as CLEC's capability to order a Cross Connection from it's Collocation in a Qwest Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Qwest Premises at the ICDF.

8.2.1.23.1.2 Qwest will provide the capability to combine these separate Collocations through an Interconnection Distribution Frame (ICDF). This is accomplished by the use of CLECs' Connecting Facility Assignment (CFA) terminations residing at an ICDF. Also, ICDF Cross Connections must terminate on the same ICDF at the same service rate level.

8.2.1.23.1.3 If CLEC has its own Dedicated ICDF, CLEC is responsible for ordering tie cables to the common ICDF frame/bay where the other CLEC resides. These tie cables would be ordered through the existing Collocation Application form.

8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration

may be required, depending on the distance parameters of the combination.

8.2.1.23.1.5 If two (2) CLECs are involved, one CLEC acts as the "ordering" CLEC. The ordering CLEC identifies both connection CFA's on the ASR. CLEC requests service order activity by using the standard ASR forms. These forms are agreed upon nationally at the OBF (Ordering and Billing Forum). Refer to the DMP (Document Management Platform)/Carrier/Carrier Centers/"A"/"ASOG" for copies of all forms including definitions of the fields. CLEC is responsible for obtaining these forms. Qwest must not reproduce copies for its Customers, as this is a copyright violation. The standard industry forms for CLEC-to-CLEC Cross Connections (COCC-X) are: Access Service Request (ASR), Special Access (SPE) and Additional Circuit Information (ACI).

8.2.1.24 Qwest will provide CLEC the same connection to the network as Qwest uses for provision of services to Qwest end users. The direct connection to Qwest's network is provided to CLEC through direct use of Qwest's existing Cross Connection network. CLEC and Qwest will share the same distributing frames for similar types and speeds of equipment, where Technically Feasible and space permitting.

8.2.1.25 CLEC terminations will be placed on the appropriate Qwest Cross Connection frames using standard engineering principles. CLEC terminations will share frame space with Qwest terminations on Qwest frames without a requirement for an intermediate device.

8.2.1.26 If CLEC disagrees with the selection of the Qwest Cross Connection frame, CLEC may request a tour of the Qwest Premises to determine if Cross Connection frame alternatives exist, and may request use of an alternative frame or an alternative arrangement, such as direct connections from CLEC's Collocation space to the MDF or COSMIC™ frame.

8.2.1.27 Conversions of the various Collocation arrangements (e.g., Virtual to Physical) will be considered on an Individual Case Basis. However, conversions from Virtual Collocation to Cageless Physical Collocation, where the conversion only involves an administrative and Billing change, and the virtually collocated equipment is located in a space where Cageless Physical Collocation is available, shall be completed in thirty (30) calendar Days. CLEC must pay all associated conversion charges.

8.2.1.27.1 Qwest will maintain and repair the POTS splitter shelf assembly. If CLEC has Physical Caged or Cageless collocation, CLEC will have the option to perform maintenance and repair of the POTS splitter cards. Election of this option requires CLEC to perform all maintenance associated with the splitter cards including troubleshooting, repair and replacement of cards. CLEC will also be responsible to supply and inventory spare cards including adding new cards to provision un-carded splitter shelf slots. Election of splitter cards maintenance requires CLEC to maintain the splitter cards in all of its common area splitter collocation sites in Qwest's 14 state operating territory. If Qwest maintains the splitter cards, CLEC will not be permitted to remove or replace splitter cards and will only be allowed access for the purposes of troubleshooting and assisting in the isolation of reported troubles to the splitter cards or to add additional card

capacity to an existing shelf. Splitter shelves and associated cabling will continue to be installed and maintained by Qwest; such charges are detailed in the Line Sharing section of Exhibit A.

8.2.1.28 Qwest shall permit CLEC to construct or subcontract the construction and build-out of Physical Collocation arrangements with CLEC employees or CLEC-selected contractors approved by Qwest. Such CLEC construction of Physical Collocation arrangements are for within CLEC's physical space including the cage, if appropriate, frames, and cable racking, and also outside CLEC's physical space, CLEC may install the tie cables, blocks, and terminations on the ICDF or for CLEC-to-CLEC connections. Qwest approval of CLEC contractors involves security access arrangements and shall not be unreasonably withheld. CLEC is not required to use Qwest or Qwest contracted personnel for the engineering and installation of CLEC's collocated equipment. Approval by Qwest of CLEC's employees, vendors or subcontractors shall be based on the same criteria that Qwest uses in approving contractors for its own purposes. Such approval shall not be unreasonably withheld.

8.2.1.29 Qwest will provide CLEC with written notification at least five (5) business days before any scheduled non-emergency AC or DC power work or power related activities in the collocated facility that may cause a power disruption to CLEC equipment located in the Qwest facility, service outage, or otherwise may disrupt service provided by CLEC to its end user customers. This does not include notification of routine power testing or power installation work not expected to cause a power disruption, service outage or other service disruption. Qwest will use diligent efforts to notify CLEC by the Abnormal Condition Report (ACR) of: (a) general power outages as soon as Qwest becomes aware that an outage is to take place or has occurred and (b) any emergency power disruption that would impact CLEC equipment no later than thirty (30) minutes after such activity commences. Finally, Qwest shall immediately notify CLEC by ACR if an alarm condition exists with respect to the monitoring of power that poses a material risk to the continued operation of CLEC equipment.

8.2.1.30 Qwest will inform CLEC of Central Office construction work of Qwest, its employees or any independent contractors retained by it that could affect CLEC's collocated equipment or services offered by CLEC out of that Central Office. Such construction work is that which takes place in or around CLEC's collocation space, work in the space over or around a CLEC's collocation space (e.g., ladder racking work) or collocated equipment, or any work in adjacent areas that will generate dust, debris or falling objects that might impact CLEC's collocation space or collocated equipment. Daily routine equipment work shall be performed in the Central Office without notification to CLEC.

8.2.1.31 Qwest shall provide continuity testing for new, existing or augmented collocation space at any time the CLEC requests such testing.

8.2.1.32 All equipment or property of CLEC not removed from the Qwest Premises within thirty (30) days after (i) the vacation or abandonment thereof, (ii) the breach of any of the terms of Collocation, or (iii) the termination of this Agreement for any cause whatsoever, shall conclusively be deemed to have been abandoned, transferred, deeded, and assigned by CLEC to Qwest and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest without notice to CLEC and without obligation to account therefor, and CLEC shall reimburse Qwest for all reasonable

expenses incurred in connection with the storage or disposition of such equipment or property. The provisions regarding abandoned equipment where CLEC has submitted a Decommissioning Application, are set forth in the Decommissioning Section.

8.2.2 Terms and Conditions - Virtual Collocation

8.2.2.1 Qwest is responsible for installing, maintaining, and repairing virtually collocated equipment for the purpose of Interconnection or to access UNEs, ancillary and Finished Services. When providing Virtual Collocation, Qwest shall install, maintain, and repair collocated equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest.

8.2.2.2 CLEC will not have physical access to the virtually collocated equipment in the Qwest Premises. However, CLEC will have physical access to the Demarcation Point in the Qwest Premises.

8.2.2.3 CLEC will be responsible for obtaining and providing to Qwest administrative codes (e.g., common language codes) for all equipment provided by CLEC and installed in Qwest Premises.

8.2.2.4 CLEC shall ensure that upon receipt of CLEC's virtually collocated equipment by Qwest, all warranties and access to ongoing technical support are passed through to Qwest at CLEC's expense. CLEC shall advise the manufacturer and seller of the virtually collocated equipment that CLEC's equipment will be possessed, installed and maintained by Qwest.

8.2.2.5 CLEC's virtually collocated equipment must comply with Telcordia Network Equipment Building System (NEBS) Level 1 safety standards and any statutory (local, state or federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. CLEC shall provide Qwest interface specifications (e.g., electrical, functional, physical and software) of CLEC's virtually collocated equipment. Such safety and engineering standards shall apply to CLEC equipment only to the degree that they apply to Qwest equipment located in Qwest's Premises.

8.2.2.6 CLEC must specify all software options and associated plug-ins for its virtually collocated equipment.

8.2.2.7 CLEC will be responsible for payment of Qwest's initial direct training charges associated with training Qwest employees for the maintenance, operation and installation of CLEC's virtually collocated equipment when such equipment is different than the standard equipment used by Qwest in that Premises. This includes per diem charges (i.e., expenses based upon effective Qwest labor agreements), travel and lodging incurred by Qwest employees attending a vendor-provided training course.

8.2.2.8 CLEC will be responsible for payment of reasonable charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment in accordance with this Agreement, unless otherwise agreed by the Parties. Notwithstanding the foregoing, CLEC shall not be responsible for any costs or charges incurred in the

maintenance and/or repair of CLEC's virtually collocated equipment where such costs or charges result from Qwest's fault or negligence.

8.2.3 Terms and Conditions - Caged and Cageless Physical Collocation

8.2.3.1 Qwest shall provide Caged and Cageless Physical Collocation (including Shared Caged Collocation) to CLEC for access to UNEs and ancillary services and Interconnection, except that Qwest may provide Virtual Collocation if Qwest demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act.

8.2.3.2 Physical Collocation is offered in Premises on a space-available, first come, first-served basis.

8.2.3.3 Reserved for Future Use.

8.2.3.4 Qwest will design the floor space in the most efficient manner possible within each Premises that will constitute CLEC's leased space. CLEC will, in accordance with the other terms and conditions of this Section, have access to its leased space.

8.2.3.5 When Qwest constructs the collocated space, Qwest will ensure that the necessary construction work (e.g., racking, ducting and caging for Caged Physical Collocation) is performed pursuant to Qwest Technical Publication 77350, including all construction of CLEC's leased physical space and the riser from the vault to the leased physical space.

8.2.3.6 CLEC owns or leases and is responsible for the installation, Maintenance and Repair of its equipment located within the physically collocated space leased from Qwest.

8.2.3.7 Qwest shall permit CLEC to commence installation of its equipment prior to completion of Qwest's work on the remaining Collocation infrastructure, at no additional charge to CLEC. Such "early access" date will be negotiated by Qwest and CLEC on a site specific basis. In order to obtain early access, CLEC must pay eighty (80) percent of the remaining fifty (50) percent of the quoted nonrecurring charges before early access is granted, leaving a holdback of ten (10) percent of the originally quoted nonrecurring charges. All appropriate (i.e. space and cable racking) recurring charges will begin on a negotiated date. The enclosure for Caged Physical Collocation must be complete before early access is granted. Such early access by CLEC shall not interfere with the work remaining to be performed by Qwest.

8.2.3.8 Upon completion of the construction of the Collocation project, Qwest will work cooperatively with CLEC in matters of joint testing and maintenance.

8.2.3.9 If, during installation, Qwest determines CLEC activities or equipment do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work until the situation is remedied. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does

not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLECs equipment fails to meet. If such conditions pose an immediate threat to the safety of Qwest employees, interfere with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission, a court of competent jurisdiction or pursuant to Section 5.18 of this Agreement

8.2.3.10 All equipment placed will be subject to random safety audits conducted by Qwest. These audits will determine whether the equipment meets the NEBS Level 1 safety standards required by this Agreement. CLEC will be notified of the results of this audit. If, at any time, pursuant to a random audit or otherwise, Qwest determines that the equipment or the installation does not meet the NEBS standards described in Section 8.2.1.8, CLEC will be responsible for the costs associated with the removal, modification to, or installation of the equipment to bring it into compliance. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC, and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC's equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If CLEC fails to correct any non-compliance within fifteen (15) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct any non-compliance as soon as reasonably possible, Qwest may pursue immediate resolution by the Commission or a court of competent jurisdiction. If there is an immediate threat to the safety of Qwest employees, or an immediate threat to the physical integrity of the conduit system, cable facilities, or other equipment in the Premises, Qwest may perform such work and/or take such action as is necessary to correct the condition at CLEC's expense.

8.2.3.11 Qwest shall provide basic telephone service with a connection jack at the request of CLEC for Caged and Cageless Physical Collocation. Upon CLEC's request, this service shall be available per standard Qwest business service Provisioning processes and rates. CLEC may have access to telephone service provided by Qwest at any ICDF location where test access may be required. CLEC shall share these lines for circuit testing only and may use them only for such purpose.

8.2.3.12 For Caged Physical Collocation, CLEC's leased floor space will be separated from other CLECs and Qwest space through a cage enclosure. Qwest will construct the cage enclosure or CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval which may not be unreasonably withheld, to construct the cage enclosure. All CLEC equipment placed will meet NEBS Level 1 safety standards, and will comply with any local, state, or federal regulatory requirements in effect at the time of equipment installation or that subsequently become effective.

8.2.3.13 For Cageless Physical Collocation in a Wire Center, the minimum square footage is nine (9) square feet per bay (however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly). Requests for multiple bay space will be provided in adjacent bays where possible. CLEC may elect to share its Cageless Collocation space (e.g., sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, Provisioning, repairing, maintaining, and Billing for equipment, cross-connects, and services in its Collocation space. When contiguous space is not available, bays may be commingled with other CLECs' equipment bays. CLEC may request, through the Qwest Space Reclamation Policy, a price quote to rearrange Qwest equipment to provide CLEC with adjacent space.

8.2.4 Transmission Facility Access to Collocation Space

8.2.4.1 For Virtual or Physical Collocation, CLEC may select from four (4) optional methods for facility access to its Collocation space. They include: 1) fiber entrance facilities, 2) purchasing private line or Access Services, 3) Unbundled Network Elements; and 4) microwave entrance facilities. Other Entrance Facility technologies may be requested through the BFR process.

8.2.4.2 Collocation Fiber Entrance Facilities. Qwest offers three (3) Fiber Collocation Entrance Facility options – Standard Fiber Entrance Facility, Cross-Connect Fiber Entrance Facility, and Express Fiber Entrance Facilities. These options apply to Caged and Cageless Physical Collocation and Virtual Collocation. Fiber Entrance Facilities provide the connectivity between CLEC's collocated equipment within the Qwest Wire Center and a Collocation Point of Interconnection (C-POI) outside the Qwest Wire Center where CLEC shall terminate its fiber-optic facility, except the Express Fiber Entrance Facilities.

8.2.4.3 CLEC is responsible for providing its own fiber facilities to the C-POI outside Qwest's Wire Center. Qwest will extend the fiber cable from the C-POI to a Fiber Distribution Panel (FDP). Additional fiber, conduit and associated riser structure will then be provided by Qwest from the FDP to continue the run to CLEC's leased Collocation space (Caged or Cageless Physical Collocation) or CLEC's equipment (Virtual Collocation). The Qwest provided facility from the C-POI to the leased Collocation space (Physical Collocation) or CLEC equipment (Virtual Collocation) shall be considered the Collocation Fiber Entrance Facility. The preceding provisions do not apply to Express Fiber Entrance Facility which provides that CLEC fiber will be pulled to CLEC Collocation equipment without splices or termination on an FDP.

8.2.4.3.1 Standard Fiber Entrance Facility -- The standard fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to the C-POI and CLEC's Collocation space in increments of 12 fibers. CLEC's fiber cable is spliced into a Qwest-provided shared fiber entrance cable that consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable shall be terminated on a Fiber Distribution Panel (FDP). A 12 fiber Interconnection cable is placed between CLEC's Collocation space and the FDP. The FDP provides Qwest with test access and a connection point between the transport fiber and CLEC's Interconnection cable.

8.2.4.3.2 Cross-Connect Fiber Entrance Facility -- The cross-connect fiber entrance facility provides fiber connectivity between CLEC's fiber facilities

delivered to a C-POI and multiple locations within the Qwest Wire Center. CLEC's fiber cable is spliced into a Qwest provided shared fiber entrance cable in 12 fiber increments. The Qwest fiber cable consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable terminates in a fiber distribution panel. This fiber distribution panel provides test access and flexibility for Cross Connection to a second fiber distribution panel. Fiber Interconnection cables in 4 and 12 fiber options connect the second fiber distribution panel and equipment locations in the Qwest Wire Center. This option has the ability to serve multiple locations or pieces of equipment within the Qwest Wire Center. This option provides maximum flexibility in distributing fibers within the Wire Center and readily supports Virtual and Cageless Physical Collocation and multiple CLEC locations in the office. This option also supports transitions from one form of Collocation to another.

8.2.4.3.3 Express Fiber Entrance Facility – Qwest will place CLEC-provided fiber cable from the C-POI directly to CLEC's Collocation space. The fiber cable placed in the Wire Center must meet NEBS Level 1 fire rating requirements. If CLEC provided cable does not meet NEBS Level 1 fire rating requirements then a transition splice will occur in the cable vault to insure that the cable within the Qwest Wire Center meets requirements. This option will not be available if there is only one conduit with two (2) unused innerducts (one (1) for emergency restoral and one (1) for a shared entrance cable).

8.2.4.4 Qwest will designate the location of the C-POI for Virtual, Caged Physical or Cageless Physical Collocation arrangements.

8.2.4.5 The Collocation entrance facility is assumed to be fiber optic cable and meets industry standards (GR. 20 Core). Metallic sheath cable is not considered a standard Collocation entrance facility. Requests for non-standard entrances will be considered through the BFR process described in the Bona Fide Request Process Section of this Agreement. All costs and Provisioning intervals for non-standard entrances will be developed on an Individual Case Basis.

8.2.4.6 Qwest shall provide an Interconnection point or points, physically accessible by both Qwest and CLEC, at which the fiber optic cable carrying CLEC's circuits can enter Qwest's Wire Center, provided that Qwest shall designate Interconnection points as close as reasonably possible to its Premises. Qwest shall offer at least two (2) such Interconnection points at each Qwest Wire Center when at least two (2) entry points pre-exist and duct space is available. Qwest will not initiate construction of a second, separate Collocation entrance facility solely for Collocation. If Qwest requires the construction of a new Collocation entrance facility for its own use, then the needs of CLEC will also be taken into consideration.

8.2.4.7 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase Qwest Tariffed or cataloged Private Line or Switched Access Services.

8.2.4.8 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase unbundled dedicated interoffice transport.

8.2.4.9 Microwave Entrance Facilities. Qwest offers Microwave Entrance Facilities on Premises owned or controlled by Qwest, to access CLEC transmission

equipment collocated on or inside the Qwest Premises. The rooftop, duct, conduit and riser cable space for Microwave Entrance Facilities is available on a first-come, first-served basis where Technically Feasible. CLEC may place its microwave antenna on a Qwest owned or controlled existing tower, building or supporting structure, where space is available, or CLEC may construct such tower or supporting structure, if necessary and if there is sufficient space and the building structure is not jeopardized. Such microwave equipment will be limited to that which is necessary for Interconnection to Qwest's network or access to Qwest's Unbundled Network Elements.

8.2.4.9.1 Qwest will jointly coordinate and plan with CLEC for the placement and location of the microwave equipment on a non-penetrating roof mount, or an existing tower or supporting structure on the exterior of a Qwest Premises. The method of placing CLEC microwave equipment shall be mutually agreed upon. Tower space or building roof space that allows for unobstructed line-of-sight will be provided by Qwest where Technically Feasible. A weather proof cable entry hatch or an existing wave-guide hatch or other suitable entrance into the building is required. If space is available, CLEC may use an existing cable entry hatch or a new cable entry hatch will need to be constructed. The cable entry hatch charges are on a per Port used basis.

8.2.4.9.2 CLEC can perform the determination of line-of-sight feasibility or CLEC can request Qwest perform the line-of-sight feasibility. CLEC will submit a microwave Entrance Facility application for each antenna arrangement and each Qwest Premises requested. A site visit will include appropriate Qwest and CLEC personnel for the purpose of determining whether an unobstructed line-of-sight is Technically Feasible and structural analysis of the building. The site visit will take place within fifteen (15) calendar after receipt by Qwest of the CLEC's microwave Entrance Facility application, unless the CLEC requests a later date. If CLEC performs the structural analysis and line-of-sight feasibility, it shall submit a response regarding its analysis to Qwest and Qwest will only bill for an escort fee per site requested. If either Party disputes the technical feasibility, space availability, or other conditions proposed by Qwest, the Parties will promptly petition the Commission for resolution of the dispute.

8.2.4.9.3 If Qwest performs the feasibility analysis, a response will be provided to CLEC within thirty (30) calendar Days of the site visit with the structural analysis and line-of-sight feasibility. If the site visit determines that unobstructed line-of-sight and placement of the microwave equipment are not Technically Feasible, CLEC will be billed only for the site visit. If the site visit determines that the placement of microwave equipment is Technically Feasible, Qwest will provide a quote for the microwave Entrance Facility with the quote for the submitted Collocation Application. If CLEC does not submit a Collocation Application for the Premises within thirty (30) Days following the completion of the line-of-sight and structural feasibility analysis or CLEC subsequently cancels the Collocation Application, CLEC will be billed for the site visit.

8.2.4.9.4 CLEC must obtain all necessary variances, licenses, approvals and authorizations from governmental agencies with jurisdiction, such as use permits, building permits, FCC licenses and FAA approval, if required, to construct, operate and maintain the CLEC facilities. If Qwest's assistance is required in order for CLEC to obtain necessary licenses or permits, Qwest will

not unreasonably withhold such assistance. CLEC will pay all expenses associated with that assistance on a time and materials basis.

8.2.4.9.5 CLEC is responsible for the engineering, purchasing, supplying, installing, maintaining, repairing and servicing of its microwave specific equipment. CLEC shall provide the cable from the Radio Frequency (RF) equipment to the building cable entry hatch. However, CLEC is not permitted to penetrate the building exterior wall or roof. Qwest will do all building penetration and Qwest will install the coaxial cable or wave-guide/transmission facility from the cable entry hatch to CLEC's Collocation space within the interval as set forth in Section 8.4 for the type of Collocation requested by CLEC. CLEC facilities shall not physically, electronically, or inductively interfere with the existing Qwest or other CLECs' equipment. Each transmitter individually and all transmitters collectively, for Qwest, Qwest Affiliates and CLECs, at a given location shall comply with appropriate federal, state, and local regulations governing the safe levels of RF radiation.

8.2.4.9.6 Upon expiration or termination, CLEC shall return the antenna space to its original condition. CLEC shall repair any damages caused by removal of its microwave equipment, or by the use, operation or placement of its microwave equipment on the Premises. If CLEC performs the foregoing, Qwest shall impose no charges on CLEC for such work. In the event the CLEC fails to remove its microwave equipment, CLEC shall be liable to Qwest for all reasonable costs of removal, restoration of the property, storage, and transportation to CLEC of such microwave equipment incurred by Qwest.

8.2.5 Terms and Conditions – ICDF Collocation

8.2.5.1 Interconnection Distribution Frame (ICDF) Collocation is available if CLEC has not obtained Caged or Cageless Physical Collocation, but requires access to the Qwest Wire Center for combining Unbundled Network Elements, Finished Services, including local Interconnection trunks, and ancillary services. ICDF Collocation provides CLEC with access to the Interconnection Distribution Frame, where Qwest will terminate the Unbundled Network Elements, Finished Service and ancillary services ordered by CLEC. CLEC may combine such services by running a jumper on the ICDF, in accordance with Section 8.2.5.3. CLEC access to the ICDF will be on the same terms and conditions described for other types of Collocation in this Section. There are multiple frames that could be used for ICDF Collocation including, but not limited to, the following: a) existing Interconnection Distribution Frame (ICDF); b) existing DSX panels for DS-1 and DS-3 services; c) new Interconnection Distribution Frame; d) existing toll frame; e) fiber distribution panel; and, f) existing intermediate frame. CLEC requested combinations at the ICDF must be in accordance with Sections 9.1 and 9.23. Qwest provided combinations in accordance with Sections 9.1 and 9.23.3.7 are not provided by Qwest in CLEC's ICDF Collocation space.

8.2.5.2 All Qwest terminations on the Interconnection Distribution Frame will be given a frame address. Qwest will establish and maintain frame address records for Qwest terminations. Qwest will maintain assignment records for each Unbundled Network Element and ancillary service ordered by CLEC that is terminated on the Interconnection Distribution Frame. Qwest will provide CLEC with the frame assignments for each Unbundled Network Element and ancillary service terminated on

the ICDF.

8.2.5.3 CLEC will be required to place the jumper connection between frame addresses to connect Unbundled Loops, ancillary and Finished Services. CLEC will be required to maintain the records for CLEC-provided jumpers.

8.2.5.4 Reserved for Future Use.

8.2.6 Terms and Conditions - Adjacent Collocation and Adjacent Remote Collocation

8.2.6.1 CLEC may request Adjacent Collocation and Adjacent Remote Collocation in an existing Qwest controlled environmental vault, controlled environmental hut, or similar structures on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises, to the extent Technically Feasible. Adjacent Collocation in an existing structure shall be ordered as Physical Collocation.

8.2.6.1.1 Alternatively, if no such structure described above exists, CLEC may choose to construct or procure a structure to place on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval. Qwest will review the building and property plans for the new structure within thirty (30) calendar Days.

8.2.6.1.2 CLEC shall own such structure, subject to a reasonable ground space lease. If CLEC terminates its Adjacent Collocation space, Qwest shall have the right of first refusal to such structure under terms to be mutually agreed upon by the Parties. In the event Qwest declines to take the structure or terms cannot be agreed upon, CLEC may transfer such structure to another CLEC for use for Interconnection and or access to UNEs. Transfer to another CLEC shall be subject to Qwest's approval, which approval shall not be unreasonably withheld. If no transfer of ownership occurs, CLEC is responsible for removal of the structure and returning the property to its original condition.

8.2.6.2 Qwest shall provide written authorization for use of Qwest's property to CLEC or CLEC's contractor, to the extent that Qwest owns or controls such property, to assist CLEC in obtaining any building permits or other approvals that may be necessary to construct the facility. CLEC is responsible for construction of the structure or procurement of an existing structure. CLEC is responsible for meeting all state and municipal building and zoning requirements.

8.2.6.3 Qwest will provide power and all other Physical Collocation services and facilities.

8.2.6.4 Upon request, Qwest will evaluate all parking or other spaces outside the Qwest Premises on Qwest property that can be reasonably made available to CLEC for Adjacent Collocation. Qwest will retain a reasonable amount of parking space for Qwest technicians or other vehicles, including CLEC's. Space below a hoisting area will not be relinquished for Collocation space.

8.2.6.5 If Physical Collocation space becomes available in a previously exhausted Qwest structure, Qwest shall not require CLEC to move, or prohibit CLEC

from moving its Collocation arrangement into the Qwest structure. Instead, Qwest shall continue to allow CLEC to collocate in any adjacent controlled environmental vault, controlled environmental hut, or similar structure.

8.2.7 Terms and Conditions – Remote Collocation

8.2.7.1 Remote Collocation allows CLEC to collocate in a Qwest Remote Premises that is located remotely from a Qwest Wire Center building property. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

8.2.7.2 The terms and conditions for Virtual or Physical Collocation shall apply to Remote Collocation as appropriate to the specific Remote Premises structure and subject to technical feasibility (e.g., Section 8.2.3.11 and Section 8.2.4 would not apply), or if appropriate, Adjacent Collocation as set forth above. Space will be offered in increments appropriate to the Remote Premises structure (i.e., shelf, relay rack, etc.).

8.2.8 Terms and Conditions – Available Inventory

8.2.8.1 The offering of a Collocation site from the Qwest Available Inventory list shall be limited to the offering of a specified site in Qwest's control to CLEC that either: (i) has a commission-approved Interconnection Agreement covering the specific type of Collocation to be obtained or (ii) is currently in negotiations with Qwest for such an Agreement. CLEC obtaining a Collocation site from the Qwest Available Inventory must not have any undisputed overdue financial obligations (i.e. more than thirty (30) days past due) owed to Qwest. Formally disputed charges will be treated as an exception.

8.2.8.2 The assuming CLEC for all Qwest posted sites will be required to pay a minimum of six (6) months of Space Construction and Floor Space Lease recurring charges should the CLEC terminate its rights of occupancy prior to six (6) months of occupancy.

8.2.8.3 Standard Sites

8.2.8.3.1 Qwest Postings: Collocation sites available in the Qwest Postings may be partially or fully completed before being returned to Qwest inventory. Both caged and cageless sites will be offered in the Qwest Collocation Postings section. Sites will be offered under the terms and conditions set forth in CLEC's Interconnection Agreement. In its Collocation application for such a site, CLEC may request to add to or complete the Collocation site to the CLEC's specifications. In CLEC Collocation application for such a site, CLEC may also request that Qwest reduce cable terminations. CLEC will be charged for the removal of such cable terminations.

8.2.8.3.2 All services that were previously connected to the Collocation (e.g. Unbundled Network Elements, CLEC to CLEC connections, administrative lines, Finished Services, Line Splitting and Line Sharing, etc.) will be disconnected before the site is listed on the "Qwest Postings" section of the Collocation Classifieds. Power, Grounding for caged sites and Entrance Facilities are also disconnected prior to a site being posted. Qwest shall inventory all Reusable and Reimbursable Elements and list them in the Qwest Postings. Shared

resources including HVAC and racking will not be listed in the Qwest postings. When other Collocation space is not available, Qwest reserves the right to remove Qwest postings from the Available Inventory web site to satisfy CLEC Applications for Collocation, for Qwest space requirement needs, or for CLEC Collocation augments to existing sites. Qwest shall not use the Qwest Postings as a basis to claim exhaust (space, power, terminations, etc.) in any Qwest Premises.

8.2.8.3.3 Qwest will provide CLEC with a feasibility study within ten (10) Calendar Days after receipt of the application. Qwest will provide CLEC with a quote within twenty-five (25) Calendar Days after providing the feasibility study. Price quotes will be honored for thirty (30) Calendar Days from the date the quote is provided and the associated space is reserved during such period, pending CLEC's acceptance of the quoted charges.

8.2.8.3.4 CLEC must pay the initial fifty percent (50%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receiving the quote. If the payment is not received by Qwest within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4 Special Sites:

8.2.8.4.1 Qwest may elect to offer Collocation sites returned through Chapter 7 bankruptcy or abandonment. These sites "Special Sites" will not be decommissioned and may be offered with Electronic Equipment (Equipment), Equipment Racks, Cages, DC power, Grounding and Terminations. These Special Sites will be posted in the Qwest Available Inventory posting under "Unverified sites with equipment".

8.2.8.4.2 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Calendar Days after receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receipt of the quote. If Qwest does not receive the payment within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4.3 Upon receipt of the full payment for the quoted nonrecurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that the CLEC requires Qwest to install Augments (additional services) to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.

8.2.8.4.4 For Special Sites; IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT QWEST IS SELLING EQUIPMENT THAT IS CLASSIFIED AS "USED" OR "SURPLUS" EQUIPMENT ON AN "AS IS, WHERE IS" BASIS. CLEC UNDERSTANDS AND AGREES THAT ALL EQUIPMENT IS, CONVEYED (I) IN AN "AS IS" "WHERE IS" CONDITION WITH ALL FAULTS, LATENT AND PATENT AND (II) ALL EQUIPMENT IS CONVEYED WITHOUT ANY QWEST WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED BY A PARTICULAR COURSE OF DEALING.

8.2.8.4.4.1 All software and software license agreements for any Equipment conveyed as part of a Special Site shall be the sole responsibility of the assuming CLEC.

8.2.8.4.4.2 CLEC hereby warrants and certifies that its handling, scrap, destruction or other disposition of any Equipment conveyed as part of a Special Site shall conform and comply with the following.

a) All applicable federal, state, county and municipal laws, statutes, regulations, and codes regulating hazardous wastes, materials or substances, including, but not limited to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.); the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.); Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 et seq.); Occupational Safety and Health Act (OSHA) (29 U.S.C. 651 et seq.); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq.); and any successor acts thereto or the regulations promulgated thereunder and any applicable International laws and regulations;

b) Environmental rules and regulations governing environmental impacts associated with the production and or recovery of precious metals, scrap metals and material processing and or residual material disposition whether hazardous or non-hazardous as defined by governing laws and or applicable laws and are the sole responsibility of the CLEC; and

c)All hazardous waste, hazardous material, hazardous substances or solid waste manifests relating to the shipping, receiving, disposal or final disposition of the Equipment shall not reference, list or otherwise indicate on the manifest that Qwest is the generator, arranger, transporter, owner or otherwise the party that owns, controls, manages, handles, stores, generates or otherwise uses the Equipment. On any required hazardous waste, hazardous material, hazardous substances or solid waste manifest relating to the shipping, receiving, disposal or final disposition of the Equipment, the CLEC shall be listed as the generator, arranger and owner of the materials.

d) The CLEC shall comply with the applicable Qwest Technical Publications as defined in the CLEC's Interconnection Agreement when removing any equipment from a Special Site.

8.2.8.5 CLEC Posting: Sites listed in the "CLEC Postings" section are eligible for Transfer Of Responsibility to an assuming CLEC. Sites may be offered with or without working circuits. The terms and conditions for the Transfer of Responsibility shall be in accordance with the Transfer of Responsibility Product offering.

8.2.9 Terms and Conditions – Joint Testing

8.2.9.1 Qwest will only test between the CLEC Collocation and the ICDF (or the first test point, i.e., the Demarcation Point between Qwest's and CLEC's network) once CLEC equipment is in place. Joint Testing is available for those terminations that are affected on a New/Change/Augment Collocation Application or which are in service for an existing collocation arrangement.

8.2.9.2 For New/Change/Augment collocation applications, Joint Testing will be available from the time of your installation and for a period up to sixty (60) calendar Days past the actual scheduled Ready For Service (RFS) date. Joint Testing will be completed within ninety (90) calendar days of the actual RFS date. CLEC must specify the type of test to be performed with Qwest presence on the Joint Testing at the ICDF Application or the New/Change/Augment Collocation Application form. Joint testing also will be available for existing collocation arrangements if CLEC provides a good faith reason demonstrating that joint testing is necessary. Testing on an existing collocation arrangement will be requested on a Joint Testing at ICDF application.

8.2.9.3 CLEC must provide contact information on the application for Qwest to arrange the Joint Testing date. Collocation application forms are located in the Ordering section of Collocation General Information at: http://www.qwest.com/wholesale/pcat/collocation.html#order.

8.2.9.4 Qwest will acknowledge acceptance of your application within ten (10) calendar days of an accepted New/Change/or Augment Collocation Application or Joint Testing at the ICDF Application.

8.2.9.5 CLEC will be required to provide the installation administration (e.g. Method of Procedures (MOPs) and Completion Notifications (CNs)) in a manner that is consistent with other policies for all Qwest Collocation product offerings. Refer to Qwest's Technical Publication 77350 located in the Product Description section of Collocation General information at: http://www.qwest.com/wholesale/pcat/collocation.html#prod for procedures.

8.2.9.6 CLEC will provide test gear for CLEC technicians and Qwest will provide test gear for Qwest's technicians to operate. Qwest employees will assist CLEC in conducting continuity tests on terminations at the ICDF. Qwest employees will not operate CLEC test gear

8.2.9.7 If an error rate of more than 2% is determined to exist on the terminations identified for testing and being tested during the scheduled joint testing period, and the errors are identified as Qwest errors, Qwest will not charge for this Joint Testing ordered

by CLEC. However, if there are less than 2% errors found or if the errors are facility errors and CLEC provided the facilities, Qwest will charge for the Joint Testing (i.e. one (1) pair is counted as two (2) terminations and errors are counted as one (1) termination basis).

8.2.9.8 If CLEC wants additional testing not identified on CLEC application, CLEC will need to complete a new Joint Testing at the ICDF Application.

8.2.9.9 If CLEC requests charges be waived because Qwest errors are found during testing, Qwest may request access to CLEC Collocation space to identify if the facility cabling sequence is correct, per applicable standards. CLEC agreement to such access will not be unreasonably withheld and will be given in all circumstances in which a waiver of charges is requested. CLEC may view Qwest facility cabling at the ICDF to identify cable sequence. If the errors are validated as Qwest errors, the charges are waived. Otherwise, Qwest will charge for the test.

8.2.9.10 If errors are found during the Joint Test, Qwest will only provide tools and materials for the repair of Qwest-network faults. If errors are facility errors and CLEC provided the facilities, CLEC will be responsible for the replacement or repair of those facilities.

8.2.9.11 Qwest will only provide tools and materials for the repair of Qwest-network faults.

8.2.10 Terms and Conditions – Security

8.2.10.1 Intentionally Left blank.

8.2.10.2 Intentionally Left blank.

8.2.10.3 CLEC shall have the right to perform equipment modifications within an existing Caged Physical Collocation arrangement without first obtaining permission from Qwest, provided that such modifications can be accomplished in a way as to isolate the Qwest network from any potential harm. Equipment modifications to all other existing Collocations will require a Method of Procedure (MOP) per Qwest Technical Publication 77350.

8.2.10.4 Qwest shall provide to CLEC a list of CLEC employees and the designated Premises to which they have access on a monthly basis to confirm appropriate billing and access information for security purposes.

8.2.11 Terms and Conditions – DC Power Reduction

8.2.11.1 If a CLEC wishes to reduce its amount of power and will not require it for future use, Qwest will process the request as a standard augment order and not as a DC Power Reduction request.

8.2.11.2 Applications for DC Power Reduction may be submitted only for collocation sites that have been previously accepted by the CLEC. Power reductions to

sites under construction or for sites not previously accepted by the CLEC, will follow standard change or augment procedures and rates.

8.2.11.3 Before submitting a power reduction application, CLEC's financial obligations with respect to the collocation site must be current, with the exception of formally disputed charges. CLEC's financial obligations include payment of one hundred percent (100%) of all undisputed non-recurring quoted charges for the collocation site and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.11.4 Collocation applications for new, change and augment requests must be submitted to the Collocation Project Management Center (CPMC) on the form provided by Qwest at www.qwest.co./wholesale/pcat/collocation.html.apform. The CPMC will notify the CLEC of any deficiencies in the application within ten (10) days of receipt. A nonrefundable Quote Preparation Fee (QPF) in the amount reflected in Exhibit A of this Agreement must be submitted with the application.

8.2.11.5 A walk through will be performed prior to quote preparation to determine the amount of work required to perform the power reduction.

8.2.11.6 When eliminating a secondary feed, CLEC may purchase the option to have the power cable and fuse position held for its future use. CLEC will be required to pay a monthly Power Maintenance Charge until such time as CLEC notifies Qwest that it wishes either to reenergize the feed or to discontinue the option. In instances where a shortage of fuse position is imminent, Qwest reserves the right to notify CLEC of the need to exercise its option or relinquish the fuse position to Qwest. Upon receipt of such notification, CLEC will have the option of energizing the secondary feed to at least 20 amps or returning the fuse position to Qwest within thirty (30) days of receipt of the notification.

8.2.11.7 CLEC assumes all responsibility for outages and/or impacts to CLEC-provided service and equipment due to the reduction in DC Power. CLEC shall be notified at least 48 hours in advance of the time and date of the power reduction and given the opportunity to observe the actual reduction procedure from within the Central Office spaces to which CLEC normally has access.

8.2.11.8 Restoration of the desired power is contingent upon desired power and fuse position availability.

8.3 Rate Elements

Rate elements for Collocation are included in Exhibit A.

8.3.1 Rate Elements - All Collocation

8.3.1.1 Qwest will recover Collocation costs through both recurring and nonrecurring charges. The charges are determined by the scope of work to be performed based on the information provided by CLEC on the Collocation Order Form. A quote is then developed by Qwest for the work to be performed.

8.3.1.2 The following elements as specified in Exhibit A of this Agreement are

used to develop a price quote in support of Collocation:

8.3.1.3 Quote Preparation Fee. A non-refundable charge for the work required to verify space and develop a price quote for the total costs to CLEC for its Collocation request. Qwest will assess a QPF when it delivers a Collocation quote to CLEC. Once the quote is delivered, the QPF becomes a non-refundable charge for the work required to verify the space and develop a price quote for the total costs to CLEC for its Collocation request. The QPF shall also apply to all new Collocations and Collocation Cabling Augments. Upon completion of a new Caged or Cageless Collocation, the QPF shall be credited against the final non-recurring charges for the Collocation.

8.3.1.3.1 A Collocation Cable Augment QPF is specified in Exhibit A. A Collocation Cable Augment is an augment to existing termination cables which are the transmission facilities purchased by CLEC for the purpose of accessing UNEs within the collocated Central Office premises. In order to qualify as a cable augment, the following criteria must be satisfied:

- Augment terminations must originate and terminate in the same Central Office.
- Augment terminations must originate from the same collocation site location as the existing terminations.
- Augment terminations must terminate on the same frame as existing terminations.
- Augment terminations must be of the same transmission facility type as existing terminations (i.e., copper or fiber).
- Augment terminations must be of the same signal level as existing terminations (DS0, DS1, DS3, fiber).

The Collocation Cable Augment QPF is a non-recurring rate element and separate from other non-recurring costs associated with the quote. Because this rate element is not part of a space construction fee, it will not be credited to the other non-recurring costs upon acceptance of the quote. The Collocation Cable Augment QPF rate element shall be the only rate element under which Qwest will recover non-recurring costs associated with the development of the Collocation Cable Augment quote.

8.3.1.3.2 Intentionally Left blank.

8.3.1.3.3 Intentionally Left blank.

8.3.1.3.4 Where CLEC disputes the accuracy or validity of a quote provided by Qwest, and Qwest agrees that the quote was incorrect, Qwest shall revise the quote and promptly provide it to CLEC.

8.3.1.3.5 Where CLEC disputes in good faith the accuracy or validity of a quote provided by Qwest, CLEC shall not be required to pay any charges incurred by Qwest prior to delivery of the quote if the CLEC determines that it will

not accept the quote.

8.3.1.4 Collocation Entrance Facility Charge. Provides for the fiber optic cable (in increments of 12 fibers) from the C-POI utilizing Qwest owned, conventional single mode type of fiber optic cable to the collocated equipment (for Virtual Collocation) or to the leased space (for Caged or Cageless Physical Collocation). The Collocation entrance facility includes manhole, conduit/innerduct, placement of conduit/innerduct, fiber cable, fiber placement, splice case, a splice frame, fiber distribution panel, and relay rack. Charges apply per fiber pair. Express Fiber Entrance Facility does not include fiber cable, splice case, a splice frame or fiber distribution panel. Microwave Entrance Facility charges are addressed in 8.3.1.17.

8.3.1.5 Cable Splicing Charge. Represents the labor and equipment to perform a subsequent splice to CLEC provided fiber optic cable after the initial installation splice. Includes per-setup and per-fiber-spliced rate elements.

8.3.1.6 -48 Volt DC Power Usage Charge. Provides -48 volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Usage Charge contains two components: (i) the capacity of the power plant available for CLEC's use, and (ii) the DC power used. The -48 Volt DC Power Usage Charge is specified in Exhibit A and applies to the quantity of -48 volt capacity specified by CLEC in its order. The minimum initial DC power order is twenty (20) amps. CLEC may, thereafter, augment or reduce DC power in increments of one (1) amp beyond the initial twenty (20) amp minimum, but CLEC may not reduce DC power below the twenty (20) amp minimum.

8.3.1.7 AC Power Feed. Recovers the cost of providing for the engineering and installation of wire, conduit and support, breakers and miscellaneous electrical equipment necessary to provide the AC power, with generator backup, to CLEC's space. The AC Power feed is optional. The AC Power Feed is available with single or triple phase options. The AC Power Feed is rated on a per foot and per ampere basis.

8.3.1.8 Inspector Labor Charge. Provides for Qwest qualified personnel, acting as an inspector, when CLEC requires access to the C-POI after the initial installation. A call-out of an inspector after business hours is subject to a minimum charge of three hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' Qwest employee (or contract employee) is required to go 'on-shift' on behalf of CLEC.

8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2 (EICT). Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

8.3.1.10 Interconnection Tie Pairs (ITP) are described in the UNE Section, and apply for each Unbundled Network Element, ancillary service or Interconnection service

delivered to CLEC. The ITP provides the connection between the Unbundled Network Element, ancillary service or Interconnection service and the Demarcation Point. Qwest will charge CLEC for ITPs pursuant to Exhibit A.

8.3.1.11 Collocation Terminations. Terminations are purchased by CLEC for the purpose of accessing Unbundled Network Elements. These terminations may be requested in Shared Access and Direct Connection Configurations.

8.3.1.11.1 Shared Access

8.3.1.11.1.1 In a Shared Access configuration, there are multiple frames that could be designated as an ICDF or appropriate Demarcation Point including, but not limited to, the following:

a) Existing Interconnection Distributing Frame (ICDF)

b) Existing DSX Panels for DS1 and DS3 services

c) New Interconnection Distributing Frame

d) Existing Toll Frame

e) Fiber Distribution Panel

f) Existing Intermediate Frame

8.3.1.11.1.2 The ICDF is the test access point. It would not be uncommon to find multiple service providers, including Qwest, on the ICDF at any one time. This element includes Qwest's provided termination blocks, installation labor between CLEC collocated equipment and the appropriate cross connect device. Cabling is also required and may be provided by CLEC or at their request, Qwest will provide cabling at an additional charge. When Qwest provides the cabling, Collocation Block Termination rates will apply as contained in Exhibit A of this Agreement. When CLEC provides the cabling, Collocation Termination rates, on a per termination basis, will apply as contained in Exhibit A of this Agreement. When CLEC provides and installs the tie cables, blocks and terminations on the ICDF, no Collocation Termination rates will apply.

8.3.1.11.2 Direct Connection

8.3.1.11.2.1 Direct Connection provides an uninterrupted path from the Collocation space to an existing frame. This option will guarantee that there will not be an ICDF. The connection will be designed from the Collocation space to the same frame that Qwest uses to connect to that specific service. For example, if CLEC wants to connect directly from their Collocation space to a 911 router, the infrastructure for the 911 trunks will terminate in a DS1 bay location with the 911-router circuits. There are several options for the location of the Demarcation Point. CLEC will select their desired option via the supplemental Direct Connection (DC-POT) With Collocation Form DC050900. If CLEC chooses a demarcation inside the Collocation space, the collocator

should order and install the termination equipment itself. Demarcation equipment must be noted on the order form so that a CLLI code and unique tie cable assignments can be generated for systems flow through. If CLEC chooses a demarcation outside its Collocation space, Qwest will maintain and inventory this device. Direct terminations may be ordered where frame space is available. If frame space is exhausted the terminations may need to be made at another frame. Upon completion of the pre-Provisioning of the Direct Connection, CLEC will receive an Alternate Point of Termination (APOT) form so that they may order Finished Services and UNEs. CLEC will be responsible for augmenting terminations as required. The Direct Connection APOT information must be provided on the ASR or LSR to insure that the services are designed to the dedicated path.

8.3.1.11.2.2 CLEC's termination point will require a CLLI code (e.g., Frame Number) and the dedicated tie pairs will require a unique name to enable automatic assignment through TIRKS™ and SWITCH™ via Carrier Facilities Address (CFA) methods.

8.3.1.11.2.3 If CLEC wishes to arrange terminations on a 2-wire POTS level cross-connect device of the modular type, i.e. COSMIC™ Hardware, standard-engineering principles will apply. Provisioning intervals and costs will be customized and determined on an Individual Case Basis (ICB). A five (5) year forecast including terminations per quantities will be required. MELD™ runs will be required for the initial COSMIC™ plan and each subsequent block addition. To minimize CLEC's cost, to the extent feasible, Qwest shall consolidate CLEC's requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest, Minimum installation requires at least one (1) block for every two (2) outside plant modules. A one half (½) shelf of block capacity must be reserved for future block space.

8.3.1.11.2.4 Requests for terminations at a DSO, DS1, DS3 and optical level (non-POTS) may also be made directly to the respective frame or panel (i.e. toll frame, DSX, FDP, etc.). Direct Connections to these frames do not require MELD™ runs and short jumper engineering principals, as with the COSMIC™ frame. However these connections will require coordination between Qwest and CLEC to ensure that the cable is terminated in an existing frame with the service that CLEC is wishing to connect with. Direct Connection is ordered via the supplemental Collocation order form, Direct Connection (DC-POT) With Collocation Form DC050900. Timing, pricing and feasibility will be determined on the basis of a specific, in-depth building analysis. Direct Connections are available where available frame space permits. If frame space is exhausted, terminations may need to be made at another frame. Space availability will be determined during the feasibility request phase of the order. Rates for Direct Connection Terminations will be on an ICB basis using rates defined in Exhibit A.

8.3.1.11.3 . Terminations must be purchased in the following increments: DS0 in blocks of 100; DS1 in increments of one (1); and DS3 in increments of one (1) coaxial cable or fiber pair.

8.3.1.12 Security Charge. This charge applies to the keys/card and card readers, required for CLEC access to the Qwest Premises for the purpose of Collocation. Charges are assessed per CLEC employee, per card, per Premises on a monthly basis.

8.3.1.13 Composite Clock/Central Office Synchronization. Recovers the cost of providing composite clock and/or DS1 synchronization signals traceable to a stratum one source. CLEC must determine the synchronization requirements for CLEC's equipment and notify Qwest of these requirements when ordering the clock signals. Central Office Synchronization is required for Virtual Collocation involving digital services or connections. Synchronization may be required for analog services. Central Office Synchronization is available where Qwest Central Offices are equipped with Building Integrated Timing Supply (BITS). The rate is applied on a per Port basis in accordance with Exhibit A.

8.3.1.14 -48 Volt DC Power Cable Charge. Provides for the transmission of -48 volt DC power to the collocated equipment and is fused at one hundred twenty-five percent (125%) of request. It includes engineering, furnishing and installing the main distribution bay power breaker, associated power cable, cable rack and local power bay to the closest power distribution bay. It also includes the power cable (feeders) A and B from the local power distribution bay to the leased physical space (for Caged or Cageless Physical Collocation) or to the collocated equipment (for Virtual Collocation). It is charged per foot, per A and B feeder.

8.3.1.15 Space Availability Report Charge – Recovers the cost of preparing a Space Availability Report in accordance with Section 8.2.1.9.1.

8.3.1.16 CLEC-to-CLEC Connection Charge. Recovers the cost of order processing, design and engineering. Additional charges will be assessed for Virtual Collocation connections and cable holes, if applicable. There will be recurring charges for cable racking.

8.3.1.17 Microwave Entrance Facility - The charges for Microwave Entrance Facility include the recurring and nonrecurring charges associated with the preliminary rooftop engineering and survey analysis, Premises structural analysis and line-of-sight feasibility, if performed by Qwest; space rental for the rooftop and existing antenna support structure, cable racking, cable, building penetration for cable entry, and other work as required.

8.3.2 Rate Elements - Virtual Collocation

The following rate elements, as specified in Exhibit A, apply uniquely to Virtual Collocation.

8.3.2.1 Maintenance Labor. Provides for the labor necessary for repair of out of service and/or service-affecting conditions and preventative maintenance of CLEC virtually collocated equipment. CLEC is responsible for ordering maintenance spares. Qwest will perform maintenance and/or repair work upon receipt of the replacement maintenance spare and/or equipment from CLEC. A call-out of a maintenance

technician after business hours is subject to a minimum charge of three (3) hours.

8.3.2.2 Training Labor. Provides for the training of Qwest personnel on a metropolitan service area basis provided by the vendor of CLEC's virtually collocated equipment when that equipment is different from Qwest-provided equipment. Qwest will require three (3) Qwest employees to be trained per metropolitan service area in which CLEC's virtually collocated equipment is located. If, by an act of Qwest, trained employees are relocated, retired, or are no longer available, Qwest will not require CLEC to provide training for additional Qwest employees for the same virtually collocated equipment in the same metropolitan area. Where more than one (1) CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs so selecting.

8.3.2.3 Equipment Bay. Provides mounting space for CLEC virtually collocated equipment. Each bay includes the seven (7) foot bay, its installation, and all necessary environmental supports. Mounting space on the bay, including space for the fuse panel and air gaps necessary for heat dissipation is limited to 78 inches. The monthly rate is applied per shelf. CLEC may request use of alternate bay heights of 9 foot and 11 foot 6 inches, which will be considered on an Individual Case Basis. No Equipment Bay Charge is assessed if CLEC provides its own equipment bay.

8.3.2.4 Engineering Labor. Provides the planning and engineering of CLEC virtually collocated equipment at the time of installation, change or removal.

8.3.2.5 Installation Labor. Provides for the installation, change or removal of CLEC virtually collocated equipment.

8.3.2.6 Floor Space Lease. Required for Virtual Collocation only in the instance where CLEC provides its own equipment bay. This rate element provides the monthly lease for the space occupied by the CLEC-provided equipment bay, including property taxes and base operating cost without –48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or –48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises areas surrounding the CLEC-provided equipment bay and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the CLEC-provided equipment bay.

8.3.3 Rate Elements - Physical Collocation

8.3.3.1 Space Construction and Site Preparation. Includes the material and labor to construct and prepare the space, including all support structure, cable racking and lighting required to set up the space. It also includes air conditioning (to support CLEC loads specified), lighting (not to exceed 2 watts per square foot), and convenience outlets (3 per Caged or Cageless Collocation or number required by building code) and the cost associated with space engineering. If a new line-up is established for Cageless Collocation, an AC power outlet will be provided at every other bay in the line-up. Cageless bays placed in existing line-ups will use the existing outlets. For Caged Collocation, it includes a nine foot high cage enclosure. CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to

Qwest's approval, which may not be unreasonably withheld, to construct the space, including the cage in the case of Caged Collocation, in accordance with NEBS Level 1 safety requirements. Pricing for the Space Construction and Site Preparation is described in Exhibit A. In the case of Shared Collocation, Qwest may not increase the cost of site preparation or nonrecurring charges above the TELRIC cost for Provisioning such a cage of similar dimensions and material to a single collocating Party, and Qwest must prorate the charge for site conditioning and preparation by determining the total charge for site preparation and allocating that charge to CLEC based on the percentage of the total space used by CLEC. Qwest must in all cases of shared space Collocation allocate space preparation, conditioning, security measures and other Collocation charges on a pro-rated basis to ensure that the charges paid by CLEC as a percentage of the total overall space preparation and conditioning expenses do not exceed the percentage of the total Collocation space used by CLEC.

8.3.3.2 Floor Space Lease. Provides the monthly lease for the leased physical space, property taxes and base operating cost without -48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); a pro-rata share of biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises common areas surrounding the leased physical space and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the cage enclosure, as applicable.

8.3.3.3 Intentionally Left Blank.

8.3.3.4 Collocation Grounding Charge. Used to connect the Premises common ground to CLEC equipment. Recurring and nonrecurring charges are assessed per foot to CLEC's equipment.

8.3.4 Rate Elements - ICDF Collocation

8.3.4.1 The charges for ICDF Collocation are the nonrecurring and recurring charges associated with the Unbundled Network Elements or ancillary services ordered by CLEC, the cost of extending the Unbundled Network Elements or ancillary services to the Demarcation Point, which are recovered through the ITP charges described in the UNE Section, and the Security charge, described in this Section.

8.3.5 Rate Elements – Adjacent Collocation

8.3.5.1 The charges for Adjacent Collocation will be developed on an Individual Case Basis, except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined, depending on the specific needs of CLEC and the unique nature of the available adjacent space (e.g., existing structure or new structure to be constructed).

8.3.6 Rate Elements – Remote Collocation and Adjacent Remote Collocation

8.3.6.1 The charges for Remote Collocation will be developed on an Individual Case Basis except where the Commission finds that standard pricing elements can be

reasonably identified and their costs determined.

8.3.7 Rate Elements – CLEC-to-CLEC Connections

8.3.7.1 The charges for CLEC-to-CLEC Connections are addressed in Section 8.3.1.16.

8.3.8 Rate Elements – Collocation Cancellation

8.3.8.1 Qwest will not charge for the cancellation service except as specifically provided in the terms and conditions for Collocation Cancellation.

8.3.9 Rate Elements – Collocation Decommissioning

8.3.9.1 Qwest will not charge for the decommissioning service except as specifically provided in the terms and conditions for Collocation Decommissioning unless equipment has been abandoned or the Collocation space has not been returned to turnover condition.

8.3.9.2 Miscellaneous labor hourly charges as defined in the attached Exhibit A will apply if Qwest is required to remove equipment or to restore the collocation space to turnover condition.

8.3.9.3 Additional dispatch charges, will apply for unmanned offices, as defined in the attached Exhibit A.

8.3.10 Rate Elements – Transfer of Responsibility

8.3.10.1 Vacating CLEC will not incur charges for the transfer of the Collocation site.

8.3.10.2 Assuming CLEC's quote will reflect the following nonrecurring charges associated with the transfer of the Collocation site: Assessment Fee, payable regardless of whether the quote is accepted, and Network Systems Administrative Fee.

8.3.10.3 Nonrecurring charge for processing Interconnection circuits.

8.3.11 Rate Elements – Available Inventory

8.3.11.1 Pricing for sites listed within the Qwest Available Inventory list will be provided on a site-specific basis. Pricing shall be in accordance with the Interconnection Agreement of the assuming CLEC. Vacating CLEC's may receive a potential refund from sale of available/discounted sites based on outstanding Nonrecurring charges, amounts for reimbursable elements and transfer fees.

8.3.11.2 The following items are charged to a CLEC purchasing a "Standard site" from the Qwest Available Inventory List. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before work begins.

8.3.11.2.1 Quote Preparation Fee (QPF) - Found in CLEC's existing Interconnection Agreement for a each specific type of Collocation site.

8.3.11.2.2 Reusable Elements are those Qwest inventoried components used to provision the Collocation site. The quote will be for all components used to install the Collocation space. These elements include Qwest inventoried components (i.e. cage, bays, HVAC, cable racking) to provision the original Collocation site.

8.3.11.2.2.1 Nonrecurring Collocation Rate Elements that are reused, will be available at a 50% discount to an assuming CLEC.

8.3.11.2.3 Reimbursable Elements are those which are not subject to a discount to the assuming CLEC. This includes any reusable termination cabling that is part of the available site. Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to Collocation site, i.e. Express Fiber Entrances).

8.3.11.3 Special Site Rates: The following items are charged to an assuming CLEC for a Special Site from the Qwest Postings. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before Qwest begins work.

8.3.11.3.1 Site Survey Fee: A non-refundable site survey fee for a formal site survey visit with the CLEC per Exhibit A. Payment is to be submitted in conjunction with the Collocation Application for a Special Site.

8.3.11.3.2 Quote Preparation Fee (QPF). The QPF for Special Sites will be a flat rate fee per Exhibit A. If the assuming CLEC requires Augments (additional services) to the existing site the QPF will revert to the rate defined in the CLEC's Interconnection Agreement.

8.3.11.3.3 Non recurring Collocation Rate Elements: Include all Reusable elements defined above, DC Power, grounding and terminations. Special sites will be offered at a flat 50% discount to an assuming CLEC based on the rates in its current Interconnection Agreement. Augments (additional services) or changes to the sites will not be discounted and will be charged at the rates as defined in the CLEC's Exhibit A of their Interconnect Agreement or Exhibit A of this document, payable in full prior to commencement of work.

8.3.11.3.4 Network Assessment Fee for transfer of existing circuits to the assuming CLEC per Exhibit A.

8.3.11.3.5 Any Equipment contained in the site will be conveyed at a $0.00 charge.

8.3.11.4 Recurring charges for all Products and Services will be charged at rates listed in the assuming CLEC's Exhibit A of their Interconnection Agreement without a discount.

8.3.12 Rate Elements – Joint Testing

8.3.12.1 The Joint Testing Nonrecurring Charge is specified in Exhibit A of this Agreement. The rate is a minimum of one (1) hour per Joint Testing request at the

Virtual Collocation maintenance rate and a per thirty minute charge at the same rate for any time exceeding the first hour. Qwest identified trouble during the ninety (90) calendar Day period for New/Change/Augment collocations, following the acceptance of the collocation site, will be corrected by Qwest at no additional charge. Qwest identified trouble for existing collocation sites will also be corrected at no additional charge.

8.3.12.2 Qwest will not charge a Quote Preparation Fee (QPF) for Joint Testing.

8.3.13 Rate Elements – DC Power Reduction

8.3.13.1 Collocation charges will be based upon the information provided to Qwest by CLEC on the Collocation Application Form. Below is an example of additional charges that are unique to a Power Reduction Request and will be provided to CLEC via a quote:

8.3.13.1.1 Based on this evaluation of work provided in the quote, the rates provided in Exhibit A to this Amendment will apply. One QPF per application/per collocation site will be charged. When multiple feeds at the same collocation space are reduced or eliminated, CLEC will pay one QPF. Other nonrecurring and recurring charges may apply as reflected in CLEC's Interconnection Agreement. If the quote contemplates the performance of work not included in rates identified in Exhibit A of this Amendment, such charges shall be identified in the quote.

8.3.13.1.2 Qwest will provide CLEC a quote for additional nonrecurring charges associated with the Power Reduction Procedure based upon the rates provided in Exhibit A. All quoted nonrecurring charges must be paid within thirty (30) Days from the quote. Such payment constitutes CLEC's quote acceptance and authorizes Qwest to perform the work to effect the requested power reduction. All rates and charges identified in the quote will be based on those rates in the Agreement and Exhibit A of this Amendment. If appropriate rates and charges are not available from those sources, Qwest will use tariffs or other rate sources as a basis for preparing the quote.

8.3.13.1.3 Billing to CLEC for initial power value at the collocation site will be modified to reflect the reduced amount upon receipt of payment of the quoted charges and will be made effective back to the date of acceptance of the Power Reduction Application by the CPMC.

8.3.13.1.4 Recurring billing for the Power Maintenance Charge will terminate on the day CLEC energizes the feed or returns the fuse position to Qwest.

8.3.13.2 Nonrecurring Charges

8.3.13.2.1 QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the Power Reduction request. It covers the project, order and support management associated with the administrative functions of processing the request.

8.3.13.2.2 Power Reduction Charge: Includes costs associated with reducing the fuse/breaker size. Rates are categorized in this manner based

upon the work involved and power distribution point (e.g., BDFB or power board) and are set forth in Exhibit A of CLEC's Interconnection Agreement. Where additional work is needed, such as rewiring the power lead at the power source (or some cases may require relocation of the feed), rates will be calculated on an Individual Case Basis (ICB) basis. These rates will be provided to CLEC on the quote prior to work beginning.

8.3.13.2.3 Power Restoration Charge (assessed if power is restored): ICB Charge associated with restoring the power cable to the power source and is contingent upon whether the desired power and fuse position is available. Qwest will evaluate work required to perform the Power Restoration request and provide CLEC a quote utilizing standard power element charges (for example, DC power usage, labor, and cabling charges) included in Exhibit A of CLEC's Interconnection Agreement.

8.3.13.3 Recurring Charge

8.3.13.3.1 Power Maintenance Charge: Monthly recurring charge associated with option to hold the power infrastructure from a secondary feed in place for potential CLEC requests.

8.4 Ordering

8.4.1 Ordering - All Collocation

8.4.1.1 CLEC must complete the requirements in the Implementation Schedule Section of this Agreement before submitting a Collocation Application Form to Qwest.

8.4.1.2 Any material changes, modifications or additional engineering (Material Changes) requested by CLEC, subsequent to its original Collocation order, as to the type and quantity of equipment or other aspects of the original Collocation order, must be submitted with a revised Collocation Application. For purposes of this section, Material Changes are changes that would significantly impair Qwest's ability to provision the requested Collocation within the applicable intervals if the changes are provisioned with the original Collocation order and would require Qwest to incur financial penalties under the terms of this Agreement or other Applicable Law. Qwest shall determine the additional time required to comply with CLEC's request for Material Changes (Additional Time), and CLEC shall have the option of (a) having the request for Material Changes implemented with the original Collocation order (within the original Provisioning intervals) as extended by the Additional Time; or (b) having Qwest process and provision the request as a subsequent construction activity or augmentation to the original Collocation order. Any nonmaterial changes, modifications, or additional engineering requested by CLEC, subsequent to its original Collocation order, may be submitted with a revised Collocation Application or otherwise communicated to Qwest and shall be implemented with the original Collocation order within the original applicable intervals.

8.4.1.3 There are three (3) primary steps in the ordering of Collocation – 1) Forecasting, 2) Application, and 3) Acceptance of Quote.

8.4.1.4 CLEC shall submit an annual forecast, updated at the end of each quarter, of its future Collocation requirements. The quarterly forecast shall be reviewed by CLEC and the Qwest account team. CLEC forecast shall be considered accurate for purposes of Collocation intervals if the subsequent Collocation Application correctly

identifies a) and e) below, and b) and c) below are within twenty percent (20%) of the forecast. If at the time the Application is made the forecasted type of Collocation is not available, CLEC may specify a different type of Collocation without affecting the Collocation intervals. The forecast shall include, for each Qwest premises, the following:

a) Identification of the Qwest Premises;

b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;

c) Power requirements;

d) Heat Dissipation (optional);

e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, ICDF, Virtual, etc.);

f) Intentionally Left Blank.

g) Entrance Facility Type (e.g., Express Fiber, Private Line);

h) Type and Quantity of Terminations (optional); and

i) Month or Quarter during or after which CLEC expects to submit its Collocation Application.

8.4.1.4.1 The following terms shall apply to the forecasting process:

a) CLEC forecasts shall be provided as detailed in Section 8.4.1.4;

b) CLEC forecasts shall be confidential information and Qwest may not distribute, disclose or reveal, in any form, CLEC forecasts other than as allowed and described in Sections 5.16.9.1 and 5.16.9.2.

c) Reserved for Future Use.

d) Reserved for Future Use.

8.4.1.5 CLEC shall submit a Collocation Application to order Collocation at a particular Qwest Premises. A Collocation Application shall be considered complete, if it contains:

a) Identification of the Qwest Premises;

b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;

c) Power requirements;

d) Heat Dissipation;

e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared,

Virtual, etc.);

f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality i.e., Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the Application, how this equipment is necessary for access to UNEs or Interconnection. High level equipment interface or connectivity schematic for equipment that is not on the approved equipment list or has not been used by CLEC for a similar purpose before, must also accompany this Application. CLEC using approved equipment found at www.qwest.com/wholesale/pcat/collocation.html need not comply with this provision);

g) Entrance Facility Type;

h) Type and Quantity of Terminations;

i) If desired, an alternate form of Collocation if first choice is not available; and

j) Billing Contact.

8.4.1.5.1 Parties will work cooperatively to ensure the accuracy of the Collocation Application. If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days after receipt of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.1.6 Acceptance – After receipt of a Collocation Quote Form from Qwest, CLEC shall formally accept the quote in order for Qwest to continue the processing of the Collocation Application. A Collocation Acceptance shall be considered complete, if it contains:

a) Signed Notification of Acceptance; and

b) Payment of fifty percent (50%) of quoted charges.

8.4.1.6.1 CLEC shall have the option of viewing the available space prior to quote acceptance, at the rate set forth in Exhibit A.

8.4.1.7 Collocation Space Reservation – allows CLEC to reserve space and identify, to the extent available, infrastructure incidental to that space such as power, HVAC, in a Qwest Premises for up to one (1) year for transmission equipment (ATM, Packet Switching, DSLAM), three (3) years for circuit switching equipment, and five (5) years for power equipment. CLEC may reserve space in a particular Qwest Premises through the Collocation Space Reservation Application Form. Requests for contiguous space will be honored, if available.

8.4.1.7.1 Collocation Space Reservation Application – Upon receipt of the

Collocation Space Reservation Application Form, Qwest will provide space feasibility within ten (10) calendar Days.

8.4.1.7.2 Collocation Space Reservation Quotation – If space is available, Qwest will provide a specific price quote based on the requested Collocation requirements described on the Collocation Space Reservation Application Form. The quote and a Billing invoice for twenty-five percent (25%) payment of nonrecurring charges will be sent to CLEC within twenty-five (25) calendar Days from the Collocation Space Reservation Application receipt.

8.4.1.7.2.1 Collocation Space Reservation Acceptance CLEC must electronically submit Acceptance or non-Acceptance of the quote within seven (7) calendar Days of receipt of the quotation. If CLEC submits the Acceptance between eight (8) and thirty (30) calendar Days of receipt of the quotation, Qwest will honor the reservation upon receipt of the payment only if Qwest does not receive a competing request for the same space from another CLEC. Qwest will not honor reservations if CLEC submits the Acceptance more than thirty (30) calendar Days after receipt of the quotation.

8.4.1.7.3 Upon receipt of the twenty-five percent (25%) payment, Qwest will reserve the space on behalf of CLEC in accordance with the Application and take the necessary steps to ensure the availability of power, HVAC and other components reflected on the application for reservation. Qwest will hold the reservation for the applicable reservation period after the twenty-five percent (25%) payment. This payment will be applied to the subsequent Collocation Application.

8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. Upon notification of the cancellation, Qwest will refund a prorated portion of the twenty-five percent (25%) payment as follows:

a) Cancellation notification within ninety (90) calendar Days from receipt of wire transfer, seventy five percent (75%) of the initial down payment will be returned to CLEC.

b) Cancellation notification within ninety-one (91) and one hundred and eighty (180) calendar Days from receipt of wire transfer, fifty percent (50%) of the initial down payment will be returned to CLEC.

c) Cancellation notification within one hundred and eighty-one (181) and two hundred and seventy (270) calendar Days from receipt of wire transfer, twenty-five percent (25%) of the initial down payment will be returned to CLEC.

d) Cancellation notification after two hundred and seventy (270) calendar Days from receipt of wire transfer, zero percent (0%) of the initial down payment will be returned to CLEC.

8.4.1.8 Collocation Space Option

8.4.1.8.1 CLEC, Qwest, and Qwest Affiliates may Option space in Qwest Wire Center Premises in accordance with the terms of this Section 8.4.1.8 for the following equipment and time periods:

a) Transmission equipment – one (1) year

b) Circuit switching equipment – three (3) years

c) Power plants –five (5) years

8.4.1.8.2 Optioned space is offered to CLECs for Caged, Cageless, and Virtual Collocation. To promote fairness and prevent warehousing, the following limits apply:

a) The Party requesting the Option may specify the amount of space to be Optioned but not a specific location within the Wire Center, unless CLEC requests an Option for bay space adjacent to existing cageless lineups. CLEC may also request space be contiguous to its existing Collocation space.

b) A requesting CLEC may Option one (1) Collocation space per Wire Center.

c) The maximum amount of space per Wire Center to be Optioned is:

- 200 square feet for Caged Collocation

- 4 bays for Cageless and Virtual Collocation

8.4.1.8.3 The Collocation Space Option Application form will be processed upon receipt of a properly completed request. Such form shall be considered properly completed if it contains identifying information of CLEC, the applicable Qwest Premises, the amount of Collocation space sought, the type of Collocation (Caged, Cageless, Virtual) and the type of equipment (from the categories identified in Section 8.4.1.8.1) for which the option is being sought. CLEC must have met all past and present undisputed financial obligations to Qwest. Upon receipt of the Collocation Space Option Application form, Qwest will confirm in writing, within ten (10) calendar Days, the availability of, and price quote (the "Option Fee") for the Optioned space. If space is not available, Qwest will deny the request.

8.4.1.8.4 CLEC must electronically submit Acceptance with full payment of the nonrecurring portion of the Option Fee, or acknowledge non-Acceptance of the quoted Option Fee, within seven (7) calendar Days of receipt of the quotation. When Qwest takes an Option on space for itself, Qwest shall impute an amount equal to the Option Fee to the appropriate operations for which the Optioned Space applies. The Option quote expires seven (7) calendar Days after delivery to CLEC.

8.4.1.8.5 Upon receipt of Acceptance and full payment of the nonrecurring portion of the Option Fee, Qwest will Option the space on behalf of CLEC including the contiguous space requests if available (or itself if appropriate) and

the Option time frame will begin. The prioritization of Optioning will be based upon the date and time of the Acceptance. The earlier in time an Acceptance is received by Qwest, the higher in priority is such Option. The Option is limited to space only and does not include other elements required to provision the Collocation.

8.4.1.8.6 In order for an Option request to avoid expiration, CLEC must:

a) Submit a Collocation Application during the Option time frame; or

b) The Option may be renewed if a Collocation Space Option Application is received at least ten (10) calendar Days prior to the expiration of the term of the existing Option. The priority of a renewed Option is determined by the date CLEC accepts the quote from Qwest on CLEC's renewal application.

8.4.1.8.7 First Right of Refusal – If Qwest receives a valid Collocation Application (CLEC A is the requesting Party) for a Qwest Wire Center in which all available space has been occupied or Optioned, the following provisions for First Right of Refusal will apply:

8.4.1.8.7.1 All Qwest out of space reporting requirements apply to the Collocation Application (Sections 8.2.1.11 and 8.2.1.12). In addition, Qwest will provide CLEC A with Option space information (e.g., Caged and Cageless Optioned space) that may fulfill the requirements of CLEC A's Collocation Application. At CLEC A's request, Qwest will initiate the Option Enforcement Notice process by notifying the Option Party or Parities with the most recent space Option(s) that meets the requirements of CLEC A's Collocation Application.

8.4.1.8.7.2 The Option Enforcement Notice serves as notification to the Option Party that Qwest is in possession of a valid Collocation Application, and calls for the Option Party to exercise their Right of First Refusal, or relinquish their space Option. The Option Party may exercise it's Right of First Refusal by submitting either a Collocation Application as set forth in Section 8.4.1.5, or by submitting the Collocation Space Reservation Application set forth in Section 8.4.1.7, within ten (10) calendar Days of receipt of the Option Enforcement Notice. This process continues for all Optioned space until all Optioned space is exercised or Optioned space is relinquished (affirmatively by CLEC or upon expiration of the notice period, whichever is earlier) to fulfill the Collocation Application. Once Optioned space has been relinquished for use to fulfill the Collocation Application, the standard ordering terms and conditions for Collocation shall apply.

8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLEC require the use of CLEC's contiguous space. Upon notification, CLEC will have ten (10) calendar days to indicate its intent to submit a Collocation Application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.

8.4.1.8.7.4 The rate elements for the Collocation Space Option are comprised of the following:

a) Space Option Administration Fee is a nonrecurring fee for all Collocation Space Option requests and covers the processing of application, feasibility, common space engineering, records management, and administration of the First Right of Refusal process.

b) Space Option Fee is a monthly recurring fee that will be charged based upon the amount of space being optioned, at two dollars ($2.00) per square foot per month.

8.4.1.8.8 In the event that the Option Party proceeds with a Collocation Application for optioned space, all payments made pursuant to Section 8.4.1.8.7.4(b) above shall be applied to such Application.

8.4.1.9 The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs.

8.4.2 Ordering - Virtual Collocation

8.4.2.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.2.2 Quotation – If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar Days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing virtually collocated equipment, will be processed and provisioned within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's Acceptance of the quoted charges.

8.4.2.3 Acceptance -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.2.4 Interval -- The interval for Virtual Collocation shall vary depending upon four factors – 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7; 2) whether CLEC provides its Acceptance within seven (7) calendar Days receipt of the quotation; 3) whether CLEC delivers its collocated equipment to Qwest in a timely manner, which shall mean within fifty-three (53) calendar Days of the receipt of the complete Collocation Application; and 4) whether the Application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no instance shall any such interval exceed thirty (30) calendar Days. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.2.4.1 Forecasted Applications with Timely Acceptance – If an Application is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.2 Forecasted Applications with Late Acceptance – If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.2.4.3 Unforecasted Applications with Timely Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation

Application, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.4 Unforecasted Applications with Late Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.3 through 8.4.2.4.4 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.2.4.6 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. – If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to ensure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application. If not withstanding these efforts, Qwest is unable to meet the interval and cannot reach agreement with CLEC for an extended interval. Qwest may seek a waiver from the Commission to obtain an extended interval.

8.4.3 Ordering - Caged and Cageless Physical Collocation

8.4.3.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if

adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.3.2 Quotation -- If Collocation entrance facilities and space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.3.3 Acceptance – Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.

8.4.3.4 Interval – The interval for Physical Collocation shall vary depending upon two (2) factors – 1) whether CLEC provides its Acceptance within seven (7) calendar Days of receipt of the quotation; and, 2) whether the Application requires major infrastructure additions or modifications. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.3.4.1 Applications with Timely Acceptance – If CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application.

8.4.3.4.2 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.

8.4.3.4.3 Reserved for Future Use.

8.4.3.4.4 Reserved for Future Use.

8.4.3.4.5 Reserved for Future Use.

8.4.3.4.6 Intervals for Major Infrastructure Modifications (Unforecasted)– An Unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC power plant, standby generators, heating, venting or air conditioning equipment. The installation intervals in Sections 8.4.3.4.1 through 8.4.3.4.2 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the Collocation Arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.4 Ordering - Interconnection Distribution Frame (ICDF) Collocation

8.4.4.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's terminations within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities. The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by DS0, DS1 and DS3 capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.4.2 Quotation -- If space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of receipt of the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.4.3 Acceptance -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.4.4 Interval – The interval for ICDF Collocation shall vary depending upon whether CLEC provides its Acceptance within seven (7) calendar Days of the quotation and was forecasted or unforecasted. When Qwest is permitted to complete a

Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.4.4.1 Reserved for Future Use.

8.4.4.4.2 Reserved for Future Use.

8.4.4.4.3 Applications with Timely Acceptance – If CLEC provides a complete Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of an unforecasted Collocation arrangement within ninety (90) calendar Days or, forty-five (45) calendar Days for a forecasted Collocation arrangement of the receipt of the complete Collocation Application. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.4.4.4 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days if its unforecasted, or forty-five (45) calendar Days, if it's a forecasted Collocation arrangement, of the receipt of the complete Collocation Acceptance. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.5 Ordering – Adjacent Collocation

8.4.5.1 If space for Physical Collocation in a particular Qwest Premises is not available at the time of CLEC's request, CLEC may request Qwest to conduct a feasibility study for Adjacent Collocation for that Premises site. Qwest recommends that Qwest and CLEC conduct a joint site visit of such Premises to determine if suitable arrangements can be provided on Qwest's property. Qwest will make available, within ten (10) business days, drawings of the Qwest physical structures above and below ground for the requested Adjacent Collocation site.

8.4.5.2 If a new structure is to be constructed, the interval shall be developed on an Individual Case Basis, to account for the granting of permits or ROW, if required, the provision of Collocation services by Qwest, in accordance with CLEC's Application, and the construction by CLEC of the adjacent structure. If CLEC disputes the interval proposed by Qwest, Qwest must promptly petition the Commission for approval of such disputed interval.

8.4.5.3 If Adjacent Collocation is provided within an existing Qwest Premises, the ordering procedures and intervals for Physical Collocation shall apply.

8.4.6 Ordering – Remote Collocation and Adjacent Remote Collocation

8.4.6.1 The ordering procedures and intervals for Physical Collocation or Virtual

Collocation shall apply to Remote Collocation, and to Adjacent Remote Collocation provided within an existing Qwest Premises, except Sections 8.4.3.4.3 and 8.4.3.4.4. Remote Collocation and Adjacent Remote Collocation are ordered using the Remote Collocation Application Form.

8.4.6.2 If space for Physical Collocation or Virtual Collocation in a particular Qwest Remote Premises is not available at the time of CLEC's request, CLEC may order Adjacent Remote Collocation using the ordering procedures described above for Adjacent Collocation in Sections 8.4.5.1 and 8.4.5.2.

8.4.7 Ordering – CLEC to CLEC Connections

8.4.7.1 Application -- Upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j). Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of CLEC's copper, coax, or fiber optic cable, or any other Technically Feasible method used to interconnect CLEC's collocated equipment that is in separate locations in the same Qwest Premises, or to another CLEC's equipment in the same Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.7.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.7.2 Quotation -- If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route to CLEC with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a feasibility and quote to CLEC no later than ten (10) calendar Days of receipt of the Collocation Application. CLEC-to-CLEC Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.7.3 Acceptance -- There are two (2) forms of Acceptance for CLEC-to-CLEC Connections:

8.4.7.3.1 CLEC-to-CLEC connections with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its Acceptance. Upon receipt of a complete Collocation Acceptance, CLEC may begin placement of its copper, coax, or fiber cables along the Qwest designated cable rack route. Recurring charges will begin with CLEC Acceptance.

8.4.7.3.2 CLEC-to-CLEC Connections using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.7.4 Interval – Pursuant to Section 8.4.7.3.2, the construction interval for CLEC-to-CLEC Connections requiring the construction of new cable rack by Qwest shall

be within sixty (60) calendar Days of the receipt by Qwest of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.7.5 A CLEC need not utilize the CLEC to CLEC connection process or the collocation application process to connect two contiguous collocation spaces leased by that CLEC that are adjacent to each other; provided that there is existing cable racking that the CLEC can use.

8.4.8 Ordering – Direct Connections

8.4.8.1 Application – Where Direct Connection is requested in a Wire Center where CLEC already has established Collocation, upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j), Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of copper, coax, or fiber optic cable, or any other Technically Feasible method, used for Direct Connection (as described in Section 8.3.1.11.2). The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.8.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.8.2 Quotation – If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a quote to CLEC no later than ten (10) calendar Days after receipt of a complete Collocation Application. Direct Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.8.3 Acceptance – There are two (2) forms of Acceptance for Direct Connection:

8.4.8.3.1 Direct Connection with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its acceptance notification.

8.4.8.3.2 Direct Connection using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.8.4 Interval – The construction interval for Direct Connections shall be dependent upon whether the Direct Connection is to the COSMIC™ frame requiring a MELD™ and or if new cable racking is required.

8.4.8.4.1 If CLEC provides a complete Acceptance within thirty (30)

calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Direct Connection above the DS0 level where no new cable racking is required within thirty (30) calendar Days of the receipt of the complete Collocation Acceptance. If Direct Connection is required at the DS0 level, to the COSMIC™, or if new cable racking needs to be installed, Qwest will provision the direct trunking within sixty (60) calendar Days of the receipt of the complete Collocation Acceptance.

8.4.9 Ordering – Collocation Cancellation, Decommission and Transfer of Responsibility Form

8.4.9.1 Cancellation requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.1.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.1.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.1.3 Qwest will follow its standard Cancellation order validation procedures, providing acknowledgment of acceptance or rejection within one business day of receipt of a valid and complete Application.

8.4.9.2 Decommissioning requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.2.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.2.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.2.3 Qwest will notify CLEC within one (1) business day if the prerequisites have been met. Qwest will validate the order within two (2)business days from receipt of the application.

8.4.9.3 The Transfer of Responsibility process requires submission of the Transfer of Responsibility Application Form containing information for both the vacating and the assuming CLEC.

8.4.9.3.1 The Transfer of Responsibility Application Form can be found on Qwest's web site at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.4.9.3.2 The Transfer of Responsibility request should be submitted to colo@qwest.com and rfsmet@qwest.com simultaneously.

8.4.10 Ordering – Available Inventory

8.4.10.1 CLEC must submit a "Qwest Collocation Application Form (new, change or augment)" on the Qwest web at: http://www.qwest.com/wholesale/pcat/collocation.html

8.4.10.2 The "submit" date for the Collocation Available Inventory request will commence on the date that the Wholesale Project Manager (WPM) notifies the Collocation Project Management Center (CPMC) that all prerequisites for this request to have been met.

8.4.10.3 Qwest will process the Available Inventory Request pursuant to the Collocation Intervals contained in this Agreement.

8.4.10.3.1. Special Site interval will be forty-five (45) Calendar Days from the receipt of payment.

8.4.10.4 For purposes of first–come, first-served determination of availability, priority will be defined by the date and time the complete application is received by rfsmet@qwest.com.

8.4.10.5 CLECs should submit an alternative option when requesting an available site by populating the "Second Choice" and/or "Third Choice" tabs included on the Qwest Collocation Application Form. This will prevent the possible cancellation of the submitted application in the event that the first choice is no longer available.

8.4.11 Ordering – Joint Testing

8.4.11.1 Qwest will accept a request to provide Joint Testing for up to sixty (60) calendar days past scheduled RFS. CLEC is required to submit a request for Joint Testing by checking the Joint Testing box on the New, Change or Augment Collocation Application Form or by sending in the separate Joint Testing Application Form.

8.4.11.2 Applications should be sent to rfsmet@qwest.com. Upon receipt of a complete Application Form, Qwest will contact CLEC to set up a testing time based upon the scheduled RFS.

8.4.12 Ordering – DC Power Reduction

8.4.12.1 CLEC should submit the "Collocation Application for New, Augment or Change" and indicate specific power feeds to be reduced (e.g., eliminate or reduce multiple feeds from 60 to zero amps or reduce main feed from 60 to 20 amps). Under the "type of request" category CLEC should indicate that this is an Augment.

8.5 Billing

8.5.1 Billing - All Collocation

8.5.1.1 Upon completion of the Collocation construction activities and payment of the remaining nonrecurring balance, Qwest will provide CLEC a completion package that will initiate the recurring Collocation charges. Once this completion package has

been signed by CLEC and Qwest, and Qwest has received the final fifty percent (50%) balance, Qwest will activate CLEC transport services and/or UNEs or ancillary services coincident with completion of the Collocation.

8.5.1.2 In the event Qwest has completed all associated construction activities and CLEC has not completed its associated activities (e.g., delivering fiber to the C-POI, or providing the equipment cables for connecting to the Interconnection Distribution Frame), Qwest will bill an adjusted amount of the remaining nonrecurring balance, close the job, and begin Billing the monthly recurring rent charge. In those instances where the job is delayed due to CLEC not having its fiber to the POI, Qwest will request the balance due minus the dollar amount specific to this work activity, and begin Billing the monthly recurring rent charge. Once CLEC has completed fiber placement, CLEC can request Qwest to return and complete the splicing activity at the rate reflected in this Agreement. In the case of missing equipment cables, CLEC will be responsible for installing the cables if not delivered at job completion. The installation activity must be conducted by a Qwest approved vendor and follow the designated racking route. Final test and turn-up will be performed under the Maintenance and Repair process contained herein.

8.5.1.3 Should Qwest fail to activate CLEC equipment or services, CLEC MRCs for such equipment or services will be credited on a monthly pro-rata basis until the equipment or services ordered are fully usable.

8.5.2 Billing - Virtual Collocation

8.5.2.1 Virtual Collocation will be considered complete when the Premises is Ready for Service (RFS). Cooperative testing between CLEC and Qwest may be negotiated and performed to ensure continuity and acceptable transmission parameters in the facility and equipment.

8.5.3 Billing - Caged and Cageless Physical Collocation

8.5.3.1 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charges, Qwest will schedule with CLEC, a walk through of the space. During this joint walk through, Qwest will turn over access to the space and provide security access for the Premises. Upon completion of the Acceptance walk through, CLEC will be provided the Caged or Cageless Physical Collocation completion package. The monthly Billing for leased space, DC Power, Entrance Facility, and other associated monthly charges will commence with CLEC sign off on the completion of the physical space. CLEC may then proceed with the installation of its equipment in the Collocation space, unless early access has been arranged pursuant to Section 8.2.3.7. If Qwest, despite its best efforts, including notification through the contact number on the Collocation Application, is unable to schedule the walk through with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the monthly recurring charges.

8.5.4 Billing – Transfer of Responsibility

8.5.4.1 Vacating CLEC is obligated to pay all recurring charges associated with the Collocation until Qwest completes the Transfer of Responsibility request. When the RFS date is met, Qwest will begin to bill the assuming CLEC for all recurring billing, charges based on the CLEC's Interconnection Agreement, and cease the recurring billing for the vacating CLEC.

8.5.4.2 Assuming CLEC will be responsible for the monthly charges for the working circuits and charges for the transfer of the working circuits agreed to be transferred as part of the Transfer of Responsibility request (if applicable).

8.6 Maintenance and Repair

8.6.1 Virtual Collocation

8.6.1.1 Maintenance Labor, Inspector Labor, Engineering Labor and Equipment Labor business hours are considered to be Monday through Friday, 8:00 am to 5:00 pm (local time) and after business hours are after 5:00 pm and before 8:00 am (local time), Monday through Friday, all day Saturday, Sunday and holidays.

8.6.1.2 Installation and maintenance of CLEC's virtually collocated equipment will be performed by Qwest or a Qwest authorized vendor.

8.6.1.3 Upon failure of CLEC's virtually collocated equipment, Qwest will promptly notify CLEC of such failure and the corrective action that is needed. Qwest will repair such equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest. CLEC is responsible for transportation and delivery of maintenance spares to Qwest at the Premises housing the failed equipment. CLEC is responsible for purchasing and maintaining a supply of spares.

8.6.2 Physical Collocation

8.6.2.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's leased space.

8.6.3 Interconnection Distribution Frame Collocation

8.6.3.1 CLEC is responsible for using industry accepted practices for its terminations. Additionally, CLEC is responsible for having tools for such operations. Qwest is responsible for the overall repair and maintenance of the frame; including horizontal and vertical mounting positions, cable raceways, rings, and troughs, and general housekeeping of the frame.

8.6.4 Adjacent Collocation and Adjacent Remote Collocation

8.6.4.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's Adjacent Collocation and Adjacent Remote Collocation space.

8.6.5 Reserved for Future Use

SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

9.1 General Terms

9.1.1 Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act, or other Applicable Laws. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. UNE's shall only be obtained for the provision of Qualifying Services. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A. If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternative service arrangements.[2]

9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services, for the commingling of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications services pursuant to Applicable Law.

9.1.1.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with access services or other Non-Qualifying services. All variations of Commingling of services that include a high capacity loop, which may include multiplexing or any other means by which this combination is achieved, and transport facility or service are subject to the Service Eligibility Criteria in Section 9.1.1.5.

9.1.1.2.1 Work performed by Qwest to Commingle services at CLEC's request or to provide services that are not subject to standard provisioning intervals will not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled facility or service.

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[2] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

Provisioning intervals applicable to services included in a requested Commingled facility or service will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

9.1.1.3 Qwest will not Commingle services or Network Elements that are required to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

9.1.1.3.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

9.1.1.3.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

9.1.1.4 **Ratcheting** - To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of the UNEs or UNE Combinations involved.

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9.1.1.4.2 Intentionally Left Blank.

9.1.1.4.3 To the extent a multiplexer is included in a Commingled circuit then: (1) the multiplexer will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs, or (2) in all other situations the multiplexer will be ordered and billed pursuant to the appropriate Tariff

9.1.1.5 **Service Eligibility Criteria** - With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport (High Capacity EELs), there are additional eligibility criteria that do not apply to other UNEs. CLEC can not order any EELs without an EEL amendment. This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs. Upon request by CLEC, and to the extent required by Applicable Law, the parties will negotiate an amendment to this Agreement that will enable CLEC to order EELs subject to any service eligibility criteria established by Applicable Law.

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been

required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.[3]

a) OCn Loops;

b) Feeder Subloops;

c) DS3 Loops in excess of two (2) DS3 Loops per End User Customer location;

d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center);

e) OCn UDIT

f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 circuits per route;

g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P);

h) Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P;

i) Packet Switching;

j) UDIT and UDF as a part of a Meet-Point arrangement; billed entrance facility;

k) Remote Node/Remote Port

l) Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section9.4.1.2;

m) Fiber to the Home, in accordance with Section 9.2.1.2;

n) Operator Services and Directory Assistance. except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;

o) Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0;

p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;

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[3] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

q) SONET add/drop multiplexing; and

r) Non-copper distribution Subloop unless required to access Qwest owned inside wire at an MTE.

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.[4]

9.1.1.8 Intentionally Left Blank.

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities (either "as is" or modified via conditioning or incremental facility work that fits the criteria for the service requested or is otherwise required by the Existing Rules) exist that fit the criteria necessary for the service

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[4] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.2.1 Qwest will also perform routine modifications to existing loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers, including, but not limited to, rearrangement or splicing of cable (including rearrangement of existing pairs to include fiber hub counts and rearrangement of existing pairs to extend the line), adding a doubler or repeater, adding and/or rearranging an equipment case, adding a smart jack, installing a repeater shelf, adding a line card, and deploying a new multiplexer or reconfiguring an existing multiplexer. Rates for such modifications are included in Exhibit A. For DS1 capable loops, this Section is effective immediately. For all other loop facilities, this Section will be effective July 2, 2004.

9.1.2.1.2.2 Qwest will also perform routine modifications to existing Dark Fiber loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers (including the work done on Dark Fiber to provision lit capacity to End User Customers). Rates for such modifications are included in Exhibit A. This Section is effective July 2, 2004. To the extent such modifications constitute a construction of Special Access services, pursuant to retail construction provisions of Special Access or stand-alone construction Tariffs, the terms and conditions of such Tariffs will apply to CLEC. The provisions of this Section shall not be construed to require Qwest to provide unbundled access to a Fiber-to-the-Home loop when Qwest deploys such a loop to a End User Customer premises.

9.1.2.1.2.3 Qwest performs routine, day-to-day work activities while managing its network. Activities such as accessing manholes and deploying bucket trucks to reach aerial cable do not comprise network modifications. Rather these activities are performed by Qwest to effectuate network modifications.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a supplemental order to change the Due Date to a later date.

9.1.2.1.3.2 Qwest will send CLEC a jeopardy clearly stating there is a lack of available facilities and the order will be delayed. In the event Qwest notifies CLEC that facilities ordered are not available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall send a new FOC to the CLEC identifying for the CLEC a new Due Date. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this section.

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

9.1.2.1.5 Intentionally Left Blank.

9.1.3 Reserved for Future Use.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Loop Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other Central Office Demarcation Point. The ITP is ordered in conjunction with a UNE. The charges for the ITP are contained in Exhibit A. The ITP may be ordered per termination. The Demarcation Point shall be:

a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation Space; or

b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF; or

d) if CLEC elects to use a direct connection from its Collocation space to the distribution frame serving a particular element, at the distribution frame; or

e) at another Central Office Demarcation Point mutually-agreed to by the Parties.

9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.[5]

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Qwest provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this Section 9.1.6 are contained in Exhibit A to this Agreement.

9.1.6.1 When elements are provisioned by Qwest on an individual element basis (whether or not such elements are combined by CLEC with other elements provided by Qwest or CLEC):

a) Qwest will perform testing necessary or reasonably requested by CLEC, to determine that such UNE is capable of meeting the technical parameters established for each UNE.

b) Pursuant to Section 12.3, Qwest will repair and maintain such elements to ensure that they continue to meet the technical parameters established for each UNE. CLEC is responsible for the end–to-end transmission and circuit functionality testing for UNE Combinations created by CLEC.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to assist in determining end-to-end transmission and circuit functionality of such UNE.

9.1.6.2 When elements are provisioned by Qwest in combination:

a) Qwest will perform testing necessary or reasonably requested by CLEC to determine that such combination and each UNE included in such combination is capable of meeting the technical parameters of the combination.

b) Pursuant to Section 12.3, Qwest will repair and maintain such combination and each UNE included in such combination to ensure that they

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[5] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

continue to meet the technical parameters of the combination.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to determine end-to-end transmission and circuit functionality of such combination.

9.1.7 Installation intervals for Unbundled Network Elements are contained in Exhibit C.

9.1.8 Maintenance and Repair is described herein. The repair center contact telephone numbers are provided in the Maintenance and Repair PCAT, which is located on the Qwest Web site.

9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC.

9.1.9.1 Qwest shall provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Qwest provides such disclosures on an Internet web site.

9.1.10 Intentionally Left Blank.

9.1.11 Exhibit A of this Agreement contains the rates for Unbundled Network Elements.

9.1.12 Miscellaneous Charges are defined in Section 4.40 (a). Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in Exhibit A. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges. Rates for Miscellaneous Charges are contained in Exhibit A. Unless otherwise provided for in this Agreement, no additional charges will apply.

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9.1.14 Intentionally Left Blank.

9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper Subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site (www.qwest.com/disclosures); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.

9.2 Unbundled Loops

9.2.1 Description

The Unbundled Loop is defined as a transmission facility between a distribution frame (or its

equivalent) in a Qwest Central Office and the Loop Demarcation Point at an End User Customer's premises. The Unbundled Loop includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, Dark Fiber, attached electronics and line conditioning. As used in this Agreement, "attached electronics" means any electronics necessary to provide the requested transmission path, including electronics added through incremental facilities work, but does not include multiplexing equipment, such as Digital Subscriber Line Access Multiplexers, used for the provision of Advanced Services. The Unbundled Loop includes DS0, DS1, and DS3 Loops. Qwest will not provide Unbundled OCn Loops or features and functionalities of OCn Loops.

9.2.1.1 "Loop Demarcation Point" – For purposes of this section, Loop Demarcation Point is the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, owner or landlord ownership of facilities begins.

9.2.1.2 **FTTH Loops.** For purposes of this Section, a Fiber-to-the-Home ("FTTH") loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's premises.

9.2.1.2.1 FTTH New Builds. Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's premises that had not previously been served by any loop facility prior to October 2, 2003.

9.2.1.2.2 FTTH Overbuilds. Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH loop parallel to, or in replacement of, an existing copper loop facility:

9.2.1.2.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's premises after deploying the FTTH loop to such premises and (ii) upon request to provide access to such copper loop as an Unbundled Network Element. Not withstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 9.2.1.2.2 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 9.2.1.2.3 below.

9.2.1.2.2.2 In the event Qwest, in accordance with the provisions of Section 9.2.1.2.3 below, retires the existing copper loop connected to the End User Customer's premises, Qwest shall provide access, as an Unbundled Network Element over the FTTH loop, to a 64 kbps transmission path capable of voice grade service.

9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH Loops. In the event Qwest decides to replace any

copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) provide notice of such planned replacement on its website (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified. Such notices shall be in addition to any applicable state Commission requirements.

9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replaced by like copper facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.

9.2.1.2.3.2 When Qwest retires Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition of current working facilities to the new working facilities so that service interruption is held to a minimum.

9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location, Qwest will not provide, and CLEC shall not submit orders for, DS1, DS3, or Dark Fiber Loops, as appropriate, to such specific End User Customer locations. Qwest will maintain on its website a separate listing for DS1, DS3 and Dark Fiber Loops those End User Customer premises for which the Commission has so found. In the event CLEC has DS1, DS3 or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with the Qwest Special Access Tariff.[6]

9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location.[7]

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[6] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

[7] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

9.2.1.5 Hybrid Loops – A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

9.2.1.5.1 Packet Switching Facilities, Features, Functions and Capabilities – CLEC will not order packet switching under this Agreement.

9.2.1.5.2 Broadband Services – When CLEC seeks access to a Hybrid Loop for the provision of broadband services, Qwest shall provide CLEC with nondiscriminatory access to the time division multiplexing (TDM) features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between Qwest's Central Office and an End User Customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information. Qwest will not engage in any practice, policy or procedure that has the effect of disrupting or degrading access to TDM-based features, functions, and capabilities of hybrid loops for serving end users.

9.2.1.5.3 Narrowband Services – When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

a) Provide nondiscriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology, allowing CLEC to obtain access to UNE loops comprised of the feeder, distribution, the attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer's premises and the Central Office; or

b) Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis if Qwest has not removed such loop facilities, and they remain functional.

9.2.2 Terms and Conditions

9.2.2.1 Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops, (unbundled from local switching and transport) of substantially the same quality as the Loop that Qwest uses to provide service to its own end users. For Unbundled Loops that have a retail analogue, Qwest will provide these Unbundled Loops in substantially the same time and manner as Qwest provides to its own end users. Unbundled Loops shall be provisioned in accordance with Exhibit C and the performance metrics set forth in Section 20 and with a minimum of service disruption.

9.2.2.1.1 Use of the word "capable" to describe Loops in Section 9.2 means that Qwest assures that, upon delivery to CLEC, the Loop meets the technical standards associated with the specified Network Channel/Network Channel Interface codes, as contained in the relevant technical publications and industry standards, and is in good working condition. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for

providing the type of service CLEC seeks to provide.

9.2.2.1.2 Use of the word "compatible" to describe Loops in Section 9.2 means that, upon delivery to CLEC, the Unbundled Loop complies with technical parameters of the specified Network Channel/Network Channel Interface codes as specified in the relevant technical publications and industry standards, and is in good working condition. Qwest makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer premises equipment. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.3 If Qwest uses Integrated Digital Loop Carrier (IDLC) systems to provide the Local Loop, Qwest will first attempt, to the extent possible, to make alternate arrangements such as Line and Station Transfers (LST), to permit CLEC to obtain a contiguous copper Unbundled Loop. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. If no such facilities are available, Qwest will make every feasible effort to provision Unbundled Loops over IDLC in order to provide the Unbundled Loop for CLEC. All such attempts will be made and completed within the standard interval specified in Exhibit C and at the rates specified in Exhibit A for the type of Local Loop ordered by CLEC.

9.2.2.1.3.1 CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of available copper facilities, pursuant to the procedures set forth in Section 9.2.2.8 and its subsections. Qwest may provide mediated access to such information once the information has been provided to CLEC in the same manner as it is provided to any Qwest employee. Qwest may recover any reasonable costs it incurs to provide such mediated access in the same manner as it recovers other OSS transition costs under the Commission's orders.

9.2.2.2 Analog (Voice Grade) Unbundled Loops. Analog (voice grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local exchange type services. For the two-wire configuration, CLEC must specify the signaling option. The actual Loop facilities may utilize various technologies or combinations of technologies. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.2.1 Intentionally Left Blank.

9.2.2.2.2 If there are state service quality rules in effect at the time CLEC requests an Analog Unbundled Loop Qwest will provide an Analog Unbundled Loop that meets the state technical standards. If necessary to meet the state standards, Qwest will, at no cost to CLEC, remove load coils and excess Bridged

Taps from the Loop in accordance with the requirements of the specific technical standard.

9.2.2.3 Digital Capable Loops – DS1 and DS3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops. Unbundled digital Loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including, but not limited to, metallic wire, metallic wire based digital Loop carrier, and fiber optic fed digital carrier systems. Qwest will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. Digital Loops may use a single or multiple transmission technologies. DC continuity does not apply to digital capable Loops. If conditioning is required for BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops or xDSL-I Capable Loops, then CLEC shall be charged for such conditioning, if applicable, as set forth in Exhibit A, if it authorized Qwest to perform such conditioning. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.3.1 If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) the BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. Qwest will perform line moves from digital loop carrier or UDCs to an available spare copper loop or removal of UDCs 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. If applied by Qwest, the interim charge for UDC removal or line move will be no more than the conditioning charge contained in Exhibit A until permanent rates are approved by the Commission. These charges for UDC removal or line moves will not be assessed to CLEC unless Qwest also has filed with the Commission allowing charges for its retail customers for the same work. Qwest will notify CLEC through CMP prior to implementing any charges for UDC removal or line moves.

9.2.2.3.2 Intentionally Left Blank.

9.2.2.3.3 If CLEC orders a 2/4 wire non-loaded or ADSL compatible Unbundled Loop for a Customer served by a digital Loop carrier system Qwest will conduct an assignment process which considers the potential for a line move to alternative spare copper facility. If no copper facility capable of supporting the requested service is available, Qwest will hold the order pending availability of facilities as set forth in Section 9.1.2.1.3.2.

9.2.2.4 Non-Loaded Loops. CLEC may request that Qwest provide a non-loaded Unbundled Loop. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected

may not be suitable for providing the type of service CLEC seeks to provide. CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary. If CLEC has not pre-approved conditioning, Qwest will obtain CLEC's consent prior to undertaking any conditioning efforts. Upon CLEC pre-approval or approval of conditioning, and only if conditioning is necessary, Qwest will dispatch a technician to perform line move or condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded Loop. Qwest's FOC will not reflect the loop conditioning interval until such time that Qwest determines conditioning is the only available solution for providing the loop. CLEC will be charged the nonrecurring conditioning charge (i.e., cable unloading and Bridged Taps removal), if applicable, in addition to the Unbundled Loop installation nonrecurring charge.

9.2.2.4.1 In the event that Qwest seeks to begin charging for conditioning, where Qwest fails to meet a Due Date for performing Loop conditioning, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the Unbundled Loop involved within three (3) months of such Due Date. Where Qwest does not perform conditioning in accord with the standards applicable under this Agreement, and such performance causes the due date to be missed, CLEC shall be entitled to a waiver of all non-recurring charges associated with the installation of the loop. Any credit to which CLEC is entitled under this provision will be automatically credited by Qwest to CLEC's bill within sixty (60) calendar Days.

9.2.2.5 When CLEC requests a Basic Rate ISDN capable or an xDSL-I capable Loop, Qwest will dispatch a technician, if necessary, to provide Extension Technology that takes into account for example: the additional regenerator placement, Central Office powering, Mid-Span repeaters, if required, BRITE cards in order to provision the Basic Rate ISDN capable and xDSL-I capable Loop. Extension Technology may be required in order to bring the circuit to the specifications necessary to accommodate the requested service. If the Circuit Design requires Extension Technology, to bring it up to the design standards, contained in Technical Publication 77384, it will be added by Qwest, at no charge. Extension Technology can also be requested by CLEC to meet their specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Qwest will provide the requested Extension Technology and will charge CLEC. Qwest will provision ISDN (BRI) Capable and xDSL-I capable Loops using the specifications in the Technical Publication 77384. CLEC will be charged an Extension Technology recurring charge in addition to the Unbundled Loop recurring charge, if applicable, as specified in Exhibit A of this Agreement. The ISDN Capable Loop may also require conditioning (e.g., removal of load Coils or Bridged Taps) pursuant to Exhibit A.

9.2.2.6 For DS1 or DS3 capable Loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. Prior to delivery, Qwest will test to ensure circuit continuity from the demarcation point in the Central Office to the NID. Qwest will perform a loop back test when a Network Interface Unit (NIU) is in place. In addition, CLEC will have access to these terminations for testing purposes.

9.2.2.6.1 DS1 capable Loops provide a transmission path between a Central Office network interface at a DS1 panel or equivalent in a Qwest serving Central Office and the network interface at the end user location. DS1 capable Loops transport bi-directional DS1 signals with a nominal transmission rate of

1.544 Mbit/s. DS1 capable Loops shall meet the design requirements specified in Technical Publication 77384 (Unbundled Loops) and 77375 (DS1). Cable unloading and bridge tap removal that may be required as part of the provisioning of DS-1 Capable Loops are included as a part of routine network modifications. Other functions of routine network modifications are described in Section 9.1.2.1.2 and its subsections.

9.2.2.6.2 DS3 capable Loops provide a transmission path between a Qwest Central Office network interface and an equivalent network interface at an end user location. DS3 capable Loops transport bi-directional DS3 signals with a nominal transmission rate of 44.736 Mbit/s. DS3 capable Loops shall meet the design requirements specified in Technical Publications 77384 (Unbundled Loop) and 77324 (DS3).

9.2.2.7 Intentionally Left Blank

9.2.2.8 Loop Qualification Tools. Qwest offers five (5) Loop qualification tools: the ADSL Loop Qualification Tool, Raw Loop Data Tool, POTS Conversion to Unbundled Loop Tool, MegaBit Qualification Tool, and ISDN Qualification Tool. These and any future Loop qualification tools Qwest develops will provide CLEC access to Loop qualification information in a nondiscriminatory manner and will provide CLEC the same Loop qualification information available to Qwest. CLEC may request an audit of Qwest's company records, back office systems and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

9.2.2.8.1 ADSL Loop Qualification Tool. CLEC may use the ADSL Loop Qualification tool to pre-qualify the requested circuit utilizing the existing telephone number or address to determine whether it meets ADSL specifications. The qualification process screens the circuit for compliance with the design requirements specified in Technical Publication 77384.

9.2.2.8.2 Raw Loop Data Tools. Qwest offers two (2) types of Raw Loop Data Tool. If CLEC has a digital certificate, CLEC may access the Wire Center Raw Loop Data Tool via: http://ecom.qwest.com.

9.2.2.8.2.1 The Wire Center Raw Loop Data Tool functions and capabilities are described in the PCAT.

9.2.2.8.2.2 The Wire Center Raw Loop Data Tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, and pair gain type.

9.2.2.8.2.3 CLEC may also access the IMA Raw Loop Data Tool for Loop specific information. The IMA Raw Loop Data Tool may be accessed through IMA-GUI or IMA-EDI. This tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, number of loads, and pair gain type.

9.2.2.8.3 POTS Conversion to Unbundled Loop Tool. The POTS Conversion to Unbundled Loop Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool informs CLEC whether the facility is copper or pair gain and whether there are loads on the Loop.

9.2.2.8.4 MegaBit Qualification Tool. The MegaBit Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool provides a "yes/no" answer regarding the Loop's ability to support Qwest DSL (formerly MegaBit) service. If the MegaBit Qualification Tool returns a "no" answer, it provides a brief explanation.

9.2.2.8.5 ISDN Qualification Tool. The ISDN Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool permits CLEC to view information on multiple lines and will inform CLEC of the number of lines found. If an ISDN capable Loop is found, the tool identifies the facility and, if applicable, pair gain.

9.2.2.8.6 If the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if CLEC identifies any inaccuracy in the information returned from the Loop qualification tools, and provides Qwest with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Qwest will perform a manual search of the company's records, back office systems and databases where Loop information resides. Qwest will provide CLEC via email, the Loop information identified during the manual search within forty-eight (48) hours of Qwest's receipt of CLEC's request for manual search. The email will contain the following Loop make-up information: composition of the Loop material; location and type of pair gain devices; the existence of any terminals such as remote terminals or digital Loop terminals; Bridged Tap and load coils; Loop length; wire gauge. Effective December 8, 2003, the email will also contain Loop make-up data showing the presence of Universal Digital Carrier (UDC); third party voice; and the presence of DSL. In the case of Loops served by digital Loop carrier, the email will provide the availability of spare feeder and distribution facilities that could be used to provision service to the Customer, including any spare facilities not connected to the Switch and Loop make-up for such spare facilities. After completion of the investigation, Qwest will load the information into the LFACS database, which will populate this Loop information into the fields in the Loop qualification tools.

9.2.2.9 Provisioning Options. Six (6) Provisioning options are available for Unbundled Loop elements. Charges for these Provisioning options vary depending on the type of Loop requested. Rates are contained in Exhibit A of this Agreement. Testing parameters are described below and in Qwest Technical Publication 77384.

9.2.2.9.1 Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Qwest will call CLEC to notify CLEC that the Qwest work has been completed.

9.2.2.9.1.1 For an existing end user, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination

connecting to CLEC. There is no associated circuit testing performed.

9.2.2.9.1.2 For new end user service, the Basic Installation option involves the COT and Field Technician (CST/NT) completing circuit wiring and performing the required performance tests to ensure the new circuit meets the required parameter limits. The test results are NOT provided to CLEC.

9.2.2.9.1.3 For basic installation of existing 2 / 4 wire analog Loops, Qwest provides a Quick Loop option that enables CLEC to receive the Quick Loop installation interval as set forth in Exhibit C. Quick Loop installation includes only a simple lift and lay procedure. Quick Loop is not available with cooperative testing, coordinated installation, or when unbundling from an IDLC to a copper alternative.

9.2.2.9.2 Basic Installation with Performance Testing. Basic Installation with Performance Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.2.1 For an existing end user, Basic Installation with Performance Testing is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting CLEC. The COT and Implementor/Tester perform the required performance tests to ensure that the new circuit meets required parameter limits.

9.2.2.9.2.2 The Qwest Implementor/Tester will read the test results to CLEC on close-out and email the performance test results within two (2) business days to a single, designated CLEC office email address.

9.2.2.9.2.3 For new end user service, the Basic Installation with Performance Testing option requires a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits. These test results are read to CLEC by the Qwest Implementor/Tester on close-out. Within two (2) business days, Qwest will email the performance test results to a single, designated CLEC office email address.

9.2.2.9.3 Coordinated Installation with Cooperative Testing. Coordinated installation with cooperative testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative

testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.3.1 For an existing end user, Coordinated Installation with Cooperative Testing is a "lift and lay" procedure with cooperative testing. The COT completes the installation in the Central Office and performs testing that CLEC requests. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test CLEC requests that is not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.2 For new end user service, Coordinated Installation with Cooperative Testing may require a dispatch of a technician to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure that the new circuit meets required parameter limits. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.3 The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.3.3(a) If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.3.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.3.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call

CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.4 Coordinated Installation without Cooperative Testing. Coordinated Installation without Cooperative Testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option and the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.4.1 For an existing Unbundled Loop this Coordinated Installation without Cooperative Testing is a "lift and lay" procedure without a dispatch, that offers CLEC the ability to coordinate the conversion activity. The Qwest Implementor advises CLEC when the "lift and lay" procedure is complete.

9.2.2.9.4.2 For new Unbundled Loops, Qwest may dispatch a technician to terminate the new circuit at the end user premises. The Field Technician will not remain on the premises to perform the coordinated installation once the circuit is in place. The COT completes the installation in the Central Office, and the COT and Implementor/Tester complete the required performance tests to ensure that the new circuit meets required parameter limits. CLEC will not receive test results. When installation is complete, Qwest will notify CLEC.

9.2.2.9.5 Basic Installation with Cooperative Testing. Basic Installation with Cooperative Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.5.1 For an existing end user, Basic Installation with Cooperative Testing is a "lift and lay" procedure with Cooperative Testing on the Due Date. The COT "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC and Qwest will perform a Loop back acceptance test, accept the Loop, and exchange demarcation information.

9.2.2.9.5.2 For new end user service, Basic Installation with Cooperative Testing may require a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required

parameter limits.

9.2.2.9.5.2(a) The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.5.3 If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.5.3.1 If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.5.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.5.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.6 Performance Testing. Qwest performs the following performance tests for various Loop types:

2-Wire and 4-Wire Analog Loops

No Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

2-Wire and 4-Wire Non-Loaded Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

Basic Rate ISDN and xDSL-I Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = ≤ 40 dB at 40 kHz

Automatic Number Identification (ANI) when dial-tone is present

DS1 Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

DS3 Capable Loops

Continuity Testing

ADSL Compatible Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = ≤ 41 dB at 196 kHz

Automatic Number Identification (ANI) when dial-tone is present

9.2.2.9.7 Project Coordinated Installation: A Project Coordinated Installation permits CLEC to obtain a coordinated installation for Unbundled Loops with or without LNP, where CLEC orders Unbundled DS1 Capable, Unbundled DS3 Capable or twenty-five (25) or more DS0 Unbundled Loops.

9.2.2.9.7.1 The date and time for the Project Coordinated Installation requires up-front planning and may need to be negotiated between Qwest and CLEC. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Considerations such as system down time, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Qwest will negotiate with CLEC for an agreed upon FDT, prior to issuing the Firm Order Confirmation (FOC). In special cases where CLEC is ordering Unbundled Loop with LNP, the FDT must be agreed upon, the interval to reach agreement will not exceed two (2) Days from receipt of an accurate LSR. In addition, standard intervals will apply.

9.2.2.9.7.2 CLEC shall request a Project Coordinated Installation by submitting a Local Service Request (LSR) and designating this order as a Project Coordinated Installation in the remarks section of the LSR form.

9.2.2.9.7.3 CLEC will incur additional charges for the Project Coordinated Installation dependent upon the coordinated time. The rates are based upon whether the request is within Qwest's normal business hours or Out Of Hours. Qwest normal business hours for Unbundled Loops are 8:00 a.m. to 5:00 p.m., Monday through Friday. The rates for coordinated installations are set forth in Exhibit A. Where LNP is included, see Section 10.2.5.4 for rate elements.

9.2.2.9.7.4 Qwest will schedule the appropriate number of employees prior to the cut, normally not to exceed four employees, based upon information provided by CLEC. If the Project Coordinated Installation includes LNP, CLEC will also have appropriate personnel scheduled for the negotiated FDT. If CLEC's information is modified during the installation, and, as a result, non-scheduled employees are required, CLEC shall be charged a three (3) hour minimum callout charge per each additional non-scheduled employee. If the installation is either cancelled, or supplemented (supp) to change the Due Date, within twenty-four (24) hours of the negotiated FDT, CLEC will be charged a one person three (3) hour minimum charge. For Project Coordinated Installations with LNP, if the Coordinated Installation is cancelled due to a Qwest error or a new Due Date is requested by Qwest, within twenty-four (24) hours of the negotiated FDT, Qwest may be charged by CLEC one person three (3) hour minimum charge as set forth in Exhibit A.

9.2.2.9.7.5 If CLEC orders Project Coordinated Installation with LNP and in the event the LNP conversion is not successful, CLEC and Qwest agree to isolate and fix the problem in a timeframe acceptable to CLEC or the Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the Customer, CLEC may request the restoral of Qwest service for the ported Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Qwest. If Qwest is in error, no supplemental order or additional order will be required of CLEC.

9.2.2.9.7.6 If CLEC orders Project Coordinated Installation with LNP, Qwest shall ensure that any LNP order activity requested in conjunction with a Project Coordinated Installation shall be implemented in a manner that avoids interrupting service to the end user.

9.2.2.9.8 Intentionally Left Blank.

9.2.2.9.9 Intentionally Left Blank.

9.2.2.9.10 For loop installations requiring a Qwest technician dispatch, Qwest will note the demarcation location (for designed service circuits) and CLEC may access such information via CEMR. The applicable PCAT for Business Procedure contains additional information.

9.2.2.9.11 If at any time during the Provisioning process or during the first thirty (30) business days following Qwest's notification of completion, either Qwest or CLEC may request a joint meet at either the NID or Central Office to

perform cooperative trouble isolation. If no trouble is found in Qwest's network, a Maintenance of Service Charge will apply pursuant to Exhibit A. If trouble is found in Qwest's network, CLEC will be credited the Maintenance of Service charge or CLEC's actual cost, whichever is less, pursuant to Section 12.3.4.4.

9.2.2.10 Multiplexing. Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. Except as specifically set forth in Section 9.2, CLEC may order multiplexing, including conversion from special access or private line circuits, for Unbundled Loops under the rates, terms and conditions for multiplexing of Enhanced Extended Loop (EEL), in Section 9.23.3.9 of this Agreement. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.2.11 In order to properly maintain and modernize the network, Qwest may make necessary modifications and changes to Unbundled Loops, ancillary and Finished Services in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network Interoperability require advance notice pursuant to the Notices Section of this Agreement.

9.2.2.12 If there is a conflict between an end user(or its respective agent) and CLEC regarding the disconnection or Provisioning of Unbundled Loops, Qwest will advise the end user to contact CLEC, and Qwest will initiate contact with CLEC.

(a) Reserved for Future Use.

(b) Reserved for Future Use.

9.2.2.13 Facilities and lines Qwest furnishes on the premises of CLEC's end user up to and including the Loop Demarcation Point are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel to accommodate testing, inspection repair and maintenance of such facilities and lines. CLEC will not inhibit Qwest's employees and agents from entering said premises to test, inspect, repair and maintain such facilities and lines in connection with such purposes or, upon termination or cancellation of the Unbundled Loop service, to remove such facilities and lines. Such entry is restricted to testing, inspection, repair and maintenance of Qwest's property in that facility. Entry for any other purpose is subject to audit provisions in the Audit section of this Agreement.

9.2.2.14 Reserved for Future Use.

9.2.2.15 Reuse of Loop Facilities.

9.2.2.15.1 When an end user contacts Qwest with a request to convert their local service from CLEC to Qwest, Qwest will notify CLEC of the loss of the end user, and will disconnect the Loop Qwest provided to CLEC. Qwest will disconnect the Loop only where Qwest has obtained proper Proof of Authorization.

9.2.2.15.2 When CLEC contacts Qwest with a request to convert an end user from their current CLEC (old CLEC) to them (new CLEC), new CLEC is

responsible for notifying old CLEC of the conversion. Qwest will disconnect the Loop Qwest provided old CLEC and, at new CLEC request, where technically compatible, will reuse the Loop for the service requested by new CLEC (e.g., resale service).

9.2.2.15.3 When CLEC contacts Qwest with a request to convert an end user from Qwest to CLEC, at CLEC request, Qwest will reuse the existing Loop facilities for the service requested by CLEC to the extent those facilities are technically compatible with the service to be provided. Upon CLEC request, Qwest will condition the existing Loop in accordance with the rates set forth in Exhibit A.

9.2.2.15.4 Upon completion of the disconnection of the Loop, Qwest will send a Loss Notification report to the original competitive Carrier signifying completion of the loss.

9.2.2.15.5 In all loop reuse scenarios where the facility is re-used "AS IS", Qwest shall take all steps necessary to ensure all services being provided on the loop are transitioned to the new provider with minimal service interruption to the end user. This applies to both voice and data services.

9.2.3 Rate Elements

The following recurring and nonrecurring rates for Unbundled Loops are set forth in Exhibit A of this Agreement. Recurring charges vary based on CLEC selected installation options, conditioning, and extension technology.

9.2.3.1 2/4 Wire Analog Loop (Voice Grade) Recurring and Nonrecurring rates.

9.2.3.2 2/4 Wire Non-Loaded Loop Recurring and Nonrecurring rates.

9.2.3.3 DS1 and DS3 Capable Loop, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop Recurring and Nonrecurring rates.

9.2.3.3.1 DS0, DS1 and DS3 Capable Loop Conversion Nonrecurring rates associated with the conversion of special access or private lines to Unbundled Loops.

9.2.3.4 Extension Technology Recurring and Nonrecurring rates for Digital Capable Loops, including Basic Rate (BRI) ISDN and xDSL-I Capable Loops.

9.2.3.5 Conditioning Nonrecurring rates 2/4 wire non-loaded Loops, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop, as requested and approved by CLEC.

9.2.3.6 Miscellaneous Charges, as defined in Sections 4 and 9.1.12, may apply.

9.2.3.7 Out of Hours Coordinated Installations.

9.2.3.7.1 For purposes of service installation, Qwest's installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

9.2.3.7.2 Intentionally Left Blank.

9.2.3.7.3 Intentionally Left Blank.

9.2.3.7.4 Intentionally Left Blank.

9.2.3.7.5 For coordinated installations scheduled to commence Out of Hours, or rescheduled by CLEC to commence Out of Hours, CLEC will incur additional charges for the Out of Hours coordinated installation as set forth in Exhibit A.

9.2.4 Ordering Process

9.2.4.1 Unbundled Loops are ordered via an LSR. Ordering processes are contained in the Support Functions Section of this Agreement. Detailed ordering processes are found on the Qwest wholesale website.

9.2.4.2 Prior to placing orders on behalf of the end user, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization.

9.2.4.3 Based on the pre-order Loop make-up, CLEC may be able to determine if the circuit can meet the technical parameters for the specific service CLEC intends to offer.

9.2.4.3.1 Before submitting an order for a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop or xDSL-I capable Loop, CLEC should use one of Qwest's Loop make-up tools available via IMA-EDI, IMA-GUI, or the web-based application interface to obtain specific information about the Loop CLEC seeks to order. However, CLEC is entitled to submit an LSR regardless of whether it has utilized or in any way prequalified such loop using any of Qwest's available loop prequalification tools or any information or databases Qwest has made available to CLEC for purposes of obtaining loop qualification information.

9.2.4.3.1.1 Based on the Loop make up information provided through Qwest tools, CLEC may determine whether conditioning is required to provide the xDSL service it intends to offer. If Loop conditioning is required, CLEC may authorize Qwest to perform such Loop conditioning on its Local Service Request (LSR) by entering a "Y" in the SCA field of the LSR. If CLEC does not pre-approve Loop conditioning, Qwest will assume that CLEC has determined that Loop conditioning is not necessary to provide the xDSL service CLEC seeks to offer. If CLEC does not pre-approve conditioning and no conditioning is required to provision the request, the service request will flow through the provisioning process. If CLEC or Qwest determines that conditioning is necessary, and CLEC authorizes Qwest to perform the conditioning, Qwest will perform the conditioning. CLEC will be charged for the conditioning in accordance with the rates in Exhibit A, if applicable. If Qwest determines that conditioning is necessary and CLEC has not previously authorized Qwest to perform the conditioning on the LSR, Qwest will send CLEC a rejection notice indicating the need to obtain approval for conditioning. CLEC must submit a revised LSR before the

conditioning work will commence. Once Qwest receives the revised LSR, the fifteen (15) business day conditioning interval will begin as described in Section 9.2.4.9.

9.2.4.3.1.2 For a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop, xDSL-I capable Loop, or DS1 capable Loop Qwest will return a Firm Order Confirmation (FOC) to CLEC within seventy-two (72) hours from receipt of a valid and accurate LSR. Return of such FOC will indicate that Qwest has identified a Loop assignment. Such FOC will provide CLEC with a firm Due Date commitment. If appropriate facilities are not available to fill CLEC's order, a jeopardy notification will be issued.

9.2.4.3.1.2.1 If CLEC has pre-approved Loop conditioning, and conditioning is not necessary, Qwest will return the FOC with the standard interval identified in Exhibit C.

9.2.4.3.1.2.2 If CLEC has not pre-approved Loop conditioning and Qwest determines that the Loop contains load coils, Qwest will notify CLEC via a reject notification. CLEC must submit a new version of the LSR approving Loop conditioning. In this scenario, the Application Date will correspond to date the new version is received by Qwest.

9.2.4.3.1.2.3 Reserved for Future Use.

9.2.4.3.1.2.4 Reserved for Future Use.

9.2.4.3.2 Qwest will not reject any order for any 2/4 Wire non-loaded Loop based on dB loss or loop length, including but not limited to loop length contained in databases or records containing loop make-up information, loop length based on equivalent loop length as determined by a Mechanized Loop Test (MLT).

9.2.4.4 Installation intervals for all Unbundled Loops are defined in Exhibit C. The interval will start when Qwest receives a complete and accurate LSR. The LSR date is considered the start of the service interval if the order is received prior to 7:00 p.m. For service requests received after 7:00 p.m., the service interval will begin on the next business day.

9.2.4.4.1 When CLEC places an order for an Unbundled Loop with Qwest that is complete and accurate, Qwest will reply to CLEC with a Firm Order Confirmation within the time specified in Section 20. The Firm Order Confirmation will contain the Due Date that specifies the date on which Qwest will provision the Loop. Qwest will implement adequate processes and procedures to assure the accuracy of the commitment date. If Qwest must make changes to the commitment date, Qwest will promptly issue a jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also submit a new Firm Order Confirmation that will clearly identify the new Due Date.

9.2.4.5 Installation intervals for Unbundled Loops apply when Qwest has

facilities or network capacity available.

9.2.4.6 Upon CLEC request, Qwest will convert special access or private line circuits to Unbundled Loops, with or without multiplexing, provided the service originates at the CLEC Collocation in the Serving Wire Center. If multiplexing is not involved, then the Loop conversion ordering process applies. However, if the conversion includes multiplexing, then the ordering process associated with the conversion to EELs applies. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.4.7 Reserved for Future Use.

9.2.4.8 When ordering Unbundled Loops, CLEC is responsible for obtaining or providing facilities and equipment that are compatible with the service CLEC seeks to provide.

9.2.4.9 The installation interval for xDSL Loops depends on the need to condition the Loop.

9.2.4.9.1 When load coils and Bridged Taps do not exist, CLEC may request the standard Due Date interval, which will apply upon submission of a complete and accurate LSR.

9.2.4.9.2 When load coils and/or excessive Bridged Taps do exist, CLEC will request the minimum fifteen (15) business days desired Due Date. CLEC can determine the existence of load coils or Bridged Taps by using one of the Loop make-up tools. CLEC may pre-approve line conditioning on the LSR and, by doing so, CLEC agrees to pay any applicable conditioning charges. If CLEC did not request the fifteen (15) Day interval and Qwest determines that conditioning is required, then the fifteen (15) business day interval starts when the need for conditioning is identified and CLEC approves the conditioning charges.

9.2.4.10 Out of Hours Coordinated Installations.

9.2.4.10.1 For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Installations requested outside of these hours are considered to be Out of Hours Installations.

9.2.4.10.2 CLEC may request an Out of Hours Coordinated Installation outside of Qwest's standard installation hours.

9.2.4.10.3 To request Out of Hours Coordinated Installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an Out of Hours Coordinated Installation in the Remarks section of the LSR.

9.2.4.10.4 The date and time for Out of Hours Coordinated Installations may need to be negotiated between Qwest and CLEC because of system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same appointment times in the same Switch (Switch contention).

9.2.5 Maintenance and Repair

9.2.5.1 CLEC is responsible for its own end user base and will have the responsibility for resolution of any service trouble report(s) from its end users. CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the NID, the Loop Demarcation Point or any other accessible test point that is a Demarcation Point between Qwest's and CLEC's networks. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. For Unbundled Loops, each party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 9.2.5.1, 9.2.5.2 and 9.2.5.3.

9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the end user's side of the Loop Demarcation Point. If the trouble is on the end user's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the Maintenance of Service charge.

9.2.5.3 When CLEC elects not to perform trouble isolation and Qwest performs tests on the Unbundled Loop at CLEC's request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities. Maintenance and Repair processes are set forth in Section 12.3 of this Agreement. Maintenance of Service charges are set forth in Exhibit A.

9.2.5.3(a) Prior to closing out any trouble ticket, Qwest will contact CLEC and confirm with CLEC testing personnel that the trouble has been resolved or that there is no trouble on the line.

9.2.5.4 Qwest will maintain detailed records of trouble reports of CLEC-ordered Unbundled Loops comparing CLEC provided data with internal data, and evaluate such reports on at a minimum of a quarterly basis to determine the cause of Loop problems. Qwest will conduct a quarterly root cause analysis of problems associated with UNE Loops provided to CLECs by Qwest. Based on this analysis, Qwest will take corrective measure to fix persistent and recurrent problems, reporting to CLECs on the analysis and the process changes that are instituted implemented to fix the problems.

9.2.5.5 Qwest shall allow access to the NID for testing purposes where access at the Demarcation Point is not adequate to allow testing sufficient to isolate troubles; in the event that Qwest chooses not to allow such access, it shall waive any trouble isolation charges that may otherwise be applicable.

9.2.6. Spectrum Management

9.2.6.1 Qwest will provide 2/4 Wire non-loaded Loops, ADSL compatible Loops, ISDN capable Loops, xDSL-I capable Loops, DS1 capable Loops and DS3 capable Loops (collectively referred to in this Section 9.2.6 as "xDSL Loops") in a non-discriminatory manner to permit CLEC to provide Advanced Services to its End User Customer. Such Loops are defined herein and are in compliance with FCC requirements and guidelines recommended by the Network Reliability and

Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417.

9.2.6.2 When ordering xDSL Loops, CLEC will provide Qwest with appropriate information using NC/NCI codes, (as required by the FCC), to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. Qwest will treat such information provided by CLEC as confidential and proprietary information. CLEC also agrees to notify Qwest of any change in Advanced Services technology that results in a change in spectrum management class on the xDSL Loop. Qwest agrees CLEC need not provide the speed or power at which the newly deployed or changed technology will operate if the technology fits within a generic PSD mask. Qwest will only use this information for network spectrum management purposes and will not provide this information, either by individual CLEC or in the aggregate, to marketing personnel. Qwest agrees to provide CLECs with information concerning Qwest's spectrum management procedures and policies, the number of Loops using Advanced Services within a binder group, and the types of technologies used on those Loops.

9.2.6.2.1 CLEC information provided to Qwest pursuant to Section 9.2.6.2 shall be deemed Confidential Information and Qwest may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections of 9.2.6.2.

9.2.6.2.2 The Parties may disclose, on a need to know basis only, CLEC Confidential Information provided pursuant to Section 9.2.6.2, to legal personnel, if a legal issue arises, as well as to network and growth planning personnel responsible for spectrum management functions. In no case shall the aforementioned personnel who have access to such Confidential Information be involved in Qwest's retail marketing, sales or strategic planning.

9.2.6.3 If CLEC wishes to deploy new technology not yet designated with a PSD mask, Qwest and CLEC agree to work cooperatively to determine spectrum compatibility. Qwest and CLEC agree, as defined by the FCC, that technology is presumed acceptable for deployment when it complies with existing industry standards, is approved by a standards body or by the FCC or Commission, of if technology has been deployed elsewhere without a "significant degradation of service".

9.2.6.4 Qwest recognizes that the analog T1 service traditionally used within its network is a "known Disturber" as designated by the FCC. Qwest will place such T1s, by whomever employed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is Technically Feasible, replace its T1s with a technology that will eliminate undue interference problems. Qwest also agrees that any future "known Disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

9.2.6.5 If either Qwest or CLEC claims a service is significantly degrading the performance of other Advanced Services or traditional voice band services, then that Party must notify the causing Carrier and allow the causing Carrier a reasonable opportunity to correct the problem. Upon notification, the causing Carrier shall promptly take action to bring its facilities/technology into compliance with industry standards. Upon request, within forty-eight (48) hours, Qwest will provide CLEC with binder group information including cable, pair, Carrier and PSD class to allow CLEC to notify the

causing Carrier.

9.2.6.6 If CLEC is unable to isolate trouble to a specific pair within the binder group, Qwest, upon receipt of a trouble resolution request, will perform a main frame pair by pair analysis and provide results to CLEC within five (5) business days.

9.2.6.7 Reserved for Future Use.

9.2.6.8 Qwest will not have the authority to unilaterally resolve any dispute over spectral interference among Carriers. Qwest shall not disconnect Carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the interfering Carrier or Qwest is ordered to do so by the Commission or other authorized dispute resolution body. CLEC may submit any claims for resolution under Section 5.18 of this Agreement.

9.2.6.9 Where CLEC demonstrates to Qwest that it has deployed Central Office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other Customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other Customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this Agreement.

9.3 Subloop Unbundling

9.3.1 Description

9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Dark Fiber Subloop which is addressed in

Section 9.7.[8]

9.3.1.1.1 Building terminals within or physically attached to a privately owned building in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms and conditions differ between MTE environments and non-MTE environments.

9.3.1.1.2 For any configuration not specifically addressed in this Agreement, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any Collocation or other Provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.

9.3.1.1.3 Any party may request, under any procedure provided for by this Agreement for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.

9.3.1.1.4 Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in Section 9.3.1.1.2 above only those requirements or intervals that are reasonably necessary.

9.3.1.1.4.1 MTE Terminals: Accessible terminals within a building in a MTE environment or accessible terminals physically attached to a building in a MTE environment. Qwest Premises located on real property that constitutes a campus environment, yet are not within or physically attached to a non-Qwest owned building, are not considered MTE Terminals.

9.3.1.1.4.2 Detached Terminals: All accessible terminals other than MTE Terminals.

9.3.1.2 Standard Subloops available.

a) Two-Wire/Four Wire Unbundled Distribution Loop

b) Intentionally Left Blank[9]

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[8] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

c) Two-Wire/Four Wire Non-loaded Distribution Loop

d) Intrabuilding Cable Loop

9.3.1.3 Standard Subloop Access

9.3.1.3.1 Accessing Subloops in Detached Terminals: Subloop Unbundling is available after a CLEC requested Field Connection Point (FCP) has been installed within or adjacent to the Qwest accessible terminal. The FCP is a Demarcation Point connected to a terminal block from which Cross Connections are run to Qwest Subloop elements.

9.3.1.3.2 Accessing Subloops in MTE Terminals: Subloop Unbundling is available after CLEC has notified Qwest of its intention to Subloop unbundle in the MTE, during or after an inventory of CLEC's terminations has been created, and CLEC has constructed a cross-connect field at the building terminal.

9.3.1.3.2.1 Reserved for Future Use.

9.3.1.3.2.2 Reserved for Future Use.

9.3.1.4 Field Connection Point

9.3.1.4.1 Field Connection Point (FCP) is a Demarcation Point that allows CLEC to interconnect with Qwest outside of the Central Office location where it is Technically Feasible. The FCP interconnects CLEC facilities to a terminal block within the accessible terminal. The terminal block allows a technician to access and combine Unbundled Subloop elements. When a FCP is required, it must be in place before Subloop orders are processed.

9.3.1.4.2 Placement of a FCP within a Qwest Premises for the sole purpose of creating a cross-connect field to support Subloop unbundling constitutes a "Cross-Connect Collocation."

9.3.1.4.2.1 The terms, conditions, intervals and rates for Cross-Connect Collocation are found within section 9.3.

9.3.1.4.2.2 To the extent that CLEC places equipment in a Qwest Premises that requires power and or heat dissipation, such Collocation is governed by the Terms of Section 8 and does not constitute a Cross-Connect Collocation.

9.3.1.4.3 A FCP arrangement can be established either within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when Technically Feasible, CLEC may place the FCP in an adjacent terminal. CLEC will have access to the equipment placed within the Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.

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[9] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

9.3.1.5 MTE Point of Interconnection (MTE-POI)

9.3.1.5.1 A MTE-POI is necessary when CLEC is obtaining access to the Distribution Loop or Intrabuilding Cable Loop from an MTE Terminal. CLEC must create the cross-connect field at the building terminal that will allow CLEC to connect its facilities to Qwest's Subloops. The Demarcation Point between CLEC and Qwest's facilities is the MTE-POI.

9.3.1.6 Once a state has determined that it is Technically Feasible to unbundle Subloops at a designated accessible terminal, Qwest shall either agree to unbundle at such access point or shall have the burden to demonstrate, pursuant to the dispute resolution provisions of this Agreement, that it is not Technically Feasible, or that sufficient space is not available to unbundle Subloop elements at such accessible terminal.

9.3.1.7 Qwest shall provide access to additional Subloop elements (e.g., copper feeder) to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.

9.3.2 Standard Subloops Available

9.3.2.1 Distribution Loops

9.3.2.1.1 Two-Wire/Four-Wire Unbundled Distribution Loop: a Qwest provided facility from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for local exchange-type services. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.2 Two-Wire/Four-Wire Non-Loaded Distribution Loop: a Qwest provided facility without load coils and excess Bridged Taps from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. When CLEC requests a Non-Loaded Unbundled Distribution Loop and there are none available, Qwest will contact CLEC to determine if CLEC wishes to have Qwest unload a Loop. If the response is affirmative, Qwest will dispatch a technician to "condition" the Distribution Loop by removing load coils and excess Bridged Taps (i.e., "unload" the Loop). CLEC may be charged the cable unloading and Bridged Taps removal nonrecurring charge in addition to the Unbundled Loop installation nonrecurring charge. If a Qwest technician is dispatched and no load coils or Bridged Taps are removed, the nonrecurring conditioning charge will not apply. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.3 Intrabuilding Cable Loop: a Qwest provided facility from the building terminal inside a MTE to the Demarcation Point at the End User Customer premises inside the same building. This Subloop element only applies when Qwest owns the intrabuilding cable.

9.3.2.1.4 To the extent CLEC accesses Subloop in a campus environment from an accessible terminal that serves multiple buildings, CLEC

can access these Subloops by ordering a Distribution Loop pursuant to either Section 9.3.2.1.1 or 9.3.2.1.2. A campus environment is one piece of property, owned by one person or entity, on which there are multiple buildings.

9.3.2.2 Intentionally Left Blank[10]

9.3.2.2.1 Intentionally Left Blank[11]

9.3.3 MTE Terminal Subloop Access: Terms and Conditions

9.3.3.1 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, as defined in Section 9.3, refers to creation of a cross connect field and does not constitute Collocation as defined in Section 8. The terms and conditions of Section 8 do not apply to Cross-Connect Collocation if required at or near an MTE.

9.3.3.2 To obtain such access, CLEC shall complete the "MTE-Access Ordering Process" set forth in Section 9.3.5.4.

9.3.3.3 The optimum point and method to access Subloop elements will be determined during the MTE Access Ordering Process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security. CLEC may access the MTE Terminal as a test access point.

9.3.3.4 CLEC will work with the MTE building owner to determine where to terminate its facilities within the MTE. CLEC will be responsible for all work associated with bringing its facilities into and terminating the facilities in the MTE. CLEC shall seek to work with the building owner to create space for such terminations without requiring Qwest to rearrange its facilities.

9.3.3.5 If there is space in the building for CLEC to enter the building and terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space. In such circumstances, an inventory of CLEC's terminations within the MTE shall be input into Qwest's systems to support Subloop orders before Subloop orders are provisioned or in conjunction with the first Subloop order in the MTE. Qwest shall have five (5) calendar Days from receipt of a written request from CLEC, in addition to the interval set forth in Section 9.3.5.4.1, to input the inventory of CLEC's terminations into its systems. Qwest may seek an extended interval if the work cannot reasonably be completed within the stated interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain the extended interval. If CLEC submits a Subloop order before Qwest inputs the inventory into its systems, Qwest shall process the order in accord with Section 9.3.5.4.1.

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[10] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

[11] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

9.3.3.6 If CLEC connects Qwest's Subloop element to CLEC's facilities using any temporary wiring or cut-over devices, CLEC shall remove any remaining temporary wiring or cut-over devices and install permanent wiring within ninety (90) calendar Days. All wiring arrangements, temporary and permanent, must adhere to the National Electric Code.

9.3.3.7 If there is no space for CLEC to place its building terminal or no accessible terminal from which CLEC can access such Subloop elements, and Qwest and CLEC are unable to negotiate a reconfigured Single Point of Interconnection (SPOI) to serve the MDU, Qwest will either rearrange facilities to make room for CLEC or construct a single point of access that is fully accessible to and suitable for CLEC. Qwest's obligation to construct a SPOI is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE In addition, Qwest shall have an obligation only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI. In such instances, CLEC shall pay Qwest a nonrecurring charge, which shall be ICB, based on the scope of the work required. If CLEC requests that a new SPOI be established, then CLEC shall pay Qwest a nonrecurring charge that shall be ICB, based on the scope of the work required. If the MTE terminal is hard wired in such a manner that a network Demarcation Point cannot be created, Qwest will rearrange the terminal to create a cross-connect field and Demarcation Point. Charges for such rearrangement shall be recovered through recurring termination charges.

9.3.3.7.1 If Qwest must rearrange its MTE Terminal to make space for CLEC, Qwest shall have forty-five (45) calendar Days from receipt of a written request from CLEC to complete the rearrangement. Qwest may seek an extended interval if the work cannot reasonably be completed within forty-five (45) calendar Days. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.3.7.2 If Qwest must construct a new detached terminal that is fully accessible to and suitable for CLEC, the interval for completion shall be negotiated between the Parties on an Individual Case Basis.

9.3.3.7.3 CLEC may cancel a request to construct an FCP or SPOI prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest as well as any costs necessary to restore the property to its original condition.

9.3.3.8 At no time shall either Party rearrange the other Party's facilities within the MTE or otherwise tamper with or damage the other Party's facilities within the MTE. This does not preclude normal rearrangement of wiring or jumpers necessary to connect inside wire or intrabuilding cable to CLEC facilities in the manner described in the MTE Access Protocol. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the

law.

9.3.4 Detached Terminal Subloop Access: Terms and Conditions

9.3.4.1 Except as to access at an MTE Terminal, access to unbundled Subloop elements at an accessible terminal must be made through a Field Connection Point (FCP) in conjunction with either a Cross-Connect Collocation or, if power and/or heat dissipation is required, a Remote Collocation.

9.3.4.2 To the extent that the accessible terminal does not have adequate capacity to house the network interface associated with the FCP, CLEC may opt to use Adjacent Collocation to the extent it is Technically Feasible. Such adjacent access shall comport with NEBS Level 1 safety standards

9.3.4.2.1 Reserved for Future Use.

9.3.4.3 Field Connection Point

9.3.4.3.1 Qwest is not required to build additional space for CLEC to access Subloop elements. When Technically Feasible, Qwest shall allow CLEC to construct its own structure adjacent to Qwest's accessible terminal. CLEC shall obtain any necessary authorizations or rights of way required (which may include obtaining access to Qwest rights of way, pursuant to section 10.8 of this Agreement) and shall coordinate its facility placement with Qwest, when placing their facilities adjacent to Qwest facilities. Obstacles that CLEC may encounter from cities, counties, electric power companies, property owners and similar third parties, when it seeks to interconnect its equipment at Subloop access points, will be the responsibility of CLEC to resolve with the municipality, utility, property owner or other third party.

9.3.4.3.2 The optimum point and method to access Subloop elements will be determined during the Field Connection Point process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security.

9.3.4.3.3 CLEC must identify the size and type of cable that will be terminated in the Qwest FCP location. Qwest will terminate the cable in the Qwest accessible terminal if termination capacity is available. If termination capacity is not available, Qwest will expand the FDI at the request of CLEC if Technically Feasible, all reconfiguration costs to be borne by CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. It will be the responsibility of Qwest to seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision the Collocation. CLEC will be responsible for placing the cable from the Qwest FCP to its equipment. Qwest will perform all of the initial splicing at the FCP.

9.3.4.3.4 CLEC may cancel a Collocation associated with a FCP request prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for

payment of all costs previously incurred by Qwest.

9.3.4.3.5 If the Parties are unable to reach an agreement on the design of the FCP through the Field Connection Point Process, the Parties may utilize the Dispute Resolution process pursuant to the Terms and Conditions Dispute Resolution Section. Alternatively, CLEC may seek arbitration under Section 252 of the Act with the Commission, wherein Qwest shall have the burden to demonstrate that there is insufficient space in the accessible terminal to accommodate the FCP, or that the requested Interconnection is not Technically Feasible.

9.3.4.4 At no time shall either Party rearrange the other Party's facilities within the accessible terminal or otherwise tamper with or damage the other Party's facilities. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.5. Ordering/Provisioning

9.3.5.1 All Subloop Types

9.3.5.1.1 CLEC may order Subloop elements through the Operational Support Systems described in Section 12.

9.3.5.1.2 CLEC shall identify Subloop elements by NC/NCI codes.

9.3.5.2 Additional Terms for Detached Terminal Subloop Access

9.3.5.2.1 CLEC may only submit orders for Subloop elements after the FCP is in place. The FCP shall be ordered pursuant to Section 9.3.5.5. CLEC will populate the LSR with the termination information provided at the completion of the FCP process.

9.3.5.2.2 Qwest shall dispatch a technician to run a jumper between its Subloop elements and CLEC's Subloop elements. CLEC shall not at any time disconnect Qwest facilities or attempt to run a jumper between its Subloop elements and Qwest's Subloop elements without specific written authorization from Qwest.

9.3.5.2.3 Once the FCP is in place, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.3 Reserved for Future Use.

9.3.5.4 Additional Terms for MTE Terminal Subloop Access - MTE-Access Ordering Process

9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing, including via email, of its intention to provide access to Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar Days to notify CLEC and the MTE owner whether Qwest believes it or

the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership communicated to another CLEC at the same MTE, Qwest shall provide such notification to requesting CLEC within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the Customer side of the terminal, the preceding ten (10) Day period shall be reduced to five (5) calendar Days from Qwest's receipt of such claim.

9.3.5.4.2 If the MTE owner owns the facilities on the Customer side of the terminal, CLEC may obtain access to all facilities in the building in accordance with Section 9.5 concerning access to unbundled NIDs.

9.3.5.4.3 If Qwest owns the facilities on the Customer side of the terminal, and if CLEC requests space to enter the building and terminate its facilities and Qwest must rearrange facilities or construct new facilities to accommodate such access, CLEC shall notify Qwest. Upon receipt of such notification, the intervals set forth in Section 9.3.3 shall begin.

9.3.5.4.4 CLEC may only submit orders for Subloop elements after the facilities are rearranged and/or a new facility constructed, if either are necessary. CLEC will populate the LSR with the termination information provided by CLEC at the completion of the inventory process except when submitting LSRs during the creation of the inventory.

9.3.5.4.5 If CLEC orders Intrabuilding Cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI in accordance with the MTE Access Protocol. If CLEC ordered a Subloop type other than Intrabuilding Cable Loop, Qwest will dispatch a technician to run a jumper between CLECs Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI. CLEC, at its option, may request that Qwest run the jumper for Intrabuilding cable in MTEs when the inventory is done and a complete LSR has been submitted.

9.3.5.4.5.1 When CLEC accesses a MTE Terminal, it shall employ generally accepted best engineering practices in accordance with industry standards. CLEC shall clearly label the cross-connect wires it uses. CLEC wiring will be neatly dressed. When CLEC accesses Subloops in MTE Terminals, it shall adhere to Qwest's Standard MTE Terminal Access Protocol unless the Parties have negotiated a separate document for such Subloop access. If CLEC requests a MTE Terminal access protocol that is different from Qwest's Standard MTE Terminal Access Protocol, Qwest shall negotiate with CLEC promptly and in good faith toward that end.

9.3.5.4.5.2 Reserved for Future Use.

9.3.5.4.5.2.1 Reserved for Future Use.

9.3.5.4.5.2.2 Reserved for Future Use.

9.3.5.4.5.2.3 Reserved for Future Use.

9.3.5.4.5.2.4 Reserved for Future Use.

9.3.5.4.6 Once inventory is complete and, if necessary, the facilities are rearranged and or a new facility constructed and when Qwest runs the jumper, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.4.7 For access to Qwest's on-Premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

9.3.5.5 FCP Ordering Process

9.3.5.5.1 CLEC shall submit a Field Connection Point Request Form to Qwest along with its Collocation Application. The FCP Request Form shall be completed in its entirety.

9.3.5.5.2 After construction of the FCP and Collocation are complete, CLEC will be notified of its termination location, which will be used for ordering Subloops.

9.3.5.5.2.1 The following constitute the intervals for Provisioning Collocation associated with a FCP, which intervals shall begin upon completion of the FCP Request Form and its associated Collocation Application in their entirety:

9.3.5.5.2.1.1 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in Section 8.4.

9.3.5.5.2.1.2 A Cross-Connect Collocation in a detached terminal shall be provisioned within ninety (90) calendar Days from receipt of a written request by CLEC.

9.3.5.5.2.1.3 If Qwest denies a request for Cross-Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) calendar Days of CLECs receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the

space limitations, Qwest will honor the original Cross-Connect Collocation Application Date for determining RFS unless both Parties agree to a revised date.

9.3.5.5.2.1.4 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, CLEC can request testing of the FCP at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the Cross-Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the applicable charges.

9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.6 Rate Elements

9.3.6.1 All Subloop Types

9.3.6.1.1 Subloop Recurring Charge - CLEC will be charged a monthly recurring charge pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.1.2 Subloop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the Support Functions – Maintenance and Repair Section when trouble is reported but not found on the Qwest facility.

9.3.6.2 Reserved for Future Use.

9.3.6.3 Additional rates for Detached Terminal Subloop Access:

9.3.6.3.1 Cross-Connect Collocation Charge: CLEC shall pay the full nonrecurring charge for creation of the Cross-Connect Collocation set forth in Exhibit A upon submission of the Collocation Application. The FCP Request Form shall not be considered completed in its entirety until complete payment is submitted to Qwest.

9.3.6.3.2 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the rate elements set forth in Section 8.3.

9.3.6.3.3 Subloop Nonrecurring Jumper Charge: CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.4 Additional Rates for MTE Terminal Subloop Access

9.3.6.4.1 Subloop Nonrecurring Charge - CLEC will be charged a nonrecurring charge for the time and materials required for Qwest to complete the inventory of CLEC's facilities within the MTE such that Subloop orders can be submitted and processed.

9.3.6.4.2 Subloop Nonrecurring Jumper Charge – CLEC will be charged a nonrecurring basic installation charge when Qwest runs jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.7 Repair and Maintenance

9.3.7.1 Detached Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the accessible terminal and CLEC will maintain all of its facilities and equipment in the accessible terminal.

9.3.7.2 MTE Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the MTE and CLEC will maintain all of its facilities and equipment in the MTE.

9.4 Line Sharing

9.4.1 Description

Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing end user's analog voice-grade (POTS) service on a single copper Loop referred to herein as the "Shared Loop" or "Line Sharing", by using the frequency range above the voice band on the copper portion of the Loop. This frequency range will be referred to herein as the High Frequency Spectrum Network Element (HUNE). A POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous data transmission and POTS service. The POTS service must be provided to the end user by Qwest. This section does not prohibit Line Splitting, which is addressed in Section 9.21.

9.4.1.1 To the extent additional line sharing technologies and transport mechanisms are specified by applicable FCC rules, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access. Qwest also will provide CLECs with network elements to transport data to and from Qwest remote terminals including unbundled Dark Fiber, DS1 capable Loop, and OC-N. Qwest will also provide CLECs with the ability to commingle their data with Qwest's pursuant to Section 9.20 (Unbundled Packet Switching).

9.4.1.2 Qwest shall not be required to provide Line Sharing as an Unbundled Network Element except as set forth below.

9.4.1.2.1 **Grandfathered Line Sharing Arrangements**. Any Line Sharing arrangement that had a Due Date on or before October 1, 2003 and was still in operation as of such date shall be "grandfathered" in accordance with the provisions of this subsection ("Grandfathered Line Sharing Arrangement"). For any such Grandfathered Line Sharing Arrangement, the rate in effect as of

October 2, 2003 shall remain in effect unless modified by order, ruling or decision of the FCC. A Grandfathered Line Sharing Arrangement shall automatically terminate on the earlier to occur of: (i) the date on which the End User Customer served by such Grandfathered Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign or (ii) the date as of which such Grandfathered Line Sharing Arrangement is terminated or discontinued by order, ruling or decision of the FCC. In addition, CLEC may disconnect, or may convert to another Qwest product as is Technically Feasible, any Grandfathered Line Sharing Arrangement at any time.

9.4.1.2.2 **Three Year Transition Period**. CLEC may order Line Sharing arrangements during the period beginning on October 2, 2003 and ending on October 1, 2004 ("New Line Sharing Arrangement") in accordance with the provisions of this subsection. The Due Date for any New Line Sharing Arrangement may be no later than October 1, 2004, and CLEC may not order any New Line Sharing Arrangement after October 1, 2004. Any New Line Sharing Arrangement shall automatically terminate if, at any time after October 1, 2004, the End User Customer served by such New Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign. The nonrecurring charge for the installation of Line Sharing arrangements shall apply to any New Line Sharing arrangements. The monthly recurring charge for any New Line Sharing Arrangement shall apply as set forth below.

(a) During the period beginning on October 2, 2003 and ending on October 1, 2004, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be twenty-five (25) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(b) During the period beginning on October 2, 2004 and ending on October 1, 2005, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be fifty (50) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(c) During the period beginning on October 2, 2005 and ending on October 1, 2006, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be seventy-five (75) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(d) **Completion of Transition**. New Line Sharing Arrangements will no longer be available as of October 2, 2006. No later than October 2, 2006, CLEC must convert all New 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 New Line Sharing arrangement.

e) As of February 2, 2004, Qwest's Billing systems are not equipped to Bill the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above. Qwest will not commence Billing the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above until Qwest has provided CLEC with forty-five (45) Days notice, in accordance with Section 5.21. Until such notice has been given, and the forty-five (45) Day notice period has expired, Qwest will Bill a rate for New Line Sharing Arrangements equal to the rate in effect as of October 1, 2003, unless modified by order, ruling or decision of the FCC.

9.4.1.2.3 **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 be required to purchase the entire loop being disconnected to continue providing DSL service to such End User Customer.

9.4.1.2.4 **Successors and Assigns**. Line Sharing arrangements may be transferred or assigned by CLEC to another Carrier as set forth below.

9.4.1.2.4.1 **Grandfathered Line Sharing Arrangements.** Any Grandfathered Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier if the DSL service to CLEC's End User Customer is not canceled or discontinued in connection with such transfer or assignment. In such event, the monthly recurring rate in effect as of October 2, 2003 shall remain in effect with respect to such Grandfathered Line Sharing Arrangement until it is terminated or modified in accordance with the provisions of Section 9.4.1.2.1. Carrier will be billed the Transfer of Responsibility nonrecurring charge as provided in Exhibit A to transfer or assign Grandfathered Line Sharing Arrangements. Notwithstanding the foregoing, in the event the transfer or assignment of any Grandfathered Line Sharing Arrangement involves: (i) cancellation or discontinuation of the DSL service to CLEC's End User Customer or (ii) re-termination of the End User Customer's DSL service, then (a) such Line Sharing arrangement shall no longer be subject to the grandfathering provisions of Section 9.4.1.2.1 and (b) such line shall be eligible for treatment as a New Line Sharing Arrangement pursuant to, and subject to the terms and conditions of, Section 9.4.1.2.2 (including, without limitation, the specified recurring and nonrecurring charges for New Line Sharing Arrangements and the October 1, 2004 deadline for establishing New Line Sharing Arrangements).

9.4.1.2.4.2 **New Line Sharing Arrangements**. Any New Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier provided that such transfer or assignment takes place before October 1, 2004. Carrier will be charged the Shared Loop nonrecurring charges as provided in Exhibit A to transfer or assign New Line Sharing Arrangements. Following transfer or assignment, the New Line Sharing Arrangement in question will be assessed the monthly recurring rates described in Sections 9.4.1.2.2 (a)-(c) above, and shall be subject to termination in accordance with Sections 9.4.1.2.3 and 9.4.1.2.4. If re-termination of a New Line Sharing arrangement is

required to complete any such transfer or assignment, then the new Carrier will be assessed the nonrecurring rates for New Line Sharing Arrangements as specified in Section 9.4.1.2.2 above. No transfers or assignments of New Line Sharing Arrangements shall be allowed after October 1, 2004.

9.4.2 Terms and Conditions

9.4.2.1 General

9.4.2.1.1 To order the HUNE, CLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user as provided for in this Section, and the end user must have dial tone originating from a Qwest Switch in that Wire Center. CLEC must provide the end user with, and is responsible for, the installation of a Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.4.2.1.2 Reserved for Future Use.

9.4.2.1.3 CLEC may use the HUNE to provide any xDSL services that will not interfere with analog voiceband transmissions in accordance with FCC rules. Such services currently are 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 Line Sharing Deployment under applicable FCC rules.

9.4.2.1.4 CLEC may not order the HUNE on a given copper Loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the end user has requested a change of data providers at which time Qwest shall perform the necessary work required to migrate the HUNE to the new data provider with minimal interruption to the end user's data and voice services.

9.4.2.1.5 CLEC may request and Qwest will provide, conditioning of Shared Loops to remove load coils and excess Bridged Taps, subject to the charges for Loop conditioning in Exhibit A. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the Loop. Qwest will perform requested conditioning, including de-loading and removal of excess Bridged Taps, unless Qwest demonstrates in advance that conditioning a 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 may make a preliminary determination if the Loop can meet the technical parameters applicable to the data service it intends to provide over the Loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop to the point that it is unacceptable to the End User Customer, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.4.2.1.6 Qwest will provide CLEC with access to the HUNE through POTS Splitters installed in Qwest Wire Centers. POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC:

(a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in this Section. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination.

9.4.2.1.7 Reserved for Future Use.

9.4.2.2 CLEC Collocation Area Splitter

9.4.2.2.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via the standard Collocation arrangements set forth in the Collocation Section, CLEC will either purchase the POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to taxes, shipping and handling. The POTS Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. CLEC will be responsible for installing and maintaining the POTS Splitters in its Collocation areas within Qwest Wire Centers.

9.4.2.2.2 CLEC may designate some or all of its existing TIE Cables for use in connection with Line Sharing. Qwest will perform any necessary TIE Cable reclassifications, frame re-stenciling, and related work for which it is responsible and that is required to provision Line Sharing. Charges will apply pursuant to Exhibit A of the Agreement.

9.4.2.2.3 Two (2) ITPs and two (2) TIE Cables will be needed to connect POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter located in CLEC's Collocation area. The voice and data traffic will be separated at the POTS Splitter. The data traffic will be routed to CLEC's network within its Collocation area. The voice traffic will be routed to the COSMIC™/MDF Switch termination, via the ICDF, using a second TIE Cable and a second ITP.

9.4.2.2.4 Interconnection Tie Pairs and TIE Cables. There are two (2) types of ITP arrangements for connecting the Qwest network to the CLEC provided Splitter, depending on whether CLEC elects to use an ICDF or direct connections.

9.4.2.2.4.1 CLEC may elect to use an ICDF. In this instance, one ITP carries the combined voice/data signal from the COSMIC™/MDF Loop termination to the ICDF and a second ITP carries the voice only signal from the ICDF to the COSMIC™/MDF Switch termination. For each Shared Loop, two pairs of the TIE cable must be used: one pair of the TIE Cable will carry the voice/data from the ICDF to the CLEC provided Splitter, and the second pair will carry the voice-only signal from the CLEC provided Splitter to the ICDF.

9.4.2.2.4.2 CLEC may elect to use direct connections between the CLEC-provided Splitter and the COSMIC™/MDF. In this instance, Qwest will provide one TIE Cable between each module of the COSMIC™/MDF

and the CLEC-provided Splitter. One pair in the TIE Cable will carry the combined voice/data signal from the COSMIC™/MDF Loop termination to the CLEC-provided Splitter in CLEC's Collocation space. A second pair in the TIE Cable will carry the voice-only signal from the CLEC-provided Splitter to the Switch termination on the COSMIC™/MDF. These TIE Cables will be dedicated to CLEC's use, and, as a result, the full cost of the necessary Mechanized Engineering and Layout for Distributing Frame (MELD™) run, cable placement, and cable termination, and associated COSMIC™/MDF hardware to terminate a TIE Cable on each outside plant and Switch equipment module of the COSMIC™/MDF will be assessed to CLEC in accordance with Section 8 (Collocation). To minimize CLECs cost, to the extent feasible, Qwest shall consolidate CLECs requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest. Qwest will provide, for each Shared Loop, the TIE Cable pair assignments.

9.4.2.2.5 The Demarcation Points between Qwest's network and CLEC's network will be the place where the combined voice and data Loop is connected to the ICDF, or where CLEC chooses a direct connection to the COSMIC™/MDF, where the combined voice and data Loop originates from CLECs Collocation.

9.4.2.3 Common Area Splitter Collocation

9.4.2.3.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS Splitters will be installed in those Wire Centers in one of the following locations: (a) in a relay rack near CLEC's DS0 termination points ; (b) on an ICDF to the extent such a frame is available; or (c) at CLEC's direction, on the COSMIC™/MDF, where space is available on the COSMIC™/MDF and priced on an ICB basis, or in some other appropriate location such as an existing Qwest relay rack or bay. In the event that the option selected by CLEC is not available, Qwest may place CLEC's splitter in some other appropriate location such as an existing Qwest relay rack or bay. CLEC either may purchase POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to, taxes, shipping and handling, and any similar charges assessed on Qwest by vendors in connection with the purchase of POTS Splitters. The POTS splitters must meet the FCC requirements and NEBs Level 1 safety standards. If CLEC purchases the POTS splitter, Qwest will be responsible for installing the POTS Splitter shelf with cards as supplied, but CLEC will lease the POTS Splitters to Qwest at no cost. Qwest will not be responsible for shortages of POTS Splitters or Qwest's inability to obtain POTS Splitters from vendors, if acting as purchasing agent on behalf of CLEC. Qwest may install the POTS Splitter shelves of different CLECs in a single relay rack (bay) or frame.

9.4.2.3.1.1 CLEC has the option to maintain the POTS splitter cards or have Qwest perform this function. When CLEC elects to maintain the POTS splitter cards, CLEC will be responsible to troubleshoot and replace defective cards. Qwest will be responsible for troubleshooting

and trouble isolation of circuit continuity issues up to the splitter card and from the splitter card to the DEMARC. CLEC will be responsible to add splitter cards as necessary to provision un-carded splitter shelf slots. CLEC will be responsible to clearly label the splitter shelf as CLEC maintained. Election to maintain the POTS splitter cards will be for all CLEC collocations in Qwest 14 state operating territory.

9.4.2.3.1.2 If CLEC elects to have Qwest perform the splitter card maintenance, CLEC will be responsible for inventory and supply of spare splitter cards in the event a defective card requires replacement or a cards needs to be added to provision an unused splitter card slot.

9.4.2.3.2 Two (2) ITPs and four (4) TIE Cables will be needed to connect the POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter. The voice and data traffic will be separated at the POTS Splitter, and the separated voice and data traffic will be routed to the ICDF via separate TIE Cables (i.e., the second and third TIE Cables). At the ICDF, the data traffic will be routed to CLEC's Collocation area via a fourth TIE Cable, and the voice traffic will be routed to the COSMIC™/MDF Switch termination, via a second ITP. CLEC can also elect a direct connect option pursuant to Section 8.3.1.11.2.

9.4.2.3.3 Qwest will provide the cabling used for TIE Cables between the POTS Splitter and the ICDF. The POTS Splitter Tie Cable Connection Charge will apply.

9.4.2.3.4 The Demarcation Point between Qwest's network and CLEC's network will be at the place where the data Loop leaves the POTS Splitter on its way to CLEC's Collocated equipment, or at the ICDF, where the data Port is cabled to existing CLEC Collocation tie cable.

9.4.3 Line Sharing Deployment

9.4.3.1 New applications for installation of POTS Splitters will be processed in the manner outlined in the Collocation Section for Cageless or Common Collocation.

9.4.3.2 CLEC may submit applications for additional DSO TIE Cable terminations and/or reclassifications to support Line Sharing. Qwest will process any such applications for augmentation and/or reclassification of DSO TIE Cable terminations under intervals as outlined below in this Section.

9.4.3.3 Augmentation intervals will be thirty (30) Calendar Days, subject to the following terms and conditions identified below:

9.4.3.3.1 Intentionally Left Blank.

9.4.3.3.2 Intentionally Left Blank.

9.4.3.3.3 The interval for reclassification will be fifteen (15) Calendar Days, subject to the following terms and conditions. If requested reclassification

engineering results in additional requirements for DSO TIE Cable termination or TIE Cable support, the interval will default to thirty (30) Calendar Days.

9.4.3.3.4 Intentionally Left Blank.

9.4.3.3.5 In the event CLEC, or Qwest acting as purchasing agent for CLEC, is unable to procure any equipment needed to complete all work required by applications submitted to Qwest by CLEC, including but not limited to, POTS Splitters or cabling, Qwest will install the subject equipment when it becomes available. If Qwest is acting as purchasing agent for CLEC and is unable to procure equipment to complete all work in a timely manner, CLEC may provide Qwest with the subject equipment. CLEC will be notified by Qwest of the required material on-site date for the affected Wire Center(s) and CLEC will have two (2) business days to determine if it will be able to provide the subject equipment in advance of the material on-site date. If CLEC does not notify Qwest in writing of its intent to provide the subject equipment within this two (2) business days period, or if the subject equipment is not provided in a timely manner, Qwest will install the subject equipment when available.

9.4.4 Rate Elements

9.4.4.1 Recurring Rates for Shared Loop

9.4.4.1.1 Shared Loop Charge - A monthly recurring charge for the use of the Shared Loop will apply.

9.4.4.1.2 OSS Charge - A monthly recurring charge to recover upgrades to Qwest Operational Support Systems required to accommodate Line Sharing will apply.

9.4.4.2 Nonrecurring Rates for the Shared Loop

9.4.4.2.1 Basic Installation Charge for Shared Loop – A nonrecurring charge for each Shared Loop installed will apply.

9.4.4.2.2 If CLEC requests conditioning of a Shared Loop, a nonrecurring conditioning charge specified in Exhibit A will apply for removal of load coils and excess Bridged Taps. If the conditioning significantly degrades the voice services on the Loop to the point it is unacceptable to the end user, CLEC shall pay the conditioning charge in Exhibit A to recondition the Loop.

9.4.4.3 Nonrecurring Rates for Tie Cable Reclassification

9.4.4.3.1 Reclassification Charge – A nonrecurring charge will apply, based on time and materials for reclassification of existing TIE cable capacity, by among other things, reclassification of existing TIE cables for Line Sharing, frame re-stenciling, and any other work performed between CLEC's Collocation and the intermediate distribution frame required to provision Line Sharing.

9.4.4.4 Nonrecurring Rates for Maintenance and Repair

9.4.4.4.1 Trouble Isolation Charge – A nonrecurring charge for Trouble

isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.4.4.4.2 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 Exhibit A.

9.4.4.5 Rates for Common Area Splitter Collocation

9.4.4.5.1 Splitter Shelf Charge – This charge recovers installation and ongoing maintenance associated with Splitter installation, bay installation, lighting costs, aerial support structures and grounding charge for Splitters either in a bay, on the IDF, or on the MDF/COSMIC™. These are both recurring and nonrecurring charges.

9.4.4.5.2 POTS Splitter Charge – A nonrecurring charge will apply for the cost of each POTS Splitter purchased by Qwest on behalf of CLEC. This charge will cover the cost of the POTS Splitter, plus any associated costs incurred by Qwest to order the POTS Splitter.

9.4.4.5.3 Engineering – A nonrecurring charge will apply for the planning and engineering associated with placing POTS Splitters in the Central Office, either in a bay, on the IDF, or on the MDF/COSMIC™.

9.4.4.6 POTS Splitter TIE Cable Connections Charge – A nonrecurring charge will apply for the cost of each TIE Cable connected to the POTS Splitters. This charge will cover both the TIE cables and associated blocks per one hundred (100) pair between the POTS Splitter and the intermediate distribution frame or Splitter bay.

9.4.4.7 The rates for each of the aforementioned Line Sharing rate elements are set forth in Exhibit A. Where such rates are interim, they will be subject to true up based on either mutually agreed to permanent rates or permanent rates established in a Line Sharing cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are set established by the Commission.

9.4.5 Ordering Process

9.4.5.1 Shared Loop

9.4.5.1.1 As a part of the pre-order process, CLEC can access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. However, use of any Qwest loop qualification tool is not required prior to placing an order for a Shared Loop. CLEC will determine, in its sole discretion, whether to order the HUNE across any specific copper Loop. Qwest and CLEC will work together to modify the Loop Information Tool to better support Line Sharing. CLEC shall accept the risk that the Loop selected may not be suitable for providing the type of xDSL service CLEC seeks to provide.

9.4.5.1.2 The appropriate Splitter Meet Points dedicated to the POTS 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 ordered by the Commission or further agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC™/MDF and ICDF.

9.4.5.1.3 Basic Installation "lift and lay" procedure will be used for all 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.

9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) and load coils on Shared Loops as part of basic installation. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Qwest will perform an ANI test to verify that the proper pair has been connected to CLEC's DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF.

9.4.5.1.4 Qwest will provision the Shared Loop within the standard unbundled Loop Provisioning interval as defined in Exhibit C.

9.4.5.1.5 CLEC shall not place initial orders for Shared Loops until all infrastructure work necessary to provision Line Sharing in a given Qwest Wire Center, including, but not limited to, POTS 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 Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

9.4.5.1.6 Prior to placing an LSR for Shared Loop, CLEC must obtain a Proof of Authorization from the End User Customer in accordance with the Proof of Authorization Section.

9.4.5.2 Common Area Splitter Collocation

9.4.5.2.1 This Section only applies to situations where CLEC orders placement of the Splitter in a common area.

9.4.5.2.2 New POTS Splitter shelves may be ordered via a single Collocation application form and quote preparation fee. Standard intervals as contained in Exhibit C will apply.

9.4.5.2.3 New POTS Splitter shelves may be ordered with an existing Collocation. CLEC must submit a new Collocation application form and the

applicable fee to Qwest. Standard Cageless and/or Common Collocation intervals as contained in Exhibit C will apply.

9.4.5.3 TIE Cable Reclassification

9.4.5.3.1 To the extent CLEC has existing DSO TIE Cable terminations extending from an intermediate distribution frame to its Collocation space, CLEC may request that these existing DSO TIE Cable terminations be reclassified for use with Line Sharing. CLEC shall request such reclassification through the same process used to order new terminations.

9.4.6 Repair and Maintenance

9.4.6.1 Qwest will allow CLEC to access Shared Loops at the point where the combined voice and data Loop is cross-connected to the POTS Splitter. If CLEC elects the Common Area Splitter Maintenance option, CLEC may access all cross connect points on the ICDF at which CLEC's data circuits terminate.

9.4.6.2 Qwest will be responsible for repairing voice services provided over Shared Loops and the physical line between Network Interface Devices at end user premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at end user premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end users. CLEC will be responsible for repairing data services provided on 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 POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.4.6.3 Qwest and CLEC will continue to develop repair and maintenance procedures for Line Sharing and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsServices/pcat/TABL1-0.html. In the interim, Qwest and CLEC agree that the following general principles will guide the repair and maintenance process for Line Sharing.

9.4.6.3.1 If an end user complains of a voice service problem that may be related to the use of a Shared Loop for data services, Qwest and CLEC will work together with the end user to solve the problem to the satisfaction of the end user. Qwest will not disconnect the data service provided to an end user over a Shared Loop without the written permission of CLEC unless the end user's voice service is so degraded that the end user cannot originate or receive voice grade calls and/or the end user authorizes Qwest to disconnect the data service. Qwest will notify CLEC whenever this occurs upon voice trouble ticket closure. If the trouble is isolated into the CLEC collocation arrangement, Qwest shall notify the CLEC when disconnecting the data service and immediately restore the data service once the CLEC notifies Qwest that the trouble has been cleared.

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

9.4.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess CLEC the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at its option, may require Qwest to pay a charge, equivalent to the Qwest TIC charge, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.4.6.3.4 When trouble reported by CLEC is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of CLEC on a case-by-case basis. CLEC may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide CLEC with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, CLEC will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge.

9.4.6.3.5 Where Qwest has billed CLEC for Trouble Isolation Charges for a CLEC Trouble Report, Qwest will remove such Trouble Isolation Charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Trouble Isolation Charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and

- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and

- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and

- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and

- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

9.4.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.4.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing Shared Loops. This equipment must meet the requirements for Central Office equipment set by the FCC in its March 31, 1999 Order in CC Docket No. 98-147.

9.4.6.6 Qwest and CLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.4.7 Other

9.4.7.1 Reserved for Future Use.

9.5 Network Interface Device (NID)

9.5.1 Description

The Qwest NID is defined as any means of Interconnection of on-premises wiring and Qwest's distribution plant, such as a cross connect device used for that purpose. Specifically, the NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit at a premises. If CLEC seeks to access a NID as well as a Subloop connected to that NID, it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. Qwest shall permit CLEC to connect its own Loop facilities to on-premises wiring through Qwest's NID, or at any other technically feasible point. The NID carries with it all features, functions and capabilities of the facilities used to connect the Loop distribution plant to the Customer premises wiring, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the Customer premises wiring, it may not represent the Demarcation Point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the Customer's on-premises wiring against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the Customer's on-premises wiring to the end user's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

9.5.1.1 Simple NID - The modular NID is divided into two (2) components, one containing the over-voltage unit (protector) and the other containing the end user's on-

premises inside wiring termination, and a modular plug which connects the inside wire to the distribution plant or dial tone source. The non-modular NID is a protector block with the inside wire terminated directly on the distribution facilities.

9.5.1.2 Smart NID – To the extent Qwest has deployed "Smart" devices in general meaning a terminating device that permits the service provider to isolate the Loop facility from the premises wiring for testing purposes, and such devices have spare functioning capacity not currently used by Qwest or any other provider, Qwest shall provide unbundled access to such devices. Qwest shall also continue to allow CLEC, at its option, to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future regardless of whether or not CLEC terminates its own distribution facility on the NID.

9.5.1.3 Multi-Tenant (MTE) NID - The MTE NID is divided into two (2) functional components: one containing the over-voltage unit (protector) and the other containing the terminations of the on-premises inside wiring. Such devices contain the protectors for, and may be located externally or internally to the premises served.

9.5.2 Terms and Conditions

9.5.2.1 A CLEC can use the existing Qwest NID to terminate its drop if space permits, otherwise a new NID or other Technically Feasible Interconnection point is required. If CLEC installs its own NID, CLEC may connect its NID to the Qwest NID by placing a cross-connect between the two. When Provisioning a NID to NID connection, CLEC will isolate the Qwest facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Qwest will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facility based provider up to and including its NID, the Qwest facility currently in place, including the NID, will remain in place.

9.5.2.1.1 Qwest shall allow CLEC to connect its Loops directly to the NID field containing the terminations of the on-premises inside wiring not owned or controlled by Qwest, without restriction. Where Qwest does not own or control the on-premises inside wiring, CLEC and the landowner shall determine procedures for such access.

9.5.2.1.2 Qwest shall allow CLEC to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.

9.5.2.1.3 Pursuant to generally acceptable work practices, and provided the inside wire re-termination is required to meet service requirements of either Parties' End User Customer. Either Party may remove the inside wire from the NID and connect that wire to that Party's own NID.

9.5.2.1.4 CLEC may enter the subscriber access chamber or "End User Customer side" of "dual chamber" NID enclosures for the purpose of NID to NID connections.

9.5.2.1.5 Upon CLEC request, Qwest will make other rearrangements to the inside wire terminations or terminal enclosure. Charges will be assessed per

section 9.5.3.4. No such charge shall be applicable if Qwest initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without a Customer's perceivable disruption in service. Qwest will not make any rearrangements of wiring that is provided by another Carrier that relocates the other Carrier's test access point without notifying the affected Carrier promptly after such rearrangement if CLEC has properly labeled its cross connect wires.

9.5.2.2 Qwest will retain sole ownership of the Qwest NID and its contents on Qwest's side. Qwest is not required to proactively conduct NID change-outs, on a wide scale basis. At a CLEC's request, Qwest will change the NID on an individual request basis by CLEC and charges will be assessed per section 9.5.3.5 except where Section 9.5.5.1 applies. Qwest is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Qwest NID, it shall employ generally accepted best engineering practices and comply with industry standards should such standards exist when it physically connects its NID (or equivalent) to the Qwest NID and makes Cross Connections necessary to provide service. At MTE NIDs, CLEC shall clearly label the cross-connect wires it uses to provide service. Qwest shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Qwest NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the Customer's in-premises wiring. All services fed through a protector field in a Qwest NID that is attached to a building will interface on industry standard lugs or a binding post type of termination and then extend, via a Cross Connection, to the Customer's on-premises wiring.

9.5.2.4.1 Reserved for Future Use.

9.5.2.4.2 Reserved for Future Use.

9.5.2.4.3 Reserved for Future Use.

9.5.2.4.4 Reserved for Future Use.

9.5.2.5 If so requested by CLEC, Qwest shall allow CLEC to connect its Loops directly to the protector field at Qwest NIDs that have unused protectors and are not used by Qwest or any other Telecommunications Carrier to provide service to the premises. If a CLEC accesses the Qwest protector field it shall do so on the distribution side of the protector field only where spare protector capacity exists. In such cases, CLEC shall only access a Qwest NID protector field in cable increments appropriate to the NID. If twenty-five (25) or more metallic cable pairs are simultaneously terminated at the MTE NID, additions must be in increments of twenty-five (25) additional metallic pairs. In all cases, Telecommunications cables entering a Qwest NID must be terminated in compliance with FCC 88-57, section 315 of the National Electric Safety Code and section 800.30 of the National Electric Code. When CLEC removes Qwest facilities from the NID protector, it must terminate the spare Qwest Loops on protection devices that ensure that Qwest's facilities and the Customer's premises be protected

from electrical surges. In such instances, CLEC must provide Qwest with written notice within 10 days that it had so disconnected the Qwest facilities from the protection device. CLECs will be liable for damages in situations where their technicians have failed to follow standard electrical protection and safety procedures. To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement.

9.5.2.6 Reserved for Future Use.

9.5.3 Rate Elements

9.5.3.1 If CLEC requests the current Simple NID to be replaced with a different Simple NID, pursuant to section 9.5.2.1, charges will be assessed on a time and materials basis with CLEC paying only for the portion of the change out that is specific to and for the functionality that supports CLEC requirements.

9.5.3.2 Recurring rates for unbundled access to the protector field in a Qwest NID are contained in Exhibit A of this Agreement and apply pursuant to 9.5.2.5. As of the Effective Date of this Agreement, Qwest has not implemented charges for this recurring rate element, but reserves the right to assess such a charge in the future.

9.5.3.3 When a CLEC requests that Qwest perform the work to connect its NID to the Qwest NID, the costs associated with Qwest performing such work will be charged to CLEC on a time and materials basis.

9.5.3.4 Where Qwest makes 9.5.2.1.5 rearrangements to the inside wire terminations or terminal enclosure on CLEC request pursuant to Section 9.5.2.1.5, charges will be assessed on a time and materials basis.

9.5.3.5 CLEC will be billed on a time and materials basis for any change out Qwest performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change out that is specific to the CLEC request for additional capacity.

9.5.4 Ordering Process

9.5.4.1 Reserved for Future Use.

9.5.4.2 CLEC may access a MTE NID after determining that the terminal in question is a NID, per the process identified in 9.3. If the terminal is a NID and CLEC wishes to access the Customer field of the NID, no additional verification is needed by Qwest. CLEC shall tag their jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross-connect field other than to the Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within 10 business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal or disputing the claim of technical infeasibility pursuant to the dispute resolution provisions of this Agreement. No additional verification is needed by Qwest and CLEC shall tag their jumper wire.

9.5.4.3 Subject to the terms of 9.5.4.2, CLEC may perform a NID-to-NID connection, according to 9.5.2.3, and access the Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

9.5.5 Maintenance and Repair

9.5.5.1 If Qwest is dispatched to an end user's location on a maintenance issue and finds the NID to be defective, Qwest will replace the defective element or, if beyond repair, the entire device at no cost to CLEC. If the facilities and lines have been removed from the protector field or damaged by CLEC, CLEC will be responsible for all costs associated with returning the facilities and lines back to their original state. Charges for this work will be on a time and materials basis and billed directly to CLEC. Billing disputes will be resolved in accordance with the dispute resolution process contained in this Agreement. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6 Unbundled Dedicated Interoffice Transport (UDIT)

Qwest shall provide access to Unbundled Dedicated Interoffice Transport (UDIT) in a non-discriminatory manner according to the following terms and conditions. The following services are not available under the terms of this Agreement:

a) Extended Unbundled Interoffice Transport (EUDIT);

b) OCn UDIT;

c) More than twelve (12) DS3 UDIT, for one carrier or its affiliates, per route;

d) UDIT as a part of a Meet-Point;

e) Remote Node/Remote Port/

f) SONET add/drop multiplexing; or

g) UDIT on routes where the Commission has found no CLEC impairment.[12]

9.6.1 Description

9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a Network Element of a single transmission path between Qwest End Office Switches, Serving Wire Centers or Tandem Switches in the same LATA and state. A UDIT can also provide a path between one (1) CLEC's Collocation in one (1) Qwest Wire Center and a different CLEC's Collocation in another Qwest Wire Center. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. UDIT is available in DS0 through DS3 bandwidths. CLEC can assign channels and transport its choice of voice or data. Specifications, interfaces and parameters are described in Qwest Technical Publication 77389.

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[12] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

9.6.1.2 An unbundled multiplexer is offered as an optional stand-alone element associated with UDIT. A 3/1 multiplexer provides CLEC with the ability to multiplex the DS3 44.736 Mbps signal to twenty-eight (28) DS1 1.544 Mbps channels. The 3/1 multiplexer, in conjunction with an ITP, provides a DS3 signal terminated at a Demarcation Point and twenty-eight (28) DS1 signals terminated at a Demarcation Point. A 1/0 multiplexer provides CLEC with the ability to multiplex the DS1 1.544 Mbps signal to twenty-four (24) DS0 64 Kbps channels. The 1/0 multiplexer provides a DS1 signal terminated at a Demarcation Point and twenty-four (24) DS0 signals terminated at a Demarcation Point.

9.6.1.3 Intentionally Left Blank

9.6.1.4 Where unbundled DS3 is available as a UNE, Qwest is not required to provide, and CLEC shall not submit orders for, more than twelve (12) DS3 UDIT channels on a specific Wire Center to Wire Center route for which unbundled DS3 UDIT is available as an Unbundled Network Element.

9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.[13]

> **9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.[14]**

9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport

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[13] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

[14] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

in accordance with the Qwest Special Access Tariff.[15]

9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.[16]

9.6.1.7 CLEC will not order services provided in this Section with High Capacity Loops. If CLEC wishes to order services provided in this Section with High Capacity Loops in the future, the parties will negotiate an amendment to this agreement incorporating the terms and conditions for ordering such services, including applicable Service Eligibility Criteria established by Applicable Law

9.6.1.8 All services provided in this Section are subject to the Ratcheting criteria as outlined in Section 9.1.1.4 of this Agreement.

9.6.2 Terms and Conditions

9.6.2.1 To the extent that CLEC is ordering access to a UNE Combination, and Cross Connections are necessary to combine UNEs, Qwest will perform requested and necessary Cross Connections between UNEs in the same manner that it would perform such Cross Connections for its End User Customers or for itself. When UDIT is combined or Commingled with high capacity loops, the circuit is subject to the Service Eligibility Criteria as stated in Section 9.1.1.5. If not ordered as a combination, CLEC is responsible for performing Cross Connections at its Collocation or other mutually determined Demarcation Point between UNEs and ancillary or Finished Services, and for transmission design work including regeneration requirements for such connections. Such Cross Connections will not be required of CLEC when CLEC orders a continuous dedicated transport element from one point to another. UDIT may be directly connected to Finished Services, except as prohibited by Existing Rules.

9.6.2.2 CLEC must order all multiplexing elements (if it chooses the multiplexing option) and regeneration requirements with its initial installation for the 3/1 multiplexer, including all 28 DS1s and the settings on the multiplexer cards. If options are not selected and identified on the order by CLEC, the order will be held until options are selected. For the 1/0 multiplexer, the low side channels may be ordered as needed. Low Side Channelization charges are assigned as channels are ordered. When Loops are ordered in combination with multiplexing, Qwest will provision Loops directly terminated to the multiplexer.

9.6.2.3 With the exception of combinations provided through the UNE Combinations Section 9.23, CLEC may utilize any form of Collocation at both ends of the

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[15] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

[16] North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.

UDIT . Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network. Cable distance limitations are based on ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

9.6.2.4 Intentionally Left Blank.

9.6.2.5 Intentionally Left Blank.

9.6.2.6 Intentionally Left Blank.

9.6.2.7 Intentionally Left Blank.

9.6.3 Rate Elements

9.6.3.1 DS1 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS1 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 1.544 Mbps termination at a DSX or DCS. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS1 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 1.544 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS1 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) Intentionally Left Blank.

9.6.3.2 DS3 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS3 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 44.736 Mbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS3 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides an interoffice transmission path of 44.736 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS3 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) DS3 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS3 service.

e) Intentionally Left Blank.

9.6.3.3 DS0 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS0 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 64 Kbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS0 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 64 Kbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS0 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) DS0 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS0 service.

9.6.3.4 Intentionally Left Blank.

9.6.3.5 Intentionally Left Blank.

9.6.3.6 Low Side Channelization (LSC) Charge. A recurring charge for low side multiplexed channel cards and settings at each end of the DS0 UDIT.

9.6.3.7 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:

a) Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.

9.6.3.8 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:

a) Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.

c) Low Side Channelization (LSC). A recurring charge for low side multiplexed channel cards and settings plus a nonrecurring charge for each individual channelization Provisioning.

9.6.3.9 Rearrangement rates are contained in Exhibit A of this agreement.

9.6.3.10 Remote Node/Remote Port rates are contained in Exhibit A of this Agreement and include the following charges:

a) Recurring Remote Node Charge. The Remote Node at OC3, OC12 or OC48.

b) Recurring Remote Port Charge. A recurring charge for Remote Port card at DS1, DS3, OC3, OC12.

c) Nonrecurring Remote Port. One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

9.6.4 Ordering Process

9.6.4.1 Ordering processes and installation intervals are as follows:

9.6.4.1.1 UDIT is ordered via the Access Service Request (ASR) process. Ordering processes are contained in the Access to OSS Section of this Agreement.

9.6.4.1.2 Reserved for Future Use.

9.6.4.1.3 The interval will start when Qwest receives a complete and accurate Access Service Request (ASR). This date is considered the start of the installation interval if the order is received prior to 3:00 p.m. The installation interval will begin on the next business day for service requests received after 3:00 p.m. The installation intervals have been established and are set forth in Exhibit C, Section 2.0 of this Agreement.

9.6.4.1.4 Subsequent changes to the quantity of services on an existing order will require a revised order. Also, additional charges apply for the following modifications to existing orders unless the need for such change is caused by Qwest:

a) Service Date changes;

b) Partial cancellation;

c) Design change; and

d) Expedited order.

9.6.4.1.5 An order may be canceled any time up to and including the Service Date. Cancellation charges will apply except when:

a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Qwest that such Due Date will be, delayed ten (10) business days or longer; or

b) The original Due Date has been scheduled later than the expiration of the standard interval set forth in Exhibit C and CLEC cancels its order no later than ten (10) Days before such original Due Date.

9.6.4.1.6 Definitions of the most common critical dates that occur during the ordering and installation process are included in the Definitions Section of

this Agreement.

9.6.4.2 UDIT is ordered with basic installation. Qwest will install the UDIT extending connections to CLEC Demarcation Point and will notify CLEC when the work activity is complete. UDIT will comply will technical specifications contained in Technical Publication 77389. Joint testing is available pursuant to the joint testing provisions contained in Section 8 of this Agreement.

9.6.4.3 UDIT 3/1 multiplexing is provisioned as a complete system with terminations at the Demarcation Point and all multiplexing cards. CLEC must order settings for all cards at the time of the multiplexing request.

9.6.4.4 For UDIT 1/0 multiplexing, the high side is fully provisioned with the order. The low side is provisioned when low side channels are ordered. Optional card settings are selected by CLEC at the time of the DS0 order.

9.6.4.5 Qwest will perform industry standard tests, set forth in Technical Publication 77389, when installing UDIT service.

9.6.4.6 Reserved for Future Use.

9.6.5 Maintenance and Repair

9.6.5.1 The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC Cross Connections will be repaired by CLEC and Qwest Cross Connections will be repaired by Qwest. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6.6 Rearrangement

9.6.6.1 CLEC can submit requests through the ASR process to move or rearrange UDIT terminations on CLEC's Demarcation Point or to change UDIT options. These rearrangements are available through a single Wire Center or dual Wire Center request. Single Wire Center rearrangements are limited to the change in options or movement of terminations within a single Wire Center. Dual Wire Center rearrangements are used to change options or movement of terminations in two (2) Wire Centers. Rearrangement is only available for in-place and working UDITs.

9.6.6.2 The rearrangement of terminations or option changes are completed as an "uncoordinated change" (basic request) and will be completed within the normal intervals outlined in Exhibit C. If CLEC desires a coordinated rearrangement of terminations or options changes, additional labor installation as identified in Exhibit A shall apply.

9.6.6.3 CLEC will submit an ASR with the rearrange USOC and appropriate termination information (e.g., CFA) or NC/NCI codes (Network Channel Codes/Network Channel Interface Codes).

9.7 Unbundled Dark Fiber

CLEC does not intend to order Unbundled Dark Fiber; however in the event CLEC wishes to order Unbundled Dark Fiber, the Parties will negotiate an appropriate amendment to this Agreement.

9.8 Shared Interoffice Transport

CLEC does not intend to order Shared Interoffice Transport; however in the event CLEC wishes to order Shared Interoffice Transport, the Parties will negotiate an appropriate amendment to this Agreement.

9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)

CLEC does not intend to order UCCRE; however in the event CLEC wishes to order UCCRE, the Parties will negotiate an appropriate amendment to this Agreement.

9.10 Local Tandem Switching

CLEC does not intend to order Local Tandem Switching; however in the event CLEC wishes to order Local Tandem Switching, the Parties will negotiate an appropriate amendment to this Agreement.

9.11 Local Switching

CLEC does not intend to order Local Switching; however in the event CLEC wishes to order Local Switching, the Parties will negotiate an appropriate amendment to this Agreement.

9.12 Customized Routing

CLEC does not intend to order Customized Routing; however in the event CLEC wishes to order Customized Routing, the Parties will negotiate an appropriate amendment to this Agreement.

9.13 Access to Signaling

CLEC does not intend to order Access to Signaling; however in the event CLEC wishes to order Access to Signaling, the Parties will negotiate an appropriate amendment to this Agreement.

9.14 AIN Services

CLEC does not intend to order AIN Services; however in the event CLEC wishes to order AIN Services, the Parties will negotiate an appropriate amendment to this Agreement.

9.15 Interconnection to Line Information Database (LIDB)

CLEC does not intend to order LIDB; however in the event CLEC wishes to order LIDB, the Parties will negotiate an appropriate amendment to this Agreement.

9.16 8XX Database Query Service

CLEC does not intend to order 8XX Database Query Service; however in the event CLEC wishes to order 8XX Database Query Service, the Parties will negotiate an appropriate amendment to this Agreement.

9.17 InterNetwork Calling Name (ICNAM)

CLEC does not intend to order ICNAM; however in the event CLEC wishes to order ICNAM, the Parties will negotiate an appropriate amendment to this Agreement.

9.18 Additional Unbundled Elements

CLEC may request non-discriminatory access to and, where appropriate, development of, additional UNEs not covered in this Agreement pursuant to the Bona Fide Request Process.

9.19 Construction Charges

Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a Network Element that satisfies the description of a UNE contained in this Agreement, that Network Element shall be deemed a UNE.

9.20 Unbundled Packet Switching

Packet Switching is no longer an Unbundled Network Element under existing rules.

9.21 UNE-P Line Splitting

CLEC intends to operate only as a DLEC and does not intend to operate as the voice provider CLEC as described in this Section 9.21. In the event that CLEC wishes to order voice services under this Section 9.21, the Parties will negotiate an amendment to this Agreement adding the appropriate sections of the SGAT.

9.21.1 Description

Line Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with a new or existing UNE-P by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. A POTS Splitter must be inserted into the UNE-P to accommodate establishment of the advanced data service. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.21.2 Terms and Conditions

On the effective date of a Commission determination that Qwest is no longer required to provide UNE-P Combination services in a market area, Line Splitting is also not available in that market area. To the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.[17]

9.21.2.1 General

9.21.2.1.1 The Customer of record will order the insertion of a POTS Splitter. Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.21.2.1.2 To order Line Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.21.2.1.3 CLEC/DLEC may provide any xDSL services that are compatible with CLEC UNE-P POTS service in accordance with ANSI T1.413 or IEEE 820 or other industry standards.

9.21.2.1.4 There may be only one DLEC at any given time that provides advanced data service on any given UNE-P.

9.21.2.1.5 The Customer of record will be able to request conditioning of the Unbundled Loop portion of the UNE-P. If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by

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[17] **North Dakota PSC Order, Case No. PU-05-165, February 8, 2006.**

CLEC to condition (remove load coils and excess Bridged Tap) shared Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop of the UNE-P to the point that it is unacceptable to CLEC, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.21.2.1.6 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Shared Loop Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination. For UNE-P Line Splitting, Qwest shall use the same number of Cross Connections and the same length of the tie pairs as it uses for Line Sharing.

9.21.2.1.7 Reserved for Future Use.

9.21.2.1.8 POTS Splitter Collocation requirements are covered in the Shared Loop Section of this Agreement.

9.21.3 Rate Elements

The following UNE-P Line Splitting rate elements are contained in Exhibit A of this Agreement.

9.21.3.1 Recurring Rates for UNE-P Line Splitting.

9.21.3.1.1 Interconnection TIE Pairs (ITP). A monthly recurring charge to recover the costs associated with the use of 2 ITPs, one for voice and one for voice/data.

9.21.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the UNE-P Loop.

9.21.3.2 Nonrecurring Rates for the UNE-P Line Splitting

9.21.3.2.1 Basic Installation Charge for UNE-P Line Splitting – A nonrecurring charge for each UNE-P Line Splitting installed will apply.

9.21.3.2.2 Charge for conditioning Loop associated with UNE-P – A nonrecurring charge for either conditioning the Loop by removing load coils and/or excess Bridged Taps; or reconditioning the line if necessary to assure the quality of the voice service on the UNE-P.

9.21.3.3 Nonrecurring Rates for Maintenance and Repair

9.21.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance

and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.21.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.

9.21.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.21.3.5 Where there are no Commission-approved interim or permanent rates for UNE-P Line Splitting, the current rates for Line Sharing will be used for Line Splitting. All such Line Splitting rates shall be deemed as interim, and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission for UNE-P Line Splitting. In the event interim rates for UNE-P Line Splitting are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true-up will be performed until mutually agreed upon permanent rates are established or permanent rates are established by the Commission for UNE-P Line Splitting.

9.21.4 Ordering Process

9.21.4.1 UNE-P Line Splitting

9.21.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific UNE-P associated Loop. Neither the CLEC/DLEC nor the Customer of Record are required to access loop characteristic information prior to placing an order.

9.21.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.21.4.1.3 Basic Installation "lift and lay" procedure will be used for all Line Splitting 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/DLEC's collocated equipment in the same Wire Center. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. When installation of Line Splitting is in conjunction with the migration of service from another provider, every effort will be taken by Qwest to ensure that the End User's services, both voice and data, experience limited interruption.

9.21.4.1.4 The Customer of record shall not place orders for UNE-P Line Splitting until all work necessary to provision UNE-P Line Splitting in a given

Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.21.4.1.5 If a Line Splitting LSR is placed to change from Line Sharing to UNE-P Line Splitting or to change the voice provider in a UNE-P Line Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.21.4.1.6 The Customer of record shall submit the appropriate LSR's associated with establishing UNE-P and Line Splitting. A single LSR may be used to establish both the UNE-P and Line Splitting service at the same time.

9.21.5 Billing

9.21.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format, Billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for CLEC/DLEC review.

9.21.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Line Splitting rate elements.

9.21.6 Repair and Maintenance

9.21.6.1 Qwest will allow CLEC/DLEC to access UNE-P Line Splitting at the point where the combined voice and data Loop is cross-connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points document.

9.21.6.2 The Customer of record will be responsible for reporting to Qwest voice service troubles provided over UNE-P Line Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. CLEC/DLEC will be responsible for repairing data services provided on UNE-P Line Splitting. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.21.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for UNE-P Line Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsservices/pcat/index.html. In the interim, Qwest and CLEC/DLEC agree that the following general principles will guide the repair and maintenance process for UNE-P Line Splitting.

9.21.6.3.1 If an end user complains of a voice service problem that may be related to the use of an UNE-P for data services, Qwest and CLEC/DLEC will work together with the end user to solve the problem to the satisfaction of the end user. Disconnection of the data service will only be done after Qwest has clearly determined that no trouble exists in the Qwest network or parts of the network maintained by Qwest (i.e.; Common Area Splitter Collocation where the

problem is in the splitter). Should Qwest temporarily disconnect the data service in order to restore voice service caused by a problem in the data providers network, Qwest shall promptly restore the data service and complete the normal test process, including synchronization testing, to ensure both data and voice are working properly. This will be done within twenty-four (24) hours of notification by the customer of record that the problem in the data providers network has been corrected.

9.21.6.3.2 CLEC and DLEC are responsible for their respective end user base. CLEC/DLEC will have the responsibility for initiation and resolution of any service trouble report(s) initiated by their respective end users.

9.21.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on UNE-P Line Splitting in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC or CLEC's actual cost, whichever is less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.21.6.3.4 When trouble reported by the Customer of record is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of the Customer of record on a case-by-case basis. The Customer of record may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide the Customer of record with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, the Customer of record will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC/DLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge to the Customer of record.

9.21.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC/DLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC/DLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.21.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC/DLEC may install test access equipment in its

Collocation areas in those Wire Centers for the purpose of testing UNE-P Line Splitting. This equipment must meet the requirements for Central Office equipment set by the FCC.

9.21.6.6 Qwest, CLEC and DLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.21.7 Customer of Record and Authorized Agents

9.21.7.1 "Customer of record" is defined for purposes of this section as the CLEC that is the billed Customer for Line Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.21.7.2 and 9.21.7.3 to perform ordering and/or Maintenance and Repair functions.

9.21.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.21.7.3 The Customer of record shall hold Qwest harmless with regard to any harm to Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices through the Customer of record, including but not limited to user identifications, digital certificates and SecurID cards, that allow such person to access the records of the Customer of record unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

9.22 Reserved for Future Use

9.23 Unbundled Network Elements Combinations (UNE Combinations)

CLEC does not intend to order UNE Combinations; however in the event CLEC wishes to order UNE Combinations, the Parties will negotiate an appropriate amendment to this Agreement.

9.24 Loop Splitting

9.24.1 Description

Loop Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with voice over a new or existing Unbundled Loop by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the

same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.24.1.1 With regard to the current requirement that Loop Splitting be offered over an existing Unbundled Loop, Qwest acknowledges that there are ongoing industry discussions regarding the Provisioning of Loop Splitting over a new Unbundled Loop. If as a result of those discussions, a process is developed for Loop Splitting over a new Loop, Qwest will amend its Agreement to eliminate the limitation of Loop Splitting to existing Unbundled Loops. Requests for other Loop Splitting applications, including line splitting on resold lines, must be submitted through the Special Request Process (SRP).

9.24.2 Terms and Conditions

9.24.2.1 General

9.24.2.1.1 Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.24.2.1.2 To order Loop Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.24.2.1.3 There may only be one DLEC at any given time that provides advanced data service on any given Unbundled Loop.

9.24.2.1.4 If Loop Splitting is requested for an analog Loop, the Loop must be converted to a 2/4 wire non-loaded Loop or ADSL compatible Loop.

9.24.2.1.4.1 The Customer of record will be able to request conditioning of the Unbundled Loop pursuant to the charges contained in Exhibit A. Qwest will perform requested conditioning of Unbundled Loops to remove load coils and excess Bridged Taps, undertake a line move, and/or remove UDCs under the terms and conditions associated with Loop conditioning contained in Section 9.2 of this Agreement.

9.24.2.1.4.2 If requested conditioning significantly degrades the existing service over the Unbundled Loop to the point that it is unacceptable to CLEC, Customer of record shall pay to convert back to an analog Loop.

9.24.2.1.5 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Line Sharing Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that points of termination are kept to a minimum. For Loop Splitting, Qwest shall use the same length of tie pairs as it uses for Line Sharing, except for the additional CLEC to CLEC connection, which is not required for Line Sharing.

9.24.2.1.6 POTS Splitter Collocation requirements are covered in the Line Sharing Section of this Agreement.

9.24.3 Rate Elements

The following Loop Splitting rate elements are contained in Exhibit A of this Agreement.

9.24.3.1 Recurring Rates for Loop Splitting.

9.24.3.1.1 Interconnection TIE Pairs (ITP)- A monthly recurring charge to recover the costs associated with the use of ITPs.

9.24.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the Unbundled Loop.

9.24.3.2 Nonrecurring Rates for the Loop Splitting

9.24.3.2.1 Basic Installation Charge for Loop Splitting – A nonrecurring charge for Loop Splitting installed will apply.

9.24.3.3 Nonrecurring Rates for Maintenance and Repair

9.24.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Loop Splitting in response to trouble tickets initiated by CLEC. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the Trouble Isolation Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC charge or CLEC's actual cost, whichever is less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.24.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.

9.24.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.24.3.5 All of these rates are interim and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up

will be performed until mutually agreed to permanent rates are established or permanent rates are established by the Commission.

9.24.4 Ordering Process

9.24.4.1 Loop Splitting

9.24.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific Unbundled Loop. However, neither CLEC/DLEC nor the Customer of record are required to access Loop characteristic information prior to placing an order.

9.24.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.24.4.1.3 Basic Installation "lift and lay" procedure will be used for all Loop Splitting 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/DLEC's collocated equipment in the same Wire Center.

9.24.4.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage), excessive bridged tap, and load coils as part of basic installation. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM.

9.24.4.1.3.2 Loop Splitting shall be provided in accordance with the technical specifications contained in Technical Publication 77384.

9.24.4.1.4 The Customer of record shall not place orders for Loop Splitting until all work necessary to provision Loop Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.24.4.1.5 The Customer of record shall submit the appropriate LSR's associated with establishing Unbundled Loop and Loop Splitting.

9.24.4.1.6 If a Loop Splitting LSR is placed to change from Line Sharing to Loop Splitting or to change the voice provider in an existing Loop Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.24.5 Billing

9.24.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format.

9.24.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Loop Splitting rate elements.

9.24.6 Repair and Maintenance

9.24.6.1 Qwest will allow CLEC/DLEC to access Loop Splitting at the point where the combined voice and data Loop is cross connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points documents.

9.24.6.2 The Customer of record or its authorized agent will be responsible for reporting to Qwest service troubles provided over Loop Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.24.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for Loop Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website.

9.24.7 Customer of Record and Authorized Agents

9.24.7.1 "Customer of Record" is defined for the purposes of this section as the CLEC that is the billed Customer for Loop Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.24.7.2 and 9.24.7.3 to perform ordering and/or Maintenance and Repair functions.

9.24.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.24.7.3 The Customer of record shall hold Qwest harmless with regard to any harm Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that allow person to access the records of the Customer of record unless such access and security devices through the Customer of record were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

Section 10.0 - ANCILLARY SERVICES

10.1 Reserved for Future Use

10.2 Local Number Portability

CLEC does not intend to order Local Number Portability (LNP); however in the event CLEC wishes to order Local Number Portability (LNP), the Parties will negotiate an appropriate amendment to this Agreement.

10.3 911/E911 Service

CLEC does not intend to order 911/E911 Service; however in the event CLEC wishes to order 911/E911 Service, the Parties will negotiate an appropriate amendment to this Agreement.

10.4 White Pages Directory Listings

CLEC does not intend to order White Pages Directory Listings; however in the event CLEC wishes to order White Pages Directory Listings, the Parties will negotiate an appropriate amendment to this Agreement.

10.5 Directory Assistance

CLEC does not intend to order Directory Assistance; however in the event CLEC wishes to order Directory Assistance, the Parties will negotiate an appropriate amendment to this Agreement.

10.6 Directory Assistance List

CLEC does not intend to order Directory Assistance List; however in the event CLEC wishes to order Directory Assistance List, the Parties will negotiate an appropriate amendment to this Agreement.

10.7 Toll and Assistance Operator Services

CLEC does not intend to order Toll and Assistance Operator Services; however in the event CLEC wishes to order Toll and Assistance Operator Services, the Parties will negotiate an appropriate amendment to this Agreement.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

CLEC does not intend to order Access to Poles, Ducts, Conduits, and Rights of Way; however in the event CLEC wishes to order Access to Poles, Ducts, Conduits, and Rights of Way, the Parties will negotiate an appropriate amendment to this Agreement.

Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Parties' Telecommunications networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the Telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-879-7328. In cases of emergency, CLEC shall call 911 and 1-888-879-7328.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Qwest and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 Qwest and CLEC's employees, agents and vendors shall comply with Qwest Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction may result in denial of access for that individual and may constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar Days of a CLEC violation of this provision to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of this provision and the personnel involved,

2) identification of the safety regulation violated, and 3) date and location of such violation. CLEC will have five (5) calendar Days to remedy any such violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such violation of which it has received notice within such five (5) calendar Days following receipt of such notice, CLEC shall be denied unescorted access to the affected Premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest Premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this Agreement, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11 shall prevent CLEC, its employees or agents from performing modifications, alterations, additions or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises, Qwest equipment or Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, to Qwest Service Assurance (800-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. The compliant Party shall provide immediate notice of the non-compliant work activity to the non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. If such non-compliant work activities pose an immediate threat to the safety of the other Party's employees, interference with the performance of the other Party's service obligations, or pose an immediate threat to the physical integrity of the other Party's facilities, the compliant Party may perform such work and/or take action as is necessary to correct the condition at the non-compliant Party's expense. In the event the non-compliant Party disputes any action the compliant Party seeks to take or has taken pursuant to this provision, the non-compliant Party may pursue immediate resolution by expedited Dispute Resolution. If the non-compliant Party fails to correct any safety non-compliance within ten (10) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within ten (10) calendar Days of written notice of non-compliance, and if the non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, the compliant Party may pursue immediate resolution by expedited Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification may be asked to vacate the Premises and Qwest security

may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar Days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)

800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available seven (7) Days a week, twenty-four (24) hours a Day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) prior to gaining access into a Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel. On a monthly basis, Qwest will provide said list to CLEC.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-

976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.34.1 Uncollectable or unbillable revenues resulting from, but not confined to, Provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing such error or malicious acts, if such malicious acts could have reasonably been avoided.

11.34.2 Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending Operational Support Systems by unauthorized third parties that could have reasonably been avoided shall be the responsibility of the Party having administrative control of access to said Network Element or operational support system software.

11.34.3 Qwest shall be responsible for any direct uncollectible or unbillable revenues resulting from the unauthorized physical attachment to Loop facilities from the Main Distribution Frame up to and including the Network Interface Device, including clip-on fraud, if Qwest could have reasonably prevented such fraud.

11.34.4 To the extent that incremental costs are directly attributable to a revenue protection capability requested by CLEC, those costs will be borne by CLEC.

11.34.5 To the extent that either Party is liable to any toll provider for fraud and to the extent that either Party could have reasonably prevented such fraud, the Party who could have reasonably prevented such fraud must indemnify the other for any fraud due to compromise of its network (e.g., clip-on, missing information digits, missing toll restriction, etc.).

11.34.6 If Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction of CLEC, take reasonable action to mitigate the fraud where such action is possible.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven (7) Days a week/twenty-four (24) hours a Day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or *57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court

order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a twenty-four (24) hours a Day, seven (7) Days a week contact for processing such requests, should they occur.

Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

12.1 Description

12.1.1 Qwest has developed and shall continue to provide Operational Support System (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation and support, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of the Change Management Process (CMP) set forth in Section 12.2.6.

12.1.2 Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing functions. For those functions with a retail analogue, such as pre-ordering and ordering and Provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and Provisioning of Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order and Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards

Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines/standards shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre Ordering - Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to Customer Service Records (CSRs) for Qwest retail or resale End User Customers. The information will include Billing name, service address, Billing address, service and feature subscription, Directory Listing information, and long distance Carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 For End User Customer locations, facility availability, Loop qualification, including resale-DSL, and Loop make-up information, including, but not limited to, Loop length, presence of Bridged Taps, repeaters, and loading coils.

12.2.1.4.8 A list of valid available CFAs for Unbundled Loops.

12.2.1.4.9 A list of one to five (1-5) individual Meet Points or a range of Meet Points for shared Loops.

12.2.1.4.10 Design Layout Record (DLR) Query which provides the layout for the local portion of a circuit at a particular location where applicable.

12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use.

12.2.1.5.2 Reserved for Future Use.

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs for use by CLEC Customer service representatives at a single CLEC location,

CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.7 Facility Based EDI Listing Process -- Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines/standards in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CMP process to consider any suggestions made by CLEC to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all Provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours Provisioning services to CLEC on a non-discriminatory basis as it provides such Provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours Provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic Firm Order Confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest Due Date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual Firm Order Confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate

completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.

12.2.2 Maintenance and Repair

12.2.2.1 Qwest shall provide electronic interface gateways, including an Electronic Bonding interface and a GUI interface, for reviewing a Customer's trouble history at a specific location, conducting testing of a Customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

12.2.3 Interface Availability

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows as applicable.

12.2.4 Billing

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local Billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of Telecommunications Billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

12.2.5.1 Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as Billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, Billing account number (BAN) and bill cycle.

12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given Day as captured or recorded by the network Switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in ATIS standard Electronic Message Interface (EMI) format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

a) Resale;

b) Unbundled Switch Port; and

c) UNE-P for POTS.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a Carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the End User Customer has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

a) Intentionally Left Blank;

b) Resale;

c) Unbundled Loop;

d) Unbundled Line Side Switch Port;

e) UNE-P for POTS;

f) Line Sharing;

g) UNE-P Line Splitting - Loss Report is provided only to the Customer of record; and

h) Loop Splitting - Loss Report is provided only to the Customer of record

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

a) Intentionally Left Blank;

b) Resale;

c) Unbundled Loop;

d) Unbundled Line Side Switch; and

e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR)

which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use. Qwest will make accessible to CLEC through electronic means the transmission method/media types available for these mechanized records.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

a) SAG provides Address and Serving Central Office Information.

b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA Carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

12.2.6 Change Management

Qwest agrees to maintain a change management process, known as the Change Management Process (CMP), that is consistent with or exceeds industry guidelines, standards and practices to address Qwest's OSS, products and processes. The CMP shall include, but not be limited to, the following: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), CMP notifications, systems release life cycles, and communications; (ii) provide a forum for CLECs and Qwest to discuss and prioritize CRs, where applicable pursuant to Exhibit G; (iii) develop a mechanism to track and monitor CRs and CMP notifications; (iv) establish intervals where appropriate in the process; (v) processes by which CLEC impacts that result from changes to Qwest's OSS, products or processes can be promptly and effectively resolved; (vi) processes that are effective in maintaining the shortest timeline practicable for the receipt, development and implementation of all CRs; (vii) sufficient dedicated Qwest processes to address and resolve in a timely manner CRs and other issues that come before the CMP body; (viii) processes for OSS Interface testing; (ix) information that is clearly organized and readily accessible to CLECs, including the availability of web-based tools; (x) documentation provided by Qwest that is effective in enabling CLECs to build an electronic gateway; and (xi) a process for changing CMP that calls for collaboration among CLECs and Qwest and requires agreement by the CMP participants. Pursuant to the scope and procedures set forth in Exhibit G, Qwest will submit to CLECs through the CMP, among other things, modifications to existing products and product and technical documentation available to CLECs, introduction of new products available to CLECs, discontinuance of products available to CLECs, modifications to pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, introduction of pre-ordering, ordering/Provisioning, Maintenance/Repair or Billing processes, discontinuance of pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, modifications to existing OSS interfaces, introduction of new OSS interfaces, and retirement of existing OSS interfaces. Qwest will maintain as part of CMP an escalation process so that CMP issues can be escalated to a Qwest representative authorized to make a final decision and a process for the timely resolution of disputes. The governing document for CMP, known as the "Change Management Process," is attached as Exhibit G (the "CMP Document"). The CMP Document (Exhibit G) is the subject of ongoing negotiations between Qwest and CLECs in the ongoing CMP redesign process. Not all of the sections of Exhibit G have been discussed or considered

during the ongoing CMP redesign process, and the CMP Document will continue to be changed through those discussions. Exhibit G reflects the commitments Qwest has made regarding maintaining its CMP. and Qwest commits to implement agreements made in the CMP redesign process as soon as practicable after they are made. Following the completion of the CMP Document, Exhibit G will be subject to change through the CMP process, as set forth in the CMP Document. Qwest will maintain the most current version of the CMP Document on its wholesale website.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be implemented pursuant to the CMP set forth in Exhibit G.

12.2.6.3 Notwithstanding any other provisions in this Agreement, the CMP document attached as Exhibit G will be modified pursuant to the terms of Exhibit G, or the procedures of the redesign process and incorporated as part of the Agreement without requiring the execution or filing of any amendment to this Agreement.

12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces

12.2.7.1 Before CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces

Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLEC demonstrates the ability to generate correct functional transactions for enhancements not previously certified. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces

12.2.9.1 If using the GUI interface, CLEC will take reasonable efforts to train CLEC personnel on the GUI functions that CLEC will be using.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to controlled production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment ("SATE") – Qwest's stand-alone testing environment will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The SATE provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. SATE uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATE pre-order queries and orders are subjected to the same edits as production pre-order and order transactions. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in Interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of valid data in Qwest production systems. All Interoperability pre-order queries and order transactions are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions

and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must make every effort to comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the EDI interface. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel where Technically Feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, where Technically Feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two (2) months after the implementation of the next release. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two (2) months after the next release implementation may continue certifying additional products and activities until two (2) months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the SATE or Interoperability environment before two (2) months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or Interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the Dispute Resolution procedures of this Agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.

12.2.9.9 Reserved for Future Use.

12.2.10 CLEC Support

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include, but is not limited to, contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation and CLEC Help Desk.

12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: Resale/POTS; UNE POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLEC is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site. Qwest will provide Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery

Recurring and nonrecurring OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any recurring or nonrecurring OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

12.3 Maintenance and Repair

12.3.1 Service Levels

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Qwest provides for itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner as Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

12.3.1.4 During the performance of Maintenance and Repair services, neither Party shall make disparaging remarks about the other Party. Neither Party shall provide information about its own products or services to End User Customers of the other Party during performance of maintenance and repair services; however, nothing in this Agreement shall be deemed to prohibit either Party from discussing its own products and services with End User Customers of the other Party seeking such information.

12.3.2 Branding

12.3.2.1 Qwest shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded Maintenance and Repair forms. Qwest may not unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

12.3.3 Service Interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring Carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring Carriers involved in its services; 3) violate any Applicable Law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party) shall promptly notify the Party causing the Impairment of Service (the "Impairing Party) of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as

set forth in this Section, the Party whose network or service is being impaired (the Impaired Party) shall promptly notify the Party causing the Impairment of Service (the Impairing Party) of the nature and location of the problem. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to CLEC as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, Point of Interface or such other test points as are identified in this Agreement or applicable Qwest publications. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is found to be on Qwest's side of the Demarcation Point, Qwest will credit CLEC a Maintenance of Service charge or CLEC's actual costs, whichever is less, pursuant to Section 12.3.4.4. If the trouble is on the End User Customer's side of the Demarcation Point, and the CLEC authorizes Qwest to repair trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs

tests at CLEC's request, a Maintenance of Service Charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the repeat Trouble Report submitted within the time frame as set forth in Section 12.3.4.4 for the same line or circuit, Maintenance of Service charges shall not apply.

12.3.4.4 Where Qwest has billed CLEC for Maintenance of Service charges for a CLEC Trouble Report, Qwest will remove such Maintenance of Service charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Maintenance of Service charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and
- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and
- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and
- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and
- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the End User Customer's Demarcation Point) for CLEC or its End User Customers.

12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

12.3.6.1 Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.2 Prior to Qwest conducting a test on a line, circuit, or service provided in

this Agreement that CLEC is utilizing to serve an End User Customer, Qwest must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Qwest's portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including Central Office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.

12.3.7 Work Center Interfaces

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective End User Customers with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End User Customers of CLEC shall be instructed to report all cases of trouble to CLEC. End User Customers of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End

User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain Proprietary Information such as Customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

12.3.10 Protective Maintenance

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Qwest shall provide notice of potentially CLEC Customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

12.3.11 Hours of Coverage

12.3.11.1 Qwest's repair operation is seven (7) Days a week, twenty-four (24) hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations

center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than three (3) troubles in a rolling thirty (30) Day period, pursuant to Section 12.2.2.1.

12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines and designed service circuits, Qwest is responsible for all Maintenance and Repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC Customer premises without prior CLEC authorization. For dispatch to the CLEC Customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the Electronic Bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

12.3.15 Intervals/Parity

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End

User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.16 Jeopardy Management

12.3.16.1 Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its End User Customer trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC may employ similar techniques in its centers.

12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported trouble, Qwest will inform CLEC of repair completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

12.3.19 End User Customer Interface Responsibilities

12.3.19.1 CLEC will be responsible for all interactions with its End User Customers including service call handling and notifying its End User Customers of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC End User Customers will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the Customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, Customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC Customers.

12.3.20 Repair Call Handling

12.3.20.1 Manually-reported repair calls by CLEC to Qwest will be answered with the same quality and speed as Qwest answers calls from its own End User Customers.

12.3.21 Single Point of Contact

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven (7) Days a week, twenty-four (24) hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major Switch maintenance activities off-hours, during certain "maintenance windows". Major Switch maintenance activities include Switch conversions, Switch generic upgrades and Switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 am Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., Mountain Time. Although Qwest normally does major Switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Reserved for Future Use.

12.3.23.4 Planned generic upgrades to Qwest Switches are included in the ICONN database, available to CLEC via Qwest's Web site.

12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one Switch and its replacement with another. Generic Switch software or hardware upgrades, the addition of Switch line and trunk connection hardware and the addition of capacity to a Switch do not constitute Switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the Switch Ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a Switch or frame conversion planned day of cut-over to the replacement frame(s) or Switch. The actual

conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the Day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A Switch or frame conversion embargo is the time period that the Switch or frame Trunk Side facility connections are frozen to facilitate conversion from one Switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for Trunk Side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for Switch or frame Trunk Side facility augments to capacity or changes to Switch or frame Trunk Side facilities must be issued by CLEC with a Due Date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject Switch or frame Trunk Side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's Due Date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For Switch and Trunk Side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) Days before the Conversion Date.

12.3.24.4.3 For Switch and Trunk Side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) Days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old Switch or frame to the new Switch or frame, and sixty (60) Days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During Switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the Trunk Side of the Switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old Switch to the new Switch on a like-for-like basis, such

embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new Switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for Switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain Due Dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, Billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during Switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the Switch or frame conversion. LSRs of any kind issued during the Switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for Switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a Due Date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested Due Date, will be processed after the quiet period expires.

12.3.24.7.6 CLEC may request a Due Date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a Due Date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time

the Day prior to the scheduled LSR Due Date until 12 noon Mountain Time the Day after the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic Switch software and hardware upgrades are not subject to the Switch conversion embargoes or quiet periods described above. If such generic Switch or software upgrades require significant activity related to translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during Switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing Switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such Switch hardware additions.

Section 13.0 - ACCESS TO TELEPHONE NUMBERS

CLEC does not intend to order Access to Telephone Numbers; however in the event CLEC wishes to order Access to Telephone Numbers, the Parties will negotiate an appropriate amendment to this Agreement.

Section 14.0 - LOCAL DIALING PARITY

CLEC does not intend to order Local Dialing Parity; however in the event CLEC wishes to order Local Dialing Parity, the Parties will negotiate an appropriate amendment to this Agreement.

Section 15.0 - Qwest Dex

CLEC does not intend to order Qwest Dex; however in the event CLEC wishes to order Qwest Dex, the Parties will negotiate an appropriate amendment to this Agreement.

Section 16.0 - REFERRAL ANNOUNCEMENT

CLEC does not intend to order Referral Announcement; however in the event CLEC wishes to order Referral Announcement, the Parties will negotiate an appropriate amendment to this Agreement.

Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other interconnection agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the processing fee specified in Exhibit A of this Agreement. Qwest will refund one-half (1/2) of the processing fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of Interconnection or access;

17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar Days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) Day period that a BFR does not

qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) Day period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) Day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar Days, but in no case later than the end of such twenty-one (21) Day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar Days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a request for Interconnection, Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections 17.2.1 through 17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

17.15 Qwest will provide notice to CLECs of all BFRs which have been deployed or denied, provided, however, that identifying information such as the name of the requesting CLEC and the location of the request shall be removed. Qwest shall make available a topical list of the BFRs that it has received with CLECs under the Agreement or an Interconnection Agreement. The description of each item on that list shall be sufficient to allow CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of CLEC to provide sufficient details about the terms and conditions of any granted requests to allow CLEC to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this Agreement. CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to CLEC of the need therefore.

Section 18.0 - AUDIT PROCESS

18.1 Nothing in this Section 18 shall limit or expand the Audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the Audit provisions in this Section 18. For purposes of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of the books, records, and other documents used in providing services under this Agreement. The term "Audit" also applies to the investigation of company records, back office systems and databases pertaining to Loop information.

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such Audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two (2) Audits requested by each Party under this Agreement in any twelve (12) month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least twenty-four (24) months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the

reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the requesting Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the Billing to the requesting Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) Days after the Parties' receipt of the final Audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process; (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and Audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will

aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an Affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such Affiliate's disaggregated data, as required by reasonable needs of the Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

18.3.1 Either Party may request an Audit of the other's compliance with this Agreement's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting Party has provided to the other. Those Audits shall not take place more frequently than once in every three (3) years, unless cause is shown to support a specifically requested Audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this Section 18 that are not inconsistent herewith shall apply, except that in the case of these Audits, the Party to be audited may also request the use of an independent auditor.

Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to Unbundled Loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to Unbundled Loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to Unbundled Loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of End User Customers and without discrimination among the various Carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

Section 20.0 - SERVICE PERFORMANCE

Performance Indicator Definitions (PIDs), in their current form, are included in Exhibit B of this Agreement. Subsequent changes to these PIDs that are made by the Long Term PID Administration or the Commission shall be incorporated into Exhibit B by reference. Modifications of PIDs that apply to the Qwest Performance Assurance Plan (QPAP) shall be made in accordance with Section 16.0 of Exhibit K.

Section 21.0 - NETWORK STANDARDS

21.1 The Parties recognize that Qwest services and Network Elements have been purchased and deployed, over time, to Telcordia and Qwest technical standards. Specification of standards is built into the Qwest purchasing process, whereby vendors incorporate such standards into the equipment Qwest purchases. Qwest supplements generally held industry standards with Qwest Technical Publications.

21.2 The Parties recognize that equipment vendors may manufacture Telecommunications equipment that does not fully incorporate and may differ from industry standards at varying points in time (due to standards development processes and consensus) and either Party may have such equipment in place within its network. Except where otherwise explicitly stated within this Agreement, such equipment is acceptable to the Parties, provided said equipment does not pose a security, service or safety hazard to Persons or property.

21.3 Generally accepted and developed industry standards which the Parties agree to support include, but are not limited to:

21.3.1 Switching

GR-954-CORE LIDB

GR-2863-CORE AIN

GR-1428-CORE Toll Free Service

GR-1432-CORE TCAP

GR-317-CORE Call Control Using Integrated Services Digital User Part (ISDNUP)

GR-905-CORE ISUP

GR-1357-CORE Switched Fractional DS1

GR-1298-CORE AIN Switching System Generic Requirements

GR-1299-CORE AIN Service Control Point Adjunct Interface Generic Requirements

TR-NWT-001284 AIN 0.1 Switching System Generic Requirements

GR-905-CORE Common Channel Signaling Network Interface Specification

GR-1432-CORE CCS Network Interface Specification

Telcordia TR-TSY-000540, Issue 2R2

GR-305-CORE

GR-1429-CORE

GR-2863-CORE

FR-64 LATA LSSGR

GR-334-CORE Switched Access Service

TR-NWT-000335 Voice Grade Special Access Services

TR-TSY-000529 Public LSSGR

TR-NWT-000505 LSSGR Call Processing

FR-NWT-000271 OSSGR

TR-NWT-001156 OSSGR Subsystem

SR-TSY-001171 System Reliability Analysis

21.3.2 Transport

Telcordia FR-440

TR-NWT-000499 (TSGR) Transport Systems Generic Requirements

GR-820-CORE Generic Transmission Surveillance; DS1 and DS3 Performance

GR-253-CORE Synchronous Optical Network Systems (SONET)

TR-NWT-000507 Transmission

TR-NWT-000776 NID for ISDN Subscriber Access

TR-INS-000342 High Capacity Digital Special Access Service

ST-TEC-000051 & 52 Telecommunications Transmission Engineering Handbooks Volumes 1 & 2

ANSI T1.102-1993 Digital Hierarchy – Electrical Interface, Annex B.

21.3.3 Loops

TR-NWT-000057 Functional Criteria for Digital Loop Carrier Systems Issue 2

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

GR-253-CORE SONET Common Generic Criteria

TR-NWT-000303 Integrated Digital Loop Carrier System Generic Requirements

TR-TSY-000673 Operations Interface for an IDLC System

GR-303-CORE Issue 1 Integrated Digital Loop Carrier System Generic Requirements

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

TR-TSY-000008 Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch

TR-NWT-008 and 303

TA-TSY-000120 Subscriber Premises or Network Ground Wire

GR-49-CORE Generic Requirements for Outdoor Telephone Network Interface Requirements

TR-NWT-000239 Indoor Telephone Network Interfaces

TR-NWT-000937 Generic Requirements for Outdoor and Indoor Building Entrance

TR-NWT-000133 Generic Requirements for Network Inside Wiring

21.3.4 Local Number Portability

Number Portability Generic Switching and Signaling Requirements for Number Portability, Issue 1.00, February 12, 1996 (Editor – Lucent Technologies, Inc.);

Generic Requirements for SCP Application and GTT Function for Number Portability, Issue 0.95, Final Draft, September 4, 1996 (Editor – Ameritech Inc.);

Generic Operator Services Switching Requirements for Number Portability, Issue 1.00, Final Draft, April 12, 1996 (Editor – Nortel);

ATIS, TRQ No. 1, Technical Requirements for Number Portability Operator Services Switching Systems, April 1999;

ATIS, TRQ No. 2, Technical Requirements for Number Portability Switching Systems, April 1999;

ATIS, TRQ No. 3, Technical Requirements for Number Portability Database and Global Title Translation, April 1999;

FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Released July 2, 1996;

FCC First Memorandum Opinion and Order on Reconsideration; FCC 97-74; CC Docket 95-116, RM 8535; Released March 11, 1997.

FCC Second Report and Order, FCC 97-298; CC Docket 95-116, RM 8535; Released August 18, 1997.

21.4 The Parties will cooperate in the development of national standards for Interconnection elements as the competitive environment evolves. Recognizing that there are no current national standards for Interconnection Network Elements, Qwest has developed its own standards for some Network Elements, including:

Qwest Interconnection – Unbundled Loop #77384

Expanded Interconnection and Collocation for Private Line Transport and Switched Access Services - #77386

Unbundled Dedicated Interoffice Transport - #77389

Telecommunications Equipment Installation Guidelines - #77350.

21.5 Qwest Technical Publications have been developed to support service offerings, inform End User Customers and suppliers, and promote engineering consistency and deployment of developing technologies. Qwest provides all of its Technical Publications at no charge via website: http://www.qwest.com/techpub/.

Section 22.0 - SIGNATURE PAGE

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

DIECA Communications, Inc. d/b/a Covad Communications Company

Signature

James A. Kirkland
Name Printed/Typed

Senior VP and General Counsel
Title

2/23/06
Date

Qwest Corporation

Signature

L. T. Christensen
Name Printed/Typed

Director–Interconnection Agreements
Title

2/24/06
Date

74 [redacted]GK N

- 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:
Kent Blickensderfer
Qwest Corporation
220 N 5th St
Bismarck ND 58501

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Pebelick C. Date of Delivery 3-21-06

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) 7004 2510 0004 8815 3084

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-165

- 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:
Patrick W Durick
Pearce & Durick PLLP
314 E Thayer Ave
Bismarck ND 58502-0400

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Belinda Dickson C. Date of Delivery 3-21-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND 582 MAR 21 2006 USPS

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) 7004 2510 0004 8815 3046

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-165

- 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:
Linda Miles
Qwest Corporation
1600 7th Ave Rm 3007
Seattle Wa 98191

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MAR 2 3 2006

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) 7004 2510 0004 8815 3053

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-165

- 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:
Jason Topp
Qwest Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

A. Signature
X Billie Kaye ☑ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 3/29/06

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) 7004 2510 0004 8815 3091

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-165

- 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:
John Devaney
Mary Rose Hughes
Perkins Coie LLP
607 14th St NW Ste 800
Washington DC 20005-2011

A. Signature [redacted] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 3-24-6

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) 7004 2510 0004 8815 3077

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-165

- 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:
Gregory Diamond
Covad Communications Company
7901 Lowry Blvd
Denver Co 80230

A. Signature
X Matthew J Sledd ☐ Agent ☐ Address

B. Received by (Printed Name) Matthew J Sledd | C. Date of Deliver 4/4/06

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) 7004 2510 0004 8815 3220

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PY-05-105

■ 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:
Gregory Diamond
Covad Communications Company
7901 Lowry Blvd
Denver Co 80230

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Linda Kercher C. Date of Delivery

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) 7004 2510 0004 8815 3060

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-105

■ 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:
Kendra Nilles
Qwest Corporation
1600 7th Ave Rm 3007
Seattle Wa 98191

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 14 2006

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) 7004 2510 0004 8815 3213

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-105 (illegible)

■ 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:
Kent Blickensderfer
Qwest Corporation
220 N 5th St
Bismarck ND 58501

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) [illegible] C. Date of Delivery 4.13.06

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) 7004 2510 0004 8815 3244

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-165

- 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:
Patrick J Durick
Pearce Durick PLLP
314 E Thayer Ave
Bismarck ND 58502-0400

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
4-13-06

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) 7004 2510 0004 8815 3206

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-165

- 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:
Jason Topp
Qwest Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
JoAnn Revering 4/14/06

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) 7004 2510 0004 8815 3251

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-165

- 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:
John Devaney
Mary Rose Strubbe
Perkins Coie LLP
607 14th St NW Ste 800
Washington DC 20005-2011

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery
[illegible] 4-22-6

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) 7004 2510 0004 8815 3237

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Exhibit A
North Dakota*

New			Recurring	Recurring, Per Mile	Non-Recurring	Notes: REC	REC per Mile	NRC
6.0 Resale - Intentionally Left Blank								
7.0 Interconnection - Intentionally Left Blank								
8.0 Collocation								
8.1 All Collocation								
8.1.1 Planning and Engineering								
8.1.1.1 Intentionally Left Blank								
8.1.1.2 Cable Augment Quote Preparation Fee					$1,488.56			C
8.1.2 Entrance Facility								
8.1.2.1 Standard Shared, per Fiber			$6.02		$659.96	C		C
8.1.2.2 Cross Connect, per Fiber			$6.18		$774.12	C		C
8.1.2.3 Express, per Cable			$96.45		$9,641.86	C		C
8.1.3 Cable Splicing								
8.1.3.1 Fiber, per Set-Up					$506.81			C
8.1.3.2 Per Fiber Spliced					$38.24			C
8.1.4 Power Usage								
8.1.4.1 -48 Volt DC Power, per Ampere, per Month								
8.1.4.1.1 Power Plant								
8.1.4.1.1.1 Less Than 60 Amps			$12.51			C		
8.1.4.1.1.2 Greater Than or Equal To 60 Amps			$9.75			C		
8.1.4.1.2 Power Usage								
8.1.4.1.2.1 Less Than or Equal To 60 Amps			$1.98			C		
8.1.4.1.2.2 Greater Than 60 Amps			$3.97			C		
8.1.5 AC Power Feed								
8.1.5.1 Backup AC Power Feed, per Amp, per Month								
8.1.5.1.1 120 V			$20.12			C		
8.1.5.1.2 208 V, Single Phase			$34.87			C		
8.1.5.1.3 208 V, Three Phase			$60.32			C		
8.1.5.1.4 240 V, Single Phase			$40.23			C		
8.1.5.1.5 240 V, Three Phase			$69.60			C		
8.1.5.1.6 480 V, Three Phase			$139.20			C		
8.1.5.2 Backup AC Power Feed, per Foot, per Month								
8.1.5.2.1 20 Amp, Single Phase			$0.0119		$8.04	C		C
8.1.5.2.2 20 Amp, Three Phase			$0.0148		$9.97	C		C
8.1.5.2.3 30 Amp, Single Phase			$0.0128		$8.67	C		C
8.1.5.2.4 30 Amp, Three Phase			$0.0176		$11.91	C		C
8.1.5.2.5 40 Amp, Single Phase			$0.0151		$10.20	C		C
8.1.5.2.6 40 Amp, Three Phase			$0.0208		$14.04	C		C
8.1.5.2.7 50 Amp, Single Phase			$0.0179		$12.10	C		C
8.1.5.2.8 50 Amp, Three Phase			$0.0250		$16.89	C		C
8.1.5.2.9 60 Amp, Single Phase			$0.0203		$13.68	C		C
8.1.5.2.10 60 Amp, Three Phase			$0.0288		$19.44	C		C
8.1.5.2.11 100 Amp, Single Phase			$0.0251		$16.94	C		C
8.1.5.2.12 100 Amp, Three Phase			$0.0392		$26.45	C		C
8.1.6 Inspector Labor, per Half Hour								
8.1.6.1 Regular Hours Rate					$34.37			C
8.1.6.2 After Hours Rate, minimum 3 Hours					$44.70			C
8.1.7 Channel Regeneration								
8.1.7.1 DS1			$0.00		$0.00	C		C
8.1.7.2 DS3			$0.00		$0.00	C		C
8.1.8 Collocation Terminations								
8.1.8.1 Shared Access								
8.1.8.1.1 DS0								
8.1.8.1.1.1 Cable Placement, per 100 Pair Block			$0.1980		$225.69	C		C
8.1.8.1.1.2 Cable Placement, per Termination			$0.0079		$9.03	C		C
8.1.8.1.1.3 Cable, per 100 Pair Block			$0.2931		$334.21	C		C
8.1.8.1.1.4 Cable, per Termination			$0.0059		$6.68	C		C
8.1.8.1.1.5 Blocks, per 100 Pair Block			$0.5075		$578.65	C		C
8.1.8.1.1.6 Blocks, per Termination			$0.0102		$11.57	C		C
8.1.8.1.1.7 Block Placement, per 100 Pair Block			$0.2083		$237.53	C		C
8.1.8.1.1.8 Block Placement, per Termination			$0.0042		$4.75	C		C

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.1.8.1.2	DS1							
	8.1.8.1.2.1	Cable Placement, per 28 DS1s	$0.5802		$391.80	C		C
	8.1.8.1.2.2	Cable Placement, per Termination	$0.0624		$42.13	C		C
	8.1.8.1.2.3	Cable, per 28 DS1s	$0.5713		$385.79	C		C
	8.1.8.1.2.4	Cable, per Termination	$0.0614		$41.48	C		C
	8.1.8.1.2.5	Panel, per 28 DS1s	$0.3918		$264.56	C		C
	8.1.8.1.2.6	Panel, per Termination	$0.0470		$31.77	C		C
	8.1.8.1.2.7	Placement Panel, per 28 DS1s	$0.1195		$80.69	C		C
	8.1.8.1.2.8	Placement Panel, per Termination	$0.0128		$8.68	C		C
8.1.8.1.3	DS3							
	8.1.8.1.3.1	Cable Placement, per Termination	$0.2147		$144.97	C		C
	8.1.8.1.3.2	Cable, per Termination	$0.3689		$249.13	C		C
	8.1.8.1.3.3	Panel / Connector, per Termination	$0.3750		$253.21	C		C
	8.1.8.1.3.4	Panel / Connector Placement, per Termination	$0.0289		$19.49	C		C
8.1.8.1.4	Fiber Termination							
	8.1.8.1.4.1	Terminations, per 12 Fibers	$28.32		$1,637.87	C		C
	8.1.8.1.4.2	Cable Racking for Fiber Terminations, Dedicated, per 12 Fibers	$2.30		$1,551.41	C		C
	8.1.8.1.4.3	Connector, Each Additional, if Applicable	$0.66		$445.37	C		C
	8.1.8.1.4.4	Cable Racking, Shared, per 12 Fibers	$27.96			C		
8.1.8.1.5	Direct Connect				ICB			C, 3
8.1.9	Security Charges							
8.1.9.1	Access Card, per Employee, per Card		$0.93			C		
8.1.9.2	Card Access, per Employee, per Central Office		$9.05			C		
8.1.10	Composite Clock / Central Office Synchronization							
8.1.10.1	Synchronization - Composite Clock, per Port		$8.48			C		
8.1.11	Intentionally Left Blank							
8.1.12	Space Availability Charge				$365.21			C
8.1.13	Collocation Space Reservation Fee				Charge will be 25% of Nonrecurring Fee			
8.1.14	Collocation Space Option Administration Fee				$1,198.04			C
8.1.15	Collocation Space Option Fee, per Square Foot		$2.00			C		
8.1.16	Joint Inventory Visit Fee, per Visit - **Intentionally Left Blank**							
8.1.17	Intentionally Left Blank							
8.1.18	Intentionally Left Blank							
8.1.19	Intentionally Left Blank							
8.1.20	Splitter Collocation							
8.1.20.1	Tie Cable Reclassification				ICB			C, 3
8.1.20.2	Splitter Shelf Charge		$4.96		$541.39	C		C
8.1.20.3	Engineering				$1,429.90			C
8.1.20.4	Splitter TIE Cable Connections							
	8.1.20.4.1	Splitter in the Common Area - Data to 410 Block	$4.31		$2,909.32	C		C
	8.1.20.4.2	Splitter in the Common Area - Data Direct to CLEC	$4.57		$3,084.48	C		C
	8.1.20.4.3	Splitter on the IDF - Data to 410 Block	$1.34		$903.30	C		C
	8.1.20.4.4	Splitter on the IDF - Data Direct to CLEC	$2.60		$1,756.45	C		C
	8.1.20.4.5	Splitter on the MDF - Data to 410 Block	$1.38		$932.51	C		C
	8.1.20.4.6	Splitter on the MDF - Data Direct to CLEC	$3.08		$2,079.88	C		C
8.1.20.5	Splitter Charge				ICB			3
8.1.21	Viewing Available Space (prior to quote acceptance)				$150.00			1

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				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.2	**Virtual Collocation**								
	8.2.1	Planning and Engineering							
		8.2.1.1	Quote Preparation Fee, per Collocation			$4,539.46			C, 6
	8.2.2	Maintenance Labor, per Half Hour							
		8.2.2.1	Regular Hours Rate			$31.39			C
		8.2.2.2	After Hours Rate			$42.20			C
	8.2.3	Training Labor, per Half Hour							
		8.2.3.1	Regular Hours Rate			$31.39			C
	8.2.4	Bay Space							
		8.2.4.1	Equipment Bay, per Shelf	$4.37			C		
	8.2.5	Engineering Labor, per Half Hour							
		8.2.5.1	Regular Hours Rate			$35.64			C
		8.2.5.2	After Hours Rate			$46.85			C
	8.2.6	Installation Labor, per Half Hour							
		8.2.6.1	Regular Hours Rate			$34.37			C
		8.2.6.2	After Hours Rate			$44.70			C
	8.2.7	Rent							
		8.2.7.1	Floor Space Lease, per Square Foot	$3.02			C		
	8.2.8	Intentionally Left Blank							
	8.2.9	-48 Volt DC Power Cable							
		8.2.9.1	20 Amp Feed	$6.42		$4,334.96	C		C
		8.2.9.2	30 Amp Feed	$7.31		$4,935.66	C		C
		8.2.9.3	40 Amp Feed	$8.83		$5,961.10	C		C
		8.2.9.4	60 Amp Feed	$15.63		$10,557.33	C		C
		8.2.9.5	100 Amp Feed	$26.37		$17,806.34	C		C
		8.2.9.6	200 Amp Feed	$49.09		$33,146.31	C		C
		8.2.9.7	300 Amp Feed	$77.19		$52,120.67	C		C
		8.2.9.8	400 Amp Feed	$109.60		$74,004.44	C		C
8.3	**Cageless Physical Collocation**								
	8.3.1	Planning and Engineering							
		8.3.1.1	Quote Preparation Fee, per Collocation Ordered			$4,539.46			C, 6
	8.3.2	Space Construction and Site Preparation							
		8.3.2.1	Site Preparation			ICB			C, 3
		8.3.2.2	2 Bays	$31.31		$21,147.27	C		C
		8.3.2.3	Intentionally Left Blank						
		8.3.2.4	Intentionally Left Blank						
		8.3.2.5	Each Additional Bay, per Bay	$3.72		$2,512.64	C		C
		8.3.2.6	Adjustment for Single Bay, Change to Standard Design	($3.72)		($2,512.98)	C		C
		8.3.2.7	DC Power Cable						
			8.3.2.7.1 -48 Volt DC Power Cable						
			8.3.2.7.1.1 20 Amp Feed	$6.42		$4,334.96	C		C
			8.3.2.7.1.2 30 Amp Feed	$7.31		$4,935.66	C		C
			8.3.2.7.1.3 40 Amp Feed	$8.83		$5,961.10	C		C
			8.3.2.7.1.4 60 Amp Feed	$15.63		$10,557.33	C		C
			8.3.2.7.1.5 100 Amp Feed	$26.37		$17,806.34	C		C
			8.3.2.7.1.6 200 Amp Feed	$49.09		$33,146.31	C		C
			8.3.2.7.1.7 300 Amp Feed	$77.19		$52,120.67	C		C
			8.3.2.7.1.8 400 Amp Feed	$109.60		$74,004.44	C		C
	8.3.3	Floor Space Lease, per Square Foot		$3.02			C		
8.4	**Caged Physical Collocation**								
	8.4.1	Planning and Engineering							
		8.4.1.1	Quote Preparation Fee, per Collocation			$4,539.46			C, 6
	8.4.2	Space Construction and Site Preparation							
		8.4.2.1	Site Preparation Fee			ICB			C, 3
		8.4.2.2	Intentionally Left Blank						
		8.4.2.3	Intentionally Left Blank						
		8.4.2.4	Space Construction						
			8.4.2.4.1 Cage: Up to 100 Sq. Ft.	$54.43		$36,755.70	C		C

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.4.2.4.2	Cage: 101 to 200 Sq. Ft.		$48.32		$32,629.55	C		C
8.4.2.4.3	Cage: 201 to 300 Sq. Ft.		$59.60		$40,246.31	C		C
8.4.2.4.4	Cage: 301 to 400 Sq. Ft.		$62.44		$42,159.89	C		C
8.4.2.5	Intentionally Left Blank							
8.4.2.6	DC Power Cable							
8.4.2.6.1	-48 Volt DC Power Cable							
	8.4.2.6.1.1	20 Amp Feed	$6.42		$4,334.96	C		C
	8.4.2.6.1.2	30 Amp Feed	$7.31		$4,935.66	C		C
	8.4.2.6.1.3	40 Amp Feed	$8.83		$5,961.10	C		C
	8.4.2.6.1.4	60 Amp Feed	$15.63		$10,557.33	C		C
	8.4.2.6.1.5	100 Amp Feed	$26.37		$17,806.34	C		C
	8.4.2.6.1.6	200 Amp Feed	$49.09		$33,146.31	C		C
	8.4.2.6.1.7	300 Amp Feed	$77.19		$52,120.67	C		C
	8.4.2.6.1.8	400 Amp Feed	$109.60		$74,004.44	C		C
8.4.3	Space Construction - Fencing Credit							
8.4.3.1	Cage: Up to 100 Sq. Ft.		($8.18)		($5,521.00)	C		C
8.4.3.2	Cage: 101 to 200 Sq. Ft.		($10.19)		($6,883.87)	C		C
8.4.3.3	Cage: 201 to 300 Sq. Ft.		($11.45)		($7,732.18)	C		C
8.4.3.4	Cage: 301 to 400 Sq. Ft.		($12.65)		($8,538.78)	C		C
8.4.4	Floor Space Lease, per Square Foot		$3.02			C		
8.4.5	Intentionally Left Blank							
8.4.6	Intentionally Left Blank							
8.4.7	Intentionally Left Blank							
8.4.8	Grounding							
8.4.8.1	2 / 0 AWG, per Foot		$0.0137		$9.26	C		C
8.4.8.2	1 / 0 AWG, per Foot		$0.0241		$16.30	C		C
8.4.8.3	4 / 0 AWG, per Foot		$0.0284		$19.18	C		C
8.4.8.4	350 kcmil, per Foot		$0.0367		$24.75	C		C
8.4.8.5	500 kcmil, per Foot		$0.0424		$28.65	C		C
8.4.8.6	750 kcmil, per Foot		$0.0647		$43.67	C		C
8.5 Adjacent Collocation					ICB			C, 3
8.6 Remote Collocation								
8.6.1	Physical & Virtual Remote Collocation							
8.6.1.1	Space, per Standard Mounting Unit		$0.44		$719.98	C		C
8.6.1.2	FDI Terminations, per 25 Pair		$0.26		$524.62	C		C
8.6.1.3	Power Usage							
	8.6.1.3.1	Less Than or Equal To 60 Amps, per Amp (uses rates from 8.1.4.1.2.1)	$1.98			C		
8.6.1.4	Quote Preparation Fee				$1,151.71			C
8.6.2	Adjacent Remote Collocation							
8.6.2.1	Adjacent Remote Collocation (New)				Under Development			
8.6.2.2	Adjacent Remote Collocation (Existing)				Under Development			
8.6.3	Additional Virtual Remote Collocation Elements							
8.6.3.1	Flat Charge, per Job				$40.40			C
8.6.3.2	Engineering Labor, per Half Hour				$35.99			C
8.6.3.3	Maintenance Labor, per Half Hour				$33.43			C
8.6.3.4	Installation Labor, per Half Hour				$33.43			C
8.6.3.5	Training, per Half Hour				$33.43			C
8.7 CLEC-to-CLEC								
8.7.1	Design, Engineering & Installation, Mechanized - No Cables							
8.7.1.1	Fiber Flat Charge				$1,334.85			C
8.7.1.2	Flat Charge				$687.23			C
8.7.2	Cable Racking							
8.7.2.1	DS0, per Foot, per Cable		$0.15606			C		
8.7.2.2	DS1, per Foot, per Cable		$0.16909			C		
8.7.2.3	DS3, per Foot, per Cable		$0.13891			C		
8.7.2.4	Fiber, per Foot, per Fiber		$1.26758			C		

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.7.3	Virtual Connections (if Applicable - Connections Only; No Cables)							
8.7.3.1	DS0, per 100 Connections				$210.31			C
8.7.3.2	DS1, per 28 Connections				$99.04			C
8.7.3.3	DS3, per 1 Connection				$6.38			C
8.7.3.4	Fiber Connections							
	8.7.3.4.1	Fiber, per Set-Up			$506.81			C
	8.7.3.4.2	Per Fiber Spliced			$38.24			C
8.7.4	Cable Hole, if Applicable				$483.48			C
8.7.5	CLEC to CLEC Cross-Connection				$204.36			C
8.8	**Interconnection Distribution Frame (ICDF) Collocation**							
8.8.1	Quote Preparation Fee (uses rates from 8.1.1.2)				$1,488.56			C, 3
8.8.2	DS0 Circuit, per 200 Legs		$21.13		$2,148.69	1		1
8.8.3	DS1 Circuit, per Two Legs		$1.52		$365.41	1		1
8.8.4	DS3 Circuit, per Two Legs		$10.60		$1,168.92	1		1
8.8.5	Fiber Circuit, per Two Legs		$2.65		$234.31	1		1
8.9	**Application to Request Cancellation**				QPF, Prorated Job Costs			C
8.10	**Microwave Entrance Facility**				Under Development			
8.11	**Intentionally Left Blank**							
8.12	**Facility Connected (FC) Collocation - Intentionally Left Blank**							
8.13	**DC Power Reduction**							
8.13.1	Quote Preparation Fee				$761.34			C
8.13.2	Power Reduction Less Than 60 Amps				$534.95			C
8.13.3	Power Reduction Equal To 60 Amps				$764.81			C
8.13.4	Power Reduction Greater Than 60 Amps				$968.64			C
8.13.5	Power On / Off				$671.96			C
8.13.6	Battery Distribution Fuse Board (BDFB) Rent		$68.21			C		
8.14	**Collocation Transfer of Responsibility**							
8.14.1	Interconnection Facility Options - Wireline and Wireless Local Interconnection Service Trunks							
8.14.1.1	Per Trunk Group				$33.26			1
8.14.1.2	Per Facility Circuit				$33.26			1
8.14.2	Transfer of Responsibility Assessment Fee				$1,058.00			1
8.14.3	Network System Administration Fee				$1,663.00			1
8.14.4	Unbundled Loop, per Circuit				$33.26			1
8.14.5	Subloop and Shared Distribution Loop, per Circuit				$33.26			1
8.14.6	Shared Loop and Line Splitting, per Circuit				$33.26			1
8.14.7	Unbundled Dedicated Interoffice Transport, per Circuit				$33.26			1
8.14.8	Enhanced Extended Loop / Loop Mux Combination, per Circuit				$33.26			1
8.14.9	Loop Splitting, per Circuit				$33.26			1
8.14.10	Unbundled Dark Fiber, per Circuit				$33.26			1
8.15	**Collocation Available Inventory**							
8.15.1	Standard Sites							
8.15.1.1	Removal of Terminations							
	8.15.1.1.1	DS0, per 100 Terminations			ICB			3
	8.15.1.1.2	DS1, per Termination			ICB			3
	8.15.1.1.3	DS3, per Termination			ICB			3
	8.15.1.1.4	OCN, per 12 Fibers			ICB			3
8.15.1.2	Quote Preparation Fee (QPF)							
	8.15.1.2.1	Cageless (uses rate from 8.3.1.1)			$4,539.46			C, 6
	8.15.1.2.2	Caged (uses rate from 8.4.1.1)			$4,539.46			C, 6
8.15.2	Special Sites							
8.15.2.1	Special Site Assessment Fee				$1,058.00			1
8.15.2.2	Network Systems Assessment Fee				$1,663.00			1
8.15.2.3	Site Survey Fee				$150.00			1
8.15.3	Re-usable Elements				ICB			3
8.16	**Collocation Decommissioning (uses rates from 9.20)**							
8.16.1	Additional Labor Other - Basic				$26.18			C
8.16.2	Additional Labor Other - Overtime				$34.96			C

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				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.16.3	Additional Labor Other - Premium					$43.76			C
8.16.4	Additional Dispatch					ICB			C, 3
8.17	**Joint Testing**								
8.17.1	Set-Up Fee (price contains a One Hour Set Up Fee)					$40.96			1
8.17.2	Test Time Fee, per Half Hour					$20.48			1
9.0	**Unbundled Network Elements (UNEs)**								
9.1	**Interconnection Tie Pairs (ITP) - Per Termination**								
9.1.1	DS0								
	9.1.1.1	2-Wire		$0.00			C		
	9.1.1.2	4-Wire		$0.79			C		
9.1.2	DS1			$1.47			C		
9.1.3	DS3			$17.46			C		
9.2	**Unbundled Loops**								
9.2.1	Analog Loops					See 9.2.4			
	9.2.1.1	2-Wire Voice Grade Loop							
		9.2.1.1.1	Zone 1	$14.53			C		
		9.2.1.1.2	Zone 2	$24.49			C		
		9.2.1.1.3	Zone 3	$55.47			C		
	9.2.1.2	Intentionally Left Blank							
	9.2.1.3	4-Wire Voice Grade Loop							
		9.2.1.3.1	Zone 1	$28.54			C		
		9.2.1.3.2	Zone 2	$48.11			C		
		9.2.1.3.3	Zone 3	$108.99			C		
	9.2.1.4	Intentionally Left Blank							
	9.2.1.5	Unbundled Loop Grooming (2-Wire)		$0.00			C		
	9.2.1.6	Unbundled Loop Grooming (4-Wire)		$0.00			C		
9.2.2	Nonloaded Loops					See 9.2.4			
	9.2.2.1	2-Wire Nonloaded Loop							
		9.2.2.1.1	Zone 1	$14.53			C		
		9.2.2.1.2	Zone 2	$24.49			C		
		9.2.2.1.3	Zone 3	$55.47			C		
	9.2.2.2	Intentionally Left Blank							
	9.2.2.3	4-Wire Nonloaded Loop							
		9.2.2.3.1	Zone 1	$28.54			C		
		9.2.2.3.2	Zone 2	$48.11			C		
		9.2.2.3.3	Zone 3	$108.99			C		
	9.2.2.4	Cable Unloading / Bridge Tap Removal				No Charge at This Time			C
9.2.3	Digital Capable Loops								
	9.2.3.1	Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop				See 9.2.4			
		9.2.3.1.1	Zone 1	$14.53			C		
		9.2.3.1.2	Zone 2	$24.49			C		
		9.2.3.1.3	Zone 3	$55.47			C		
	9.2.3.2	Intentionally Left Blank							
	9.2.3.3	DS1 Capable Loop				See 9.2.5			
		9.2.3.3.1	Zone 1	$74.88			C		
		9.2.3.3.2	Zone 2	$78.63			C		
		9.2.3.3.3	Zone 3	$83.57			C		
	9.2.3.4	DS3 Capable Loop				See 9.2.6			
		9.2.3.4.1	Zone 1	$748.54			C		
		9.2.3.4.2	Zone 2	$953.76			C		
		9.2.3.4.3	Zone 3	$1,009.89			C		
	9.2.3.5	Intentionally Left Blank							
	9.2.3.6	2-Wire Extension Technology		$4.75			C		
	9.2.3.7	2-Wire Extension Technology Grooming		$1.61			C		

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				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.2.4	Loop Installation Charges for 2 & 4-Wire Analog / Nonloaded, ISDN BRI Capable, xDSL-I Capable, and ADSL Compatible Loop where conditioning is not required.			See 9.2.1 & 9.2.2					
	9.2.4.1	Basic Installation							
		9.2.4.1.1	First			$55.27			C
		9.2.4.1.2	Each Additional			$48.77			C
	9.2.4.2	Basic Installation with Performance Testing							
		9.2.4.2.1	First			$142.10			C
		9.2.4.2.2	Each Additional			$86.24			C
	9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation							
		9.2.4.3.1	First			$171.87			C
		9.2.4.3.2	Each Additional			$94.09			C
	9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation							
		9.2.4.4.1	First			$59.81			C
		9.2.4.4.2	Each Additional			$53.32			C
	9.2.4.5	Basic Installation with Cooperative Testing							
		9.2.4.5.1	First			$142.10			C
		9.2.4.5.2	Each Additional			$94.09			C
9.2.5	DS1 Loop Installation Charges			See 9.2.3.3					
	9.2.5.1	Basic Installation							
		9.2.5.1.1	First			$124.61			C
		9.2.5.1.2	Each Additional			$78.01			C
	9.2.5.2	Basic Installation with Performance Testing							
		9.2.5.2.1	First			$207.62			C
		9.2.5.2.2	Each Additional			$146.05			C
	9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation							
		9.2.5.3.1	First			$248.42			C
		9.2.5.3.2	Each Additional			$146.04			C
	9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation							
		9.2.5.4.1	First			$115.22			C
		9.2.5.4.2	Each Additional			$83.36			C
	9.2.5.5	Basic Installation with Cooperative Testing							
		9.2.5.5.1	First			$212.82			C
		9.2.5.5.2	Each Additional			$146.40			C
9.2.6	DS3 Loop Installation Charges			See 9.2.3.4					
	9.2.6.1	Basic Installation							
		9.2.6.1.1	First			$124.61			C
		9.2.6.1.2	Each Additional			$78.01			C
	9.2.6.2	Basic Installation with Performance Testing							
		9.2.6.2.1	First			$207.61			C
		9.2.6.2.2	Each Additional			$146.05			C
	9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation							
		9.2.6.3.1	First			$248.42			C
		9.2.6.3.2	Each Additional			$146.05			C
	9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation							
		9.2.6.4.1	First			$173.22			C
		9.2.6.4.2	Each Additional			$122.68			C
	9.2.6.5	Basic Installation with Cooperative Testing							
		9.2.6.5.1	First			$212.82			C
		9.2.6.5.2	Each Additional			$146.40			C
9.2.7	Intentionally Left Blank								
9.2.8	Private Line / Special Access to Unbundled Loop Conversion (as is)					$37.47			C
9.3	**Subloop**								
9.3.1	2-Wire Distribution Loop (Applies to both Analog and Nonloaded Loops)								8
	9.3.1.1	First Loop				$64.83			C
	9.3.1.2	Each Additional				$17.69			C
	9.3.1.3	First & Each Additional 2-Wire Distribution Loop							

Exhibit A
North Dakota*

				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
		9.3.1.3.1	Zone 1	$9.60			C		
		9.3.1.3.2	Zone 2	$15.44			C		
		9.3.1.3.3	Zone 3	$20.88			C		
	9.3.2	Intentionally Left Blank							
	9.3.3	Intra Building Cable		$0.53			C		
	9.3.3.1	No Dispatch, First				$35.85			C
	9.3.3.2	No Dispatch, Each Additional				$14.93			C
	9.3.3.3	Dispatch, First				$75.58			C
	9.3.3.4	Dispatch, Each Additional				$25.14			C
	9.3.4	Feeder Loop							
	9.3.4.1	DS1 Capable Feeder Loop							
		9.3.4.1.1	First Loop			$191.97			C
		9.3.4.1.2	Each Additional			$142.32			C
		9.3.4.1.3	First & Each Additional DS1 Capable Feeder Loop						
			9.3.4.1.3.1 Zone 1	$66.33			C		
			9.3.4.1.3.2 Zone 2	$70.07			C		
			9.3.4.1.3.3 Zone 3	$75.01			C		
	9.3.5	MTE Terminal Subloop Access							
	9.3.5.1	Subloop MTE - POI Site Inventory, per Request				$113.17			C
	9.3.5.2	MTE - POI Rearrangement of Facilities				ICB			C, 3
	9.3.5.3	MTE - POI Construction of New SPOI		ICB			C, 3		
	9.3.6	Intentionally Left Blank							
	9.3.7	Field Connection Point (FCP)							
	9.3.7.1	Feasibility Fee / Quote Preparation Fee				$1,107.09			C
	9.3.7.2	FCP Set-up, per Request		$2.26		$3,232.73	1		1
	9.3.7.3	FCP Splicing, per 25 Pairs		$0.01		$13.63	1		1
	9.3.7.4	FCP Reclassification				$427.17			C
	9.3.8	Intentionally Left Blank							
	9.3.9	Intentionally Left Blank							
	9.3.10	Intentionally Left Blank							
	9.3.11	Intentionally Left Blank							
	9.3.12	Construction Fee		ICB		ICB	C, 3		C, 3
9.4	**Shared Services**								
	9.4.1	Shared Loop, per Loop		$5.00		$34.24	C		C
	9.4.2	Line Splitting							
	9.4.2.1	Basic Installation Charge for Line Splitting				$34.24			B
	9.4.3	Loop Splitting (uses Shared Loop rate)		$5.00			C		
	9.4.3.1	Basic Installation Charge for Loop Splitting				$34.24			C
	9.4.4	OSS, per Line, per Month		$3.33			C		
9.5	**Network Interface Device (NID)**			$0.00		$52.98	C		C, 13
9.6	**Unbundled Dedicated Interoffice Transport (UDIT)**								
	9.6.1	DS0 UDIT *(Recurring Fixed & per Mile)*				$173.02			C
	9.6.1.1	Over 0 to 8 Miles		$26.09	$0.09		C	C	
	9.6.1.2	Over 8 to 25 Miles		$26.09	$0.09		C	C	
	9.6.1.3	Over 25 to 50 Miles		$26.09	$0.11		C	C	
	9.6.1.4	Over 50 Miles		$25.60	$0.11		C	C	
	9.6.2	DS1 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.2.1	Over 0 to 8 Miles		$34.12	$3.25		C	C	
	9.6.2.2	Over 8 to 25 Miles		$34.95	$3.28		C	C	
	9.6.2.3	Over 25 to 50 Miles		$36.80	$1.86		C	C	
	9.6.2.4	Over 50 Miles		$35.44	$0.79		C	C	
	9.6.3	DS3 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.3.1	Over 0 to 8 Miles		$421.97	$5.87		C	C	
	9.6.3.2	Over 8 to 25 Miles		$421.97	$5.87		C	C	
	9.6.3.3	Over 25 to 50 Miles		$421.97	$5.87		C	C	
	9.6.3.4	Over 50 Miles		$420.30	$24.40		C	C	

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.6.4	Intentionally Left Blank							
9.6.5	Intentionally Left Blank							
9.6.6	Intentionally Left Blank							
9.6.7	UDIT DS0 Channel Performance							
	9.6.7.1	DS0 Low Side Channelization	$12.56			C		
	9.6.7.2	DS1 to DS0 Low Side Channelization	$8.41		$184.43	C		C
9.6.8	Multiplexing							
	9.6.8.1	DS1 to DS0	$273.18		$197.38	C		C
	9.6.8.2	DS3 to DS1	$300.35		$1,662.65	C		C
9.6.9	Intentionally Left Blank							
9.6.10	Intentionally Left Blank							
9.6.11	UDIT Rearrangement							
	9.6.11.1	DS0 Single Office			$183.55			C
	9.6.11.2	DS0 Dual Office			$248.25			C
	9.6.11.3	High Capacity Single Office			$248.25			C
	9.6.11.4	High Capacity Dual Office			$277.03			C
9.6.12	Private Line / Special Access to UDIT Conversion (as is)				$129.94			1
9.7	**Unbundled Dark Fiber (UDF) - Intentionally Left Blank**							
9.8	**Shared Transport - Intentionally Left Blank**							
9.9	**Unbundled Customer Controlled Rearrangement Element (UCCRE) - Intentionally Left Blank**							
9.10	**Intentionally Left Blank**							
9.11	**Local Switching - Intentionally Left Blank**							
9.12	**Customized Routing - Intentionally Left Blank**							
9.13	**Intentionally Left Blank**							
9.14	**Intentionally Left Blank**							
9.15	**Intentionally Left Blank**							
9.16	**Intentionally Left Blank**							
9.17	**Intentionally Left Blank**							
9.18	**Intentionally Left Blank**							
9.19	**Construction Charges**							
9.19.1	CLEC Requested UNE Construction (CRUNEC)							
	9.19.1.1	Unbundled Dark Fiber Quote Preparation Fee			$1,706.60			1
	9.19.1.2	Subloop Quote Preparation Fee			$1,706.60			1
	9.19.1.3	Unbundled Loop Quote Preparation Fee			$1,706.60			1
	9.19.1.4	Loop Mux Combo Quote Preparation Fee			$1,706.60			1
	9.19.1.5	EEL Quote Preparation Fee			$1,706.60			1
	9.19.1.6	UDIT Quote Preparation Fee			$1,706.60			1
9.19.2	Construction of Network Capacity, Facilities or Space for Access to or use of UNEs		ICB		ICB	C, 3		C, 3
9.20	**Miscellaneous Charges**							
9.20.1	Additional Engineering, per Half Hour or fraction thereof							
	9.20.1.1	Additional Engineering - Basic			$30.03			C
	9.20.1.2	Additional Engineering - Overtime			$37.14			C
9.20.2	Additional Labor Installation, per Half Hour or fraction thereof							
	9.20.2.1	Additional Labor Installation - Overtime			$8.54			C
	9.20.2.2	Additional Labor Installation - Premium			$17.08			C
9.20.3	Additional Labor Other, per Half Hour or fraction thereof							
	9.20.3.1	Additional Labor Other - (Optional Testing) Basic			$26.18			C
	9.20.3.2	Additional Labor Other - (Optional Testing) Overtime			$34.96			C
	9.20.3.3	Additional Labor Other - (Optional Testing) Premium			$43.76			C

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.20.4	Testing and Maintenance, per Half Hour or fraction thereof							
	9.20.4.1	Testing and Maintenance - Basic			$27.81			C
	9.20.4.2	Testing and Maintenance - Overtime			$37.14			C
	9.20.4.3	Testing and Maintenance - Premium			$46.48			C
9.20.5	Maintenance of Service, per Half Hour or fraction thereof							
	9.20.5.1	Maintenance of Service - Basic			$26.18			C
	9.20.5.2	Maintenance of Service - Overtime			$34.96			C
	9.20.5.3	Maintenance of Service - Premium			$43.76			C
9.20.6	Additional Cooperative Acceptance Testing, per Half Hour or fraction thereof							
	9.20.6.1	Additional Cooperative Acceptance Testing - Basic			$27.81			C
	9.20.6.2	Additional Cooperative Acceptance Testing - Overtime			$37.14			C
	9.20.6.3	Additional Cooperative Acceptance Testing - Premium			$46.48			C
9.20.7	Nonscheduled Cooperative Testing, per Half Hour or fraction thereof							
	9.20.7.1	Nonscheduled Cooperative Testing - Basic			$27.81			C
	9.20.7.2	Nonscheduled Cooperative Testing - Overtime			$37.14			C
	9.20.7.3	Nonscheduled Cooperative Testing - Premium			$46.48			C
9.20.8	Nonscheduled Manual Testing, per Half Hour or fraction thereof							
	9.20.8.1	Nonscheduled Manual Testing - Basic			$27.81			C
	9.20.8.2	Nonscheduled Manual Testing - Overtime			$37.14			C
	9.20.8.3	Nonscheduled Manual Testing - Premium			$46.48			C
9.20.9	Cooperative Scheduled Testing							
	9.20.9.1	Cooperative Scheduled Testing - Loss	$0.08			C, 5		
	9.20.9.2	Cooperative Scheduled Testing - C-Message Noise	$0.08			C, 5		
	9.20.9.3	Cooperative Scheduled Testing - Balance	$0.33			C, 5		
	9.20.9.4	Cooperative Scheduled Testing - Gain Slope	$0.08			C, 5		
	9.20.9.5	Cooperative Scheduled Testing - C-Notched Noise	$0.08			C, 5		
9.20.10	Manual Scheduled Testing							
	9.20.10.1	Manual Scheduled Testing - Loss	$0.17			C, 5		
	9.20.10.2	Manual Scheduled Testing - C-Message Noise	$0.17			C, 5		
	9.20.10.3	Manual Scheduled Testing - Balance	$0.67			C, 5		
	9.20.10.4	Manual Scheduled Testing - Gain Slope	$0.17			C, 5		
	9.20.10.5	Manual Scheduled Testing - C-Notched Noise	$0.17			C, 5		
9.20.11	Additional Dispatch				$79.80			C
9.20.12	Date Change				$9.81			C
9.20.13	Design Change				$69.90			C
9.20.14	Expedite Charge							
	9.20.14.1	Designed Services			$200.00			2
9.20.15	Cancellation Charge				ICB			C, 3
9.21	**Channel Regeneration**							
9.21.1	DS1		$0.00		$0.00	C		C
9.21.2	DS3		$0.00		$0.00	C		C
9.22	**Intentionally Left Blank**							
9.23	**UNE Combinations - Intentionally Left Blank**							
10.0	**Ancillary Services - Intentionally Left Blank**							
12.0	**Operational Support Systems**							
12.1	Development and Enhancements, per Order				No Charge at this Time			C
12.2	Ongoing Maintenance, per Order				No Charge at this Time			C
12.3	Daily Usage Record File, per Record		$0.0003926			C		
12.4	Trouble Isolation Charge				See 9.20			
17.0	**Bona Fide Request Process**							
17.1	Processing Fee				$1,897.30			C

NOTES:

Unless otherwise indicated, all rates are pursuant to North Dakota Public Service Commission dockets:

Exhibit A
North Dakota*

	Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC

A: U S WEST and AT&T Interconnection Agreement approved by the North Dakota Public Utilities Commission in Docket Number PU-453-96-497, effective June 23, 1997.

B: 271 Compliance Investigation Docket Number PU-314-97-193, Order on Group 2 Checklist Items dated 10/15/01.

C: Cost Docket Case No. PU-2342-01-296

[1] Rate not addressed in cost docket (estimated TELRIC)

[2] Market-based rates contained in the Stipulation and Settlement Agreement in Case No. PU-2342-01-296.

[3] ICB, Individual Case Basis pricing.

[4] Rates per FCC Guidelines. Pole Attachment & Innerduct Occupancy rates revised in 9/17/04 Exhibit A to reflect newly calculated rates.

[5] Rates not applicable to UNE Elements. See Qwest's North Dakota Access Service Catalog

[6] The preliminary QPF costs are included in the Caged, and Cageless space construction charges. The engineering and planning charges are also included in the caged and cageless quote preparation fees. Upon completion of the collocation construction, the quote preparation fee (QPF) will be credited to the final space construction charge for the collocation job. The credit will apply to whichever QPF is applied. This exhibit currently lists multiple QPFs based on what has been proposed on the cost docket and what was approved in the AT&T interconnection agreement. CLEC may choose either QPF at this time.

[7] Intentionally Left Blank

[8] When distribution is purchased only for the purpose of campus wire, no recurring or nonrecurring charges will be assessed. This does not include collocation charges or FCP placement.

[9] Intentionally Left Blank

[10] Intentionally Left Blank

[11] Intentionally Left Blank

[12] Intentionally Left Blank

[13] The NID charge will only apply if (a) the CLEC requests replacement of the NID; (b) the CLEC has requested an upgrade or rearrangement of existing facilities for which replacement of the NID is necessary; or (c) the CLEC is using its own loop facilities and requests a NID for access to inside wiring at the customer premises.

[14] Qwest is voluntarily reducing the LMC Multiplexing Recurring rate in order to keep the rate relationship with EEL Multiplexing.

North Dakota

Deaveraged rates approved per Stipulated Agreement in Docket PU-314-97-12.
Below is a breakdown of wire center per zone:

Zone 1		Zone 2		Zone 3
Bismarck		Casselton		Alexander
Dickinson		Grafton		Belfield
Fargo		Larimore		Emerado
Grand Forks		Lisbon		Fairmount
Jamestown		Mayville		Gardner
Mandan		Valley City		Gwinner
Wahpeton				Hatton
West Fargo				Hillsboro
Williston				Kindred
				Leonard
				Manvel
				Minto
				Northwood
				Pembina
				Reynolds
				Thompson
				Watford
				Wyndmere

Service Performance Indicator Definitions (PID)

14-State 271 PID Version 8.1

QWEST'S SERVICE PERFORMANCE INDICATOR DEFINITIONS (PID)

14-State 271 PID Version 8.1

Introduction

Qwest will report performance results for the service performance indicators defined herein. Qwest will report separate performance results associated with the services it provides to Competitive Local Exchange Carriers (CLECs) in aggregate (except as noted herein), to CLECs individually and, as applicable, to Qwest's retail customers in aggregate. Within these categories, performance results related to service provisioning and repair will be reported for the products listed in each definition. Reports for CLECs individually will be subject to agreements of confidentiality and/or nondisclosure.

The definitions in this version of the PID apply in the 14 states of Qwest's local service region: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Individual state Performance Assurance Plans may specify and apply state specific variations from the Performance Measure definitions and/or standards contained herein.

Qwest's Service Performance Indicator Definitions

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Electronic Gateway Availability

GA-1 – Gateway Availability – IMA-GUI

Purpose:
Evaluates the quality of CLEC access to the IMA-GUI electronic gateway and one associated system, focusing on the extent they are actually available to CLECs.

Description:

GA-1A: Measures the availability of the IMA-GUI (Interconnect Mediated Access- Graphical User Interface), and reports the percentage of Scheduled Availability Time the IMA-GUI interface is available for view and/or input.

- Scheduled Up Time hours for preorder, order, and provisioning transactions are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html.

GA-1D: Measures the availability of the SIA system, which facilitates access for the IMA-GUI interface and the IMA-EDI interface (see GA-2), and reports the percentage of scheduled time the SIA system is available. Scheduled availability times will be no less than the same hours as listed for IMA-GUI and IMA-EDI.

- Time Gateway is Available to CLECs is equal to Scheduled Availability Time minus Outage Time.
- Scheduled Availability Time is equal to Scheduled Up Time minus Scheduled Down Time.
- Scheduled Down Time is time identified and communicated that the interface is not available due to maintenance and/or upgrade work. Notification of Scheduled Down Time for routine maintenance and/or upgrade work will be provided no less than 48 hours in advance.
- An outage is a critical or serious loss of functionality, attributable to the specified gateway or component (i.e., IMA-GUI, SIA), affecting Qwest's ability to serve its customers. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate results	**Disaggregation Reporting:** Region-wide level. Results will be reported as follows: GA-1A IMA Graphical User Interface Gateway GA-1D SIA system

Formula:
([Number of Hours and Minutes Gateway is Available to CLECs During Reporting Period] ÷ [Number of Hours and Minutes of Scheduled Availability Time During Reporting Period]) x 100

Exclusions: None

Product Reporting: None	**Standard:** 99.25 percent
Availability: Available	**Notes:**

GA-2 – Gateway Availability – IMA-EDI

Purpose:

Evaluates the quality of CLEC access to the IMA-EDI electronic gateway, focusing on the extent the gateway is actually available to CLECs.

Description:

Measures the availability of IMA-EDI (Interconnect Mediated Access - Electronic Data Interchange) interface and reports the percentage of scheduled availability time the IMA-EDI Interface is available for view and/or input. All times during which the interface is scheduled to be operating during the reporting period are measured.

- Scheduled Up Time hours for IMA-EDI based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html. Time Gateway is Available to CLECs is equal to Scheduled Availability Time minus Outage Time.
- Scheduled Availability Time is equal to Scheduled Up Time minus Scheduled Down Time.
- Scheduled Down Time is time identified and communicated that the interface is not available due to maintenance and/or upgrade work. Notification of Scheduled Down Time for routine maintenance and/or upgrade work will be provided no less than 48 hours in advance.
- An outage is a critical or serious loss of functionality, attributable to the specified gateway or component (i.e., IMA-EDI), affecting Qwest's ability to serve its customers. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate results	**Disaggregation Reporting:** Region-wide level. (See GA-1D for reporting of SIA system availability.)

Formula:

([Number of Hours and Minutes Gateway is Available to CLECs During Reporting Period] ÷ [Number of Hours and Minutes of Scheduled Availability Time During Reporting Period]) x 100

Exclusions: None

Product Reporting: None	**Standard:** 99.25 percent
Availability: Available	**Notes:**

GA-3 – Gateway Availability – EB-TA

Purpose:
Evaluates the quality of CLEC access to the EB-TA interface, focusing on the extent the gateway is actually available to CLECs.

Description:
Measures the availability of EB-TA (Electronic Bonding – Trouble Administration) interface and reports the percentage of scheduled availability time the EB-TA Interface is available.

- Scheduled Up Time hours are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html.
- Time Gateway is Available to CLECs is equal to Scheduled Availability Time minus Outage Time.
- Scheduled Availability Time is equal to Scheduled Up Time minus Scheduled Down Time.
- Scheduled Down Time is time identified and communicated that the interface is not available due to maintenance and/or upgrade work. Notification of Scheduled Down Time for routine maintenance and/or upgrade work will be provided no less than 48 hours in advance.
- An outage is a critical or serious loss of functionality, attributable to the specified gateway or component (i.e., EB-TA), affecting Qwest's ability to serve its customers. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate results	**Disaggregation Reporting:** Region-wide level.

Formula:
([Number of Hours and Minutes Gateway is Available to CLECs During Reporting Period] ÷ [Number of Hours and Minutes of Scheduled Availability During Reporting Period]) x 100

Exclusions: None

Product Reporting: None	**Standard:** 99.25 percent
Availability: Available	**Notes:**

GA-4 – System Availability – EXACT

Purpose: Evaluates the quality of CLEC batch access to the EXACT electronic access service request system, focusing on the extent the system is actually available to CLECs.	
Description: Measures the availability of EXACT system and reports the percentage of scheduled availability time the EXACT system is available. • Scheduled Up Time hours are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html. • Time System is Available to CLECs is equal to Scheduled Availability Time minus Outage Time. • Scheduled Availability Time is equal to Scheduled Up Time minus Scheduled Down Time. • Scheduled Down Time is time identified and communicated that the system is not available due to maintenance and/or upgrade work. Notification of Scheduled Down Time for routine maintenance and/or upgrade work will be provided no less than 48 hours in advance. • An outage is a critical or serious loss of functionality, attributable to the specified gateway or component (i.e., EXACT), affecting Qwest's ability to serve its customers. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.	
Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate results	**Disaggregation Reporting:** Region-wide level.
Formula: ([Number of Hours and Minutes EXACT is Available to CLECs During Reporting Period] ÷ [Number of Hours and Minutes of Scheduled Availability During Reporting Period]) x 100	
Exclusions: None	
Product Reporting: None	**Standard:** 99.25 percent
Availability: Available	**Notes:**

GA-6 – Gateway Availability – GUI -- Repair

Purpose:

Evaluates the quality of CLEC access to the GUI Repair electronic gateway, focusing on the extent the gateway is actually available to CLECs.

Description:

Measures the availability of the GUI (Graphical User Interface) repair electronic interface and reports the percentage of scheduled availability time the interface is available for view and/or input. All times during which the interface is scheduled to be operating during the reporting period are measured.

- Scheduled Up Time" hours are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html.
- Time Gateway is Available to CLECs is equal to Scheduled Availability Time minus Outage Time.
- Scheduled Availability Time is equal to Scheduled Up Time minus Scheduled Down Time.
- Scheduled Down Time is time identified and communicated that the interface is not available due to maintenance and/or upgrade work. Notification of Scheduled Down Time for routine maintenance and/or upgrade work will be provided no less than 48 hours in advance.
- An outage is a critical or serious loss of functionality, attributable to the specified gateway or component (i.e., GUI-Repair), affecting Qwest's ability to serve its customers. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate results	**Disaggregation Reporting:** Region-wide level.

Formula:

[Number of Hours and Minutes Gateway is Available to CLECs During Reporting Period ÷ Number of Hours and Minutes of Scheduled Availability Time During Reporting Period] x 100

Exclusions: None

Product Reporting: None	**Standard:** 99.25 percent
Availability: Available	**Notes:**

GA-7 – Timely Outage Resolution following Software Releases

Purpose:
Measures the timeliness of resolution of gateway or system outages attributable to software releases for specified OSS interfaces, focusing on CLEC-affecting software releases involving the specified gateways or systems.

Description:

- Measures the percentage of gateway or system outages, which are attributable to OSS system software releases and which occur within two weeks after the implementation of the OSS system software releases, that are resolved [NOTE 1] within 48 hours of detection by the Qwest monitoring group or reporting by a CLEC/co-provider.
- Includes software releases associated with the following OSS interfaces in Qwest: IMA-GUI, IMA-EDI, and CEMR, Exchange Access, Control, & Tracking (EXACT)[NOTE 2], Electronic Bonding– Trouble Administration (EB -TA) [NOTE 3]
- An outage for this measurement is a critical or serious loss of functionality, attributable to the specified gateway or component, affecting Qwest's ability to serve its customers or data loss [NOTE 4] on the Qwest side of the interface. An outage is determined by Qwest technicians through the use of verifiable data, collected from the affected customer(s) and/or from mechanized event management systems.
- The outage resolution time interval considered in this measurement starts at the time Qwest's monitoring group detects a failure, or at the date/time of the first transaction sent to Qwest that cannot be processed (i.e. lost data), and ends with the time functionality is restored or the lost data is recovered.

Reporting Period: Monthly	**Unit of Measure:** Percent
Reporting Comparisons: CLEC Aggregate	**Disaggregation Reporting:** Region-wide level.

Formula:
[(Total outages detected within two weeks of a Software Release that are resolved within 48 hours of the time Qwest detects the outage) ÷ (Total number of outages detected within two weeks of Software Releases resolved in the Reporting Period)] x 100

Exclusions:

- Outages in releases prior to any CLEC migrating to the release.
- Duplicate reports attributable to the same software defect.

Product Reporting: None	**Standards:** Volume = 1-20: 1 miss Volume > 20: 95%

Availability: Available	**Notes:** 1. "Resolved" means that service is restored to the reporting CLEC, as experienced by the CLEC. 2. EXACT is a Telecordia system. Only releases for changes initiated by Qwest for hardware or connectivity will be included in this measurement. 3. Outages reported under EB-TA are the same as outages in MEDIACC. 4. For data loss to be considered for GA-7, a functional acknowledgement must have been provided for the data in question (e.g., EDI 997, LSR ID or trouble ticket number).

Pre-Order/Order

PO-1 – Pre-Order/Order Response Times

Purpose:
Evaluates the timeliness of responses to specific preordering/ordering queries for CLECs through the use of Qwest's Operational Support Systems (OSS). Qwest's OSS are accessed through the specified gateway interface.

Description:
PO-1A & PO-1B:
Measures the time interval between query and response for specified pre-order/order transactions through the electronic interface.

- Measurements are made using a system that simulates the transactions of requesting pre-ordering/ordering information from the underlying existing OSS. These simulated transactions are made through the operational production interfaces and existing systems in a manner that reflects, in a statistically-valid manner, the transaction response times experienced by CLEC service representatives in the reporting period.
- The time interval between query and response consists of the period from the time the transaction request was "sent" to the time it is "received" via the gateway interface.
- A query is an individual request for the specified type of information.

PO-1C:

- Measures the percentage of all IRTM Queries measured by PO-1A & 1B transmitted in the reporting period that timeout before receiving a response.

PO-1D:

- Measures the average response time for a sampling of rejected queries across preorder transaction types. The response time measured is the time between the issuance of a pre-ordering transaction and the receipt of an error message associated with a "rejected query." A rejected query is a transaction that cannot be successfully processed due to the provision of incomplete or invalid information by the sender, which results in an error message back to the sender. NOTE 1

Reporting Period: One month	**Unit of Measure:** PO-1A, PO-1B, & PO-1D: Seconds PO-1C: Percent

PO-1 – Pre-Order/Order Response Times (continued)

Reporting Comparisons: CLEC aggregate.	**Disaggregation Reporting:** Region-wide level. Results are reported as follows: PO-1A Pre-Order/Order Response Time for IMA-GUI PO-1B Pre-Order/Order Response Time for IMA-EDI Results are reported separately for each of the following transaction types: NOTE 2 1. Appointment Scheduling (Due Date Reservation, where appointment is required) 2. Service Availability Information 3. Facility Availability 4. Street Address Validation 5. Customer Service Records 6. Telephone Number 7. Loop Qualification Tools NOTE 3 8. Resale of Qwest DSL Qualification 9. Connecting Facility Assignment NOTE 4 10. Meet Point Inquiry NOTE 5 For PO-1A (transactions via IMA-GUI), in addition to reporting total response time, response times for each of the above transactions will be reported in two parts: (a) time to access the request screen, and (b) time to receive the response for the specified transaction. For PO-1A 6, Telephone Number, a third part (c) accept screen, will be reported. For PO-1B (transactions via IMA-EDI), request/response will be reported as a combined number. PO-1C Results for PO-1C will be reported according to the gateway interface used: 1. Percent of Preorder Transactions that Timeout IMA-GUI 2. Percent of Preorder Transactions that Timeout IMA-EDI PO-1D Results for PO-1D will be reported according to the gateway interface used: 1. Rejected Response Times for IMA-GUI 2. Rejected Response Times for IMA-EDI
Formula: PO-1A & PO-1B = Σ[(Query Response Date & Time) – (Query Submission Date & Time)] ÷ (Number of Queries Submitted in Reporting Period) PO-1C = [(Number of IRTM Queries measured by PO-1A & 1B that Timeout before receiving response) ÷ (Number of IRTM Queries Transmitted in Reporting Period)] x 100 PO-1D = Σ[(Rejected Query Response Date & Time) – (Query Submission Date & Time)] ÷ (Number of Rejected Query Transactions Simulated by IRTM)	
Exclusions: PO-1A & PO-1B: • Rejected requests/errors, and timed out transactions PO-1C: • Rejected requests and errors PO-1D: • Timed out transactions	

PO-1 – Pre-Order/Order Response Times (continued)

Product Reporting: None	**Standards:** Total Response Time:	IMA-GUI	IMA-EDI
	1. Appointment Scheduling	<10 seconds	<10 seconds
	2. Service Availability Information	<25 seconds	<25 seconds
	3. Facility Availability	<25 seconds[6]	<25 seconds[6]
	4. Street Address Validation	<10 seconds	<10 seconds
	5. Customer Service Records	<12.5 seconds[6]	<12.5 seconds[6]
	6. Telephone Number	<10 seconds	<10 seconds
	7. Loop Qualification Tools NOTE 3	≤ 20 seconds[7]	≤ 20 seconds
	8. Resale of Qwest DSL Qualification	≤ 20 seconds[7]	≤ 20 seconds
	9. Connecting Facility Assignment	≤ 25 seconds	≤ 25 seconds
	10. Meet Point Inquiry	≤ 30 seconds	≤ 30 seconds
	PO-1C-1	0.5%	
	PO-1C-2	0.5%	
	PO-1D-1 & 2	Diagnostic	

Availability:	**Notes:**
Available	1. Rejected query types used in PO-1D are those developed for internal Qwest diagnostic purposes. 2. As additional transactions, currently done manually, are mechanized, they will be measured and added to or included in the above list of transactions, as applicable. 3. Results based on a weighted combination of ADSL Loop Qualification and Raw Loop Data Tool. 4. Results based on Connecting Facility Assignment by Unit Query. 5. Results based on meet Point Query, POTS Splitter option for Shared loops. 6. Times reflect non-complex services, including residential, simple business, or POTS account. Does not include ADSL or accounts>25 lines. 7. Benchmark applies to response time only. Request time and Total time will also be reported.

PO-2 – Electronic Flow-through

Purpose:
Monitors the extent Qwest's processing of CLEC Local Service Requests (LSRs) is completely electronic, focusing on the degree that electronically-transmitted LSRs flow directly to the service order processor without human intervention or without manual retyping.

Description:
PO-2A - Measures the percentage of all electronic LSRs that flow from the specified electronic gateway interface to the Service Order Processor (SOP) without any human intervention.

- Includes all LSRs that are submitted electronically through the specified interface during the reporting period, subject to exclusions specified below.

PO-2B – Measures the percentage of all flow-through-eligible LSRs [NOTE 1] that flow from the specified electronic gateway interface to the SOP without any human intervention.

- Includes all flow-through-eligible LSRs that are submitted electronically through the specified interface during the reporting period, subject to exclusions specified below.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLEC	**Disaggregation Reporting:** Statewide level (per multi-state system serving the state). Results for PO-2A and PO-2B will be reported according to the gateway interface* used to submit the LSR: 1 LSRs received via IMA-GUI 2 LSRs received via IMA-EDI *CO also reports an aggregate of IMA-GUI and IMA-EDI results.

Formula:

PO-2A = [(Number of Electronic LSRs that pass from the Gateway Interface to the SOP without human intervention) ÷ (Total Number of Electronic LSRs that pass through the Gateway Interface)] x 100

PO-2B = [(Number of flow-through-eligible Electronic LSRs that actually pass from the Gateway Interface to the SOP without human intervention) ÷ (Number of flow-through-eligible Electronic LSRs received through the Gateway Interface)] x 100

Exclusions:

- Rejected LSRs and LSRs containing CLEC-caused non-fatal errors.
- Non-electronic LSRs (e.g., via fax or courier).
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the PID.
- Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

PO-2 – Electronic Flow-through (continued)

<table>
<tr>
<td colspan="2">Product Reporting:
• Resale
• Unbundled Loops (with or without Local Number Portability)
• Local Number Portability
• UNE-P (POTS) and UNE-P (Centrex 21)
• Line Sharing</td>
<td colspan="2">Standards:
<u>PO-2A</u>:
CO: CO PO-2B benchmarks minus 10 percent NOTE 2
All Other States: Diagnostic

<u>PO-2B</u>: NOTE 2
<table>
<tr><td>Resale:</td><td>95%</td></tr>
<tr><td>Unbundled Loops:</td><td>85%</td></tr>
<tr><td>LNP:</td><td>95%</td></tr>
<tr><td>UNE-P (POTS & Centrex 21):</td><td>95%</td></tr>
<tr><td>Line Sharing:</td><td>Diagnostic NOTE 3</td></tr>
</table>
</td>
</tr>
<tr>
<td>Availability:
Available (except as follows):

Combined reporting of UNE-P (POTS) and UNE-P (Centrex 21) – beginning with Jul 04 data on the Aug 04 report.

Line Sharing – beginning with Jul 04 data on the Aug 04 report</td>
<td colspan="3">Notes:
1. The list of LSR types classified as eligible for flow through is contained in the "LSRs Eligible for Flow Through" matrix. This matrix also includes availability for enhancements to flow through. Matrix will be distributed through the CMP process.
2. In Colorado the standard for PO-2 is considered met if the standard for either PO-2A or PO-2B is met. For both PO-2A and PO-2B, the benchmark percentages shown apply to the aggregations of PO-2A-1 and PO-2A-2 (i.e., the combined PO-2A result) and of PO-2B-1 and PO-2B-2 (i.e., the combined PO-2B result).
3. The standard and future disaggregated reporting of the Line Sharing product is TBD, pending resolution of TRO issues.</td>
</tr>
</table>

PO-3 – LSR Rejection Notice Interval

Purpose:
Monitors the timeliness with which Qwest notifies CLECs that electronic and manual LSRs were rejected.

Description:
Measures the interval between the receipt of a Local Service Request (LSR) and the rejection of the LSR for standard categories of errors/reasons.

- Includes all LSRs submitted through the specified interface that are rejected during the reporting period.
- Standard reasons for rejections are: missing/incomplete/mismatching/unintelligible information, duplicate request or LSR/PON (purchase order number), no separate LSR for each account telephone number affected, no valid contract, no valid end user verification, account not working in Qwest territory, service-affecting order pending, request is outside established parameters for service, and lack of CLEC response to Qwest question for clarification about the LSR.
- Included in the interval is time required for efforts by Qwest to work with the CLEC to avoid the necessity of rejecting the LSR.
- With hours: minutes reporting, hours counted are (1) business hours for manual rejects (involving human intervention) and (2) published Gateway Availability hours for auto-rejects (involving no human intervention). Business hours are defined as time during normal business hours of the Wholesale Delivery Service Centers, except for PO-3C in which hours counted are workweek clock hours. Gateway Availability hours are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html.

Reporting Period: One month

Unit of Measure:
PO-3A-1, PO-3B-1 & PO-3C - Hrs: Mins.
PO-3A-2 & PO-3B-2 – Mins: Secs.

Reporting Comparisons:
CLEC aggregate and individual CLEC results

Disaggregation Reporting:
Results for this indicator are reported according to the gateway interface used to submit the LSR:

- PO-3A-1, LSRs received via IMA-GUI and rejected manually: Statewide
- PO-3A –2, LSRs received via IMA-GUI and auto-rejected: Region wide
- PO-3B-1, LSRs received via IMA-EDI and rejected manually: Statewide
- PO-3B –2, LSRs received via IMA-EDI and auto-rejected: Region wide
- PO-3C, LSRs received via facsimile: Statewide

Formula:
Σ [(Date and time of Rejection Notice transmittal) – (Date and time of LSR receipt)] ÷ (Total number of LSR Rejection Notifications)

Exclusions:

- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the PID.
- Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

Product Reporting: Not applicable (reported by ordering interface).

Standards:

- PO-3A-1 and -3B-1: ≤ 12 business hours
- PO-3A -2 and -3B -2: ≤ 18 seconds
- PO-3C: ≤ 24 work week clock hours

Availability:
Available

Notes:

PO-4 – LSRs Rejected

Purpose:
Monitors the extent LSRs are rejected as a percentage of all LSRs to provide information to help address potential issues that might be raised by the indicator of LSR rejection notice intervals.

Description:
Measures the percentage of LSRs rejected (returned to the CLEC) for standard categories of errors/reasons.

- Includes all LSRs submitted through the specified interface that are rejected or FOC'd during the reporting period.
- Standard reasons for rejections are: missing/incomplete/mismatching/unintelligible information; duplicate request or LSR/PON (purchase order number); no separate LSR for each account telephone number affected; no valid contract; no valid end user verification; account not working in Qwest territory; service-affecting order pending; request is outside established parameters for service; and lack of CLEC response to Qwest question for clarification about the LSR.

Reporting Period: One month	**Unit of Measure:** Percent of LSRs
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Results for this indicator are reported according to the gateway interface used to submit the LSR: PO-4A-1 LSRs received via IMA-GUI and rejected manually – Region wide PO-4A -2 LSRs received via IMA-GUI and auto-rejected – Region wide PO-4B-1 LSRs received via IMA-EDI and rejected manually – Region wide PO-4B -2 LSRs received via IMA-EDI and auto-rejected – Region wide PO-4C LSRs received via facsimile – Statewide

Formula:
[(Total number of LSRs rejected via the specified method in the reporting period) ÷ (Total of all LSRs that are received via the specified interface that were rejected or FOC'd in the reporting period)] x 100

Exclusions:

- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the PID.
- Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

Product Reporting: Not applicable (reported by ordering interface).	**Standard:** Diagnostic
Availability: Available	**Notes:**

PO-5 – Firm Order Confirmations (FOCs) On Time

Purpose:
Monitors the timeliness with which Qwest returns Firm Order Confirmations (FOCs) to CLECs in response to LSRs/ASRs 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/ASRs that are submitted through the specified interface or in the specified manner (i.e., facsimile) 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.)
- For PO-5A, the interval measured is the period between the LSR received date/time (based on scheduled up time) and Qwest's response with a FOC notification (notification date and time).
- For PO-5B, 5C, and 5D, the interval measured is the period between the application date and time, as defined herein, and Qwest's response with a FOC notification (notification date and time).
- "Fully electronic" LSRs are those (1) that are received via IMA-GUI or IMA-EDI, (2) that involve no manual intervention, and (3) for which FOCs are provided mechanically to the CLEC. NOTE 2
- "Electronic/manual" LSRs are received electronically via IMA-GUI or IMA-EDI and involve manual processing.
- "Manual" LSRs are received manually (via facsimile) and processed manually.
- ASRs are measured only in business days.
- 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 Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level (per multi-state system serving the state). Results for this indicator are reported as follows: • PO-5A:* FOCs provided for fully electronic LSRs received via: – PO-5A-1 IMA-GUI – PO-5A-2 IMA-EDI • PO-5B:* FOCs provided for electronic/manual LSRs received via: – PO-5B-1 IMA-GUI – PO-5B-2 IMA-EDI • PO-5C:* FOCs provided for manual LSRs received via Facsimile. • PO-5D: FOCs provided for ASRs requesting LIS Trunks. * Each of the PO-5A, PO-5B and PO-5C measurements listed above will be further disaggregated as follows: – (a) FOCs provided for Resale services and UNE-P – (b) FOCs provided for Unbundled Loops and specified Unbundled Network Elements – (c) FOCs provided for LNP

Formula:
PO-5A = {[Count of LSRs for which the original FOC's "(FOC Notification Date & Time) - (LSR received date/time (based on scheduled up time))" is within 20 minutes] ÷ (Total Number of original FOC Notifications transmitted for the service category in the reporting period)} x 100

PO-5B, 5C, & 5D = {[Count of LSRs/ASRs 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

PO-5 – Firm Order Confirmations (FOCs) On Time (continued)

Exclusions:

- LSRs/ASRs 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. (Except for PO-5A which only excludes hours outside the scheduled up time).
- 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 PID.
- Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

Additional PO-5D exclusion:

- Records with invalid application or confirmation dates.

Product Reporting:

- For PO-5A, -5B and -5C:
  (a) Resale services UNE-P (POTS) and UNE-P Centrex
  (b) Unbundled Loops and specified Unbundled Network Elements.
  (c) LNP
- For PO-5D: LIS Trunks.

Standards:

- For PO-5A (all): 95% within 20 minutes NOTE 2
- For PO-5B (all): 90% within standard FOC intervals (specified below)
- For PO-5C (manual): 90% within standard FOC intervals specified below PLUS 24 hours NOTE 3
- For PO-5D (LIS Trunks): 85% within eight business days

Standard FOC Intervals for PO-5B and PO-5C

Product Group NOTE 1		FOC Interval
Resale		
Residence and Business POTS	1-39 lines	
ISDN-Basic	1-10 lines	
– Conversion As Is		**24 hours**
– Adding/Changing features		
– Add primary directory listing to established loop		
– Add call appearance		
Centrex Non-Design with no Common Block Configuration	1-19 lines	
Centrex line feature changes/adds/removals (all)		
LNP	1-24 lines	
Unbundled Loops 2/4 Wire analog DS3 Capable	1-24 loops	
Sub-loop [included in Product Reporting group (b)]	1-24 sub-loops	
Line Sharing/Line Splitting/Loop Splitting [included in Product Reporting group (b)]	1-24 shared loops	
Unbundled Network Element–Platform (UNE-P POTS)	1 – 39 lines	

PO-5 – Firm Order Confirmations (FOCs) On Time (continued)

	Resale ISDN-Basic 1-10 lines – Conversion As Specified – New Installs – Address Changes – Change to add Loop ISDN-PRI (Facility) 1-3 PBX 1-24 trunks DS0 or Voice Grade Equivalent 1-24 DS1 Facility 1-24 DS3 Facility 1-3	**48 hours**
	LNP 25-49 lines	
	Enhanced Extended Loops (EELs) [included in Product Reporting group (b)] **DS1** 1-24 circuits	
	Resale Centrex (including Centrex 21, Non-design, Centrex 21 Basic ISDN, Centrex-Plus, Centron, Centrex Primes) 1-10 lines – With Common Block Configuration required – Initial establishment of Centrex CMS services – Tie lines or NARs activity – Subsequent to initial Common Block – Station lines – Automatic Route Selection – Uniform Call Distribution – Additional numbers	**72 hours**
	UNE-P Centrex 1-10 lines **UNE-P Centrex 21** 1-10 lines	
	Unbundled Loops with Facility Check(NOTE 2, 3) 1 – 24 loops 2/4 wire Non-loaded ADSL compatible ISDN capable XDSL-I capable DS1 capable	
	Resale ISDN-PRI (Trunks) 1-12 trunks	**96 hours**
	For PO-5D: LIS Trunks 1-240 trunk circuits	**8 business days**

Availability:
Available

Notes:
1. LSRs with quantities above the highest number specified for each product type are considered ICB.
2. Unbundled Loop with Facility Check can be processed electronically; however, because this category always carries a 72-hour FOC interval the FOC results for this product will appear in PO-5B if received electronically or PO-5C if received manually.
3. Unbundled Loop with Facility Check will not add an additional 24 hours to the 72-hour interval if the LSR is submitted manually.

PO-6 – Work Completion Notification Timeliness

Purpose:
To evaluate the timeliness of Qwest issuing electronic notification at an LSR level to CLECs that provisioning work on all service orders that comprise the CLEC LSR have been completed in the Service Order Processor and the service is available to the customer.

Description:
PO-6A & 6B:

- Includes all orders completed in the Qwest Service Order Processor that generate completion notifications in the reporting period, subject to exclusions shown below.
- The start time is the date/time when the last of the service orders that comprise the CLEC LSR is posted as completed in the Service Order Processor.
- The end time is when the electronic order completion notice is made available (IMA-GUI) [NOTE 1] or transmitted (IMA-EDI) to the CLEC via the ordering interface used to place the local service request. The notification is transmitted at an LSR level when all service orders that comprise the CLEC LSR are complete.
- With hours: minutes reporting, hours counted are during the published Gateway Availability hours. Gateway Availability hours are based on the currently published hours of availability found on the following website: http://www.qwest.com/wholesale/cmp/ossHours.html.

Reporting Period:	**Unit of Measure:**
One month	PO-6A - 6B: Hrs:Mins

Reporting Comparisons: CLEC aggregate and individual CLEC results.	**Disaggregation Reporting:** Statewide level. • PO-6A Notices transmitted via IMA-GUI • PO-6B Notices transmitted via IMA-EDI

Formula:
For completion notifications generated from LSRs received via IMA-GUI:
PO–6A = Σ((Date and Time Completion Notification made available to CLEC) - (Date and Time the last of the service orders that comprise the CLEC LSR is completed in the Service Order Processor)) ÷ (Number of completion notifications made available in reporting period)

For completion notifications generated from LSRs received via IMA-EDI:
PO–6B = Σ((Date and Time Completion Notification transmitted to CLEC) - (Date and Time the last of the service orders that comprise the CLEC LSR is completed in the Service Order Processor.)) ÷ (Number of completion notifications transmitted in reporting period)

Exclusions:
PO – 6A & 6B:

- Records with invalid completion dates.
- LSRs submitted manually (e.g., via facsimile).
- ASRs submitted via EXACT.

Product Reporting:	**Standard:**
PO – 6A & 6B Aggregate reporting for all products ordered through IMA-GUI and, separately, IMA-EDI (see disaggregation reporting).	6 hours

Availability:	**Notes:**
Available	1. The time a notice is "made available" via the IMA-GUI is the time Qwest stores a status update related to the completion notice in the IMA Status Updates database. When this occurs, the notice can be immediately viewed by the CLEC using the Status Updates window or by using the LSR Notice Inquiry function.

PO-7 – Billing Completion Notification Timeliness

Purpose:
To evaluate the timeliness with which electronic billing completion notifications are made available or transmitted to CLECs, focusing on the percentage of notifications that are made available or transmitted (for CLECs) or posted in the billing system (for Qwest retail) within five business days.

Description:
PO-7A & 7B:

- This measurement includes all orders posted in the CRIS billing system for which billing completion notices are made available or transmitted in the reporting period, subject to exclusions shown below.
- Intervals used in this measurement are from the time a service order is completed in the SOP to the time billing completion for the order is made available or transmitted to the CLEC.
  - The time a notice is "made available" via the IMA-GUI consists of the time Qwest stores the completion notice in the IMA Status Updates database. When this occurs, the notice can be immediately viewed by the CLEC using the Status Updates window.
  - The time a notice is "transmitted" via IMA-EDI consists of the time Qwest actually transmits the completion notice via IMA-EDI. Applicable only to those CLECs who are certified and setup to receive the notices via IMA-EDI.
- The start time is when the completion of the service order is posted in the Qwest SOP. The end time is when, confirming that the order has been posted in the CRIS billing system, the electronic billing completion notice is made available to the CLEC via the same ordering interface (IMA-GUI or IMA-EDI) as used to submit the LSR.
- Intervals counted in the numerator of these measurements are those that are five business days or less.

PO-7C:

- This measurement includes all retail orders posted in the CRIS Billing system in the reporting period, subject to exclusions shown below.
- Intervals used in this measurement are from the time an order is completed in the SOP to the time it is posted in the CRIS billing system.
- The start time is when the completion of the order is posted in the SOP. The end time is when the order is posted in the CRIS billing system.
- Intervals counted in the numerator of this measurement are those that are five business days or less.

Reporting Period: One month	**Unit of Measure:** Percent

Reporting Comparisons:	**Disaggregation Reporting:** Statewide level.
PO-7A and -7B: CLEC aggregate and individual CLEC results. PO-7C: Qwest retail results.	• PO-7A Notices made available via IMA-GUI • PO-7B Notices transmitted via IMA-EDI • PO-7C Billing system posting completions for Qwest Retail

Formula:
For wholesale service orders Qwest generates for LSRs received via IMA:

PO-7A = (Number of electronic billing completion notices in the reporting period made available within five business days of posting complete in the SOP) ÷ (Total Number of electronic billing completion notices made available during the reporting period)

PO-7B = (Number of electronic billing completion notices in the reporting period transmitted within five business days of posting complete in the SOP) ÷ (Total Number of electronic billing completion notices transmitted during the reporting period)

For service orders Qwest generates for retail customers (i.e., the retail analogue for PO-7A & -7B):

PO-7C = (Total number of retail service orders posted in the CRIS billing system in the reporting period that were posted within 5 business days) ÷ (Total number of retail service orders posted in the CRIS billing system in the reporting period)

PO-7 – Billing Completion Notification Timeliness (continued)

<table>
<tr><td colspan="3">Exclusions:
PO-7A, 7B & 7C
• Services that are not billed through CRIS, e.g. Resale Frame Relay.
• Records with invalid completion dates.
PO-7A & 7B
• LSRs submitted manually.
• ASRs submitted via EXACT.</td></tr>
<tr><td colspan="2">Product Reporting:
Aggregate reporting for all products ordered through IMA-GUI and, separately, IMA-EDI (see disaggregation reporting).</td><td>Standard:
PO-7A and -7B: Parity with PO-7C</td></tr>
<tr><td>Availability:
Available</td><td colspan="2">Notes:</td></tr>
</table>

PO-8 – Jeopardy Notice Interval

Purpose:
Evaluates the timeliness of jeopardy notifications, focusing on how far in advance of original due dates . jeopardy notifications are provided to CLECs (regardless of whether the due date was actually missed).

Description:
Measures the average time lapsed between the date the customer is first notified of an order jeopardy event and the original due date of the order.

- Includes all orders completed in the reporting period that received jeopardy notifications.

Reporting Period: One month	**Unit of Measure:** Average Business days [NOTE 1]
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. (This measure is reported by jeopardy notification process as used for the categories shown under Product Reporting.)

Formula:
[Σ(Date of the original due date of orders completed in the reporting period that received jeopardy notification – Date of the first jeopardy notification) ÷ Total orders completed in the reporting period that received jeopardy notification]

Exclusions:

- Jeopardies done after the original due date is past.
- 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 PID.

Product Reporting:	**Standards:**
A Non-Designed Services	A Parity with Retail POTS
B Unbundled Loops (with or without Number Portability)	B Parity with Retail POTS
C LIS Trunks	C Parity with Feature Group D (FGD) services
D UNE-P (POTS)	D Parity with Retail POTS
Availability: Available	**Notes:** 1. For PO-8A and -D, Saturday is counted as a business day for all non-dispatched orders for Resale Residence, Resale Business, and UNE-P (POTS), as well as for the retail analogues specified above as standards. For dispatched orders for Resale Residence, Resale Business, and UNE-P (POTS) and for all other products reported under PO-8B and -8C, Saturday is counted as a business day when the service order is due on Saturday.

PO-9 – Timely Jeopardy Notices

Purpose:
When original due dates are missed, measures the extent to which Qwest notifies customers in advance of jeopardized due dates.

Description:
Measures the percentage of late orders for which advance jeopardy notification is provided.

- Includes all inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed in the reporting period that missed the original due date. Change order types included in this measurement consist of all C orders representing inward activity.
- Missed due date orders with jeopardy notifications provided on or after the original due date is past will be counted in the denominator of the formula but will not be counted in the numerator.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. (This measure is reported by jeopardy notification process as used for the categories shown under Product Reporting.)

Formula:
[(Total missed due date orders completed in the reporting period that received jeopardy notification in advance of original due date) ÷ (Total number of missed due date orders completed in the reporting period)] x 100

Exclusions:

- Orders missed for customer reasons.
- Records with invalid product codes.
- 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 PID.

Product Reporting:	**Standards:**
A Non-Designed Services	A Parity with Retail POTS
B Unbundled Loops (with or without Number Portability)	B Parity with Retail POTS
C LIS Trunks	C Parity with Feature Group D (FGD) Services
D UNE-P (POTS)	D Parity with Retail POTS
Availability: Available	**Notes:**

PO-15 – Number of Due Date Changes per Order

Purpose: To evaluate the extent to which Qwest changes due dates on orders.	
Description: Measures the average number of Qwest due date changes per order. • Includes all inward orders (Change, New, and Transfer order types) that have been assigned a due date in the reporting period subject to the exclusions below. Change order types for additional lines consist of all "C" orders representing inward activity. • Counts all due date changes made for Qwest reasons following assignment of the original due date.	
Reporting Period: One month	**Unit of Measure:** Average Number of Due Date Changes
Reporting Comparisons: CLEC aggregate, individual CLEC, and Qwest retail results.	**Disaggregation Reporting:** Statewide level.
Formula: Σ(Count of Qwest due date changes on all orders) ÷ (Total orders in reporting period)	
Exclusions: • Customer requested due date changes. • Records involving official company services. • Records with invalid due dates or application dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the PID.	
Product Reporting: None	**Standard:** Diagnostic
Availability: Available	**Notes:**

PO-16– Timely Release Notifications

Purpose:
Measures the percent of release notifications for changes to specified OSS interfaces sent by Qwest to CLECs within the intervals and scope specified within the change management plan found on Qwest's Change Management Process, (CMP) website at http://www.qwest.com/wholesale/cmp/whatiscmp.html.

Description:

- Measures the percent of release notices that are sent by Qwest within the intervals/timeframes prescribed by the release notification procedure on Qwest's CMP website. NOTE 1
  - Release notices measured are:
    - Draft Technical Specifications (for App to App interfaces only);
    - Final Technical Specifications (for App to App interfaces only);
    - Draft Release Notices (for IMA-GUI interfaces only);
    - Final Release Notices (for IMA-GUI interfaces only); and
    - OSS Interface Retirement Notices. NOTE 2
    - For the following OSS interfaces:
      - IMA-GUI, IMA-EDI;
      - CEMR;
      - Exchange Access, Control, & Tracking (EXACT); NOTE 3
      - Electronic Bonding - Trouble Administration (EB -TA); NOTE 4
      - IABS and CRIS Summary Bill Outputs; NOTE 5
      - Loss and Completion Records; NOTE 5
      - New OSS interfaces (for introduction notices only.) NOTE 6
    - Also included are notifications for connectivity or system function changes to Resale Product Database.
    - Includes OSS interface release notifications by Qwest relating to the following products and service categories: LIS/Interconnection, Collocation, Unbundled Network Elements (UNE), Ancillary, and Resale Products and Services.
    - Includes OSS interface release notifications by Qwest to CLECs for the following OSS functions: Pre-Ordering, Ordering, Provisioning, Repair and Maintenance, and Billing.
    - Includes Types of Changes as specified in the "Qwest Wholesale Change Management Process Document" (Section 4 – Types of Changes).
  - Includes all OSS interface release notifications pertaining to the above OSS systems, subject to the exclusions specified below.
- Release Notifications sent on or before the date required by the CMP are considered timely. A release notification "sent date" is determined by the date of the e-mail sent by Qwest that provides the Release Notification. NOTE 7
- Release Notifications sent after the date required by the (CMP) are considered untimely. Release Notifications required but not sent are considered untimely.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC Aggregate	**Disaggregation Reporting:** Region-wide level.

Formula:
[(Number of required release notifications for specified OSS interface changes made within the reporting period that are sent on or before the date required by the change management plan (CMP) ÷ Total number of required release notifications for specified OSS interface changes within reporting period)]x100

Exclusions:

- Changes to be implemented on an expedited basis (exception to OSS notification intervals) as mutually agreed upon by CLECs and Qwest through the CMP.
- Changes where Qwest and CLECs agree, through the CMP, that notification is unnecessary.

PO-16 Timely Release Notifications (continued)

Product Reporting: None	**Standards:** Vol. 1-10: No more than one untimely notification Vol. > 10: 92.5% timely notifications

Availability:	**Notes:**
Available	1. The Qwest Wholesale Change Management Process Document specifies the intervals for release notifications by type of notification. These intervals are documented in the change management plan. 2. The documents described in section "9.0 – Retirement of Existing OSS Interfaces" of the "Qwest Wholesale Change Management Process Document" as "Initial Retirement Notice" and "Final Retirement Notice." 3. EXACT is a Telecordia system. Only release notifications for changes initiated by Qwest for hardware or connectivity will be included in this measurement. 4. EB-TA is the same system as MEDIACC. 5. CRIS, IABS, and Loss and Completions will adhere to the notification intervals documented in section 8.1 – Changes to Existing Application to Application Interface. 6. The documents described in section "7.0 – Introduction of New OSS Interface" of the "Qwest Wholesale Change Management Process Document" as "Initial Release Announcement and Preliminary Implementation Plan" (new App to App only), "Initial Interface Technical Specification" (new App to App only), "Final Interface Technical Specifications (new App to App only), "Release Notification" (new GUI only). CMP notices for "Introduction of a New OSS" are to be included in this measurement even though the new system is not explicitly listed in the "Description" section of this PID. However, once implemented, the system will not be added to the measurement for purposes of measuring release, change and retirement notifications unless specifically incorporated as an authorized change to the PID. 7. The intervals used to determine timeliness are based on CMP guidelines.

PO-19 – Stand-Alone Test Environment (SATE) Accuracy

Purpose:
Evaluates Qwest's ability to provide accurate production-like tests to CLECs for testing new releases in the SATE and production environments and testing between releases in the SATE environment.

Description:

PO-19A

- Measures the percentage of test transactions that conform to the test scenarios published in the *IMA EDI Data Document – for the Stand Alone Test Environment (SATE)* that are successfully executed in SATE at the time a new IMA Release is deployed to SATE. In months where no release activity occurs, measures the percentage of test transactions that conform to the test scenarios published in the current IMA EDI Data Document-for the Stand Alone Test Environment (SATE) that are successfully executed in SATE during the between-releases monthly performance test.
- Includes one test transaction for each test scenario published in the *IMA EDI Data Document – for the Stand Alone Test Environment (SATE).*
- Test transactions will be executed for each of the IMA releases supported in SATE utilizing all test scenarios for each of the current versions of the *IMA EDI Data Document – for the Stand Alone Test Environment (SATE).*
- The successful execution of a transaction is determined by the Qwest Test Engineer according to:
  - The expected results of the test scenario as described in the *IMA EDI Data Document – for the Stand Alone Test Environment (SATE)* and the EDI disclosure document.
  - The transactions strict adherence to business rules published in Qwest's most current IMA EDI Disclosure Documentation for each release and the associated Addenda. NOTE 1
- For this measurement, Qwest will execute the test transactions in the Stand-Alone Test Environment.
  - Release related test transactions will be executed when a full or point release of IMA is installed in SATE. These transactions will be executed within five business days of the numbered release being originally installed in SATE. This five-business day period will be referred to as the "Testing Window."
  - Mid-release monthly performance test transactions will be executed in the months when no Testing Window for a release is completed. These transactions will be executed on the 15th, or the nearest working day to the 15th of the month, in the months when no release related test transactions are executed.
- Test transaction results will be reported by release and included in the Reporting Period during which the release transactions or mid-release test transactions are completed.

PO-19B

- Validates the extent that SATE mirrors production by measuring the percentage of IMA EDI test transactions that produce comparable results in SATE and in production.
  - Transactions counted as producing comparable results are those that return correctly formatted data and fields as specified in the release's EDI disclosure document and developer worksheets related to the IMA release being tested.
  - Comparability will be determined by evaluating the data and fields in each EDI message for the test transactions against the same data and fields for Preorder queries, LSRs, and Supplementals, and returned as Query Responses, Acknowledgements, Firm Order Confirmations (FOCs) for flow-through eligible products, and rejects.
- Test transactions are executed one time for each new major IMA release within 7 days after the IMA release.
  - Test transactions consist of a defined suite of Product/Activity combinations. Qwest's three regions will be represented. NOTE 2
  - Pre-order, Order, and Post-order transactions (FOCs for flow-through products) are included.
- With respect to the comparability of the structure and content of results from SATE and production environments, this measurement focuses only on the validity of the structure and the validity of the content, per developer worksheets and EID mapping examples distributed as part of release notifications. NOTE 3

Reporting Period:	**Unit of Measure:** Percent
PO-19A -- One month PO-19B: -- One month (for those months in	

which release-related test transactions are completed)	
Reporting Comparisons: None	**Disaggregation Reporting:** PO-19A – Reported separately for each release tested in the reporting period PO-19B -- None
Formula: PO-19A [(Total number of successfully completed SATE test transactions executed for a Software Release or between-releases performance test completed in the Reporting Period) ÷ (Total number of SATE test transactions executed for each Software Release or between-releases performance test completed in the Reporting Period)] x 100 PO-19B [(Total number of completed IMA EDI test transactions executed in SATE and production that produce comparable results for each new major IMA Software Release completed in the Reporting Period) ÷ (Total number of completed IMA EDI test transactions executed in SATE and production for each new major IMA Software Release completed in the Reporting Period)] x 100	
Exclusions: For PO-19B: • Transactions that fail due to the unavailability of a content item (e.g., TN exhaustion in SATE or the production environment) or a function in the SATE or production environments (e.g., address validation query or CSR query) that is unsuccessful due to an outage in systems that interface with IMA-EDI (e.g., PREMIS or SIA). • Transactions that fail because of differences between the production and SATE results caused when an IMA candidate is implemented into IMA and not SATE (i.e., where CMP decides not to implement an IMA candidate in a SATE release: e.g., the Reject Duplicate LSR candidate in IMA 12.0). This exclusion does not apply during reporting periods in which there are no differences between production IMA and SATE caused by SATE releases packaged pursuant to CMP decisions.	
Product Reporting: None	**Standard:** PO-19A – 95% for each release tested PO-19B – 95%
Availability: Available	**Notes:** 1. Transactions that are executed and found to have inconsistencies with the data and format rules will be corrected and rerun. Rerun volumes will not be counted in the denominator for PO-19. Such corrections and re-executions are intended to enforce strict adherence to business rules published in Qwest's most current IMA EDI Data and Disclosure Documents. 2. The product and activity combinations that make up the test decks for PO-19B will be updated after each major IMA software release and provided to CLECs with the publication of IMA EDI Draft Interface Technical Specifications for the next major IMA software release as defined in the CMP process. All combinations with EDI transaction volumes > 100 in the previous 12-month period will be included in the test deck. 75 days prior to the execution of the test, Qwest will run a query against IMA to determine which combinations meet the criteria for inclusion (i.e., volumes > 100).

	3. The intent of this provision is to avoid including the effects of circumstances beyond the SATE environment that could cause differences in SATE and production results that are not due to problems in mirroring production. For example, because of real-time data manipulation in production, an appointment availability query transaction in SATE will not return the same list of available appointments as in production. Available appointments in production are fully dependent on real-time activities that occur there, whereas available appointments in SATE are based on a pre-defined list that is representative of production.

PO-20 (Expanded) – Manual Service Order Accuracy

Purpose:
Evaluates the degree to which Qwest accurately processes CLECs' Local Service Requests (LSRs), which are electronically-submitted and manually processed by Qwest, into Qwest Service Orders, based on mechanized comparisons of specified LSR-Service Order fields and focusing on the percentage of manually-processed Service Orders that are accurate/error-free.

Description:
Measures the percentage of manually-processed Qwest Service Orders that are populated correctly, in specified data fields, with information obtained from CLEC LSRs.

- Includes only Service Orders created from CLEC LSRs that Qwest receives [NOTE 1] electronically (via IMA-GUI or IMA-EDI) and manually processes in the creation of Service Orders, regardless of flow through eligibility, subject to exclusions specified below.
- Includes only Service Orders, from the product reporting categories specified below, that request inward line or feature activity (Change, New, and Transfer order types), are assigned a due date by Qwest, and are completed/closed in the reporting period. Change Service Order types included in this measurement consist of all C orders with "I" and "T" action-coded line or feature USOCs.
- All Service Orders satisfying the above criteria and as specified in the Availability section below are evaluated in this measurement.
- An inward line Service Order will be classified as "accurate" and thus counted in the numerator in the formula below when the mechanized comparisons of this measurement determine that the fields specified in the Service Order Fields Evaluated section below (when the source fields have been properly populated on the LSR) are all accurate on the Service Order. An inward feature Service Order will be classified as "accurate" if the fields specified in the Service Order Fields Evaluated section below (when the source fields have been properly populated on the LSR) are all accurate on the Service Order and if no CLEC notifications to the call center have generated call center tickets coded to LSR/SO mismatch for that order.
  - Service Orders will be counted as being accurate if the contents of the relevant fields, as recorded in the completed Service Orders involved in provisioning the service, properly match or correspond to the information from the specified fields as provided in the latest version of associated LSRs.
  - Service orders generated from LSRs receiving a PIA (Provider Initiated Activity value will be counted as being accurate if each and every mismatch has a correct and corresponding PIA value.
  - Service Orders, including those otherwise considered accurate under the above-described mechanized field comparison, will not be counted as accurate if Qwest corrects errors in its Service Order(s) as a result of contacts received from CLECs no earlier than one business day prior to the original due date.

Reporting Period: One month, reported in arrears (i.e., results first appear in reports one month later than results for measurements that are not reported in arrears), in order to exclude Service Orders that are the subject of call center tickets counted in OP-5B and OP-5T, as having new service problems attributed to Service Order errors.	**Unit of Measure:** Percent
Reporting Comparisons: CLEC Aggregate and individual CLEC	**Disaggregation Reporting:** Statewide Level

Formula:
[(Number of accurate, evaluated Service Orders) ÷ (Number of evaluated Service Orders completed in the reporting period)] x 100

PO-20 (Expanded) – Manual Service Order Accuracy (continued)

Exclusions:

- Service Orders that are the subject of call center tickets counted in OP-5B and OP-5T as having new service problems attributed to Service Order errors.
- Cancelled Service Orders.
- Service Orders that cannot be matched to a corresponding LSR
- Records missing data essential to the calculation of the measurement per the PID.

Product Reporting:

- Resale and UNE-P (POTS and Centrex 21)
- Unbundled Loops (Analog and Non-Loaded 2/4-wire, DS1 Capable, DS3 and higher Capable, ADSL Compatible, XDSL-I Capable, ISDN-BRI Capable)

Standard:
Benchmarks, as follows:

Phase 1	97%
Phase 2	96%
Phase 3 & beyond	95%

Availability:

- Phase 0 – PO-20 (Old) (the first version using sampling of limited fields). (Available now)
- Phase 1[NOTE 2] – PO-20 (Expanded) Mechanized version (as defined herein). All qualifying orders associated with initial LSRs received via IMA version 15.0 or higher beginning with May 2004 data reported in Jul 04.
- Phase 2 – Additional fields added. No later than Sep 04 results reported in Nov 04
- Phase 3– Additional fields added. Targeted for 1st Quarter 05
- Phase 4 – Additional fields added. (Date TBD).

Notes:

1. To be included in the measurement, Service Orders created from CLEC LSRs must be received and completed in the same version of IMA-GUI or IMA-EDI.
2. Phase 1: Consists of all manually-processed, qualifying Service Orders per product reporting category specified above, from throughout Qwest's 14-state local service region.

LSR-Service Order Fields Evaluated

Phase 1 – (Effective with LSRs received beginning May 2004)

Mechanized comparison of the fields from the Service Order to the LSR:

Form	LSR Field Code	LSR Field Name	Remarks/Service Order Field:
LSR	CCNA	Customer Carrier Name Abbreviation	CCNA field of LSR form compared to the RSID/ZCID field identifier in the Extended ID section of the Service Order.
	PON	Purchase Order Number	PON field of LSR form compared to the PON field in Bill Section of the Service Order.
	D/TSENT	Date and time sent	The D/TSENT field of LSR form from the Firm Order Manager, using applied business day cut-off rules and business typing rules, and compare to the APP (Application Date) used on the Service Order.
	CHC	Coordinated Hot Cut Requested	Applies only to Unbundled Loop. Validate that the installation USOC used on the Service Order matches the Coordinated Cut request. (Evaluated in conjunction with the TEST field to determine correct USOC.)
	TEST	Testing required	Applies only to Unbundled Loop. Validate that the installation USOC used on the Service Order matches the TEST request. (Evaluated in conjunction with the CHC field to determine correct USOC.)
	NC	Network Channel Code	Applies only to Unbundled Loop. NC field on the LSR form compared to provisioning USOC for CKL1 on the Service Order.

LSR-Service Order Fields Evaluated			
Phase 1 – (Effective with LSRs received beginning May 2004)			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
	NCI	Network Channel Interface Code	Applies only to Unbundled Loop NCI field on the LSR form compared to provisioning USOC for CKL1 on the Service Order.
	SECNCI	Secondary Network Channel Interface Code	Applies only to Unbundled Loop orders. SECNCI field on the LSR form compared to the provisioning USOC for CKL2 on the Service Order.
Resale or Centrex	PIC	InterLATA Pre-subscription Indicator Code	PIC field on Resale or Centrex form compared to PIC populated on the "I" or "T" action lines in the Service and Equipment section of the Service Order. *Note:* LSR PIC = None; S.O. PIC = None
	LPIC	IntraLATA Pre-subscription Indicator Code	LPIC field on Resale or Centrex form compared to LPIC populated on the "I" or "T" action lines in the Service and Equipment section of the Service Order. *Note:* LSR LPIC = None; S.O. LPIC = 9199 LSR LPIC = DFLT; S.O. LPIC = 5123
Resale or Centrex	TNS	Telephone Numbers	Validate that all telephone numbers in the TNS fields in the Service Details section on the Resale or Centrex form requiring inward activity are addressed on the Service Order.
	FA/ FEATURE	Feature Activity/Feature Codes	When the FA = N, T, V Validate line and feature USOCs provided in the FEATURE field on the Resale or Centrex form are addressed with "I" and/or "T" action lines on the Service Order. Note: Comparison will be based on the USOCs associated with line and feature activity listed in the PO-20 USOC List posted on Qwest's public website, on the web page containing the current PID www.qwest.com/wholesale/results). Qwest may add USOCs to the list, delete grand-fathered/ discontinued or obsolete USOCs, or update USOCs assigned to listed descriptions by providing notice in the monthly Summary of Notes and updating the list.

LSR-Service Order Fields Evaluated			
Phase 1 – (Effective with LSRs received beginning May 2004)			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
LS	ECCKT	Exchange Company Circuit ID	Applies to LSRs with ACT = C (only when NC code has not changed, M, or T. ECCKT field on the LS form compared to the CLS field in the Service and Equipment section of the Service Order.
LS/ LSNP	CFA	Connecting Facility Assignment	CFA field on the LS or LSNP forms compared to the CFA field used in CKL1 of the Service Order. (Verbal acceptance of CFA changes will be FOC'd and PIA'd, which will account for the mismatch and eliminate it as an error in the PO-20 calculation.
DL – Directory Listings form (Evaluated only for Local Main Listings)	LTY	Listing Type	LTY = 1 (Listed – appears in DA and the directory.) Validate that there is a LN in the List section of the Service Order. LTY = 2 (Non Listed – appears only in DA.) Validate that there is non listing instructions in the LN field in the List section of the Service Order. **Central/Western Region:** Validate that the left handed field is NLST and (NON-LIST) is contained in the NLST data field in the List section of the Service order. **Eastern Region:** Validate that the left handed field is NL and (NON LIST) is contained in the NL data field in the List section of the Service Order. LTY = 3 (Non Pub - does not appear in the directory and telephone number does not appear in DA.) Validate that there is non published instructions in the LN field in the List section of the Service Order. **Central/Western Regions:** Validate that the left handed field is NP and (NON-PUB) is contained in the NP data field in the List section of the Service Order. **Eastern Region:** Validate that the left handed field is NP and (NP LODA) or (NP NODA) is contained in the NP data field in the List section of the Service Order.
	TOA	Type of Account	Validate TOA entries (only reviewed when BRO field on DL form is not populated): • TOA valid entries are B or RP Validate that there is a semi colon (;) within the LN in the List section of the Service Order. • TOA valid entries are R or BP Validate that there is a comma (,) within the LN in the List section of the Service Order. **Exception:** When LSR-TOS = 3, TOA review is Not Applicable. Handled by Complex Listing Group. Requires separate Service Order.
	DML	Direct Mail List	DML field = O on DL form; Service Order LN contains (OCLS).
	NOSL	No Solicitation Indicator	**Arizona Only** NOSL field = Y on DL form; Service Order LN contains (NSOL) (OCLS).

LSR-Service Order Fields Evaluated			
Phase 1 – (Effective with LSRs received beginning May 2004)			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
	TMKT	Telemarketing	**Colorado Only** TMKT field = O on DL form; Service Order LN contains (OATD). When both the DML and the TMKT fields are populated, DML validation applies.
	LNLN and LNFN	Listed Name	LNLN and LNFN fields on DL form compared to the LN field in the List section of the Service Order.
	ADI	Address Indicator	ADI = O on DL form; Service Order LA contains (OAD).
	LAPR	Listed Address Number Prefix	LAPR field of the Listing form compared to LA in the List section of the Service Order.
	LANO	Listed Address Number	LANO field of the Listing form compared to LA in the List section of the Service Order.
	LASF	Listed Address Number Suffix	LASF field of the Listing form compared to LA in the List section of the Service Order.
	LASD	Listed Address Street Directional	LASD field of the Listing form compared to LA in the List section of the Service Order.
	LASN	Listed Address Street Name	LASN field of the Listing form compared to LA in the List section of the Service Order.
	LATH	Listed Address Street Type	LATH field of the Listing form compared to LA in the List section of the Service Order.
	LASS	Listed Address Street Directional Suffix	LASS field of the Listing form compared to LA in the List section of the Service Order.
	LALOC	Listed Address Locality	LALOC field of the Listing form compared to LA in the List section of the Service Order.

Phase 2 – No later than Sep 04 results			
LSR-Service Order Fields Evaluated			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
LSR	DSPTCH	Dispatch	Limited to Unbundled Loops where ACT = Z or V only. If DSPTCH field on the LSR form = Y, validate dispatch USOC in the Service and Equipment section of the Service Order.
Centrex	LTC	Line Treatment Code	Applies only to Centrex 21 LTC field numeric value on the Centrex form compared to the data following the CAT field for the Line USOC on the Service Order.
	COS	Class of Service – Qwest Specific	Applies only to Centrex 21. COS field of the Centrex form compared to the CS field in the ID section of the Service Order.

Phase 2 – No later than Sep 04 results			
LSR-Service Order Fields Evaluated			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
Resale or Centrex	FEATURE DETAILS	Feature Details	As specified in Appendix A of the 14 State Working PID. Comparison would be based on the fields associated with the USOC list referenced under Feature Activity in Phase 1 above.
Phase 3 – Targeted for 1st Quarter 05			
LSR-Service Order Fields Evaluated			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
Resale or Centrex	BLOCK (Stage 1)	Blocking Type	For each LNUM provided in the Service Detail section of the Resale or Centrex form when BA = E: Note: The BLOCK field may have one or more alpha and/or numeric values per LNUM. This review will only validate based on BA/BLOCK fields and will not address blocking information provided in the "Remark" section on the LSR or the Feature Detail section of the LSR. The values listed below will be considered as follows: If BLOCK contains A, validate FID TBE A is present on the service order floated behind line USOC associated with the TNS for that LNUM. If BLOCK contains B, validate FID TBE B is present on the service order floated behind line USOC associated with the TNS for that LNUM. If BLOCK contains C, validate FID TBE C is present on the service order floated behind line USOC associated with the TNS for that LNUM. If BLOCK contains H, validate FID BLKD is present on the service order floated behind line USOC associated with the TNS for that LNUM.

Phase 4 – Date TBD			
LSR-Service Order Fields Evaluated			
Mechanized comparison of the fields from the Service Order to the LSR:			
Form	**LSR Field Code**	**LSR Field Name**	**Remarks/Service Order Field:**
LSR	DFDT	Desired Frame Due Time	Applicable only to orders for Resale and UNE-P (POTS and Centrex 21) DFDT field on the LSR form compared to the FDT field in the Extended ID section of the Service Order.
	DDD	Desired Due Date	DDD field from the last FOC'd LSR compared to the original or last subsequent due date in the Extended ID section on the Service Order when no CFLAG/PIA is present on the FOC. (i.e. Evaluation includes recognition of valid differences between DDD and Service Order based on population of the CFLAG/PIA field on the LSRC (FOC))
DL – Directory Listings form (Evaluated only for Local Main Listings)	LTN	Listed Telephone Number	For Resale and UNE-P (POTS and Centrex 21): LTN field on the Listing form compared to the Main Account Number of the Service Order. For Unbundled Loop: LTN field on the Listing form compared to the TN floated after the LN in the Listing section of the Service Order.
	LNPL	Letter Name Placement	LNPL field on the Listing form = L, validate that LN on the Service Order follows letter placement versus word placement.
Resale or Centrex	FEATURE DETAILS	Feature Details	If CLECs propose additional FIDs for review, Qwest will undertake a feasibility evaluation.
	BLOCK (Stage 2)	Blocking Type	If CLECs identify value in additional Blocking review, Qwest will undertake development. [Requirements to be developed]

Ordering and Provisioning

OP-2 – Calls Answered within Twenty Seconds – Interconnect Provisioning Center

Purpose: Evaluates the timeliness of CLEC access to Qwest's interconnection provisioning center(s) and retail customer access to the Business Office, focusing on the extent calls are answered within 20 seconds.	
Description: Measures the percentage of (Interconnection Provisioning Center or Retail Business Office) calls that are answered by an agent within 20 seconds of the first ring. • Includes all calls to the Interconnect Provisioning Center/Retail Business Office during the reporting period, subject to exclusions specified below. • Abandoned calls and busy calls are counted as calls which are not answered within 20 seconds. • First ring is defined as when the customer's call is first placed in queue by the ACD (Automatic Call Distributor). • Answer is defined as when the call is first picked up by the Qwest agent.	
Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate and Qwest Retail results	**Disaggregation Reporting:** Region-wide level.
Formula: [(Total Calls Answered by Center within 20 seconds) ÷ (Total Calls received by Center)] x 100	
Exclusions: Time spent in the VRU Voice Response Unit is not counted.	
Product Reporting: Not applicable	**Standard:** Parity
Availability: Available	**Notes:**

OP-3 – 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. 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 Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be reported according to orders involving: OP-3A Dispatches within MSAs; OP-3B Dispatches outside MSAs; and OP-3C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to installations: OP-3D In Interval Zone 1 areas; and OP-3E In 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 PID.

OP – 3 Installation Commitments Met (continued)

Product Reporting:	Standards:
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
DS0 (non-designed provisioning)	Parity with retail service
PBX Trunks (non-designed provisioning)	Parity with retail service
Primary ISDN (non-designed provisioning)	Parity with retail service
Basic ISDN (non-designed provisioning)	Parity with retail service
Qwest DSL (non-designed provisioning)	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	95%
• Loop Splitting [NOTE 1]	Diagnostic
• Line Sharing	95%
• Sub-Loop Unbundling	**CO:** 90% **All Other States:** Diagnostic
Zone-Type Disaggregation -	
• Resale	
Primary ISDN (designed provisioning)	Parity with retail service
Basic ISDN (designed provisioning)	Parity with retail service
DS0 (designed provisioning)	Parity with retail service
DS1	Parity with retail service
PBX Trunks (designed provisioning)	Parity with retail service
Qwest DSL (designed provisioning)	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with retail DS1 Private Line
UDIT – Above DS1 level	Parity with retail Private Lines above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	90%
Non-loaded Loop (2-wire)	90%
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	Parity with retail DS1 Private Line
xDSL-I capable Loop	90%
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	90%
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate Private Line services (aggregate)
Dark Fiber – Loop	Diagnostic
Loops with Conditioning	90%
• E911/911 Trunks	Parity with retail E911/911 Trunks

OP – 3 Installation Commitments Met (continued)

• Enhanced Extended Loops (EELs) – (DS0 level)	**WA:** 90% **All Other States:** Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	90%
• Enhanced Extended Loops (EELs) – (DS3 level)	**WA:** 90% **All Other States:** Diagnostic
Availability: Available	**Notes:** 1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

OP-4 – Installation Interval

Purpose:
Evaluates the timeliness of Qwest's installation of services for customers, focusing on the average time to install service.

Description:
Measures the average interval (in business days)[NOTE 1] 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 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.[NOTE 2]
- Time intervals associated with customer-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 customer-initiated due date, if any.[NOTE 2]

Reporting Period: One month	**Unit of Measure**: Average Business Days

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be reported according to orders involving: OP-4A Dispatches within MSAs; OP-4B Dispatches outside MSAs; and OP-4C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to installations: OP-4D In Interval Zone 1 areas; and OP-4E In 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 customer-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)[NOTE 1] by total number of service orders completed in the reporting period.

Exclusions:

- Orders with customer 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 PID.

OP-4 – Installation Interval (continued)

Product Reporting:	Standards:
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
DS0 (non-designed provisioning)	Parity with retail service
PBX Trunks (non-designed provisioning)	Parity with retail service
Primary ISDN (non-designed provisioning)	Parity with retail service
Basic ISDN (non-designed provisioning)	Parity with retail service
Qwest DSL (non-designed provisioning)	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	3.3 days
• Loop Splitting [NOTE 3]	Diagnostic
• Line Sharing	3.3 days
• Sub-Loop Unbundling	**CO:** 6 days
	All Other States: Diagnostic
Zone-Type Disaggregation -	
• Resale	
Primary ISDN (designed provisioning)	Parity with retail service
Basic ISDN(designed provisioning)	Parity with retail service
DS0 (designed provisioning)	Parity with retail service
DS1	Parity with retail service
PBX Trunks (designed provisioning)	Parity with retail service
Qwest DSL (designed provisioning)	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with DS1 Private Line Service
UDIT – Above DS1 level	Parity with Private Lines above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	6 days
Non-loaded Loop (2-wire)	6 days
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	**Idaho, Iowa, Montana, Nebraska, North Dakota, Oregon, Wyoming:** Parity with retail DS1 Private Line **Arizona, Colorado, Minnesota, New Mexico, South Dakota, Utah, Washington:** 5.5 days
xDSL-I capable Loop	6 days
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	6 days
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate services (aggregate)

OP-4 – Installation Interval (continued)

Dark Fiber – Loop	Diagnostic
Loops with Conditioning	15 days
• E911/911 Trunks	Parity with retail E911/911 Trunks
• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	6 days
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic

Availability:

Available

Notes:

1. For OP-4C, Saturday is counted as a business day for all orders for Resale Residence, Resale Business, and UNE-P (POTS), as well as for the retail analogues specified above as standards. For all other products under OP-4C and for all products under OP-4A, -4B, -4D, and -4E. Saturday is counted as a business day when the service order is due or completed on Saturday.
2. According to this definition, the Applicable Due Date can change, per successive customer-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 customer-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 customer-initiated due date change or delay. The intervals thus calculated from each pairing of Qwest and customer-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 customer-initiated impacts on intervals are not counted in the reported interval.
3. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

OP-5 – New Service Quality

Purpose:
Evaluates the quality of ordering and installing new services (inward line service orders), focusing on the percentage of newly-installed service orders that are free of CLEC/customer-initiated trouble reports during the provisioning process and within 30 calendar days following installation completion, and focusing on the quality of Qwest's resolution of such conditions with respect to multiple reports.

Description:
Measures two components of new service provisioning quality (OP-5A and -5B) and also reports a combined result (OP-5T), as described below, each as a percentage of all inward line service orders completed in the reporting period that are free of CLEC/customer-reported provisioning and repair trouble reports, as described below. Also measures the percentage of all provisioning and repair trouble reports that constitute multiple trouble reports for the affected service orders. (OP-5R)

- Orders for new services considered in calculating all components of this performance indicator are all inward line service orders completed in the reporting period, including Change (C-type) orders for additional lines/circuits, subject to exclusions shown below. Change order types considered in these measurements consist of all C orders representing inward activity.[NOTE 1]
- Orders for new service installations include conversions (Retail to CLEC, CLEC to CLEC, and same CLEC converting between products).
- Provisioning or repair trouble reports include both out of service and other service affecting conditions, such as features on a line that are missing or do not function properly upon conversion, subject to exclusions shown below.

OP-5A: New Service Installation Quality Reported to Repair

- Measures the percentage of inward line service orders that are free of repair trouble reports [NOTE 2] within 30 calendar days of installation completion, subject to exclusions below.
- Repair trouble reports are defined as CLEC/customer notifications to Qwest of out-of-service and other service affecting conditions for which Qwest opens repair tickets in its maintenance and repair management and tracking systems [NOTE 3] that are closed in the reporting period or the following month, [NOTE 4] subject to exclusions shown below. [NOTE 5]
- Qwest is able to open repair tickets for repair trouble reports received from CLECs/customers once the service order is completed in Qwest's systems.

OP-5B: New Service Provisioning Quality

- Measures the percentage of inward line service orders that are free of provisioning trouble reports during the provisioning process and within 30 calendar days of installation completion, subject to exclusions shown below.
- Provisioning trouble reports are defined as CLEC notifications to Qwest of out of service or other service affecting conditions that are attributable to provisioning activities, including but not limited to LSR/service order mismatches and conversion outages. For provisioning trouble reports, Qwest creates call center tickets in its call center database. Subject to exclusions shown below, call center tickets closed in the reporting period or the following month [NOTE 4] are captured in this measurement. Call center tickets closed to Network reasons will not be counted in OP-5B when a repair trouble report for that order is captured in OP-5A. [NOTE 5, 6]

OP-5T: New Service Installation Quality Total

- Measures the percentage of inward line service orders that are free of repair or provisioning trouble reports during the provisioning process and within 30 calendar days of installation completion, subject to exclusion shown below.

OP-5R: New Service Quality Multiple Report Rate

- Evaluates the quality of Qwest's responses to repair and provisioning trouble reports for inward line service orders completed in the reporting period. This measurement reports, for those service orders that were *not* free of repair or provisioning trouble reports in OP-5A or OP-5B, the percentage of trouble reports affecting the same service orders that were followed by additional repair and provisioning trouble reports, as specified below.
- Measures the percentage of all repair and provisioning trouble reports considered in OP-5A and OP-5B that are additional repair or provisioning trouble reports received by Qwest for the same service order during the provisioning process or within 30 calendar days following installation

OP- 5 – New Service Quality (continued)

completion.

- Additional repair or provisioning trouble reports are defined as all such reports that are received following the first report (whether the first report is represented by a call center ticket or a repair ticket) relating to the same service order during the provisioning process or within 30 calendar days following installation completion. In all cases, the trouble reports counted are those that are defined for OP-5A and OP-5B above. [NOTE 7]

Reporting Period: One month, reported in arrears (i.e., results first appear in reports one month later than results for measurements that are not reported in arrears), in order to cover the 30-day period following installation.	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level

Formulas:

OP-5A = (Number inward line service orders completed in the reporting period – Number of inward line service orders with any repair trouble reports as specified above) ÷ (Number of inward line service orders completed in the reporting period) x 100

OP-5B = (Number of inward line service orders completed in the reporting period – Number of inward line service orders with any provisioning trouble reports as specified above) ÷ (Number of inward line service orders completed in the reporting period) x 100

OP-5T = ([Number of inward line service orders completed in the reporting period] – Number of inward line service orders with repair or provisioning trouble reports as defined above under OP-5A or OP-5B, as applicable) ÷ (Number of inward line service orders completed in the reporting period) x 100

OP-5R = (Number of all repair and provisioning trouble reports, relating to inward line service orders closed in the reporting period as defined above under OP-5A or OP-5B, that constitute additional repair and provisioning trouble reports, within 30 calendar days following the installation date ÷ Number of all repair and provisioning trouble reports relating to inward line service orders closed In the reporting period, as defined above under OP-5A or OP-5B) x 100

Exclusions:

Applicable to OP-5A, OP-5T and OP-5R:

- Repair trouble reports attributable to CLEC or coded to non-Qwest reasons as follows:
  - For products measured from MTAS data, repair trouble reports coded to disposition codes for:
    - Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider); and Reports from other than the CLEC/customer that result in a charge if dispatched.
  - For products measured from WFA (Workforce Administration) data, repair reports coded to codes for:
    - Carrier Action (IEC); Customer Provided Equipment (CPE); Commercial power failure; Customer requested service order activity; and Other non-Qwest.
  - Repair reports coded to disposition codes for referral to another department (i.e., for non-repair ticket resolutions of non-installation-related problems, except cable cuts, which are not excluded).

Applicable to OP-5B, OP-5T and OP-5R only:

- Provisioning trouble reports attributable to CLEC or non-Qwest causes.
- Call center tickets relating to activities that occur as part of the normal process of conversion (i.e., while Qwest is actively and properly engaged in process of converting or installing the service). Provisioning trouble reports involving service orders that, at the time of the calls, have fallen out for manual handling and been disassociated from the related service order, as applicable, will be considered as not in the normal process of conversion and will not be excluded.

Applicable to OP-5A, OP-5B, OP-5T and OP-5R:

- Repair or provisioning trouble reports related to service orders captured as misses under measurements OP-13 (Coordinated Cuts Timeliness) or OP-17 (LNP Timeliness).
- Subsequent repair or provisioning trouble reports of any trouble on the installed service before the original repair or provisioning trouble report is closed.
- Service orders closed in the reporting period with App Dates earlier than eight months prior to the

OP- 5 – New Service Quality (continued)

<table>
<tr><td colspan="2">beginning of the reporting period.
• Information tickets generated for internal Qwest system/network monitoring purposes.
• Disconnect, From (another form of disconnect) and Record order types. When out of service or service affecting problems are reported to the call center on conversion and move requests, the resulting call center ticket will be included in the calculation of the numerator in association with the related inward order type even when the call center ticket reflects the problem was caused by the Disconnect or From order.
• Records involving official Qwest company services.
Records missing data essential to the calculation of the measurement as defined herein.</td></tr>
<tr><td>Product Reporting Categories:
• As specified below – one percentage result reported for each bulleted category under the sub-measurements shown.</td><td>Standards:
OP-5A: Parity with retail service
OP-5B: Diagnostic for six months following first reporting. After six months Benchmark (TBD)
OP-5T: Diagnostic
OP-5R: Diagnostic for six months following first reporting. Possible standard (TBD)
(Where parity comparisons involve multiple service varieties in a product category, weighting based on the retail analogue volumes may be used if necessary to create a comparison that is not affected by different proportions of wholesale and retail analogue volumes in the same reporting category.)</td></tr>
</table>

OP- 5 – New Service Quality (continued)

Product Reporting:	Standards:		
Reported under OP-5A, OP-5B, OP-5T and OP-5R: (Product categories may be combined as agreed upon by the parties in Long-Term PID Administration.)			
	OP-5A	**OP-5B**	**OP-5T & OP-5R**
Resale			
Residential single line service	Parity with retail service	96.5%	Diagnostic
Business single line service	Parity with retail service	96.5%	Diagnostic
Centrex	Parity with retail service	96.5%	Diagnostic
Centrex 21	Parity with retail service	96.5%	Diagnostic
PBX Trunks	Parity with retail service	96.5%	Diagnostic
Basic ISDN	Parity with retail service	96.5%	Diagnostic
Qwest DSL	Parity with retail service	96.5%	Diagnostic
Primary ISDN	Parity with retail service	96.5%	Diagnostic
DS0	Parity with retail service	96.5%	Diagnostic
DS1	Parity with retail service	96.5%	Diagnostic
DS3 and higher bit-rate services (aggregate)	Parity with retail service	96.5%	Diagnostic
Frame Relay	Parity with retail service	Diagnostic	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service	96.5%	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21	96.5%	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex	96.5%	Diagnostic
Line Splitting	Parity with retail Qwest DSL	96.5%	Diagnostic
Loop Splitting [NOTE 8]	Diagnostic	Diagnostic	Diagnostic
Line Sharing	Parity with retail RES & BUS POTS	96.5%	Diagnostic
Sub-Loop Unbundling	Diagnostic	Diagnostic	Diagnostic
Unbundled Loops:			
Analog Loop	Parity with retail Res & Bus POTS with dispatch	96.5%	Diagnostic
Non-loaded Loop (2-wire)	Parity with retail ISDN BRI	96.5%	Diagnostic
Non-loaded Loop (4-wire)	Parity with retail DS1	96.5%	Diagnostic
DS1-capable Loop	Parity with retail DS1	96.5%	Diagnostic
xDSL-I capable Loop	Parity with retail Qwest DSL	96.5%	Diagnostic
ISDN-capable Loop	Parity with retail ISDN BRI	96.5%	Diagnostic
ADSL-qualified Loop	Parity with retail Qwest DSL with dispatch	96.5%	Diagnostic
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate services (aggregate)	96.5%	Diagnostic
Dark Fiber - Loop	Diagnostic	Diagnostic	Diagnostic

OP- 5 – New Service Quality (continued)

• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic until volume criteria are met	96.5%	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	Parity with retail DS1 Private Line	96.5%	Diagnostic
• Enhanced Extended Loops (EELs) – (above DS1 level)	Diagnostic until volume criteria are met	96.5%	Diagnostic

Reported under OP-5A and under OP-5R (per OP-5A specifications):

	OP-5A	OP-5R
• LIS Trunks	Parity with Feature Group D (aggregate)	Diagnostic
Unbundled Dedicated Interoffice Transport (UDIT)		
UDIT (DS1 Level)	Parity with Retail Private Lines (DS1)	Diagnostic
UDIT (Above DS1 Level)	Parity with Retail Private Lines (Above DS1 level)	Diagnostic
Dark Fiber - IOF	Diagnostic	Diagnostic
• E911/911 Trunks	Parity with Retail E911/911 Trunks	Diagnostic

Availability:

Available

Notes:

1. The specified Change order types representing inward activity exclude Change orders that do not involve installation of lines (in both wholesale and retail results). Specifically this measurement does not include changes to existing lines, such as number changes and PIC changes.
2. Including consideration of repeat repair trouble reports (i.e., additional reports of trouble related to the same newly-installed line/circuit that are received after the preceding repair report is closed and within 30 days following installation completion) to complete the determination of whether the newly-installed line/circuit was trouble free within 30 days of installation.
3. Qwest's repair management and tracking systems consist of WFA (Work Force Administration), MTAS (Maintenance Tracking and Administration System), and successor repair systems, if any, as applicable to obtain the repair report data for this measurement. Not included are Call Center Database systems supporting call centers in logging calls from customers regarding problems or other inquiries (see OP-5B and OP-5T).
4. The "following month" includes also the period of a few business days (typically four or five) afterward, up to the time when Qwest pulls the repair data to begin processing results for this measurement.
5. Includes repair and provisioning trouble reports generated by new processes that supersede or supplement existing processes for submitting repair and provisioning trouble reports as specified in Qwest's documented or agreed upon procedures.
6. For purposes of calculating OP-5B, a call center ticket for multiple orders with provisioning trouble reports will result in all orders reporting trouble counting as a miss in OP-5B. If a repair trouble report(s) is received for the same orders, the number of orders counted as a miss in OP-5B for Network reasons will be reduced by the number of orders with repair troubles counted as a miss in OP-5A.
7. OP-5R will be counted on a per ticket basis.
8. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

OP-6 – Delayed Days

Purpose:
Evaluates the extent Qwest is late in installing services for customers, focusing on the average number of days that late orders are completed beyond the committed due date.

Description:
OP-6A – Measures the average number of business days [NOTE 1] that service is delayed beyond the Applicable Due Date for non-facility reasons attributed to Qwest.

- Includes all inward orders (Change, New, and Transfer order types) that are completed/closed during the reporting period, later, due to non-facility reasons, than the Applicable Due Date recorded by Qwest, subject to exclusions specified below.

OP-6B – Measures the average number of business days [NOTE 1] that service is delayed beyond the Applicable Due Date for facility reasons attributed to Qwest.

- Includes all inward orders (Change, New, and Transfer order types) that are completed/closed during the reporting period later due to facility reasons than the original due date recorded by Qwest, subject to exclusions specified below.

For both OP-6A and OP-6B:

- Change order types for additional lines consist of "C" orders representing inward activity.
- 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. [NOTE 2]
- Time intervals associated with customer-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 customer-initiated due date, if any. [NOTE 2]

Reporting Period: One month	**Unit of Measure:** Average Business Days

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for products/services listed under Product Reporting under "MSA-type Disaggregation" will be reported for OP-6A and OP-6B according to orders involving: 1. Dispatches within MSAs; 2. Dispatches outside MSAs; and 3. No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to installations: 4. In Interval Zone 1 areas; and 5. In Interval Zone 2 areas.

Formula:

OP-6A = ∑[(Actual Completion Date of late order for non-facility reasons) – (Applicable Due Date of late order) – (Time intervals associated with customer-initiated due date changes or delays occurring after the Applicable Due Date)] ÷ (Total Number of Late Orders for non-facility reasons completed in the reporting period)

OP-6B = ∑[(Actual Completion Date of late order for facility reasons) – (Applicable Due Date of late order)] – (Time intervals associated with customer-initiated due date changes or delays occurring after the Applicable Due Date) ÷ (Total Number of Late Orders for facility reasons completed in the reporting period)

OP- 6 – Delayed Days (continued)

Exclusions:

- Orders affected only by delays that are solely for customer and/or CLEC reasons.
- 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 PID.

Product Reporting:	**Standards:**
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
DS0 (non-designed provisioning)	Parity with retail service
PBX Trunks (non-designed provisioning)	Parity with retail service
Primary ISDN (non-designed provisioning)	Parity with retail service
Basic ISDN (non-designed provisioning)	Parity with retail service
Qwest DSL (non-designed provisioning)	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with retail Qwest DSL
• Loop Splitting NOTE 3	Diagnostic
• Line Sharing	Parity with retail Qwest DSL
• Sub-Loop Unbundling	Diagnostic
Zone-type Disaggregation -	
• Resale	
Primary ISDN (designed provisioning)	Parity with retail service
Basic ISDN (designed provisioning)	Parity with retail service
DS0 (designed provisioning)	Parity with retail service
DS1	Parity with retail service
PBX Trunks (designed provisioning)	Parity with retail service
Qwest DSL (designed provisioning)	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with retail DS1 Private Line- Service
UDIT – Above DS1 level	Parity with retail Private Line- Services above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	Parity with retail Res and Bus POTS with dispatch
Non-loaded Loop (2-wire)	Parity with retail ISDN BRI
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	Parity with retail DS1 Private Line
xDSL-I capable Loop	Parity with retail Qwest DSL, with dispatch
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	Parity with retail Qwest DSL, with dispatch

OP- 6 – Delayed Days (continued)

Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate Private Line services (aggregate)
Dark Fiber – Loop	Diagnostic
• E911/911 Trunks	Parity with retail E911/911 Trunks
• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	OP-6A: Parity with retail DS1 Private Line OP-6B: Diagnostic
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic

Availability:	**Notes:**
Available	1. For OP-6A-3 and OP-6B-3, Saturday is counted as a business day for all orders for Resale Residence, Resale Business, and UNE-P (POTS), as well as for the retail analogues specified above as standards. For all other products under OP-6A-3 and OP-6B-3, and for all products under OP-6A-1, -6A-2, -6A-4, -6A-5, -6B-1, -6B-2, -6B-4, and -6B-5, Saturday is counted as a business day when the service order is due or completed on Saturday. 2. According to this definition, the Applicable Due Date can change, per successive customer-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 customer-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 customer-initiated due date change or delay. The intervals thus calculated from each pairing of Qwest and customer-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 customer-initiated impacts on intervals are not counted in the reported interval. 3. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

OP-7 – Coordinated "Hot Cut" Interval – Unbundled Loop

Purpose:
Evaluates the duration of completing coordinated "hot cuts" of unbundled loops, focusing on the time actually involved in disconnecting the loop from the Qwest network and connecting/testing the loop.

Description:
Measures the average time to complete coordinated "hot cuts" for unbundled loops, based on intervals beginning with the "lift" time and ending with the completion time of Qwest's applicable tests for the loop.

- Includes all coordinated hot cuts of unbundled loops that are completed/closed during the reporting period, subject to exclusions specified below.
- "Hot cut" refers to moving the service of existing customers from Qwest's switch/frames to the CLEC's equipment, via unbundled loops, that will serve the customers.
- "Lift" time is defined as when Qwest disconnects the existing loop.
- "Completion time" is defined as when Qwest completes the applicable tests after connecting the loop to the CLEC.

Reporting Period: One month	**Unit of Measure:** Hours and Minutes
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level.

Formula:
$\sum$[Completion time – Lift time] ÷ (Total Number of unbundled loops with coordinated cutovers completed in the reporting period)

Exclusions:

- Time intervals associated with CLEC-caused delays.
- Records missing data essential to the calculation of the measurement per the PID.
- Invalid start/stop dates/times or invalid scheduled date/times.

Product Reporting: Coordinated Unbundled Loops – Reported separately for: • Analog Loops • All other Loop Types	**Standard:** **CO:** 1 hour **All Other States:** Diagnostic in light of OP-13 (Coordinated Cuts On Time)
Availability: Available	**Notes:**

OP-8 – Number Portability Timeliness

Purpose:
Evaluates the timeliness of cutovers of local number portability (LNP).

Description:

OP-8B – LNP Timeliness with Loop Coordination (percent): Measures the percentage of coordinated LNP triggers set prior to the scheduled start time for the loop.

- All orders for LNP coordinated with unbundled loops that are completed/closed during the reporting period are measured, subject to exclusions specified below.

OP-8C – LNP Timeliness without Loop Coordination (percent): Measures the percentage of LNP triggers set prior to the Frame Due Time or scheduled start time for the LNP cutover as applicable.

- All orders for LNP for which coordination with a loop was not requested that are completed/closed during the reporting period are measured (including standalone LNP coordinated with other than Qwest-provided Unbundled Loops and non-coordinated, standalone LNP), subject to exclusions specified below.

- For purposes of these measurements (OP-8B and -8C), "trigger" refers to the "10-digit unconditional trigger" or Line Side Attribute (LSA) that is set or translated by Qwest.
- "Scheduled start time" is defined as the confirmed appointment time (as stated on the FOC), or a newly negotiated time. In the case of LNP cutovers coordinated with loops, the scheduled time used in this measurement will be no later than the "lay" time for the loop.

Reporting Period: One month	**Unit of Measure:** Percent of triggers set on time
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level.

Formula:

OP-8B = [(Number of LNP triggers set before the scheduled time for the coordinated loop cutover) ÷ (Total Number of LNP activations coordinated with unbundled loops completed)] x 100

OP-8C = [(Number of LNP triggers set before the Frame Due Time or Scheduled Start Time) ÷ (Total Number of LNP activations without loop cutovers completed)] x 100

Exclusions:

- CLEC-caused delays in trigger setting.
- LNP requests that do not involve automatic triggers (e.g., DID lines without separate, unique telephone numbers and Centrex 21).
- LNP requests for which the records used as sources of data for these measurements have the following types of errors:
  - Records with no PON (purchase order number) or STATE.
  - Records where triggers cannot be set due to switch capabilities.
  - Records with invalid due dates, application dates, or start dates.
  - Records with invalid completion dates.
  - Records missing data essential to the calculation of the measurement per the PID.
  - Invalid start/stop dates/times or invalid frame due or scheduled date/times.

Product Reporting: None	**Standard:** 95%
Availability: Available	**Notes:**

OP-13 – Coordinated Cuts On Time – Unbundled Loop

Purpose:
Evaluates the percentage of coordinated cuts of unbundled loops that are completed on time, focusing on cuts completed within one hour of the committed order due time and the percent that were started without CLEC approval.

Description:

- Includes all LSRs for coordinated cuts of unbundled loops that are completed/closed during the reporting period, subject to exclusions specified below.
- OP-13A – Measures the percentage of LSRs (CLEC orders) for all coordinated cuts of unbundled loops that are started and completed on time. For coordinated loop cuts to be counted as "on time" in this measurement, the CLEC must agree to the start time, and Qwest must (1) receive verbal CLEC approval before starting the cut or lifting the loop, (2) complete the physical work and appropriate tests, (3) complete the Qwest portion of any associated LNP orders and (4) call the CLEC with completion information, all within one hour of the time interval defined by the committed order due time.
- OP-13B – Measures the percentage of all LSRs for coordinated cuts of unbundled loops that are actually started without CLEC approval.
- "Scheduled start time" is defined as the confirmed appointment time (as stated on the FOC), or a newly negotiated appointment time.
- The "committed order due time" is based on the number and type of loops involved in the cut and is calculated by adding the applicable time interval from the following list to the scheduled start time:
  - Analog unbundled loops:

1 to 16 lines:	1 Hour
17 to 24 lines:	2 Hours
25+ lines:	Project*

  - All other unbundled loops:

1 to 5 lines:	1 Hour
6 to 8 lines:	2 Hours
9 to 11 lines:	3 Hours
12 to 24 lines:	4 Hours
25+ lines:	Project*

  *For Projects scheduled due dates and scheduled start times will be negotiated between CLEC and Qwest, but no committed order due time is established. Therefore, projects are not included in OP-13A (see exclusion below).
- "Stop" time is defined as when Qwest notifies the CLEC that the Qwest physical work and the appropriate tests have been successfully accomplished, including the Qwest portion of any coordinated LNP orders.
- Time intervals following the scheduled start time or during the cutover process associated with customer-caused delays are subtracted from the actual cutover duration.
- Where Qwest's records of completed coordinated cut transactions are missing evidence of CLEC approval of the cutover, the cut will be counted as a miss under both OP-13A and OP-13B.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level. Results for this measurement will be reported according to: OP-13A Cuts Completed On Time OP-13B Cuts Started Without CLEC Approval

OP-13 – Coordinated Cuts On Time – Unbundled Loop (continued)

Formula:

OP-13A = [(Count of LSRs for Coordinated Unbundled Loop cuts completed "On Time") ÷ (Total Number of LSRs for Coordinated Unbundled Loop Cuts completed in the reporting period)] x 100

OP-13B = [(Count of LSRs for Coordinated Unbundled Loop cuts whose actual start time occurs without CLEC approval) ÷ (Total Number of LSRs for Coordinated Unbundled Loop Cuts completed in the reporting period)] x 100

Exclusions:

Applicable to OP-13A:

- Loop cuts that involve CLEC-requested non-standard methodologies, processes, or timelines.

OP-13A & OP-13B:

- Records with invalid completion dates.
- Records missing data essential to the calculation of the measurement per the PID which are not otherwise designated to be "counted as a miss".
- Invalid start/stop dates/times or invalid scheduled date/times.
- Projects involving 25 or more lines.

Product Reporting: Coordinated Unbundled Loops – Reported separately for:	**Standards:**
• Analog Loops • All Other Loops	**OP-13A**: **AZ:** 90 Percent or more **All Other States:** 95 Percent or more **OP-13B**: Diagnostic
Availability: Available	**Notes:**

OP-15 – Interval for Pending Orders Delayed Past Due Date

Purpose:
Evaluates the extent to which Qwest's pending orders are late, focusing on the average number of days the pending orders are delayed past the Applicable Due Date, as of the end of the reporting period.

Description:
OP-15A – Measures the average number of business days that pending orders are delayed beyond the Applicable Due Date for reasons attributed to Qwest.

- Includes all pending inward orders (Change, New, and Transfer order types) for which the Applicable Due Date recorded by Qwest has been missed, subject to exclusions specified below. Change order types included in this measurement consist of all "C" orders representing inward activity.
- 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. NOTE 1
- Time intervals associated with customer-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 customer-initiated due date, if any. NOTE 1

OP-15B – Reports the number of pending orders measured in the numerator of OP-15A that were delayed for Qwest facility reasons.

Reporting Period: One month	**Unit of Measure:** OP-15A – Average Business Days NOTE 2 OP-15B – Number of orders pending facilities
Reporting Comparisons: CLEC aggregate, individual CLEC, Qwest retail	**Disaggregation Reporting:** Statewide

Formula:

OP-15A = $\sum$[(Last Day of Reporting Period) – (Applicable Due Date of Late Pending Order) - (Time intervals associated with customer-initiated due date changes or delays occurring after the Applicable Due Date)] ÷ (Total Number of Pending Orders Delayed for Qwest reasons as of the last day of Reporting Period)

OP-15B = Count of pending orders measured in numerator of OP-15A that were delayed for Qwest facility reasons

Exclusions:

- 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 product codes.
- Records missing data essential to the calculation of the measurement per the PID.

OP-15 – Interval for Pending Orders Delayed Past Due Date (continued)

Product Reporting:	**Standards:** OP-15B = diagnostic only For OP-15A:
• Resale	
Residential single line service	Diagnostic (Expectation: Parity with retail service)
Business single line service	Diagnostic (Expectation: Parity with retail service)
Centrex	Diagnostic (Expectation: Parity with retail service)
Centex 21	Diagnostic (Expectation: Parity with retail service)
PBX Trunk	Diagnostic (Expectation: Parity with retail service)
Basic ISDN	Diagnostic (Expectation: Parity with retail service
Qwest DSL	Diagnostic (Expectation: Parity with retail service)
Primary ISDN	Diagnostic (Expectation: Parity with retail service)
DS0	Diagnostic (Expectation: Parity with retail service)
DS1	Diagnostic (Expectation: Parity with retail service)
DS3 and higher bit-rate services (aggregate)	Diagnostic (Expectation: Parity with retail service)
Frame Relay	Diagnostic (Expectation: Parity with retail service)
• Unbundled Network Element – Platform (UNE-P) (POTS)	Diagnostic (Expectation: Parity with retail service)
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Diagnostic (Expectation: Parity with retail Centrex 21)
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Diagnostic (Expectation: Parity with retail Centrex)
• Line Splitting	Diagnostic (Expectation: Parity with retail Qwest DSL)
• Loop Splitting [NOTE 3]	Diagnostic
• Line Sharing	Diagnostic (Expectation: Parity with retail Qwest DSL)
• Sub-Loop Unbundling	Diagnostic
• LIS Trunks	Diagnostic (Expectation: Parity with Feature Group D (aggregate)) (separately reported)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Diagnostic (Expectation: Parity with DS1 Private Line- Service)
UDIT – Above DS1 level	Diagnostic (Expectation: Parity with Private Line-Services above DS1 level)
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	Diagnostic (Expectation: Parity with retail Res and Bus POTS with dispatch)
Non-loaded Loop (2-wire)	Diagnostic (Expectation: Parity with retail ISDN BRI)
Non-loaded Loop (4-wire)	Diagnostic (Expectation: Parity with retail DS1)
DS1-capable Loop	Diagnostic (Expectation: Parity with retail DS1)
ISDN-capable Loop	Diagnostic (Expectation: Parity with ISDN-BRI)
ADSL-qualified Loop	Diagnostic (Expectation: Parity with retail Qwest DSL with dispatch)
Loop types of DS3 or higher bit rate (aggregate)	Diagnostic (Expectation: Parity with retail DS3 and higher bit-rate services (aggregate)
Dark Fiber – Loop	Diagnostic
• E911/911 Trunks	Diagnostic (Expectation: Parity with retail E911/911 Trunks)
• Enhanced Extended Loops (EELs)	Diagnostic

OP-15 – Interval for Pending Orders Delayed Past Due Date (continued)

Availability:	**Notes:**
Available	1. According to this definition, the Applicable Due Date can change, per successive customer-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 customer-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 customer-initiated due date change or delay. The intervals thus calculated from each pairing of Qwest and customer-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 customer-initiated impacts on intervals are not counted in the reported interval. 2. For OP-15A, Saturday is counted as a business day for all non-dispatched orders for Resale Residence, Resale Business, and UNE-P (POTS), as well as for non-dispatched orders in the retail analogues specified above as standards. For all other non-dispatched products and for all dispatched products under OP-15A, Saturday is not counted as a business day. 3. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

OP-17 – Timeliness of Disconnects associated with LNP Orders

Purpose:
Evaluates the quality of Qwest completing LNP telephone number porting, focusing on the degree to which porting occurs without implementing associated disconnects before the scheduled time/date.

Description:

OP-17A

- Measures the percentage of all LNP telephone numbers (TNs), both stand alone and associated with loops, that are ported without the incidence of disconnects being made by Qwest before the scheduled time/date, as identified by associated qualifying trouble reports.
  - Focuses on disconnects associated with timely CLEC requests for delaying the disconnects or no requests for delays.
  - The scheduled time/date is defined as 11:59 p.m. on (1) the due date of the LNP order recorded by Qwest or (2) the delayed disconnect date requested by the CLEC, where the CLEC submits a timely request for delay of disconnection.
  - A CLEC request for delay of disconnection is considered timely if received by Qwest before 8:00 p.m. MT on the current due date of the LNP order recorded by Qwest.

OP-17B

- Measures the percentage of all LNP telephone numbers (TNs), both stand alone and associated with loops, that are ported without the incidence of disconnects being made by Qwest before the scheduled time/date, as identified by associated qualifying trouble reports.
  - Includes only disconnects associated with untimely CLEC requests for delaying the disconnects.
  - A CLEC request for delay of disconnection is considered "untimely" if received by Qwest after 8:00 p.m. MT on the current due date of the LNP order recorded by Qwest and before 12:00 p.m. MT (noon) on the day after the current due date.
- Disconnects are defined as the removal of switch translations, including the 10-digit trigger.
- Disconnects that are implemented early, and thus counted as a "miss" under this measurement, are those that the CLEC identifies as such to Qwest via trouble reports, within four calendar days of the actual disconnect date, that are confirmed to be caused by disconnects being made before the scheduled time.
- Includes all CLEC orders for LNP TNs completed in the reporting period, subject to exclusions specified below.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC Aggregate and Individual CLEC	**Disaggregation Reporting:** Statewide

Formula:
[(Total number of LNP TNs ported pursuant to orders completed in the reporting period – Number of TNs with qualifying trouble reports notifying Qwest that disconnection before the scheduled time has occurred) ÷ Total Number of LNP TNs ported pursuant to orders completed in the reporting period] x 100

OP-17 – Timeliness of Disconnects associated with LNP Orders (continued)

Exclusions:

OP-17A only

- Trouble reports notifying Qwest of early disconnects associated with situations for which the CLEC has failed to submit timely requests to have disconnects held for later implementation.

OP-17A & B

- Trouble reports not related to valid requests (LSRs) for LNP and associated disconnects.
- LNP requests that do not involve automatic triggers (e.g., DID lines without separate, unique TNs, and Centrex 21).
- Records with invalid trouble receipt dates.
- Records with invalid cleared, closed or due dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the PID.

OP-17B only

- Trouble reports notifying Qwest of early disconnects associated with situations for which the CLEC did not submit its untimely requests by 12:00 p.m. MT (noon) on the day after the LNP due date to have disconnects held for later implementation.

Product Reporting: LNP	**Standards:** OP-17A – 98.25% OP-17B – Diagnostic only, in light of its measuring only requests for delay of disconnect that are defined as untimely.
Availability: Available	**Notes:**

Maintenance and Repair

MR-2 – Calls Answered within 20 Seconds – Interconnect Repair Center

Purpose: Evaluates Customer access to Qwest's Interconnection and/or Retail Repair Center(s), focusing on the number of calls answered within 20 seconds.	
Description: Measures the percentage of Interconnection and/or Retail Repair Center calls answered within 20 seconds of the first ring. • Includes all calls to the Interconnect Repair Center during the reporting period, subject to exclusions specified below. • First ring is defined as when the customer's call is first placed in queue by the ACD (Automatic Call Distributor). • Answer is defined as when the call is first picked up by the Qwest agent. • Abandoned calls and busy calls are counted as calls which are not answered within 20 seconds.	
Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate and Qwest Retail levels.	**Disaggregation Reporting:** Region-wide level.
Formula: [(Total Calls Answered by Center within 20 seconds) ÷ (Total Calls received by Center)] x 100	
Exclusions: Time spent in the VRU (Voice Response Unit) is not counted.	
Product Reporting: None	**Standard**: Parity
Availability: Available	**Notes:**

MR-3 – 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 that Qwest is first notified of the trouble by CLEC to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Percent

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be disaggregated and reported according to trouble reports involving: MR-3A Dispatches within MSAs; MR-3B Dispatches outside MSAs; and MR-3C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to trouble reports involving: MR-3D In Interval Zone 1 areas; and MR-3E In 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; 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 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 PID.

MR-3 – Out of Service Cleared within 24 Hours (Continued)

Product Reporting:	**Standards:**
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
PBX Trunks	Parity with retail service
Basic ISDN	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with appropriate retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with retail Qwest DSL
• Loop Splitting NOTE 1	Diagnostic
• Line Sharing	**CO:** Parity with Qwest DSL
	All Other States: Parity with RES and BUS POTS
• Sub-Loop Unbundling	**CO:** Parity with retail ISDN-BRI
	All Other States: Diagnostic
Zone-type Disaggregation -	
• Resale	
Qwest DSL	Parity with retail service
• Unbundled Loops	
Analog Loop	Parity with retail Res and Bus POTS
Non-loaded Loop (2 wire)	Parity with retail ISDN-BRI
xDSL-I capable Loop	Parity with retail Qwest IDSL
ISDN-capable Loop	Parity with ISDN-BRI
ADSL-qualified Loop	Parity with retail Qwest DSL
Availability: Available	**Notes:** 1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

MR-4 – All Troubles Cleared within 48 hours

Purpose:
Evaluates timeliness of repair for specified services, focusing on trouble reports of all types (both out of service and service affecting) and on the number of such trouble reports cleared within the standard estimate for specified services (i.e., 48 hours for service-affecting conditions).

Description:
Measures the percentage of trouble reports, for specified services, that are cleared within 48 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, subject to exclusions specified below.
- Time measured is from date and time that Qwest is first notified of the trouble by CLEC to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Percent

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be disaggregated and reported according to trouble reports involving: MR-4A Dispatches within MSAs; MR-4B Dispatches outside MSAs; and MR-4C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to trouble reports involving: MR-4D In Interval Zone 1 areas; and MR-4E In Interval Zone 2 areas

Formula:
[(Total Trouble Reports closed in the reporting period that are cleared within 48 hours) ÷ (Total 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; 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 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 PID.

MR-4 – All Troubles Cleared within 48 Hours (Continued)

Product Reporting:	**Standards:**
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
PBX Trunks	Parity with retail service
Basic ISDN	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with appropriate retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with retail Qwest DSL
• Loop Splitting NOTE 1	Diagnostic
• Line Sharing	Parity with RES and BUS POTS
• Sub-Loop Unbundling	Diagnostic
Zone-Type Disaggregation -	
• Resale	
Qwest DSL	Parity with retail service
• Unbundled Loops:	
Analog Loop	Parity with retail Res and Bus POTS
Non-loaded Loop (2 wire)	Parity with retail ISDN-BRI
xDSL-I capable Loop	Parity with retail Qwest IDSL
ISDN-capable Loop	Parity with retail ISDN-BRI
ADSL-qualified Loop	Parity with retail Qwest DSL
Availability: Available	**Notes:** 1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

MR-5 – All Troubles Cleared within 4 hours

Purpose:
Evaluates timeliness of repair for specified services, focusing on all trouble reports of all types (including out of service and service affecting troubles) and on the number of such trouble reports cleared within the standard estimate for specified services (i.e., 4 hours).

Description:
Measures the percentage of trouble reports for specified services that are cleared within 4 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, subject to exclusions specified below.
- Time measured is from date and time that Qwest is first notified of the trouble by CLEC to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure**: Percent
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. Results for listed products will be disaggregated according to trouble reports: MR-5A In Interval Zone 1 areas; and MR-5B In Interval Zone 2 areas.

Formula:
[(Number of Trouble Reports closed in the reporting period that are cleared within 4 hours) ÷ (Total Trouble Reports closed in the reporting period)] x 100

Exclusions:

- Trouble reports coded as follows:
  - For products measured using WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for 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.
- 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 PID.

MR-5 – All Troubles Cleared within 4 hours (continued)

Product Reporting:	**Standards:**
Zone-Type Disaggregation -	
• Resale	
Primary ISDN	Parity with retail service
DS0	Parity with retail service
DS1	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with DS1 Private Line Service
UDIT – Above DS1 level	Parity with Private Line Services above DS1 level
• Unbundled Loops:	
Non-loaded Loop (4-wire)	Parity with retail DS1
DS1-capable Loop	Parity with retail DS1
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate services (aggregate)
• E911/911 Trunks	Parity with retail E911/911 Trunks
• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	Parity with retail DS1 Private Line
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic
Availability: Available	**Notes:**

MR-6 – Mean Time to Restore

Purpose:
Evaluates timeliness of repair, focusing how long it takes to restore services to proper operation.

Description:
Measures the time actually 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 that Qwest is first notified of the trouble by CLEC to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Hours and Minutes

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be reported according to trouble reports involving: MR-6A Dispatches within MSAs; MR-6B Dispatches outside MSAs; and MR-6C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to trouble reports involving: MR-6D In Interval Zone 1 areas; and MR-6E In 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; 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 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 PID.

MR-6 – Mean Time to Restore (Continued)

Product Reporting:	Standards:
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
PBX Trunks	Parity with retail service
Basic ISDN	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with retail Qwest DSL
• Loop Splitting NOTE 1	Diagnostic
• Line Sharing	**CO:** Parity with Qwest DSL
	All Other States: Parity with RES and BUS POTS
• Sub-Loop Unbundling	**CO:** Parity with retail ISDN-BRI
	All Other States: Diagnostic
Zone-Type Disaggregation -	
• Resale	
Qwest DSL	Parity with retail service
Primary ISDN	Parity with retail service
DS0	Parity with retail service
DS1	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with retail DS1 Private Line
UDIT – Above DS1 level	Parity with retail Private Lines above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	Parity with retail Res and Bus POTS
Non-loaded Loop (2-wire)	Parity with retail ISDN BRI
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	Parity with retail DS1 Private Line
xDSL-I capable Loop	Parity with retail Qwest IDSL
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	Parity with retail Qwest DSL
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate Private Line services (aggregate)
Dark Fiber – Loop	Diagnostic
• E911/911 Trunks	Parity with retail E911/911 Trunks
• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	Parity with retail DS1 Private Line
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic

MR-6 – Mean Time to Restore (Continued)

Availability:	Notes:
Available	1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

MR-7 – Repair Repeat Report Rate

Purpose:
Evaluates the accuracy of repair actions, focusing on the number of repeated trouble reports received for the same line/circuit within a specified period (30 calendar days).

Description:
Measures the percentage of trouble reports that are repeated within 30 days on end user lines and circuits.

- Includes all trouble reports closed during the reporting period that have a repeated trouble report received within thirty (30) days of the initial trouble report for the same service (regardless of whether the report is about the same type of trouble for that service), subject to exclusions specified below.
- In determining same service Qwest will compare the end user telephone number or circuit access code of the initial trouble reports closed during the reporting period with reports received within 30 days of when the initial trouble report closed.
- Includes reports due to Qwest network or system causes, customer-direct and customer-relayed reports.
- The 30-day period applied in the numerator of the formula below is from the date and time that the initial trouble report is closed to the date and time that the next, or "repeat" trouble report is received (i.e., opened).

Reporting Period: One month, reported in arrears (i.e., results first appear in reports one month later than results for measurements that are not reported in arrears), in order to cover the 30-day period following the initial trouble report.	**Unit of Measure:** Percent

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. • Results for product/services listed in Product Reporting under "MSA-Type Disaggregation" will be reported according to trouble reports involving: MR-7A Dispatches within MSAs; MR-7B Dispatches outside MSAs; and MR-7C No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be disaggregated according to trouble reports involving: MR-7D In Interval Zone 1 areas; and MR-7E In Interval Zone 2 areas.

Formula:
[(Total trouble reports closed within the reporting period that had a repeated trouble report received within 30 calendar days of when the initial trouble report closed) ÷ (Total number of 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; 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 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.
- 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.

MR-7 – Repair Repeat Report Rate (Continued)

• Records with invalid cleared or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the PID.	
Product Reporting:	**Standards:**
MSA-Type Disaggregation -	
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
PBX Trunks	Parity with retail service
Basic ISDN	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with Qwest Retail DSL
• Loop Splitting [NOTE 1]	Diagnostic
• Line Sharing	**AZ & CO:** Parity with Qwest Retail DSL
	All Other States: Diagnostic Comparison with Qwest Retail DSL
• Sub-Loop Unbundling	**CO:** Parity with Retail ISDN-BRI
	All Other States: Diagnostic
Zone-Type Disaggregation -	
• Resale	
Qwest DSL	Parity with retail service
Primary ISDN	Parity with retail service
DS0	Parity with retail service
DS1	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with retail DS1 Private Line
UDIT – Above DS1 level	Parity with retail Private Lines above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	Parity with retail Res and Bus POTS
Non-loaded Loop (2-wire)	Parity with retail ISDN BRI
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	Parity with retail DS1 Private Line
xDSL-I capable Loop	Parity with retail Qwest IDSL
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	Parity with retail Qwest DSL
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate Private Line services (aggregate)
Dark Fiber – Loop	Diagnostic
• E911/911 Trunks	Parity with retail E911/911 Trunks

MR-7 – Repair Repeat Report Rate (Continued)

• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	Parity with retail DS1 Private Line
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic
Availability: Targeted availability with July 2004 results reported in September 2004	**Notes:** 1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

MR-8 – 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 Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting**: Statewide 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, trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
  - For products measured from WFA data trouble reports coded to trouble codes for 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.
- 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 PID.

MR-8 – Trouble Rate (continued)

Product Reporting:	Standards:
• Resale	
Residential single line service	Parity with retail service
Business single line service	Parity with retail service
Centrex	Parity with retail service
Centrex 21	Parity with retail service
PBX Trunks	Parity with retail service
Basic ISDN	Parity with retail service
Qwest DSL	Parity with Qwest DSL service
Primary ISDN	Parity with retail service
DS0	Parity with retail service
DS1	Parity with retail service
DS3 and higher bit-rate services (aggregate)	Parity with retail service
Frame Relay	Parity with retail service
• Unbundled Network Element – Platform (UNE-P) (POTS)	Parity with like retail service
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Parity with retail Centrex 21
• Unbundled Network Element – Platform(UNE-P) (Centrex)	Parity with retail Centrex
• Line Splitting	Parity with retail Qwest DSL
• Loop Splitting [NOTE 1]	Diagnostic
• Line Sharing	**CO:** Parity with Qwest DSL
	All Other States: Parity with RES and BUS POTS
• Sub-Loop Unbundling	**CO:** Parity with retail ISDN-BRI
	All Other States: Diagnostic
• LIS Trunks	Parity with Feature Group D (aggregate)
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Parity with retail DS1 Private Line Service
UDIT – Above DS1 level	Parity with retail Private Lines above DS1 level
Dark Fiber – IOF	Diagnostic
• Unbundled Loops:	
Analog Loop	Parity with retail Res and Bus POTS
Non-loaded Loop (2-wire)	Parity with retail ISDN BRI
Non-loaded Loop (4-wire)	Parity with retail DS1 Private Line
DS1-capable Loop	Parity with retail DS1 Private Line
xDSL-I capable Loop	Parity with retail Qwest IDSL
ISDN-capable Loop	Parity with retail ISDN BRI
ADSL-qualified Loop	Parity with retail Qwest DSL
Loop types of DS3 and higher bit-rates (aggregate)	Parity with retail DS3 and higher bit-rate services (aggregate)
Dark Fiber – Loop	Diagnostic
• E911/911 Trunks	Parity with retail E911/911 Trunks
• Enhanced Extended Loops (EELs) – (DS0 level)	Diagnostic
• Enhanced Extended Loops (EELs) – (DS1 level)	Parity with retail DS1 Private Line
• Enhanced Extended Loops (EELs) – (DS3 level)	Diagnostic

MR-8 – Trouble Rate (continued)

Availability:	**Notes:**
Available	1. Reporting will begin at the time CLECs order the product, in any quantity, for three consecutive months.

MR-9 – Repair Appointments Met

Purpose:
Evaluates the extent to which Qwest repairs services for Customers by the appointment date and time.

Description:
Measures the percentage of trouble reports for which the appointment date and time is met.

- Includes all trouble reports closed during the reporting period, subject to exclusions specified below.
- Time measured is from date and time that Qwest is first notified of the trouble by CLEC to date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Percent

Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level. Results for listed services will be disaggregated and reported according to trouble reports involving: MR-9A Dispatches within MSAs; MR-9B Dispatches outside MSAs; and MR-9C No dispatches.

Formula:
[(Total Trouble Reports Cleared by appointment date and time) ÷ (Total Trouble Reports Closed in the Reporting Period)] x 100

Exclusions:

- Trouble reports coded as follows:
  - For products measured from MTAS data, trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
- 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 by using the rescheduled appointment time to determine if the repair appointment is met.
- 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 PID.

Product Reporting:	**Standard:** Parity
Resale: Residential single line service Business single line service Centrex Centrex 21 PBX Trunks Basic ISDN Unbundled Elements – Platform (UNE-P) (POTS)	
Availability: Available	**Notes:**

MR-10 – Customer and Non-Qwest Related Trouble Reports

Purpose:
Evaluates the extent that trouble reports were customer related, and provides diagnostic information to help address potential issues that might be raised by the core maintenance and repair performance indicators.

Description:
Measures the percentage of all trouble reports that are attributed to the customer as a percentage of all trouble reports resolved during the reporting period, subject to exclusions specified below.
Includes trouble reports closed during the reporting period coded as follows:

- For products measured from MTAS data, trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant, Trouble Beyond the Network Interface; and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider) and trouble reports involving a "no access" delay for MSA type disaggregated products.
- For products measured from WFA (Workforce Administration) data trouble reports coded to trouble codes for Carrier Action (IEC) and Customer Provided Equipment (CPE).

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results	**Disaggregation Reporting:** Statewide level.

Formula:
[(Number of Trouble Reports coded to disposition codes specified above) ÷ (Total Number of Trouble Reports Closed in the Reporting Period)] x 100

Exclusions:

- Subsequent trouble reports of any trouble before the original trouble report is closed
- Information tickets generated for internal Qwest system/network monitoring purposes.
- 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 PID.
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.

MR-10 Customer and Non-Qwest Related Trouble Reports (continued)

Product Reporting:	Standards:
• Resale	
Residential single line service	Diagnostic
Business single line service	Diagnostic
Centrex	Diagnostic
Centrex 21	Diagnostic
PBX Trunks	Diagnostic
Basic ISDN	Diagnostic
Qwest DSL	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (POTS)	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (Centrex 21)	Diagnostic
• Unbundled Network Element – Platform (UNE-P) (Centrex)	Diagnostic
• Resale	
Primary ISDN	Diagnostic
DS0	Diagnostic
DS1	Diagnostic
DS3 and higher bit-rate services (aggregate)	Diagnostic
Frame Relay	Diagnostic
• LIS Trunks	Diagnostic
• Unbundled Dedicated Interoffice Transport (UDIT)	
UDIT – DS1 level	Diagnostic
UDIT – Above DS1 level	Diagnostic
• Unbundled Loops:	
Analog Loop	Diagnostic
Non-loaded Loop (2-wire)	Diagnostic
Non-loaded Loop (4-wire)	Diagnostic
DS1-capable Loop	Diagnostic
xDSL-I capable Loop	Diagnostic
ISDN-capable Loop	Diagnostic
ADSL-qualified Loop	Diagnostic
Loop types of DS3 and higher bit-rates (aggregate)	Diagnostic
• E911/911 Trunks	Diagnostic
Availability: Available	**Notes:**

MR-11 – LNP Trouble Reports Cleared within 24 Hours

Purpose:
Evaluates timeliness of clearing LNP trouble reports, focusing on the degree to which residence and business, disconnect-related, out-of-service trouble reports are cleared within four business hours and all LNP-related trouble reports are cleared within 48 hours.

Description:

MR-11A: Measures the percentage of specified LNP-only (i.e., not unbundled-loop), residence and business, out-of-service trouble reports that are cleared within four business hours of Qwest receiving these trouble reports from CLECs.

- Includes only trouble reports that are received on or before the currently-scheduled due date of the actual LNP-related disconnect time/date, or the next business day, that are confirmed to be caused by disconnects being made before the scheduled time, and that are closed during the reporting period, subject to exclusions specified below.

MR-11B: Measures the percentage of specified LNP-only trouble reports that are cleared within 48 hours of Qwest receiving these trouble reports from CLECs.

- Includes all LNP-only trouble reports, received within four calendar days of the actual LNP-related disconnect date and closed during the reporting period.

- The "currently-scheduled due date/time" is the original due date/time established by Qwest in response to CLEC/customer request for disconnection of service ported via LNP or, if CLEC submits to Qwest a timely or untimely request for delay of disconnection, it is the CLEC/customer-requested later date/time.
- A request for delay of disconnection is considered timely if received by Qwest before 8:00 p.m. MT on the due date that Qwest has on record at the time of the request.
- A request for delay of disconnection is considered untimely if received by Qwest after 8:00 p.m. MT on the due date and before 12:00 p.m. MT (noon) on the day after the due date
- Time measured is from the date and time Qwest receives the trouble report to the date and time trouble is cleared.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC Aggregate and Individual CLEC	**Disaggregation Reporting:** Statewide level (all are "non-dispatched").

Formula:

MR-11A = [(Number of specified out-of-service LNP-only Trouble Reports, for LNP-related troubles confirmed to be caused by disconnects, that Qwest executed before the currently-scheduled due date/time, that were closed in the reporting period and cleared within four business hours) ÷ (Total Number of specified out of service LNP-only Trouble Reports for LNP-related troubles confirmed to be caused by disconnects that Qwest executed before the currently-scheduled due date/time, that were closed in the reporting period)] x 100

MR-11B = [(Number of specified LNP-only Trouble Reports closed in the reporting period that were cleared within 48 hours) ÷ (Total Number of specified LNP-only Trouble Reports closed in the reporting period)] x 100

MR-11 – LNP Trouble Reports Cleared within 24 Hours (Continued)

<table>
<tr><td colspan="2">Exclusions:
• Trouble reports attributed to customer or non-Qwest reasons
• Trouble reports not related to valid requests (LSRs) for LNP and associated disconnects.
• Subsequent trouble reports of LNP trouble before the original trouble report is closed.
• For MR-11B only: Trouble reports involving a “no access” delay.
• Information tickets generated for internal Qwest system/network monitoring purposes.
• 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 PID.</td></tr>
<tr><td>Product Reporting: LNP</td><td>Standards:
<u>MR-11A</u>:
• If OP-17 result meets its standard, the MR-11A standard is Diagnostic.
• If OP-17 result does not meet its standard, the MR-11A standard is as follows:
– For 0-20 trouble reports*: No more than 1 ticket cleared in > four business hours
– For > 20 trouble reports*: The lesser of 95% or Parity with MR-3C results for Retail Residence and Business

<u>MR-11B</u>:
• For 0-20 trouble reports**: No more than 1 ticket cleared > 48 hours
• For > 20 trouble reports**: The lesser of 95% or Parity with MR-4C results for Retail Residence and Business

* Based on MR-11A denominator.

** Based on MR-11B denominator.</td></tr>
<tr><td>Availability:
Available</td><td>Notes:</td></tr>
</table>

Billing

BI-1 – Time to Provide Recorded Usage Records

Purpose:
Evaluates the timeliness with which Qwest provides recorded daily usage records to CLECs.

Description:
Measures the average time interval from date of recorded daily usage to date usage records are transmitted or made available to CLECs as applicable.

BI-1A – Measures recorded daily usage for UNEs and Resale and includes industry standard electronically transmitted usage records for feature group switched access,[NOTE 1] local measured usage, local message usage, toll usage, and local exchange service components priced on a per-use basis, subject to exclusions specified below.

BI-1B – Measures the percent of recorded daily usage for Jointly provided switched access provided within four days. This includes usage created by the CLEC and Qwest or IXC providing access, usually via 2-way Feature Group X trunk groups for Feature Group A, Feature Group B, Feature Group D, Phone to Phone IP Telephony, 8XX access, and 900 access and their successors or similar Switched Access services.

BI-1C – Provides separate reporting for two elements captured in BI-1A above, as follows:

- BI-1C-1 – Measures recorded daily usage for UNEs and Resale and includes industry standard electronically transmitted usage records for feature group switched access,[NOTE 1] subject to exclusions specified below.
- BI-1C-2 – Measures recorded daily usage for UNEs and Resale and includes industry standard electronically transmitted usage records for local measured usage, local message usage, toll usage, and local exchange service components priced on a per-use basis, subject to exclusions specified below.

Reporting Period: One month	**Unit of Measure:** BI-1A, BI-1C-1, BI-1C-2: Average Business Days BI-1B: Percent
Reporting Comparisons: CLEC aggregate, individual CLECs, and Qwest Retail results	**Disaggregation Reporting:** State level.

Formula:

BI-1A, BI-1C-1, BI-1C-2 (for specified products & records) = $\sum$(Date Record Transmitted or made available – Date Usage Recorded) ÷ (Total number of records)

BI-1B = [(# of daily usage records for Jointly provided switched access sent within four days) ÷ (Total daily usage records for Jointly provided switched access in the report period)] x 100

Exclusions:

- Instances where the CLEC requests other than daily usage transmission or availability.
- Duplicate records.

Product Reporting: • UNEs and Resale • Jointly-provided Switched Access	**Standards:** BI-1A: Parity with Qwest retail. BI-1B: 95% within 4 business days BI-1C-1, BI-1C-2: Diagnostic Comparison with the Qwest Retail results used in standard for BI-1A
Availability: Available	**Notes:** 1. "Feature group switched access" includes all type 110XXX detail records for Feature Groups A, B, C, and D.

BI-2 – Invoices Delivered within 10 Days

<table>
<tr><td colspan="2">Purpose:
Evaluates the timeliness with which Qwest delivers industry standard electronically transmitted bills to CLECs, focusing on the percent delivered within ten calendar days.</td></tr>
<tr><td colspan="2">Description:
Measures the percentage of invoices that are delivered within ten days, based on the number of days between the bill date and bill delivery.
• Includes all industry standard electronically transmitted invoices for local exchange services and toll, subject to exclusions specified below.</td></tr>
<tr><td>Reporting Period: One month</td><td>Unit of Measure: Percent</td></tr>
<tr><td>Reporting Comparisons: Combined Qwest Retail/CLEC results (Parity by design)</td><td>Disaggregation Reporting: State level</td></tr>
<tr><td colspan="2">Formula:
[(Count of Invoices for which Bill Transmission Date to Bill Date is ten calendar days or less) ÷ (Total Number of Invoices)] x 100</td></tr>
<tr><td colspan="2">Exclusions:
• Bills transmitted via paper, magnetic tape, CD-ROM, diskette.
• Records with missing data essential to the calculation of the measurement per the PID.</td></tr>
<tr><td>Product Reporting:
• UNEs and Resale</td><td>Standard:
Parity by design.</td></tr>
<tr><td>Availability:
Available</td><td>Notes:</td></tr>
</table>

BI-3 – Billing Accuracy – Adjustments for Errors

<table>
<tr><td colspan="2">Purpose:
Evaluates the accuracy with which Qwest bills CLECs, focusing on the percentage of billed revenue adjusted due to errors.</td></tr>
<tr><td colspan="2">Description:
Measures the billed revenue minus amounts adjusted off bills due to errors, as a percentage of total billed revenue.
• Both the billed revenue and amounts adjusted off bills due to error are calculated from bills rendered in the reporting period.
• "Amounts adjusted off bills due to errors" is the sum of all bill adjustments made in the reporting period that involve, either in part or in total, adjustment codes related to billing errors. (Each adjustment thus qualifying is added to the sum in its entirety.)</td></tr>
<tr><td>Reporting Period: One month</td><td>Unit of Measure: Percent</td></tr>
<tr><td>Reporting Comparisons: CLEC aggregate, individual CLECs, and Qwest Retail results</td><td>Disaggregation Reporting: State level.</td></tr>
<tr><td colspan="2">Formula:
[Σ(Total Billed Revenue Billed in Reporting Period - Amounts Adjusted Off Bills Due to Errors) ÷ (Total Billed Revenue billed in Reporting Period)] x 100</td></tr>
<tr><td colspan="2">Exclusions:
• BI-3A - UNEs and Resale – None
• BI-3B - Reciprocal Compensation Minutes of Use – Billing adjustments as a result of CLEC-caused errors in return of minutes of use</td></tr>
<tr><td>Product Reporting:
• BI-3A - UNEs and Resale
• BI-3B - Reciprocal Compensation Minutes of Use (MOU)</td><td>Standards:
• BI-3A – UNEs and Resale: Parity with Qwest retail bills.
• BI-3B – Reciprocal Compensation (MOU) – 95%</td></tr>
<tr><td>Availability:
Available</td><td>Notes:</td></tr>
</table>

BI-4 – Billing Completeness

Purpose:
- UNEs and Resale – Evaluates the completeness with which Qwest reflects non-recurring and recurring charges associated with completed service orders on the bills.
- Reciprocal Compensation Minutes of Use (MOU) – Evaluates the completeness with which Qwest reflects the revenue for Local Minutes of Use associated with CLEC local traffic over Qwest's network on the bills.

Description:

BI-4A – UNEs and Resale: Measures the percentage of non-recurring and recurring charges associated with completed service orders appear on the correct bill.*

BI-4B – Reciprocal Compensation (MOU): Measures the percentage of revenue associated with local minutes of use appearing on the correct (current) bill.*

* Correct bill = next available bill

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLECs, and Qwest Retail results	**Disaggregation Reporting:** Statewide level.

Formula:

BI-4A – UNEs and Resale = [∑(Count of service orders with non-recurring and recurring charges associated with completed service orders on the bills that are billed on the correct bill ÷ total count of service orders with non-recurring and recurring charges associated with completed service orders billed on the bill)] x 100

BI-4B – Reciprocal Compensation MOU = [∑(Revenue for Local Minutes of Use billed on the correct* bill ÷ Total revenue for Local Minutes of Use collected during the month)] x 100

Exclusions: None

Product Reporting: • UNEs and Resale • Reciprocal Compensation (MOU)	**Standards:** **BI-4A** - UNEs and Resale: Parity with Qwest Retail bills. **BI-4B** - Reciprocal Compensation (MOU): 95%
Availability: Available	**Notes:**

Database Updates

DB-1 – Time to Update Databases

Purpose:
Evaluates the time required for updates to the databases of E911, LIDB, and Directory Builder.

Description:
- Measures the average time required to update the databases of E911, LIDB, and Directory Builder.
- Includes all database updates as specified under Disaggregation Reporting completed during the reporting period.
- For DB-1A the time to update the E911 database is provided by the third party vendor that performs the update. The elapsed time is captured automatically by the database system. There are no "individual E911 database update records" provided with which to measure the database update process.
- The numerator of DB-1A is calculated by multiplying the vendor-calculated results (Average Minutes in Process Time) by the denominator (Count of records Processed). This method produces a result from the vendor data that is the same as that which would be produced by totalling the update times from individual E911 database update records.

Reporting Period: One month	**Unit of Measure:** E911 – Hrs: Mins. LIDB & Directory Listings – Seconds
Reporting Comparisons: DB-1A - E911: Combined results for Qwest Retail and Reseller CLEC Aggregate; DB-1B - LIDB: Combined results for all Qwest Retail, Reseller CLEC and Facilities Based CLEC updates; DB-1C-1 - Listings: Combined results for all Provider types including Qwest Retail, Reseller CLEC, and Facilities Based CLEC, ILEC and Unknown Provider, Electronically Submitted, Electronically Processed updates. NOTE 1	**Disaggregation Reporting:** DB-1A: E911 for Qwest Retail and Reseller CLEC–State level DB-1B: LIDB for Qwest Retail, Reseller CLEC and Facilities Based CLEC – Multi state region-wide level DB-1C-1: Listings for all Provider types including Qwest Retail, Reseller CLEC, and Facilities Based CLEC, ILEC and Unknown Provider, Electronically Submitted, Electronically Processed–Sub-region applicable to state

Formula:
Σ[(Date and Time of database update for each database update as specified under Disaggregation Reporting in the reporting period) – (Date and Time of submissions of data for entry into the database for each database update as specified under Disaggregation Reporting in the reporting period)] ÷ Total database updates as specified under Disaggregation Reporting completed in the reporting period

Exclusion:
- Invalid start/stop dates/times.

DB-1 – Time to Update Databases (continued)

Product Reporting:	**Standards:**
Not applicable (Reported by database type)	DB-1A-E911: Parity by design DB-1B-LIDB: Parity by design DB-1C-1 - Listings: Parity by design
Availability:	**Notes:**
Available	1. Because they cannot be separated, results for Qwest Retail, Reseller CLEC, Facilities-based CLECs, ILEC and Unknown Provider updates are reported combined within these disaggregations.

DB-2 – Accurate Database Updates

<table>
<tr><td colspan="3">Purpose:
Evaluates the accuracy of database updates completed without errors in the reporting period.</td></tr>
<tr><td colspan="3">Description:
• Measures the percentage of database updates completed without errors in the reporting period.
• Includes all database updates as specified under Disaggregation Reporting completed during the reporting period.</td></tr>
<tr><td colspan="2">Reporting Period: One month</td><td>Unit of Measure: Percent</td></tr>
<tr><td colspan="2">Reporting Comparisons:
DB-2C-1 Listings – Combined results for all Qwest Retail, Reseller CLEC and Facilities-Based CLEC Electronically Submitted, Electronically Processed updates</td><td>Disaggregation Reporting:
DB-2C-1, Listings for Qwest Retail, Reseller CLEC, and Facilities-Based CLEC Electronically Submitted, Electronically Processed updates: Statewide</td></tr>
<tr><td colspan="3">Formula:
[Total database updates as specified under Disaggregation Reporting completed without errors in the reporting period ÷ Total database updates as specified under Disaggregation Reporting completed in the reporting period] x 100</td></tr>
<tr><td colspan="3">Exclusions:
Invalid start/stop dates/times.</td></tr>
<tr><td colspan="2">Product Reporting:
Not applicable (Reported by database type)</td><td>Standards:
DB-2C-1 – Listings: Parity by design NOTE 1</td></tr>
<tr><td>Availability:
Available</td><td colspan="2">Notes:
1. Qwest retail and Reseller CLECs are parity by design. Because Facilities-based CLEC Electronically Submitted, Electronically Processed cannot be separated out from Reseller CLECs they are reported combined within this disaggregation.</td></tr>
</table>

Directory Assistance

DA-1 – Speed of Answer – Directory Assistance

<table>
<tr><td colspan="2">Purpose:
Evaluates timeliness of customer access to Qwest's Directory Assistance operators, focusing on how long it takes for calls to be answered.</td></tr>
<tr><td colspan="2">Description:
Measures the average time following first ring until a call is first picked up by the Qwest agent/system to answer Directory Assistance calls.
Includes all calls to Qwest directory assistance during the reporting period.
Because a system (electronic voice) prompts for city, state, and listing requested before the actual operator comes on the line, the first ring is defined as when the voice response unit places the call into queue.
Measurements are taken by sampling calls from the network queue at 10-second intervals. A count of calls in the queue is taken for every sampling event (10-second snapshot), and this count is multiplied by 10 to get a measurement of waiting intervals.
Using this method, calls that enter the queue after a sample is taken but exit before the next sample is taken are not counted, i.e., are effectively counted as a zero interval. However, this situation is offset by calls that enter just prior to a sampling time, but exit before the next sampling time, and which are counted as 10 seconds. The call intervals shorter than 10 seconds that are counted as 10 seconds are offset by those calls shorter than 10 seconds that are not counted.</td></tr>
<tr><td>Reporting Period: One month</td><td>Unit of Measure: Seconds</td></tr>
<tr><td>Reporting Comparisons: Results for Qwest and all CLECs are combined.</td><td>Disaggregation Reporting:
Sub-region applicable to state</td></tr>
<tr><td colspan="2">Formula:
Σ[(Date and Time of Call Answer) – (Date and Time of First Ring)] ÷ (Total Calls Answered by Center)</td></tr>
<tr><td colspan="2">Exclusions: Abandoned Calls are not included in the total number of calls answered by the center.</td></tr>
<tr><td>Product Reporting: None</td><td>Standard: Parity by design</td></tr>
<tr><td>Availability:
Available</td><td>Notes:</td></tr>
</table>

Operator Services

OS-1 – Speed of Answer – Operator Services

<table>
<tr><td colspan="2">Purpose:
Evaluates timeliness of customer access to Qwest's operators, focusing on how long it takes for calls to be answered.</td></tr>
<tr><td colspan="2">Description:
Measures the time following first ring until a call is answered by the Qwest agent.
Includes all calls to Qwest's operator services during the reporting period, subject to exclusions specified below.
Measurements are taken by sampling calls from the network queue at 10-second intervals. A count of calls in the queue is taken for every sampling event (10-second snapshot), and this count is multiplied by 10 to get a measurement of waiting intervals.
Using this method, calls that enter the queue after a sample is taken but exit before the next sample is taken are not counted, i.e., are effectively counted as a zero interval. However, this situation is offset by calls that enter just prior to a sampling time, but exit before the next sampling time, and which are counted as 10 seconds. The call intervals shorter than 10 seconds that are counted as 10 seconds are offset by those calls shorter than 10 seconds that are not counted.</td></tr>
<tr><td>Reporting Period: One month</td><td>Unit of Measure: Seconds</td></tr>
<tr><td>Reporting Comparisons: Qwest and all CLECs are aggregated in a single measure.</td><td>Disaggregation Reporting:
Sub-region applicable to state</td></tr>
<tr><td colspan="2">Formula:
Σ[(Date and Time of Call Answer) – (Date and Time of First Ring)] ÷ (Total Calls Answered by Center)</td></tr>
<tr><td colspan="2">Exclusions: Abandoned Calls are not included in the total number of calls answered by the center.</td></tr>
<tr><td>Product Reporting: None</td><td>Standard: Parity by design</td></tr>
<tr><td>Availability:
Available</td><td>Notes:</td></tr>
</table>

NI-1 – Trunk Blocking

Purpose:
Evaluates factors affecting completion of calls from Qwest end offices to CLEC end offices, compared with the completion of calls from Qwest end offices to other Qwest end offices, focusing on average busy-hour blocking percentages in interconnection or interoffice final trunks.

Description:
Measures the percentage of trunks blocking in interconnection and interoffice final trunks.

- Includes blocking percentages on all direct final and alternate final interconnection and interoffice trunk groups that are in service during the reporting period, subject to exclusions specified below.

Reporting Period: One month

Unit of Measure: Percent Blockage

Reporting Comparisons:
CLEC aggregate, individual CLEC, and Qwest Interoffice trunk blocking results.

Disaggregation Reporting: Statewide level.
Reports the percentage of trunks blocking in interconnection final trunks, reported by:

- NI-1A Interconnection (LIS) trunks to Qwest tandem offices, with TGSR-related exclusions applied as specified below;
- NI-1B LIS trunks to Qwest end offices, with TGSR-related exclusions applied as specified below;
- NI-1C LIS trunks to Qwest tandem offices, without TGSR-related exclusions;
- NI-1D LIS trunks to other Qwest end offices, without TGSR-related exclusions.

Formula:
{[Σ(Blockage in Final Trunk Group of Specified Type)x(Number of Circuits in Trunk Group)] ÷ (Total Number of Final Trunk Circuits in all Final Trunk Groups)} x 100

Explanation: Actual average percentage of trunk blockage is calculated by dividing the equivalent average number of trunk circuits blocking by the total number of trunk circuits in final trunks of the type being measured.

Exclusions:
For NI-1A and NI-1B only:

- Trunk groups, blocking in excess of one percent in the reporting period, for which:
  - A Trunk Group Service Request (TGSR) [NOTES 1 & 2] has been issued in the reporting period; or
  - CLECs do not submit, within 20 calendar days of receiving a TGSR:
    a) Responsive ASRs (or have ASRs pending that are delayed for CLEC reasons [NOTE 3]);
    b) Trouble Reports; or
    c) Notification of traffic re-routing (as described in Note 1 below).

For NI-1A, NI-1B, NI-1C, and NI-1D:

- Trunk groups, blocking in excess of one percent in the reporting period, for which Qwest can identify, in time to incorporate in the regular reporting of this measurement, the cause as being attributable to:
  - Trunk group out-of-service conditions arising from cable cuts, severe weather, or force majeure circumstances;
  - The CLEC placing trunks in a "busy" condition;
  - Lack of interconnection facilities to fulfill LIS requests for which the CLEC did not provide a timely forecast to Qwest. (This portion of the exclusion is limited to being applied in (a) the month the LIS requests could not be fulfilled, due to lack of facilities, and (b) each month thereafter up to the month following facility availability OR up to five months after the month the LIS requests could not be fulfilled, whichever is sooner [NOTE 4]); or
  - Isolated incidences of blocking, about which Qwest provides notification to the CLEC, that (a) are not recurring or persistent (affecting the same trunk groups), (b) do not warrant corrective action by CLEC or Qwest, and (c) thus, do not require an actionable TGSR.

NI-1 – Trunk Blocking (Continued)

- Trunk groups recently activated that have not been in service for a full "20-high-day, busy hour" review period.
- Toll trunks, non-final trunks, and trunks that are not connected to the public switched network.
- One-way trunks originating at CLEC end offices.
- Qwest official services trunks, local interoffice operator and directory assistance trunks, and local interoffice 911/E911 trunks.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the PID.

Product Reporting:	**Standards:**	
LIS Trunks	Where NI-1A ≤ 1%:	1 %
	Where NI-1A > 1%:	Parity with Qwest Interoffice Trunks to tandems
	Where NI-1B ≤ 1%:	1 %
	Where NI-1B > 1%:	Parity with Qwest Interoffice Trunks to end offices
	NI-1C and NI-1D:	Diagnostic [NOTE 5]

Availability:
Available

Notes:

1. Qwest uses TGSRs to notify CLECs when trunk blocking exceeds standard thresholds or is determined to be persistent. To respond properly to TGSRs, a CLEC must (a) submit within 20 days ASRs to provide necessary trunk augmentations to avoid further blocking, (b) notify Qwest within 20 days that it is initiating a Trouble Report where Qwest traffic routing problems are causing the blocking referenced by the TGSR, or (c) notify Qwest that the CLEC will undertake its own re-routing of traffic within 20 days to alleviate the blocking.
2. The TGSR-related exclusion is applied in the month in which the TGSR is issued and in the month in which the above-specified 20-day response period ends. Thus, any trunk group excluded in one month will not be excluded in the next month, unless there is (a) a 20-day period following a TGSR ends in that month, (b) there is another TGSR applicable to the next month for the same trunk group or (c) an exception documented, in lieu of issuing a subsequent TGSR, where the CLEC's response to the previous TGSR indicated that, for its own reasons, it plans to take no action at any time to augment the trunk group.
3. CLEC delays are reflected by CLEC-initiated order supplements that move the due date later.
   a) Qwest-initiated due date delays, including supplements made pursuant to Qwest requests to delay due dates, shall not be counted as CLEC delays in this measurement.
   b) Qwest-initiated due date changes to earlier dates that the CLEC does not meet shall not be counted as a CLEC delay in this measurement unless the earlier dates were mutually agreed-upon.
   c) CLEC delays (e.g., "customer not ready" in advance of a due date) that do not contribute to a Qwest-established due date being missed shall not be counted as a CLEC delay in this measurement.
4. The limitation on part (3) of this exclusion is intended to bound its applicability to a period of time that treats the unforecasted ASR as if it were, in effect, the first forecast for the facilities needed.
   a) Given that forecast advance intervals are currently six months, this provision allows the exclusion to apply for no longer than that period of time.
   b) Nevertheless, this limitation to the exclusion also recognizes that facilities may become available sooner and, if so, reduces the limitation accordingly. In that context, this limitation recognizes that, absent a CLEC forecast, Qwest still retains a responsibility to provide facilities for the ASR, although in a longer timeframe than for ASRs covered by forecasts. NI-1C and NI-1D will be reported for information purposes only, with no standard to be applied.
   c) This limitation may change depending on the outcome of separate workshops dealing with issues of interconnection forecasting.
5. NI-1C and NI-1D will be reported for information purposes only, with no standard to be applied.

NP-1 – NXX Code Activation

Purpose:
Evaluates the timeliness of Qwest's NXX code activation prior to the LERG effective date or by the "revised" effective date, as set forth herein.

Description:
NP-1A: Measures the percentage of NXX codes activated in the reporting period that are actually loaded and tested prior to the LERG effective date or the "revised" date, subject to exclusions shown below.

NP-1B: Measures the percentage of NXX codes activated in the reporting period that are delayed beyond the LERG date or "revised" date due to Qwest-caused Interconnection facility delays, subject to exclusions shown below. Included among activations counted as a Qwest delay in this sub-measurement are cases in which "2-6 codes" [NOTE 1] associated with the Qwest interconnection facilities are provided late by Qwest to the CLEC.

- Qwest must receive complete and accurate routing information required for code activation, which includes but is not limited to "2-6 codes" for all interconnection trunk groups associated with the activation no less than 25 days prior to the LERG Due Date or Revised Due Date.
- The "revised" date, for purposes of this measurement, is a CLEC-initiated renegotiation of the activation effective date that is no less than 25 days after Qwest receives complete and accurate routing information required for code activation, which includes but is not limited to "2-6 codes" for all interconnection trunk groups associated with the activation.
- The NXX code activation notice is provided by the LERG (Local Exchange Routing Guide) to Qwest.
- NXX code activation is defined as complete when all translations associated with the new NXX are complete by 11:59 p.m. of the day prior to the date identified in the LERG or the "revised" date (if different than the LERG date).
- The NXX code activation completion process includes testing, including calls to the test number when provided.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate, individual CLEC and Qwest Retail results.	**Disaggregation Reporting:** Statewide.

Formula:
NP-1A = [(Number of NXX codes loaded and tested in the reporting period prior to the LERG effective date or the "revised" date) ÷ (Number of NXX codes loaded and tested in the reporting period)] x 100

NP-1B = [(Number of NXX codes loaded and tested in the reporting period that were delayed past the LERG effective date or "revised" date affected by Qwest Interconnection Facility Delays) ÷ (Number of NXX codes loaded and tested in the reporting period, including NXX codes loaded and tested in the reporting period that were delayed past the LERG effective date or the "revised" date due to Interconnection Facility Delays)] x 100

Exclusions:
NP-1A:

- NXX code activations completed after the LERG date or "revised" date due to delays in the installation of Qwest provided interconnection facilities associated with the activations. [NOTE 2]

NP-1A and NP-1B:

- NXX codes with LERG dates or "revised" dates resulting in loading intervals shorter than industry standard (currently 45 calendar days).
- NXX codes where QWEST received complete and accurate routing information required for code activations less than 25 days prior to the LERG due date or Revised due date.

NP-1 – NXX Code Activation (continued)

Product Reporting: None	**Standards:** NP-1A: Parity NP-1B: Diagnostic
Availability: Available	**Notes:** 1. "2-6 codes" are industry-standard designators for local interconnection trunk groups, consisting of 2 alpha letters and six numeric digits. 2. Only Qwest-provided interconnection facilities are noted in this exclusion, because delays related to facilities provided by CLECs or others are accounted for by revising the due date.

Collocation

CP-1 – Collocation Completion Interval

Purpose:
Evaluates the timeliness of Qwest's installation of collocation arrangements for CLECs, focusing on the average time to complete such arrangements.

Description:
Measures the interval between the Collocation Application Date and Qwest's completion of the collocation installation.

- Includes all collocations of types specified herein that are assigned a Ready for Service (RFS) date by Qwest and completed during the reporting period, subject to exclusions specified below.
- Collocation types included are: physical cageless, physical caged, shared physical caged, physical-line sharing, cageless-line sharing, and virtual. NOTE 1
- The Collocation Application Date is the date Qwest receives from the CLEC a complete and valid application for collocation. In cases where the CLEC's collocation application is received by Qwest on a weekend or holiday, the Collocation Application Date is the next business day following the weekend or holiday.
- Major Infrastructure Modifications include conditioning the collocation space, obtaining permits, and installing DC power plant, standby generators, heating, venting or air conditioning equipment.
- Completion of the collocation installation is the date on which the requested collocation arrangement is "Ready For Service" as defined in the Definition of Terms section herein.
- Establishment of RFS Dates: RFS dates are established according to intervals specified in interconnection agreements. Where an interconnection agreement does not specify intervals, or where the CLEC requests, RFS dates are established as follows:
  - **Collocation Applications with Timely Quote Acceptance and, for Virtual Collocations, also with Timely Equipment Ready** – for collocation applications where the CLEC accepts the quote in seven or fewer calendar days after the quote date and, for virtual collocations, where the CLEC provides the equipment to be collocated to Qwest 53 calendar days or less after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 90 calendar days after the Collocation Application Date for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 120 calendar days after the Collocation Application Date for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Collocation Applications with Late Quote Acceptance and, for Virtual Collocations, also with Timely Equipment Ready** – for collocation applications where the CLEC accepts the quote in eight or more calendar days after the quote date and, for virtual collocations, where the CLEC provides the equipment to be collocated to Qwest 53 calendar days or less after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 90 calendar days after the quote acceptance date for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 120 calendar days after the quote acceptance date for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Virtual Collocation Applications with Timely Quote Acceptance and Late Equipment Ready** – for virtual collocation applications where the CLEC (1) accepts the quote in seven or fewer calendar days after the quote date and (2) provides the equipment to be collocated to Qwest more than 53 calendar days after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 45 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 75 calendar days after the equipment is provided to Qwest, for

collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.

- **Virtual Collocation Applications with Late Quote Acceptance and Late Equipment Ready** – for virtual collocation applications where the CLEC (1) accepts the quote in eight or more calendar days after the quote date and (2) provides the equipment to be collocated to Qwest more than 53 calendar days after the Collocation Application Date, the RFS date shall be:
  - **Forecasted Collocations:** 45 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Unforecasted Collocations:** 75 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
- **All Collocations (physical, virtual, forecasted, or unforecasted) requiring Major Infrastructure Modifications:** the later of (1) up to 150 calendar days (as specified in the quote) after the Collocation Application Date, or (2) for virtual collocations, 45 days following the date equipment to be collocated is provided to Qwest for collocations in which Major Infrastructure Modifications are required. Qwest will provide to the CLEC, as part of the quotation, the need for, and the duration of, such extended intervals.
- When a CLEC submits six (6) or more Collocation applications in a one-week period in any state, completion intervals will be individually negotiated. These collocation arrangements will be included in CP-1A, -1B, or -1C according to the interval criteria specified below for these measurements.
- Where there is a CLEC-caused delay, the RFS Date is rescheduled

- RFS dates may be extended beyond the above intervals for CLEC reasons, or for reasons beyond Qwest's control, but not for Qwest reasons.
- Where CLECs do not accept the quote within thirty days of the quote date, the application is considered expired.

CP-1A Measures collocation installations for which the scheduled interval from Collocation Application Date to RFS date is 90 calendar days or less.

CP-1B Measures collocation installations for which the scheduled interval from Collocation Application Date to RFS date is 91 to 120 calendar days.

CP-1C Measures collocation installations for which the scheduled interval from Collocation Application Date to RFS date is 121 to 150 calendar days.

Reporting Period: One month	**Unit of Measure:** Calendar Days
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide.

Formula: (for CP-1A, CP-1B and CP-1C)
Σ[(Collocation Completion Date) – (Complete Application Date)] ÷ (Total Number of Collocations Completed in Reporting Period)

CP-1 – Collocation Completion Interval (continued)

<table>
<tr><td colspan="3">Exclusions:
• CP-1A: CLEC collocation applications with RFS dates yielding scheduled intervals longer than 90 calendar days from Collocation Application Date to RFS date.
• CP-1B: CLEC collocation applications with RFS dates yielding scheduled intervals shorter than 91 calendar days or longer than 120 calendar days from Collocation Application Date to RFS date.
• CP-1C: CLEC collocation applications with RFS dates yielding scheduled intervals shorter than 121 calendar days or longer than 150 calendar days from Collocation Application Date to RFS date.

• Cancelled or expired applications.</td></tr>
<tr><td colspan="2">Product Reporting: None</td><td>Standards:
CP-1A: 90 calendar days
CP-1B: 120 calendar days
CP-1C: 150 calendar days</td></tr>
<tr><td>Availability:
Available</td><td colspan="2">Notes:
1. Collocations covered by this measurement are central office related. As additional types of central office collocation are defined and offered, they will be included in this measurement. Non-central office-based types of collocation (such as remote collocation and field connection points) will be considered for either inclusion in this measurement, or in new, separate measurements, after the terms, conditions, and processes for such collocation types become finalized, accepted, mature (i.e., six months of experience from first installations), and ordered in volumes warranting reporting (i.e., consistently more than two per month in any state).</td></tr>
</table>

CP-2 – Collocations Completed within Scheduled Intervals

Purpose:
Evaluates the extent to which Qwest completes collocation arrangements for CLECs within the standard intervals or intervals established in interconnection agreements.

Description:
Measures the percentage of collocation applications that are completed within standard intervals, including intervals set forth in interconnection agreements.

- Includes all collocations of types specified herein that are assigned a Ready for Service Date RFS date by Qwest and that are completed within the reporting period, including those with CLEC-requested RFS dates longer than the standard interval and those with extended RFS dates negotiated with the CLEC (including supplemented collocation orders that extend the RFS date) subject to exclusions specified below. Collocation types included are: physical cageless, physical caged, shared physical caged, physical-line sharing, cageless-line sharing, and virtual. NOTE 1
- The Collocation Application Date is the date Qwest receives from the CLEC a complete and valid application for collocation. In cases where the CLEC's collocation application is received by Qwest on a weekend or holiday, the Collocation Application Date is the next business day following the weekend or holiday.
- Major Infrastructure Modifications are defined as conditioning the collocation space, obtaining permits, and installing DC power plant, standby generators, heating, venting or air conditioning equipment.
- A collocation arrangement is counted as met under this measurement if its RFS date is met.
- Establishment of RFS Dates: RFS dates are established as follows, except where interconnection agreements require different intervals, in which case the intervals specified in the interconnection agreements apply:
  - **Collocation Applications with Timely Quote Acceptance and, for Virtual Collocations, also with Timely Equipment Ready** – for collocation applications where the CLEC accepts the quote in seven or fewer calendar days after the quote date and, for virtual collocations, where the CLEC provides the equipment to be collocated to Qwest 53 calendar days or less after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 90 calendar days after the Collocation Application Date for physical collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 120 calendar days after the Collocation Application Date for physical collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Collocation Applications with Late Quote Acceptance and, for Virtual Collocations, also with Timely Equipment Ready** – for collocation applications where the CLEC accepts the quote in eight or more calendar days after the quote date and, for virtual collocations, where the CLEC provides the equipment to be collocated to Qwest 53 calendar days or less after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 90 calendar days after the quote acceptance date for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 120 calendar days after the quote acceptance date for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Virtual Collocation Applications with Timely Quote Acceptance and Late Equipment Ready** – for virtual collocation applications where the CLEC (1) accepts the quote in seven or fewer calendar days after the quote date and (2) provides the equipment to be collocated to Qwest more than 53 calendar days after the Collocation Application Date, the RFS date shall be:
    - **Forecasted Collocations:** 45 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
    - **Unforecasted Collocations:** 75 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Virtual Collocation Applications with Late Quote Acceptance and Late Equipment Ready** – for

virtual collocation applications where the CLEC (1) accepts the quote in eight or more calendar days after the quote date and (2) provides the equipment to be collocated to Qwest more than 53 calendar days after the Collocation Application Date, the RFS date shall be:
  - **Forecasted Collocations:** 45 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC provides a complete forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
  - **Unforecasted Collocations:** 75 calendar days after the equipment is provided to Qwest, for collocations for which the CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.
- **All Collocations (physical, virtual, forecasted, or unforecasted) requiring Major Infrastructure Modifications:** the later of (1) up to 150 calendar days (as specified in the quote) after the Collocation Application Date, or (2) for virtual collocations, 45 calendar days following the date equipment to be collocated is provided to Qwest for collocations in which Major Infrastructure Modifications are required. Qwest will provide to the CLEC, as part of the quotation, the need for, and the duration of, such extended intervals.
- When a CLEC submits six (6) or more Collocation applications in a one-week period in any state, completion intervals will be individually negotiated. These collocation arrangements will be included in CP-2A, -2B, or -2C according to the criteria specified below for these measurements.
- Where there is a CLEC-caused delay, the RFS Date is rescheduled.

- Where CLECs do not accept the quote within thirty calendar days of the quote date, the application is considered expired.

CP-2A **Forecasted Collocations**: Measures collocation installations for which CLEC provides a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.

CP-2B **Non-Forecasted and Late Forecasted Collocations**: Measures collocation installations for which CLEC does not provide a forecast to Qwest 60 or more calendar days in advance of the Collocation Application Date.

CP-2C **All Collocations requiring Major Infrastructure Modifications and Collocations with intervals longer than 120 days**: Measures all collocation installations requiring Major Infrastructure Modifications and collocations for which the RFS date is more than 120 calendar days after the Collocation Application Date.

Reporting Period: One month	**Unit of Measure**: Percent
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level.
Formula: (for CP-2A, CP-2B and CP-2C) [(Count of Collocations for which the RFS is met) ÷ (Total Number of Collocations Completed in the Reporting Period)] x 100	
Exclusions: • RFS dates missed for reasons beyond Qwest's control. • Cancelled or expired requests.	
Product Reporting: None	**Standards:** CP-2A & -2B: 90% CP-2C: 90%

CP-2 – Collocations Completed within Scheduled Intervals (continued)

Availability:	Notes:
Available	1. Collocations covered by this measurement are central office related. As additional types of central office collocation are defined and offered, they will be included in this measurement. Non-central office-based types of collocation (such as remote collocation and field connection points) will be considered for either inclusion in this measurement, or in new, separate measurements, after the terms, conditions, and processes for such collocation types become finalized, accepted, mature (i.e., six months of experience from first installations), and ordered in volumes warranting reporting (i.e., consistently more than two per month in any state).

CP-3 – Collocation Feasibility Study Interval

Purpose:
Evaluates the timeliness of the Qwest sub-process function of providing a collocation feasibility study to the CLEC.

Description:
Measures average interval to respond to collocation studies for feasibility of installation.

- Includes feasibility studies, for collocations of types specified herein that are completed in the reporting period, subject to exclusions specified below. Collocation types included are: physical cageless, physical caged, shared physical caged, physical-line sharing, cageless-line sharing, and virtual. NOTE 1
- Interval begins with the Collocation Application Date and ends with the date Qwest completes the Feasibility Study and provides it to the CLEC.
- The Collocation Application Date is the date Qwest receives from the CLEC a complete application for collocation. In cases where the CLEC's application for collocation is received by Qwest on a weekend or holiday, the Collocation Application Date is the next business day following the weekend or holiday.

Reporting Period: One month	**Unit of Measure:** Calendar Days
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level.

Formula:
Σ[(Date Feasibility Study provided to CLEC) – (Date Qwest receives CLEC request for Feasibility Study)] ÷ (Total Feasibility Studies Completed in the Reporting Period)

Exclusions:

- CLEC-caused delays of, or CLEC requests for feasibility study completions resulting in greater than ten calendar days from Collocation Application Date to scheduled feasibility study completion date.

Product Reporting: None	**Standard:** 10 calendar days or less

Availability: Available	**Notes:** 1. Collocations covered by this measurement are central office related. As additional types of central office collocation are defined and offered, they will be included in this measurement. Non-central office-based types of collocation (such as remote collocation and field connection points) will be considered for either inclusion in this measurement, or in new, separate measurements, after the terms, conditions, and processes for such collocation types become finalized, accepted, mature (i.e., six months of experience from first installations), and ordered in volumes warranting reporting (i.e., consistently more than two per month in any state).

CP-4 – Collocation Feasibility Study Commitments Met

Purpose:
Evaluates the degree that Qwest completes the sub-process function of providing a collocation feasibility study to the CLEC as committed.

Description:
Measures the percentage of collocation feasibility studies for installations that are completed within the Scheduled Interval

- The Scheduled Interval is ten calendar days from the Collocation Application Date or, if interconnection agreements call for different intervals, within intervals specified in the agreements, or if otherwise delayed by the CLEC, the interval resulting from the delay.
- Includes all feasibility studies for collocations of types specified herein, that are completed in the reporting period. Collocation types included are: physical cageless, physical caged, shared physical caged, physical-line sharing, cageless-line sharing, and virtual. NOTE 1
- Considers the interval from the Collocation Application Date to the date Qwest completes the Feasibility Study and provides it to the CLEC.
- The Collocation Application Date is the date Qwest receives from the CLEC a complete application for collocation. In cases where the CLEC's application for collocation is received by Qwest on a weekend or holiday, the Collocation Application Date is the next business day following the weekend or holiday.
- Subject to superceding terms in the CLEC's interconnection agreement, when a CLEC submits six (6) or more Collocation applications in a one-week period in any state, feasibility study intervals will be individually negotiated and the resulting intervals used instead of ten calendar days in this measurement.

Reporting Period: One month	**Unit of Measure:** Percent
Reporting Comparisons: CLEC aggregate and individual CLEC results	**Disaggregation Reporting:** Statewide level.

Formula:
[(Total Applicable Collocation Feasibility studies completed within Scheduled Intervals) ÷ (Total applicable Collocation Feasibility studies completed in the reporting period)] x 100

Exclusions: None

Product Reporting: None	**Standard:** 90 percent or more

Availability: Available	**Notes:** 1. Collocations covered by this measurement are central office related. As additional types of central office collocation are defined and offered, they will be included in this measurement. Non-central office-based types of collocation (such as remote collocation and field connection points) will be considered for either inclusion in this measurement, or in new, separate measurements, after the terms, conditions, and processes for such collocation types become finalized, accepted, mature (i.e., six months of experience from first installations), and ordered in volumes warranting reporting (i.e., consistently more than two per month in any state).

DEFINITION OF TERMS

Application Date (and Time) – The date (and time) on which Qwest receives from the CLEC a complete and accurate local service request (LSR) or access service request (ASR) or retail order, subject to the following:

- For the following types of requests/orders, the application date (and time) is the start of the next business day:
  (1) LSRs and ASRs received after 3:00PM MT for Designed Services and Local Number Portability (except non-designed, flow-through LNP).
  (2) Retail orders received after 3:00 PM local time for Designed Services.
  (3) LSRs received after 7:00PM MT for POTS Resale (Residence and Business), Non-Design Resale Centrex, non-designed UNE-P, Unbundled Loops, and non-designed, flow-through LNP.
  (4) Retail orders for comparable non-designed services cannot be received after closing time, so the cutoff time is essentially the business office closing time.
- For all types of orders that are received from Friday at 7:00 PM MT through Sunday, or on holidays, and do not flow through, the application date (and time) is the next, non-weekend business day.

Automatic Location Information (ALI) – The feature of E911 that displays at the Public Safety Answering Point (PSAP) the street address of the calling telephone number. This feature requires a data storage and retrieval system for translating telephone numbers to the associated address. ALI may include Emergency Service Number (ESN), street address, room or floor, and names of the enforcement, fire and medical agencies with jurisdictional responsibility for the address. The Management System (E911) database is used to update the Automatic E911 Location Information databases.

Bill Date – The date shown at the top of the bill, representing the date on which Qwest begins to close the bill.

Blocking – Condition on a telecommunications network where, due to a maintenance problem or an traffic volumes exceeding trunking capacity in a part of the network, some or all originating or terminating calls cannot reach their final destinations. Depending on the condition and the part of the network affected, the network may make subsequent attempts to complete the call or the call may be completely blocked. If the call is completely blocked, the calling party will have to re-initiate the call attempt.

Business Day – Workdays that Qwest is normally open for business. Business Day = Monday through Friday, excluding weekends and Qwest published Holidays including New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas. Individual measurement definitions may modify (typically expanding) this definition as described in the Notes section of the measurement definition.

Cleared Trouble Report – A trouble report for which the trouble has been cleared, meaning the customer is "back in service".

Closed Trouble Report – A trouble report that has been closed out from a maintenance center perspective, meaning the ticket is closed in the trouble reporting system following repair of the trouble.

Code Activation (Opening) – Process by which new NPA/NXXs (area code/prefix) is defined, through software translations to network databases and switches, in telephone networks. Code activation (openings) allow for new groups of telephone numbers (usually in blocks of 10,000) to be made available for assignment to an ILEC's or CLEC's customers, and for calls to those numbers to be passed between carriers.

Common Channel Signaling System 7 (CCSS7) – A network architecture used to for the exchange of signaling information between telecommunications nodes and networks on an out-of-band basis. Information exchanged provides for call set-up and supports services and features such as CLASS and database query and response.

Common Transport – Trunk groups between tandem and end office switches that are shared by more than one carrier, often including the traffic of both the ILEC and several CLECs.

Completion – The time in the order process when the service has been provisioned and service is available.

Completion Notice – A notification the ILEC provides to the CLEC to inform the CLEC that the requested service order activity is complete.
Coordinated Customer Conversion -- Orders that have a due date negotiated between the ILEC, the CLEC, and the customer so that work activities can be performed on a coordinated basis under the direction of the receiving carrier.
Customer Requested Due Date – A specific due date requested by the customer which is either shorter or longer than the standard interval or the interval offered by the ILEC.
Customer Trouble Reports – A report that the carrier providing the underlying service opens when notified that a customer has a problem with their service. Once resolved, the disposition of the trouble is changed to closed.
Dedicated Transport – A network facility reserved to the exclusive use of a single customer, carrier or pair of carriers used to exchange switched or special, local exchange, or exchange access traffic.
Delayed Order – An order which has been completed after the scheduled due date and/or time.
Directory Assistance Database – A database that contains subscriber records used to provide live or automated operator-assisted directory assistance. Including 411, 555-1212, NPA-555-1212.
Directory Listings – Subscriber information used for DA and/or telephone directory publishing, including name and telephone number, and optionally, the customer's address.
DS-0 – Digital Service Level 0. Service provided at a digital signal speed commonly at 64 kbps, but occasionally at 56 kbps.
DS-1 – Digital Service Level 1. Service provided at a digital signal speed of 1.544 Mbps.
DS-3 – Digital Service Level 3. Service provided at a digital signal speed of 44.736 Mbps.
Due Date – The date provided on the Firm Order Confirmation (FOC) the ILEC sends the CLEC identifying the planned completion date for the order.
End Office Switch – A switch from which an end users' exchange services are directly connected and offered.
Final Trunk Groups – Interconnection and interoffice trunk groups that do not overflow traffic to other trunk groups when busy.
Firm Order Confirmation (FOC) – Notice the ILEC sends to the CLEC to notify the CLEC that it has received the CLECs service request, created a service order, and assigned it a due date.
Flow-Through –The term used to describe whether a LSR electronically is passed from the OSS interface system to the ILEC legacy system to automatically create a service order. LSRs that do not flow through require manual intervention for the service order to be created in the ILEC legacy system.
Interval Zone 1/Zone 2 – Interval Zone 1 areas are wire centers for which Qwest specifies shorter standard service intervals than for Interval Zone 2 areas.
Installation – The activity performed to activate a service.
Installation Troubles – A trouble, which is identified after service order activity and installation, has completed on a customer's line. It is likely attributable to the service activity (within a defined time period).
Interconnection Trunks – A network facility that is used to interconnect two switches generally of different local exchange carriers
Inward Activity – Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C orders with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions from retail to CLEC and CLEC to CLEC.
Jeopardy – A condition experienced in the service provisioning process which results potentially in the inability of a carrier to meet the committed due date on a service order
Jeopardy Notice – The actual notice that the ILEC sends to the CLEC when a jeopardy has been identified.
Lack of Facilities – A shortage of cable facilities identified after a due date has been committed to a customer, including the CLEC. The facilities shortage may be identified during the inventory assignment process or during the service installation process, and typically triggers a jeopardy.
Local Exchange Routing Guide (LERG) – A Bellcore master file that is used by the telecom industry to identify NPA-NXX routing and homing information, as well as network element and equipment designations. The file also includes scheduled network changes associated with activity within the North American Numbering Plan (NANP).
Local Exchange Traffic – Traffic originated on the network of a LEC in a local calling area that terminates to another LEC in a local calling area.

Local Number Portability (formerly defined under Permanent Number Portability and also known as – Long Term Number Portability) – A network technology which allows end user customers to retain their telephone number when moving their service between local service providers. This technology does not employ remote call forwarding, but actually allows the customer's telephone number to be moved and redefined in the network of the new service provider. The activity to move the telephone number is called "porting."

Local Service Request (LSR) – Transaction sent from the CLEC to the ILEC to order services or to request a change(s) be made to existing services.

MSA/Non-MSA – Metropolitan Statistical Area is a government defined geographic area with a population of 50,000 or greater. Non-Metropolitan Statistical Area is a government defined geographic area with population of less than 50,000. Qwest depicts MSA Non-MSA based on NPA NXX. Where a wire center is predominantly within an MSA, all lines are counted within the MSA.

Mechanized Bill – A bill that is delivered via electronic transmission.

NXX, NXX Code or Central Office Code – The three digit switch entity indicator that is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.

Plain Old Telephone Service (POTS) – Refers to basic 2-wire, non-complex analog residential and business services. Can include feature capabilities (e.g., CLASS features).

Projects – Service requests that exceed the line size and/or level of complexity which would allow for the use of standard ordering and provisioning processes. Generally, due dates for projects are negotiated, coordination of service installations/changes is required and automated provisioning may not be practical.

Query Types – Pre-ordering information that is available to a CLEC that is categorized according to standards issued by OBF and/or the FCC.

Ready For Service (RFS) – The status achieved in the installation of a collocation arrangement when all "operational" work has been completed. Operational work consists of the following as applicable to the particular type of collocation:

- Cage enclosure complete;
- DC power is active (including fuses available, BDFB [Battery Distribution Fuse Board] in place, and cables between the CLEC and power terminated);
- Primary AC outlet in place;
- Cable racking and circuit terminations are complete (e.g. fiber jumpers placed between the Outside Plant Fiber Distribution Panel and the Central Office Fiber Distribution Panel serving the CLEC). and
- The following items complete, subject to the CLEC having made required payments to Qwest (e.g., final payment): (If the required CLEC payments have not been made, the following items are not required for RFS):
  - Key turnover made available to CLEC.
  - APOT/CFA complete, as defined/required in the CLEC's interconnection agreement and
  - Basic telephone service and other services and facilities complete, if ordered by CLEC in time to be provided on the scheduled RFS date (per Qwest's published standard installation intervals for such telephone service).

Ready for Service Date (RFS date) – The due date assigned to a collocation order (typically determined by regulatory rulings, contract terms, or negotiations with CLEC) to indicate when collocation installation is scheduled to be ready for service, as defined above.

Reject – A status that can occur to a CLEC submitted local service request (LSR) when it does not meet certain criteria. There are two types of rejects: (1) syntax, which occur if required fields are not included in the LSR; and (2) content, which occur if invalid data is provided in a field. A rejected service request must be corrected and re-submitted before provisioning can begin.

Repeat Report – Any trouble report that is a second (or greater) report on the same telephone number/circuit ID and at the same premises address within 30 days. The original report can be any category, including excluded reports, and can carry any disposition code.

Service Group Type – The designation used to identify a category of similar services, .e.g., UNE loops.

Service Order – The work order created and distributed in ILECs systems and to ILEC work groups in response to a complete, valid local service request.

Service Order Type – The designation used to identify the major types of provisioning activities associated with a local service request.

Standard Interval – The interval that the ILEC publishes as a guideline for establishing due dates for provisioning a service request. Typically, due dates will not be assigned with intervals shorter than the standard. These intervals are specified by service type and type of service modification requested. ILECs publish these standard intervals in documents used by their own service representatives as well as ordering instructions provided to CLECs in the Qwest Standard Interval Guidelines.

Subsequent Reports – A trouble report that is taken in relation to a previously-reported trouble prior to the date and time the initial report has a status of "closed."

Tandem Switch – Switch used to connect and switch trunk circuits between and among Central Office switches.

Time to Restore – The time interval from the receipt, by the ILEC, of a trouble report on a customer's service to the time service is fully restored to the customer.

Unbundled Network Element – Platform (UNE-P) – Combinations of network elements, including both new and conversions, involving POTS (i.e., basic services providing dial tone).

Unbundled Loop - The Unbundled Loop is a transmission path between a Qwest Central Office Distribution Frame, or equivalent, and the Loop Demarcation Point at an end user premises. Loop Demarcation Point is defined as the point where Qwest owned or controlled facilities cease, and CLEC, end user, owner or landlord ownership of facilities begins.

Usage Data – Data generated in network nodes to identify switched call data on a detailed or summarized basis. Usage data is used to create customer invoices for the calls.

GLOSSARY OF ACRONYMS

ACRONYM	DESCRIPTION
ACD	Automatic Call Distributor
ADSL	Asymmetric Digital Subscriber Line
ALI	Automatic Line Information (for 911/E911 systems)
ASR	Service Request (processed via Exact system)
BRI	Basic Rate Interface (type of ISDN service)
CABS	Carrier Access Billing System
CKT	Circuit
CLEC	Competitive Local Exchange Carrier
CO	Central Office
CPE	Customer Premises Equipment
CRIS	Customer Record Information System
CSR	Customer Service Record
DA	Directory Assistance
DB	Decibel
DB	Database
DS0	Digital Service 0
DS1	Digital Service 1
DS3	Digital Service 3
E911 MS	E911 Management System
EAS	Extended Area Service
EB-TA	Electronic Bonding – Trouble Administration
EDI	Electronic Data Interchange
EELS	Enhanced Extended Loops
ES	Emergency Services (for 911/E911)
FOC	Firm Order Confirmation
GUI	Graphical User Interface
HDSL	High-Bit-Rate Digital Subscriber Line
HICAP	High Capacity Digital Service
IEC	Interexchange Carrier
ILEC	Incumbent Local Exchange Carrier
INP	Interim Number Portability
IOF	Interoffice Facilities (refers to trunk facilities located between Qwest central offices)
ISDN	Integrated Services Digital Network
IMA	Interconnect Mediated Access
LATA	Local Access Transport Area
LERG	Local Exchange Routing Guide
LIDB	Line Identification Database
LIS	Local Interconnection Service Trunks
LNP	Long Term Number Portability
LSR	Local Service Request
N, T, C	Service Order Types - - N (new), T (to or transfer), C (change)
NANP	North American Numbering Plan
NDM	Network Data Mover
NPAC	Number Portability Administration Center
NXX	Telephone number prefix
OBF	Ordering and Billing Forum

ACRONYM	DESCRIPTION
OOS	Out of service (type of trouble condition)
OSS	Operations Support Systems
PBX	Private Branch Exchange
PON	Purchase Order Number
POTS	Plain Old Telephone Service
PRI	Primary Rate Interface (type of ISDN service)
RFS	Ready for Service (refers to collocation installations)
SIA	SAAFE (Strategic Application Architecture Framework and Environment) Information Access
SOP	Service Order Processor
SOT	Service Order Type
SS7	Signaling System 7
STP	Signaling Transfer Point
TN	Telephone Number
UDIT	Unbundled Dedicated Interoffice Transport
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element – Platform
VRU	Voice Response Unit
WFA	Work Force Administration
XDSL	(x) Digital Subscriber Line. (The "x" prefix refers to DSL generically. An "x" replaced by an "A" refers to Asymmetric DSL, and by an "H" refers to High-bit-rate DSL.)

APPENDIX A

PO-20 Feature Detail Fields

Feature Detail

Resale and UNE-P (POTS and Centrex 21):

CFN
Validate the call forwarding TN

CFNB
Validate the call forwarding TN

CFND
Validate the call forwarding TN

RCYC
FID associated with a call forwarding don't answer USOC that determines how many rings before the call forwards to the TN provided with the CFN or CFND FIDs.

HLN (HLA Hot Line)
FID associated with the USOC HLA (which is on our USOC list to validate.) The Hot Line feature call forwards automatically to a pre-programmed number. This TN is provided following the HLN FID. The data provided in the Feature Detail section on the LSR will be validated against the HLN FID on the service order to determine whether the FID is present and the TN provided on the LSR with the FID is correct on the service order.

LINK (HME CALL FORWARDING TO CELLULAR)
FID associated with the USOC HME (which is on our USOC list to validate.) The HME feature call forwards a call from the landline telephone number to a cellular telephone number. The LINK FID, along with the PCS telephone number provided in the Feature Detail section on the LSR, will be validated against the LINK FID on the service order to determine whether the FID is present and the telephone number provided on the LSR matches the telephone number on the service order.

DES on DID MBB
If the CLEC requests a DID voice mailbox the DID number will follow the FID DES on the LSR in the Feature Detail section and on the service order. The DES FID along with the DID telephone number provided in the Feature Detail section on the LSR will be validated against the DES FID on the service order to determine whether the FID is present and the DID telephone number provided on the matches the telephone number on the service order.

TN on Custom Ring USOC (RGG1A etc.)
We currently have 9 custom ring USOCs on our PO-20 USOC list. Along with the custom ring USOC is the TN FID. The TN FID along with the custom ring telephone number provided in the Feature Detail section on the LSR will be validated against the TN FID on the service order to determine whether the FID is present and the custom ring telephone provided on the LSR with the FID is correct on the service order. (The validation would only apply if the USOC and FID were present in the Feature Detail section of the LSR.)

CAS (If provided on LSR for SEA)
Call Screening Code Assignment is a FID associated with the selective class of call feature (which is on our USOC list to validate.) Along with the CAS FID is a two-digit number that indicates what type of screening is being requested. The CAS FID along with a two-digit number is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the two-digit number matches the two-digit number provided on the LSR.

WW (if provided on LSR for TFM)
Working With is a FID associated with the transfer mailbox feature (which is on our USOC list to validate.) Along with the WW FID is a ten-digit number that indicates where the voice mailbox is located. The WW FID along with the ten-digit number is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the ten-digit number matches the ten-digit number provided on the LSR.

MBOA (if provided on LSR for VFN)
Mailbox out-dial notification is a FID associated with the message notification feature (which is on our USOC list to validate.) Along with the MBOA FID is a two-digit alphanumeric combination that indicates where the notification will be sent (i.e., identifies pager type.) The MBOA FID along with the two-digit alphanumeric combination is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the two-digit alphanumeric matches the two-digit alphanumeric provided on the LSR.

DES on VGT (if provided on LSR)
Description is a FID associated with the scheduled greeting feature (which is on our USOC list to validate.) Along with the DES FID is a ten-digit telephone number that reflects the DID mailbox number. The DES FID along with the ten-digit telephone number is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the ten-digit telephone number matches the ten-digit telephone number provided on the LSR.

WLT (WLS Warm Line)
Warm line timeout is a FID associated with the warm line feature. Along with the WLT FID is a one or two numeric value that indicates the number of seconds that must elapse before the DMS-100 switch sets up the connection for a warm line service number. The WLT FID along with the one or two numeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the one or two numeric value matches the one or two numeric value provided on the LSR.

FIDs associated with WFA (800 service line feature which is on our USOC list to validate):

SIT (if provided on LSR for WFA)
Special identifying telephone number is a FID associated with the 800 service line feature. Along with the SIT FID is a ten-digit telephone number that reflects the 800, 888, 877, or 866 service line feature. The SIT FID along with the ten-digit telephone number is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the ten-digit telephone number matches the ten-digit telephone number provided on the LSR.

SIS (if provided on LSR for WFA)
Special Identifying Telephone Number Supplemental is a FID associated with the 800 service line feature. The SIS FID along with a one-digit number is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the one-digit number matches the one-digit number provided on the LSR.

ELN (if provided on LSR for WFA)
800 Service listed name is a FID associated with the 800 service line feature. Along with the ELN FID is a listed name, which follows the format of a business name. The ELN FID along with the name is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the name matches the name provided on the LSR.

ELA (if provided on LSR for WFA)
800 listed address is a FID associated with the 800 service line feature. Along with the ELA FID is an address, which follows the format of a listed address plus LATA, State, and ZIP code. The ELA FID along with the address is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the address matches the address provided on the LSR.

AOS (if provided on LSR for WFA)
Area of service is a FID associated with the 800 service line feature. Along with the AOS FID are one to two alphanumeric characters and three numeric characters which represents LATA and AC of the address. The AOS FID along with the additional characters are provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the additional characters match the additional characters provided on the LSR.

ALC (if provided on LSR for WFA)
IntraLATA carrier is a FID associated with the 800 service line feature. It indicates the IntraLATA carrier for the 800 service. Along with the ALC FID is the three-digit code (OTC) for the IntraLATA carrier. The ALC FID along with the three-digit code is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the three-digit code matches the three-digit code provided on the LSR.

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FIDs associated with SO3, SO5, SFB, C2TAX (Electronic Business Set USOCs which are on our USOC list to validate):

KEY (If provided on LSR for Electronic Business Set EBS USOCs)
Key Designation (KEY number) is a FID associated with the Electronic Business Set feature. Along with the KEY FID is a numeric value that indicates the key designated for different features or lines on the EBS. The KEY FID along with the numeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the numeric value matches the numeric value provided on the LSR.

MADN (If provided on LSR for Electronic Business Set EBS USOCs)
Multiple Appearance Directory Number Call Arrangement is a FID associated with the Electronic Business Set feature. Along with the MADN FID is a set of alpha values that indicate the type, appearance and ring status desired for different features or lines on the EBS. The KEY FID along with the alpha values is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the alpha values match the alpha values provided on the LSR.

ROL (If provided on LSR for Electronic Business Set EBS USOCs)
Ring On Line is a FID associated with the Electronic Business Set feature. Along with the ROL FID is an alpha value that indicates if the line will ring (Y or N). The ROL FID along with the alpha value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the alpha value matches the alpha value provided on the LSR.

TTYD (If provided on LSR for C2TAX)
Terminal Type is a FID associated with the adjunct module feature. Along with the TTYD FID is a 4 character alpha value based on customer equipment. The TTYD FID along with the 4 character alpha value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the 4 character alpha value matches the 4 character alpha value provided on the LSR.

FIDs associated with E3PPK (CALL PICK-UP feature which is on our USOC list to validate):

CPG (If provided on LSR for E3PPK)
Call Pickup Group is a FID associated with the CALL PICK-UP feature. Along with the CPG FID is a 1-3 digit numeric value that identifies the call pickup group. The CPG FID along with the 1-3 digit numeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the 1-3 digit numeric value matches the 1-3 digit numeric value provided on the LSR.

CPUO (If provided on LSR for E3PPK)
Call Pickup-Originating is a FID associated with the CALL PICK-UP feature. Along with the CPUO FID is an alphanumeric value that identifies the call pickup group. The CPUO FID along with the alphanumeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the alphanumeric value matches alphanumeric value provided on the LSR.

CPUT (If provided on LSR for E3PPK)
Call Pickup-Terminating is a FID associated with the CALL PICK-UP feature. Along with the CPUT FID is an alphanumeric value that identifies the call pickup group. The CPUT FID along with the alphanumeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the alphanumeric value matches alphanumeric value provided on the LSR.

FIDs associated with GVJ, EZJ, GVZ, GV2, EVH, GVV (Speed Call feature USOCs that are on our USOC list to validate):

SCG (If provided on LSR for Speed call USOCs)
Speed Call Group is a FID associated with the Speed call feature. Along with the SCG FID is a 7 digit numeric value that identifies the controller of the group. The SCG FID along with the 7 digit numeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the 7 digit numeric value matches 7 digit numeric value provided on the LSR.

CSL (If provided on LSR for Speed call USOCs)
Change Speed Calling Group List is a FID associated with the Speed call feature. Along with the CSL FID is a 2 digit numeric value that identifies the size of the group list. The SCG FID along with the 7 digit numeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the 2 digit numeric value matches 2 digit numeric value provided on the LSR.

SCF (If provided on LSR for Speed call USOCs)
Speed Calling Feature Name is a FID associated with the Speed call feature. Along with the SCF FID is an alphanumeric value that identifies the controller of the shared list. The SCF FID along with the alphanumeric value is provided in the Feature Detail section on the LSR. The PO-20 review will validate that the FID is floated on the service order behind the feature USOC and that the alphanumeric value matches alphanumeric value provided on the LSR.

EXHIBIT C

See Qwest's Wholesale web-site for the Service Interval Guide.

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EXHIBIT F - SPECIAL REQUEST PROCESS

1. The Special Request Process shall be used for the following requests:

1.1 Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.

1.2 Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor

1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:

1.3.1 that is made up of UNEs that are defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;

1.3.2 that is made up of UNEs that are ordinarily combined in the Qwest network.

1.4 Requesting an Unbundled Network Element that does not require a technical feasibility analysis and has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product, including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDIT, EEL between OC-3 and OC-192 and new varieties of subloops.

2. Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Qwest will consider the BFR time frame to have started upon receipt of the original Special Request application form.

3. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website.

4. Qwest shall acknowledge receipt of the Special Request within two (2) business days of receipt.

5. Qwest shall respond with an analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

6. Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for Unbundled Network Elements that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

CHANGE MANAGEMENT PROCESS (CMP)
FOR LOCAL SERVICES

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CHANGE MANAGEMENT PROCESS (CMP)

1.0 INTRODUCTION AND SCOPE [1]

This document defines the processes for change management of OSS interfaces, products and processes (including manual) as described below. CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services provided by CLECs to their end users.

The CMP is managed by CLEC and Qwest representatives each having distinct roles and responsibilities. The CLECs and Qwest will hold regular meetings to exchange information about the status of existing changes, the need for new changes, what changes Qwest is proposing, how the process is working, etc. The process also allows for escalation to resolve disputes, if necessary.

Qwest will track changes to OSS interfaces, products and processes. The CMP includes the identification of changes and encompasses, as applicable, Qwest will process any such changes in accordance with the CMP described in this document.

In cases of conflict between the changes implemented through the CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through the CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.

The CMP is dynamic in nature and, as such, is managed through the regularly scheduled meetings. The parties agree to act in Good Faith in exercising their rights and performing their obligations pursuant to this CMP. This document may be revised, through the procedures described in Section 2.0.

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[1] Throughout this document, OSS Interfaces are defined as existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and billing capabilities for local services provided by CLECs to their end users. Throughout this document, the terms "include(s)" and "including" mean "including, but not limited to."

2.0 MANAGING THE CHANGE MANAGEMENT PROCESS

2.1 Managing the Change Management Process Document

The Change Management Process is dynamic in nature. Proposed modifications to the CMP framework shall be originated by means of discussion at any of the regularly scheduled Monthly Product/Process CMP meetings (standing agenda item at the Monthly Product/Process CMP meetings).

The initiator of the change would send an email with the redlined language and the reasons for the request attached at least 14 days in advance of the Product & Process CMP meeting. The request initiator would present the proposal to the CMP participants. The parties would develop a process for input into the proposed change. To incorporate a change into the CMP requires unanimous agreement [as defined by the voting process]. Each proposal will be assigned a unique tracking number. Date, version and history log for the CMP. Include the proposal in the distribution package and on the agenda. The requested change will be reviewed at one CMP meeting and voted on no earlier than the following CMP meeting.

2.2 Change Management Point-of-Contact (POC)

Qwest and each CLEC will designate primary and secondary change management POC(s) who will serve as the official designees for matters regarding this CMP. The primary POC is the official voting member, and a secondary (alternate) POC can vote in the absence of the primary POC for each CLEC. CLECs and Qwest will exchange POC information including items such as:

- Name
- Title
- Company
- Telephone number
- E-mail address
- Fax number
- Cell phone/Pager number

2.3 Change Management POC List

Primary and secondary CLEC POCs should be included in the Qwest maintained POC list. It is the CLEC responsibility to notify Qwest of any POC changes. The list will be made available to all participating CLECs with the permission of the POCs.

2.4 Qwest CMP Responsibilities

2.4.1 CMP Managers

The Qwest CMP Product/Process Manager is the Qwest Product/Process POC and is responsible for properly processing submitted CRs, conducting the Monthly CMP Product/Process Meeting, assembling and distributing the meeting distribution package, and ensuring minutes are written and distributed in accordance with the agreed-upon timeline.

The Qwest CMP Systems Manager is the Qwest Systems POC and is responsible for properly processing submitted CRs, conducting the Monthly CMP Systems Meeting, assembling and distributing the meeting distribution package, and ensuring minutes are written and distributed in accordance with the agreed-upon timeline. The CMP Systems Manager also distributes the list of CRs eligible for prioritization to Qwest and the CLECs for ranking, tabulates the rankings, and forwards the resulting prioritization of the CRs to Qwest and the CLECs. In addition, the CMP Systems Manager is responsible for coordinating the publication of any Qwest OSS Interface release notification schedules.

2.4.2 Change Request Project Manager (CRPM)

The Qwest CRPM manages CRs throughout the CMP CR lifecycle. The CRPM is responsible for obtaining a clear understanding of exactly what deliverables the CR originator requires to close the CR, arranging the CR clarification meetings and coordinating necessary Subject Matter Experts (SMEs) from within Qwest to respond to the CR and coordinate the participation of the necessary SMEs in the discussions with the CLECs

2.4.3 Escalation/Dispute Resolution Manager

The Escalation/Dispute Resolution Manager is responsible for managing escalations and disputes in accordance with the CMP Escalation Process and Dispute Resolution Process.

2.5 Method of Communication

The method of communication is e-mail with supporting information posted to the web site when applicable (see Section 3.3 Qwest Wholesale CMP Web Site). Communications sent by e-mail resulting from CMP will include in the subject line "CMP". Email communications regarding document changes will include direct web site links to the related documentation.

Redlined PCATs and Technical Publications associated with product, process, and systems changes will be posted to the Qwest CMP Document Review Web site, http://www.qwest.com/wholesale/cmp/review.html. For the duration of the agreed upon comment period CLECs may submit comments on the proposed documentation change. At the Qwest CMP Document Review Web site CLECs may submit their comments on a specific document by selecting the "Submit Comments" link associated with the document. The "Submit Comments." link will take CLECs to an HTML comment template. If for any reason the "Submit" button on the site does not function properly, CLEC may submit comments to cmpcomm@qwest.com. After the conclusion of the applicable CLEC comment period Qwest will aggregate all CLEC comments with Qwest responses and distribute to all CLECs via Notification email within the applicable period.

2.6 CMP Relationship with Management of Performance Indicator Definitions (PIDs)

Qwest Performance Indicator Definitions (PIDs) have been established through collaboration among Qwest, CLECs and state public utilities commissions in a forum known as the Regional Oversight Committee Test Administration Group (ROC TAG). This activity was performed in order to test Qwest's performance in connection with Qwest's application to obtain approval under Section 271 of the Telecommunications Act of 1996. The parties anticipate that the ROC

TAG (or similar industry group separate from the CMP body) will continue in some form after approval of Qwest's Section 271 application. The parties expect that this industry group will be responsible for change management of the Qwest PIDs (the "PID Administration Group").

The parties acknowledge that the operation of PIDs may be impacted by changes to Qwest OSS Interfaces, products or processes that are within the scope of CMP. Conversely, Qwest OSS Interfaces, products or processes may be impacted by changes to, or the operation of, PIDs that are within the scope of the PID Administration Group. As a result, efficient operation of the CMP requires communication and coordination, including the establishment of processes, between the PID Administration Group and the CMP body.

The parties recognize that if an issue results from CMP that relates to the PIDs (e.g., Qwest denies a CR with reference to PIDs, discussion of PID administration is needed in order to implement a CR, etc.), any party to the CMP may take the issue to the PID Administration Group for discussion and resolution as appropriate under the procedures for that Group. At the time any party brings such an issue to the PID Administration Group, such party shall notify Qwest and Qwest will distribute an e-mail notification to the CMP body. Qwest shall also distribute to the CMP body all correspondence with the PID Administration Group relating to the issue at the time such correspondence is exchanged with the PID Administration Group (if Qwest is not copied on such correspondence, the involved CLEC will forward such correspondence to Qwest for distribution to the CMP body). Qwest or an interested CLEC will bring any resolution or recommendation from the PID Administration Group relating to such issues to the CMP body for consideration in resolving related CMP issues.

It is possible that the PID Administration Group will identify issues that relate to CMP. In that case, the CMP body would expect the PID Administration Group (or a party from that group) to bring such issues to the CMP body for resolution or a recommendation. Such issues may be raised in the form of a CR, but may be raised in a different manner if appropriate. Qwest or an interested CLEC will return to the PID Administration Group any resolution or recommendation from the CMP body on such issues. Qwest and CLECs participating in the PID Administration Group agree that they will propose, develop and adopt processes for the PID Administration Group that will enable the coordination called for in this Section. One such process may include joint meetings, on an as needed basis, of the PID Administration Group and the CMP body to address issues that affect both groups.

3.0 MEETINGS

Change Management meetings will be conducted on a regularly scheduled basis, at least two consecutive days on a monthly basis. Meeting participants can choose to attend meetings in person or participate by conference call.

Meetings are held to review, prioritize, manage the implementation of process and system changes and address change management requests. Qwest will review the status of all applicable change requests. The meeting may also include discussions of Qwest's development view.

CLEC's request for additional agenda items and associated materials should be submitted to Qwest at least five (5) business days by noon (MT) in advance of the meeting. Qwest is responsible for distributing the agenda and associated meeting materials at least three (3) business days by noon (MT) in advance of the meeting. Qwest will be responsible for preparing, maintaining, and distributing meeting minutes. Attendees with any walk-on items should bring materials of the walk-on items to the meeting.

All attendees, whether in person or by phone, must identify themselves and the company they represent.

Additional meetings may be held at the request of Qwest or any CLEC. Meeting notification must contain an agenda plus any supporting meeting materials. These meetings should be announced at least five (5) business days prior to their occurrence. Exceptions may be made for emergency situations.

3.1 Meeting Materials [Distribution Package] for Change Management Meeting

Meeting materials should include the following information:

- Meeting Logistics
- Minutes from previous meeting
- Agenda
- Change Requests and responses
  - New/Active
  - Updated
  - Log
- Issues, Action Items Log and associated statuses
- Release Summary
- 12 Month Development View
- Monthly System Outage Report
- Any other material to be discussed

Qwest will provide Meeting Materials (Distribution Package) electronically by noon 3 business days prior to the Monthly CMP Meeting. In addition, Qwest will provide hard copies of the Distribution Package at the Monthly CMP Meeting.

3.2 Meeting Minutes for Change Management Meeting

Qwest will take minutes. Qwest will summarize discussions in meeting minutes and include any revised documents such as Issues, Action items and statuses.

Minutes should be distributed to meeting participants for comments or revisions no later than five (5) business days by noon (MT) after the meeting. CLEC comments should be provided within two (2) business days by noon (MT). Revised minutes, if CLEC comments are received, should be distributed within nine (9) business days by noon (MT) after the meeting.

3.3 Qwest Wholesale CMP Web Site

To facilitate access to CMP documentation, Qwest will maintain CMP information on its web site. The web site should be easy to use and updated in a timely manner. The Web site should be a well organized central repository for CLEC notifications and CMP documentation. Active documentation, including meeting materials (Distribution Package), should be maintained on the website. Change Requests and release notifications should be identified in accordance with the agreed upon naming convention, to facilitate ease of identification. Qwest will maintain closed and old versions of documents on the web site's Archive page for 18 months before storing off line. Information that has been removed from the web site can be obtained by contacting the appropriate Qwest CMP Manager. At a minimum, the CMP web site will include:

- Current version of Qwest CMP document describing the CMP's purpose and scope of setting forth the CMP objectives, procedures, and timelines, including release life cycles.
- Calendar of release dates
- OSS hours of availability
- Links to related web sites, such as IMA EDI, IMA GUI, CEMR, and Notices
- Current CMP escalation process
- CMP prioritization process description and guidelines
- Change Request form and instructions to complete form
- Submitted and open Change Requests and the status of each
- Responses to Change Requests and written responses to CLEC inquiries
- Meeting (formal and informal) information for CMP monthly meetings and interim meetings or conference calls, including descriptions of meetings and participants, agendas, minutes, sign-up forms, and schedules
- A log of each type of change requests and associated status histories
- Meeting materials (distribution package)
- Meeting minutes
- Release announcements and other CLEC notifications and associated requirements
- Directory to CLEC notifications for the month
- Business rules, SATE test case scenarios technical specifications, and user guides will be provided via links on the CMP web site.
- Contact information for the CMP POC list, including CLEC, Qwest and other participants (with participant consent to publish contact information on web page).
- Redlined PCAT and Technical Publications - see Section 2.5
- Instructions for receiving CMP communications – see Section 2.5

4.0 TYPES OF CHANGE

A Change Request should fall into one of the following classifications:

4.1 Regulatory Change

A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts, or as agreed to by Qwest and CLECs. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may initiate the change request.

4.2 Industry Guideline Change

An Industry Guideline Change implements Industry Guidelines using a national implementation timeline, if any. Either Qwest or the CLEC may initiate the change request. These guidelines are industry defined by:

- Alliance for Telecommunications Industry Solutions (ATIS) Sponsored
- Ordering and Billing Forum (OBF)
- Local Service Ordering and Provisioning Committee (LSOP)
- Telecommunications Industry Forum (TCIF)
- Electronic Commerce Inter-exchange Committee (ECIC)
- Electronic Data Interface Committee (EDI)
- American National Standards Institute (ANSI)

4.3 Qwest Originated Change

A Qwest Originated change is originated by Qwest does not fall within the changes listed above and is within the scope of CMP.

4.4 CLEC Originated Change

A CLEC Originated change is originated by the CLEC does not fall within the changes listed above and is within the scope of CMP.

5.0 CHANGE REQUEST PROCESS

5.1 CLEC-Qwest OSS Interface Change Request Process

A CLEC or Qwest seeking to change an existing OSS interface, to establish a new OSS interface, or to retire an existing OSS interface must submit a Change Request (CR). A Change Request originator will complete and email a completed Change Request (CR) Form to the Qwest Systems CMP Manager in accordance with the instructions set forth in the Qwest Wholesale CMP Web site located at the following URL:http://www.qwest.com/wholesale/cmp/index.html. The CR Process supports Regulatory, Industry Guideline, CLEC-initiated and Qwest-initiated changes. The process for Regulatory or Industry Guideline changes will be managed as described in Section 5.1.1. and Section 5.1.2 below.

5.1.1 Regulatory or Industry Guideline Change Request

The party submitting a Regulatory or Industry Guideline CR must also include sufficient information to justify the CR being treated as a Regulatory or Industry Guideline CR in the CR description section of the CR form. Such information must include specific references to regulatory or court orders, legislation, or industry guidelines as well as dates, docket or case number, page or paragraph numbers and the mandatory or recommended implementation date, if any.

Qwest or any CLEC may submit Regulatory and Industry Guideline CRs. Qwest will send CLECs a notice when it posts Regulatory or Industry Guideline CRs to the web site and identify when comments are due, as described below. Regulatory and Industry Guideline CRs will also be identified in the CMP Systems Monthly Meeting Distribution Package. The upcoming meeting agenda will identify that consensus is required if a CR constitutes a Regulatory or Industry Guideline change. Not later than 8 business days prior to the CMP Systems Monthly meeting, any party objecting to the classification of such CR as Regulatory or Industry Guideline must submit a statement documenting reasons why the objecting party does not agree that the CR should be classified as Regulatory or Industry Guideline change. Regulatory and Industry Guideline CRs may not be presented as walk-on items.

If Qwest or any CLEC has objected to the classification of a CR as Regulatory or Industry Guideline, that CR will be discussed at the next monthly Change Management Systems Meeting. At that meeting, Qwest and the CLECs will attempt to agree that the CR is Regulatory or Industry Guideline. If Qwest or any CLEC does not agree that the CR is Regulatory or Industry Guideline, the CR will be treated as a non-Regulatory, non-Industry Guideline CR and prioritized with the CLEC-originated and Qwest-originated CRs, unless and until the CR is declared to be Regulatory or Industry Guideline through dispute resolution. Final determination of CR type will be made by the CLEC and Qwest POC at that monthly meeting, and documented in the meeting minutes.

5.1.2 Implementation of Regulatory CRs

As a general rule, a Regulatory Change will be implemented by mechanization unless all parties agree otherwise, as described below. Accordingly, all Regulatory CRs initially must be

submitted as Systems CRs, including when the regulatory CR clearly is for a Product or Process change, and will be introduced at the monthly CMP Systems meeting. If the Regulatory CR originator seeks to establish that the CR should be implemented by a manual process, the originator must so indicate on the CR form and include as much information supporting the application of the exception as practicable.

For each Regulatory CR, Qwest will provide a cost analysis for both a manual and a mechanized solution. The cost analyses will include a description of the work to be performed and any underlying estimates that Qwest has performed associated with those costs. Qwest will also provide an estimated level of effort expressed in terms of person hours required for the mechanized solution. The cost analysis will be based on factors considered by Qwest, which may include volume, number of CLECs, technical feasibility, parity with retail, or effectiveness/ feasibility of a manual process.

The Regulatory CR will be implemented by a manual solution if there is a majority vote in favor of one of the following exceptions by Qwest and CLECs present at the monthly CMP Systems meeting.

A. The mechanized solution is not technically feasible.

or

B. There is a significant difference in the costs for the manual and mechanized solutions. Cost estimates will allow for direct comparisons between solutions using comparable methodologies and time periods.

Any party that desires to present information to establish an exception may do so at the monthly Systems CMP meeting when the implementation plan is presented

After the implementation plan has been discussed at the CMP Systems meeting at which the CR is presented, Qwest will request that a POC of each CLEC and Qwest indicate the respective preferences regarding the exception, e.g., by a show of raised hands. The majority vote decision will apply unless the outcome of a dispute resolution alters such decision. The results will be reflected in the meeting minutes.

In addition to Exceptions A or B, the parties that are present at the CMP Systems meeting at which the CR is presented can, upon unanimous agreement, decide to vary from the general rule regarding Regulatory CR implementation in any respect. For example, the parties at the CMP Systems meeting at which the CR is presented can agree that a Regulatory CR will be implemented by a manual solution for any reason other than those described in Exceptions A and B. If the Regulatory CR originator seeks to establish that a variance should apply, the originator must so indicate on the CR form and include in the CR as much information supporting the application of the exception as practicable.

If any party present objects to voting on the exception or variance at the monthly CMP Systems meeting at which the CR is presented, then Qwest will request that a POC of each CLEC and Qwest indicate whether they prefer to postpone the vote until the next monthly CMP Systems meeting, e.g., by a show of raised hands. The majority vote decision will apply. The results of

the vote will be reflected in the meeting minutes. If appropriate, additional discussion regarding the CR will be held at the next monthly CMP Systems meeting prior to the vote.

Once a Regulatory CR has been agreed upon to be implemented by a manual solution, the CR will be, from that point forward, tracked as a Product/Process CR through the monthly CMP Product/Process meetings.

If Qwest is unable to fully implement a mechanized solution in the first release that occurs after the CMP participants agree that a change has been mandated, Qwest's implementation plan for the mechanized solution may include the short-term implementation of a manual work-around until the mechanized solution can be implemented. In that situation, a single systems Regulatory CR will be used for the implementation of both the manual and mechanized changes. Qwest will continue to work that Regulatory CR until the mechanized solution is implemented.

If a regulatory CR is implemented by a manual process and later it is determined that a change in circumstance warrants a mechanized solution, Qwest or any CLEC may submit a new systems CR which must include evidence of the change in circumstance, such as an estimated volume increase or changes in technical feasibility, and the number of the CR that was implemented using a manual process. The CR originator may request that the CR be treated as a Regulatory CR. If Qwest or any CLEC does not agree to treat the CR as a Regulatory Change, it will be treated as a Qwest or CLEC initiated change.

Any party that disagrees with the majority decision regarding Exceptions A and B may initiate dispute resolution pursuant to the CMP Dispute Resolution provisions.

5.1.3 CR Initiation Process

Within two (2) business days after receipt of a valid CR Qwest's CMP Systems Manager will assign a CR Number for tracking purposes, assign a Change Request Project Manager (CRPM), acknowledge receipt of the CR by e-mail to the CR Originator and issue the CR internally for management through the process. The CR will be assigned the status of Submitted and become an active CR reported in Qwest's CLEC Change Request Systems Interactive Report located on the Qwest Wholesale CMP web site.

Within four (4) business days after receipt of a valid CR, Qwest will post the valid CR to the CMP web site via Qwest's Interactive Report. The report will contain the CR details, originator identity, assigned CRPM, assigned CR Number and, when practicable, the designated Qwest SME and associated Director.

Within eight (8) business days after receipt of a complete CR, the CRPM coordinates and holds a Clarification Meeting with the CR Originator and Qwest's SME(s). If the originator is not available within the above specified time frame, then the clarification meeting will be held at a mutually agreed upon time. Qwest may not provide a response to a CR until a clarification meeting has been held.

At the clarification meeting, Qwest and the Originator will review the submitted CR, validate the intent of the Originator's CR, clarify all aspects, identify all questions to be answered, and

determine deliverables to be produced. After the clarification meeting has been held, the CRPM will document and issue meeting minutes within five (5) business days.

CRs submitted 21 calendar days prior to the next scheduled CMP Meeting will be presented at that CMP meeting for clarification from all CLECs participating in the CMP Meeting. Prior to the CMP Systems Meeting the CRPM will post responses to Systems CRs to the CMP database. The response will be made available via the Interactive Reports and via the Distribution Package for the CMP Systems Meeting. The Originator will present its CR and provide any business reasons for the CR. Items or issues identified during the previously held clarification meeting will be relayed. CLECs participating in the CMP Meeting will be given the opportunity to comment on the CR and provide additional clarifications. If appropriate, Qwest's SME(s) will identify options and potential solutions to the CR. Clarifications and/or modifications related to the CR will be incorporated into the evaluation of the CR. Consensus will be obtained from the participating CLECs as to the appropriate direction/solution for Qwest's SME to take in responding to the CR if applicable.

CRs that are not submitted 21 calendar days prior to the CMP Meeting may be introduced at that CMP Meeting as a walk-on item. The Originating CLEC will present its CR and participating CLECs will be allowed to provide comments to the CR. Qwest will provide a status of the CR.

All Qwest Draft Responses issued will be presented at the next scheduled CMP Meeting. Qwest will conduct a walk through of the response and participating CLECs will be provided the opportunity to discuss, clarify and comment on Qwest's Response. Qwest's Responses will be either:

- "Accepted" (Qwest will implement the CLEC request) with position stated, or
- "Denied" (Qwest will not implement the CLEC request) with basis for the denial, including reference to substantiating material. CLEC-initiated OSS Interfaces change request may be denied for one or more of the following reasons.
  - Technologically not feasible—a technical solution is not available

  Regulatory ruling/Legal implications—regulatory or legal reasons prohibit the change as requested, or if the request benefits some CLECs and negatively impact others (parity among CLECs) (Contrary to ICA provisions)
  - Outside the Scope of the Change Management Process—the request is not within the scope of the Change Management Process (as defined in this CMP), seeks adherence to existing procedures, or requests for information
  - Economically not feasible—low demand, cost prohibitive to implement the request, or both.
  - The requested change does not result in a reasonably demonstrable business benefit (to Qwest or the requesting CLEC) or customer service improvement .

Qwest will not deny a CR solely on the basis that the CR involves a change to back-end systems. Qwest will apply these same concepts to CRs that Qwest initiates. The SCRP may be invoked if a CR was denied due to economically not feasible—refer to Section 10.3 SCRP.

Based on the comments received from the CMP Meeting, Qwest may revise its response and issue a revised draft response at the next CMP Meeting.

If CLECs do not accept Qwest's response, they may elect to escalate or dispute the CR in accordance with the agreed upon CMP escalation or Dispute Resolution procedures. If the originating CLEC does not agree with the determination to escalate or pursue the dispute resolution, it may withdraw its participation from the CR and any other CLEC may become responsible for pursuing the CR Escalation upon providing written notice to the Qwest CMP Manager. The CR will be assigned the status of Escalated and remain an active CR. Qwest will note in the status history of the interactive reports that the CR has been escalated. However, the CR status will reflect the stage of the CR as it progresses through the CR lifecycle.

If the CLECs do not accept Qwest's response and do not intend to escalate or dispute at the present time, they may request Qwest to status the CR as 'Deferred.' The CR will remain as Deferred and CLECs may activate or close the CR at a later date.

At the last Systems CMP meeting before Prioritization, Qwest will facilitate the presentation of all CRs eligible for Prioritization. At this meeting Qwest will provide a high level estimate of the Level of Effort of each CR and the estimated total capacity of the release. This estimate will be an estimate of the number of person hours required to incorporate the CR into the release. Ranking will proceed, as described in Section 10.0, Prioritization. The results of the ranking will produce a release candidate list.

5.2 CLEC-Qwest OSS Interface Change Request Lifecycle

Based on the release candidate list, Qwest will begin its development cycle that includes the following milestones:

5.2.1 Business and Systems Requirements

Qwest engineers define the business and functional specifications during this phase. The specifications are completed on a per candidate basis in priority order. During business and system requirements, any candidates which have affinities and may be more efficiently implemented together will be discussed. Candidates with affinities are defined as candidates with similarities in functions or software components. Qwest will also present any complexities, changes in candidate size, or other concerns that may arise during business or system requirements, which would impact the implementation

of the candidate. During the business and systems requirement efforts, CRs may be modified or new CRs may be generated (by CLECs or Qwest), with a request that the new or modified CRs be considered for addition to the release candidate list (late added CRs). If the CMP body grants the request to consider the late added CRs for addition to the release candidate list, Qwest will size the CR's requirements work effort. If the requirements work effort for the late added CRs can be completed by the end of system requirements, the release candidate list and the new CRs will be prioritized by CLECs in accordance with the agreed upon Prioritization Process (see Section 10.0). If the requirements work effort for the late added CRs cannot be completed by the end of system requirements, the CR will not be eligible for the release and will be returned to the pool of CRs that are available for prioritization in the next OSS interface release.

5.2.2 Packaging

At the conclusion of system requirements, Qwest will present packaging option(s) for implementing the release candidates. Packaging options are defined as different combinations of candidates proposed for continuing through the next stage of development. Packaging options may not exist for the release; i.e., there may only be one straightforward set of candidates to continue working through the next stage of development. Options may be identified due to:

- affinities in candidates
- resource constraints which prevent some candidates from being implemented but allow others to be completed.

Qwest will provide an updated level estimate of the Level of Effort of each CR and the estimated total capacity of the release. If more than one option is presented, a vote will be held within 2 days after the meeting on the options. The option with the largest number of votes will continue through the design phase of the development cycle.

5.2.3 Design

Qwest engineers define the architectural and code changes required to complete the work associated with each candidate. The design work is completed on the candidates, which have been packaged.

5.2.4 Commitment

After design, Qwest will present a final list of candidates which can be implemented. Qwest will provide an updated level estimate of the Level of Effort of each CR and the estimated total capacity of the release. These candidates become the committed candidates for the release.

5.2.5 Code & Test

Qwest engineers will perform the coding and testing by Qwest required to complete the work associated with the committed candidates. The code is developed and baselined before being delivered to system test. A system test plan (system test cases, costs, schedule, test environment, test data, etc.) is completed. The system is tested for meeting business and system requirements, certification is completed on the system readiness for production, and pre-final documentation is reviewed and baselined. If in the course of the code and test effort, Qwest determines that it cannot complete the work required to include a candidate in the planned release, Qwest will discuss options with the CLECs in the next CMP meeting. Options can include either the removal of that candidate from the list or a postponement in the release date to incorporate that candidate. If the candidate is removed from the list, Qwest will also advise the CLECs whether or not the candidate could become a candidate for the next point release, with appropriate disclosure as part of the current major release of the OSS interface. Alternatively, the candidate will be returned to the pool of CRs that are available for prioritization in the next OSS interface release.

5.2.6 Deployment

During this phase Qwest representatives from the business and operations review and agree the system is ready for full deployment. The release is deployed and production support initiated and conducted.

During any phase of the lifecycle, a candidate may be requested to be removed by the requesting CLEC. If that occurs, the candidate will be discussed at the next CMP meeting or in a special emergency meeting, if required. The candidate will only be removed from further phases of development if there is unanimous agreement by the CLECs and Qwest at that meeting.

When Qwest has completed development of the OSS interface change, Qwest will release the OSS interface functionality into production for use by the CLECs.

Upon implementation of the OSS interface release, the CRs will be presented for closure at the next CMP monthly meeting.

5.3 CLEC Product/Process Change Request Initiation Process

If a CLEC wants Qwest to change a Product/Process the CLEC e-mails a completed Change Request (CR) Form to the Qwest Product/Process CMP Manager. Within 2 business days Qwest's Product/Process CMP Manager reviews CR for completeness, and requests additional information from the CR originator, if necessary, within two (2) business days after Qwest receives a complete CR:

- The Qwest CMP manager assigns a CR Number and logs the CR into the CMP Database.
- The Qwest CMP Manager forwards the CR to the CMP Group Manager,
- The Qwest CMP manager sends acknowledgment of receipt to the CR submitter and updates the CMP Database.

Within two (2) business days after acknowledgement:

- The Qwest CMP Manager posts the complete CR to the CMP Web site
- The CMP Group Manager assigns a Change Request Project Manager (CRPM) and identifies the appropriate Director responsible for the CR.
- The CRPM obtains from the Director the names of the assigned Subject Matter Expert(s) (SME).
- the CRPM will provide a copy of the detailed CR report to the CR originator which includes the following information:
- Description of CR
- originating CLEC
- assigned CRPM contact information
- assigned CR number
- designated Qwest SMEs and associated director(s)
- Within eight (8) business days after receipt of a complete CR, the CRPM Coordinates and holds a Clarification Meeting with the Originating CLEC and Qwest's SMEs. If the originating CLEC is not available within the above specified time frame, then the clarification

meeting will be held at a mutually agreed upon time. Qwest will not provide a response to a CR until a clarification meeting has been held.

- At the Clarification Meeting, Qwest and the Originating CLEC review the submitted CR, validate the intent of the Originating CLEC's CR, clarify all aspects, identify all questions to be answered, and determine deliverables to be produced. After the clarification meeting has been held, The CRPM will document and issue meeting minutes within five (5) business days. Qwest's SME will internally identify options and potential solutions to the CR
- CRs received twenty one calendar days prior to the next scheduled CMP meeting will be presented at that CMP Meeting. CRs that are not submitted by the above specified cut-off date may be presented at that CMP meeting as a walk-on item with current status. The Originating CLEC will present its CR and provide any business reasons for the CR. Items or issues identified during the previously held Clarification Meeting will be relayed. Then, participating CLECs will be given the opportunity to comment on the CR and subsequent clarifications. Clarifications and/or modifications related to the CR will be incorporated. Qwest's SME will present options and potential solutions to the CR. consensus will be obtained from the participating CLECs as to the appropriate direction/solution for Qwest's SME to take in responding to the CR.
- Subsequently, Qwest will develop a draft response based on the discussion from the Monthly CMP Meeting. Qwest's Responses will be:
- "Accepted" (Qwest will implement the CLEC request) with position stated, or
- "Denied" (Qwest will not implement the CLEC request) with basis for the denial, including reference to substantiating material. CLEC-initiated OSS Interfaces change request may be denied for one or more of the following reasons.
  - Technologically not feasible—a technical solution is not available
  - Regulatory ruling/Legal implications—regulatory or legal reasons prohibit the change as requested, or if the request benefits some CLECs and negatively impact others (parity among CLECs) (Contrary to ICA provisions)
  - Outside the Scope of the Change Management Process—the request is not within the scope of the Change Management Process (as defined in this CMP), seeks adherence to existing procedures, or requests for information
  - Economically not feasible—low demand, cost prohibitive to implement the request, or both.
  - The requested change does not result in a reasonably demonstrable business benefit (to Qwest or the requesting CLEC) or customer service improvement.

Qwest will not deny a CR solely on the basis that the CR involves a change to the back-end systems.

Qwest will apply these same concepts to CRs that they initiate.

SCRP may be invoked if a CR was denied due to Economically not feasible.

At least one (1) week prior to the next scheduled CMP meeting, The CRPM will have the response posted to the Web, added to CMP Database, and will notify all CLECs via email

All Qwest Responses will be presented at the next scheduled CMP meeting by Qwest, who will conduct a walk through of the response. Participating CLECs will be provided the opportunity to discuss, clarify and comment on Qwest's Response

Based on the comments received from the Monthly Meeting, Qwest' may revise its response and issue a modified response at the next monthly CMP meeting. Within ten (10) business days after the CMP meeting, Qwest will notify the CLECs of Qwest's intent to modify its response.

If the CLECs do not accept Qwest's response, any CLEC can elect to escalate the CR in accordance with the agreed upon CMP Escalation or dispute resolution Procedures. If the originating CLEC does not agree with the determination to escalate or pursue the dispute resolution, it may withdraw its participation from the CR and any other CLEC may become responsible for pursuing the CR upon providing written notice to the Qwest CMP manager. Qwest will note in the status history of the interactive reports that the CR has been escalated. However, the CR status will reflect the stage of the CR as it progresses through the CR lifecycle.

If the CLECs do not accept Qwest's response and do not intend to escalate or dispute at the present time, they may request Qwest to status the CR as deferred. The CR will be statused Deferred and CLECs may activate or close the CR at a later date.

The CLECs' acceptance of Qwest's response may result in:

- The response answered the CR and no further action is required;
- The response provided an implementation plan for a product or process to be developed;
- Qwest Denied the CLEC CR and no further action is required by CLEC.

If the CLECs have accepted Qwest's response, Qwest will provide notice of planned implementation in accordance with time frames defined in the CMP. If necessary, Qwest may request that CLECs provide input during the development stage. Qwest will then deploy the Qwest recommended implementation plan.

Finally, the CR will be closed when CLECs determine that no further action is required for that CR.

5.4 Qwest Initiated Product/Process Changes

The following defines five levels of Qwest-initiated product/process changes and the process by which Qwest will initiate and implement these changes. None of the following shall be construed to supersede timelines or provisions mandated by federal or state regulatory authorities, certain CLEC facing websites (e.g., ICONN and Network Disclosures) or individual interconnection agreements. Each notice will state that it does not supercede individual interconnection agreements. The lists provided below are exhaustive/ finite but may be modified by agreement of the parties. Qwest will utilize these lists when determining the disposition (e.g., Level 0–4) to which new changes should be categorized. The changes that go through these processes are not changes to OSS Interfaces. Level 1-4 changes under this process will be tracked and differentiated by level in the History Log.

5.4.1 Level 0 changes

Level 0 changes are defined as changes that do not change the meaning of documentation and do not alter CLEC operating procedures. Level 0 changes are effective immediately without notice.

Level 0 Change Categories are:

- Font and typeface changes (e.g., bold to un-bold or bold to italics)
- Capitalization
- Spelling corrections and typographical errors other than numbers that appear as part of an interval or timeframe.
- Hyphenation
- Acronym vs. non-acronym (e.g., inserting words to spell out an acronym)
- Symbols (e.g., changing bullets from circles to squares for consistency in document)
- Word changes from singular to plural (or vice versa) to correct grammar
- Punctuation
- Changing of a number to words (or vice versa)
- Changing a word to a synonym
- Contact personnel title changes where contact information does not change
- Alphabetize information
- Indenting (left/right/center justifying for consistency)
- Grammatical corrections (making a complete sentence out of a phrase)
- Corrections to apply consistency to product names (i.e., "PBX - Resale" changed to "Resale - PBX")
- Moving paragraphs/sentences within the same section of a document to improve readability
- Hyperlink corrections within documentation
- Remove unnecessary repetitive words in the same paragraph or short section.

For any change that Qwest considers a Level 0 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification.

5.4.1.1 Level 0 Process/Deliverables

For Level 0 changes, Qwest will not provide a notification, web change form, or history log to CLECs. Changes to the documentation will be updated and posted immediately.

5.4.2 Level 1 changes

Level 1 changes are defined as changes that do not alter CLEC operating procedures or changes that are time critical corrections to a Qwest product or process. Time critical corrections may alter CLEC operating procedures, but only if such Qwest product or process has first been implemented through the appropriate level under CMP. Level 1 changes are effective immediately upon notice.

Level 1 Change Categories are:

- Time Critical Corrections to information that adversely impacts CLECs ability to conduct business with Qwest
- Corrections/clarifications/additional information that does not change the product or process
- Correction to synch up related PCAT documentation with the primary PCAT documentation that was modified through a higher level change (notice needs to include reference to primary PCAT documentation)

- Document corrections to synch up with existing OSS Interfaces documentation (notice needs to include reference to OSS Interfaces documentation)
- Process options with no mandatory deadline, that do not supercede the existing processes and that do not impose charges, regardless of whether the CLEC exercises the option
- Modifications to Frequently Asked Questions that do not change the existing product or process
- Re-notifications issued within 6 months after initial notification (notice will include reference to date of initial notification or, if not available, reference to existing PCAT)
- Regulatory Orders that mandate a Product/Process change to be effective in less than 21 days
- Training information (note: if a class is cancelled, notification is provided 2 weeks in advance)
- URL changes with redirect link

For any change that Qwest considers a Level 1 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification.

5.4.2.1 Level 1 Process/Deliverables

For Level 1 changes, Qwest will provide a notification to CLECs. Level 1 notifications will state the disposition (e.g. Level 1), description of change, changes are effective immediately, that there is no comment cycle and will advise CLECs to contact the CMP Manager, by email at cmpcr@qwest.com, immediately if the change alters the CLECs' operating procedures and requires Qwest's assistance to resolve. Qwest will promptly respond to the CLEC and work to resolve the issue. In addition, Qwest will provide the following for PCAT and NonFCC Technical Publication ("Tech Pub") changes:

- A web notification form that includes an exact cut and paste of the changes highlighted in green (PCAT) or redlined (Technical Publications). If necessary, additional text above and below the changes will be provided for context.
- A history log that tracks the changes

5.4.3 Level 2 changes

Level 2 changes are defined as changes that have minimal effect on CLEC operating procedures. Qwest will provide notice of Level 2 changes at least 21 calendar days prior to implementation.

Level 2 Change Categories are:

- Contact Information updates excluding time critical corrections (includes email, fax, TN, personnel changes)
- Changes to a form that do not introduce changes to the underlying process
- Changes to eliminate/replace existing Web functionality will be available for 21 days until comments are addressed. (either a demo or screen shot presentation will be available at the time of the notification for evaluation during the 21 day cycle.)
- Removal of data stored under an archive URL
- Elimination of a URL re-direct
- Addition of new Web functionality (e.g., CNLA)

- Re-notifications issued 6 months or more after the initial notification (notice will include reference to date of initial notification or, if not available, reference to existing PCAT)
- Documentation concerning existing processes/products not previously documented
- Changes to manually generated notifications normally transmitted to CLECs through their OSS interfaces that are made to standardize or clarify, but do not change the reasons for, such notifications.
- LSOG/PCAT documentation changes associated with new OSS Interface release documentation resulting from an OSS interface CR
- Reduction to an interval in Qwest's SIG

For any change that Qwest considers a Level 2 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification.

5.4.3.1 Level 2 Process/Deliverables

For Level 2 changes, Qwest will provide a notice to CLECs. Level 2 notifications will state the disposition (e.g. level 2), description of change, proposed implementation date, and CLEC/Qwest comment cycle timeframes. In addition to the notice, any documentation changes required to PCATs and Non-FCC Tech Pubs (red-line for Tech Pubs and green highlights for PCATs) will be available for review in the Document Review section of the CMP Website (http://www.qwest.com/wholesale/cmp/review.html), commonly known as the document review site. In the document review site, a comment button will be available next to the document to allow CLECs to provide comments. For Level 2 changes that do not impact PCATs or NonFCC Tech Pubs, a comments link will be provided within the notification for comments.

Qwest must provide initial notice of Level 2 changes at least 21 calendar days prior to implementation and adhere to the following comment cycle:

- CLECs have 7 calendar days following initial notification of the change to provide written comments on the notice
- Qwest will reply to CLEC comments no later than 7 calendar days following the CLEC cut-off for comments. The Qwest reply will also include confirmation of the implementation date.
- Qwest will implement no sooner than 21 calendar days from the initial notification.

CLECs may provide General comments regarding the change (e.g., clarification, request for modification, request to change the disposition level). Comments must be provided during the comments cycle as outlined for level 2 changes.

If a CLEC requests to change the disposition level, CLECs and Qwest will discuss such requests at the next monthly Product/Process CMP meeting. In the event that timing doesn't allow for discussion at the upcoming CMP meeting Qwest will call a special ad hoc meeting to address the request. If the parties are not able to reach consensus on any such request, CLECs and Qwest will take a vote of the parties in attendance at the meeting. The result will be determined by the majority. If the disposition Level of a change is modified, from the date of the modification forward such change will proceed under the modified Level with notifications and timelines agreed to by the participants.

For general comments, Qwest will respond to comments and provide a final notice of the change. Additionally, Qwest will provide documentation of proposed changes to Qwest PCATs and NonFCC Tech Pubs available to CLECs and implement the change(s) according to the timeframes put forth above. If there are no CLEC comments, a final notice will not be provided and the changes will be effective according to the date provided in the original notification.

If the CLECs do not accept Qwest's response, any CLEC may elect to escalate or pursue dispute resolution in accordance with the agreed upon CMP Escalation or Dispute Resolution procedures.

5.4.4 Level 3 changes

Level 3 changes are defined as changes that have moderate effect on CLEC operating procedures and require more lead-time before implementation than Level 2 changes. Qwest will provide initial notice of Level 3 changes at least 31 calendar days prior to implementation.

Level 3 Change Categories are:

- NC/NCI code changes
- Adding of new features to existing products (excluding resale)
- Customer-facing Center hours and holiday schedule changes
- Modify/change existing manual process
- Expanding the availability and applicability or functionality of an existing product or existing feature (excluding resale)
- Regulatory Orders that mandate a Product/Process change to be effective in 21 days or more

For any change that Qwest considers a Level 3 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification.

5.4.4.1 Level 3 Process/Deliverables

For Level 3 changes, Qwest will provide a notice to CLECs. Level 3 notifications will state the disposition (e.g. level 3), description of change, proposed implementation date, and CLEC/Qwest comment cycle timeframes. Level 3 notifications will only include Level 3 Changes, excluding notification of changes to Tech Pubs. For Level 3 notifications that Qwest believes represent a new change category under Level 0, Level 1, Level 2, Level 3, or Level 4, Qwest should propose such new change category in the notice and CLECs and Qwest will discuss the proposal in the next monthly Product & Process CMP meeting. In addition to the notice, any documentation changes required to PCATs and Non-FCC Tech Pubs (red-line for Tech Pubs and green highlights for PCATs) will be available for review in the Document Review section of the CMP Website (http://www.qwest.com/wholesale/cmp/review.html), commonly known as the document review site. In the document review site, a comment button will be available next to the document to allow CLECs to provide written comments. For Level 3 changes that do not impact PCATs or Non-FCC Tech pubs, a link will be provided within the notification for comments.

Qwest will provide initial notice of Level 3 changes at least 31 calendar days prior to implementation and adhere to the following comment cycle:

- CLECs have 15 calendar days following initial notification of the change to provide written comments on the notice
- Qwest will reply to CLEC comments no later than 15 calendar days following the CLEC cut-off for comments. The Qwest reply will also include confirmation of the implementation date. In the event there are extenuating circumstances, (e.g. requested change requires significant research, information is required from national standards body or industry (e.g. Telcordia)), Qwest's response will indicate the course of action Qwest is taking and Qwest will provide additional information when available. Once the information is available Qwest will provide a notification and any available updated documentation (e.g. Tech Pubs, PCATs) at least 15 calendar days prior to implementation.
- Qwest will implement no sooner than 15 calendar days after providing the response to CLEC comments. For example, if there are no CLEC comments, Qwest may send out a final notification on the first day following the CLEC cut-off for comments (day 16 after the initial notification). Thus, implementation would be 31 days from the initial notification. However, if Qwest does not respond to the CLEC comments until the 15th day after the CLEC cut-off for comments, the earliest possible implementation date would be 45 calendar days from the initial notification.

CLEC comments must be provided during the comment cycle as outlined for Level 3 changes. Comments may be one of the following:

- General comments regarding the change (e.g., clarification, request for modification)
- Request to change disposition of Level. If the request is for a change to Level 4, the request must include substantive information to warrant a change in disposition (e.g. business need, financial impact).
- Request to change disposition to a Level 0, Level 1 or Level 2 doesn't have to include substantive information to warrant a change.
- Request for postponement of implementation date, or effective date

For general comments, Qwest will respond to comments and provide a final notice of the change. Additionally, Qwest will provide documentation of proposed changes to Qwest PCATs and Non FCC Tech Pubs available to CLECs and implement the change(s) according to the timeframes put forth above.

CLECs and Qwest will discuss requests to change the disposition Level of noticed changes, or to establish new change categories under Levels 0 – 4, at the next monthly Product & Process CMP meeting. In the event that the parties are not able to reach consensus on any such request, CLECs and Qwest will take a vote of the parties in attendance at the meeting. The result will be determined by the majority. If the disposition Level of a change is modified, from the date of the modification forward such change will proceed under the modified Level with notifications and timelines agreed to by the participants. Except that, within five (5) business days after the disposition level is changed to a Level 1, Qwest will provide a Level 1 notification. When a change to the disposition Level of a particular notice also suggests that a new category of change be established under one of the Levels, a separate vote shall be taken for each.

For a request for postponement, Qwest will follow the procedures as outlined in Section XX of this document.

If the CLECs do not accept Qwest's response, any CLEC may elect to escalate or pursue dispute resolution in accordance with the agreed upon CMP Escalation or Dispute Resolution procedures.

5.4.5 Level 4 Changes

Level 4 changes are defined as changes that have a major effect on existing CLEC operating procedures or that require the development of new procedures. Level 4 changes will be initiated using the CMP CR process and provide CLEC an opportunity to have input into the development of the change prior to implementation.

Level 4 Change Categories are:

- New products, features, services (excluding resale)
- Increase to an interval in Qwest's SIG
- Changes to CMP
- New PCAT/Tech Pub for new processes
- New manual process
- Limiting the availability and applicability or functionality of an existing product or existing feature
- Addition of a required field on a form excluding mechanized forms that are changed through an OSS interface CR

For any change that Qwest considers a Level 4 change that does not specifically fit into one of the categories listed above, Qwest shall issue a Level 3 notification.

5.4.5.1 Level 4 Process/Deliverables

Qwest will submit a completed Change Request no later than 14 calendar days prior to the CMP Product and Process Monthly Meeting. At a minimum, each Change Request will include the following information:

- A description of the proposed change
- A proposed implementation date (if known)
- Indication of the reason for change (e.g., regulatory mandate)
- Basis for disposition of level 4

Within two (2) business days from receipt of the CR:

- The Qwest CMP manager assigns a CR Number and logs the CR into the CMP Database.
- The Qwest CMP Manager forwards the CR to the CMP Group Manager,
- The Qwest CMP manager sends acknowledgment of receipt to the CR submitter and updates the CMP Database.

Within two (2) business days after acknowledgement,

- The Qwest CMP Manager posts the complete CR to the CMP Web site
- The CMP Group Manager assigns a Change Request Project Manager (CRPM) and identifies the appropriate Director responsible for the CR
- The CRPM identifies the CR subject matter expert (SME) and the SME's Director.

- The CRPM will provide a copy of the detailed CR report to the CR originator which includes the following information:
  - Description of CR
  - Assigned CRPM
  - Assigned CR number
  - Designated Qwest SME(s) and associated director(s)

Qwest will present the Change Request at the monthly Product and Process CMP meeting. The purpose of the presentation will be to:

- Clarify the proposal with the CLECs
- Confirm the disposition (e.g., level 4) of the Change (see below). If during the CMP meeting CLECs agree to change the disposition, then the type of change being made will be added to the list for the disposition to which it is changed.
- Propose suggested input approach (e.g., a 2 hour meeting, 4 meetings over a two week period, etc.), and obtain consensus for input approach.
- Confirm deadline, if change is mandated
- Provide proposed implementation date, if applicable

At the monthly CMP meeting, the parties will discuss whether to treat the Change Request as a Level 4 change. If the parties agree, the Change Request will be reclassified as a Level 0, 1, 2 or 3 change, and the change will follow the process set forth above for Level 0, 1, 2, or 3 changes, as applicable. If the parties do not agree to reclassify the Change Request as a Level 0, 1, 2 or 3 change, the following process will apply:

- The parties will develop a process for Qwest to obtain CLEC input into the proposed change. Examples of processes for input include, but are not limited to, one-day conferences, multi-day conferences, or written comment cycles.
- After completion of the input cycle, as defined during the CMP meeting, Qwest will modify the CR, if necessary, and design the solution considering all CLEC input.
- For Level 4 changes, when the solution is designed and all documentation is available for review, a notice of the planned change is provided to the CLECs. Level 4 notifications will only include Level 4 Changes, excluding notification of changes to Tech Pubs. This notice will be provided at least 31 calendar days prior to implementation. The notice will contain reference to the original CR, proposed implementation date, and the CLEC/Qwest comment cycle. In addition, any documentation changes required to PCATs and Non-FCC Tech Pubs will be available for review in the document review site (red-line for Tech Pubs and green highlighting for PCAT) with a Comment button available to provide written comments. For Level 4 changes that do not impact PCATs or NonFCC Tech Pubs, a comments link will be provided within the notification.
- CLECs have 15 calendar days following notification of the planned change to provide written comments on the notice
- Qwest will reply to CLEC comments no later than 15 calendar days following the CLEC cut-off for comments. The Qwest reply will also include confirmation of the implementation date. In the event there are extenuating circumstances, (e.g. requested change requires significant research, information is required from national standards body or industry (e.g. Telcordia)), Qwest's response will indicate the course of action Qwest is taking and Qwest will provide additional information when available. Once the information is available Qwest

will provide a notification and any available updated documentation (e.g. Tech Pubs, PCATs) at least 15 calendar days prior to implementation.

- Qwest will implement no sooner than 15 calendar days after providing the response to CLEC comments. For example, if there are no CLEC comments, Qwest may send out a final notification on the first day following the CLEC cut-off for comments (day 16 after the initial notification). Thus, implementation would be 31 days from the initial notification. However, if Qwest does not respond to the CLEC comments until the 15th day after the CLEC cut-off for comments, the earliest possible implementation date would be 45 calendar days from the initial notification.

CLEC comments must be provided during the comment cycle as outlined for Level 4. CLEC comments may be one of the following:

- General comments regarding the change (e.g., clarification, request for modification)
- Request for postponement of implementation, or effective date for which comments are being provided.

For general comments, Qwest will respond to comments and provide a final notice of the change. Additionally, Qwest will provide documentation of proposed changes to Qwest PCATs and NonFCC Tech Pubs available to CLECs and implement the change(s) according to the timeframes put forth above.

For a request to postponement, Qwest will follow the procedures as outlined in Section XX of this document.

If the CLECs do not accept Qwest's response, any CLEC may elect to escalate the CR or pursue dispute resolution in accordance with the agreed upon CMP Escalation or Dispute Resolution procedures.

5.5 Crossover Change Requests

During the operation of the CMP, there may be situations when Systems CRs have requirements for Product/Process discussion or solution, or when Product/Process CRs require System solutions. These crossover CR situations exist in three basic categories.

Category A. If a CR submitted to the Product/Process CMP is discovered to require a mechanized solution the following will occur:

- Qwest will open a Systems CR with a reference to the Product/Process CR number;
- Qwest will close the Product/Process CR with a reference to the new Systems CR number.
- This CR will comply with the CMP Systems CR process.

Category B. If a CR submitted to the Systems CMP is discovered to require a manual solution the following will occur:

- Qwest will open a Product/Process CR with a reference to the Systems CR number;
- Qwest will close the Systems CR with a reference to the new Product/Process CR number.
- This CR will comply with the CMP Product/Process CR process.

Category C. If a CR submitted to the Systems CMP is discovered to require an interim manual solution, the CR will be tracked as a Systems CR for the length of the CR lifecycle including the development and implementation of both the interim manual and final mechanized solutions.

The determination to close and open CRs as described above will be made by the CMP body at a monthly CMP meeting.

If a CR becomes a crossover CR, Qwest may request an ad hoc Clarification Meeting with the CR submitter or request that a portion of the appropriate CMP Monthly Meeting be devoted to discussing the CR. If a CR is closed in one CMP arena and opened in the other, the new CR will retain the status, where feasible, and the date submitted of the old, "closed" CR. Under no circumstances will the CR be restarted.

All crossover CRs will be distinctly labeled in the CMP Monthly Meeting distribution packages and addressed as a separate item on the CMP Monthly Meeting agenda.

All Regulatory and Industry Guideline CRs will be submitted as Systems CRs and maintained in the Systems database until closure, or until they are deemed to require a manual process solution, at which point they will become Product/Process CRs.

5.6 Change Request Status Codes

The following status codes will be applied to Qwest and CLEC initiated CRs. The status of the CR will be included in the Interactive Reports. CR status codes will not necessarily be assigned in the order set forth below, and not every status code will apply to every CR.

- Submitted - The CR receives a Submitted status when Qwest's CMP Manager has formally acknowledged the CR. The CR remains in Submitted status until Qwest has conducted a Clarification meeting with the originator.
- Clarification – The CR is updated to Clarification status once the clarification meeting has been held with the originator.
- Evaluation – The CR moves into Evaluation status if the CR requires further investigation.
- Presented – The CR moves into Presented status after the originator has presented it at the monthly CMP meeting.
- Pending Prioritization – The Systems CR moves into Pending Prioritization status after it has been Presented and is waiting for Prioritization.
- Prioritized - The Prioritized status is not applicable to all Change Requests. The Prioritized status is only applicable to CRs for which the impacted interface is an OSS that requires prioritization (e.g. IMA). The CR receives a status of Prioritized once it has been presented for prioritization and the Prioritization process has been completed.
- Development – A Product/Process CR moves into a Development status when Qwest's response requires development of a new or revised process. A Systems CR moves into Development status when development begins.
- CLEC Test – A CR moves into the CLEC Test status upon agreement by the participants in the CMP meeting. CLECs have the ability to evaluate the effectiveness of Qwest's change and its implementation, provide feedback, and indicate whether further action is required. Through interaction between Qwest and the interested CLECs, a Product/Process Change

as initially implemented may undergo modification. Depending on the magnitude of such modifications, it may be appropriate to return the CR to Development status. Problems found with newly deployed Systems changes will be handled in accordance with Production Support process as described in Section 12.0. If no further action is required for a consecutive 60 day period, the status moves to Completed, unless the parties agree otherwise.

- Completed – The CR moves to a completed status when the CLECs and Qwest agree that no further action is required to fulfill the requirements of the CR.
- Denied – The CR receives a Denied status when Qwest denies the CR.
- Deferred - The CR receives a Deferred status if the CMP CR originator does not intend to escalate or dispute the CR at the present time, but wants the ability to activate or close the CR at a later date.
- Withdrawn - The CR receives a Withdrawn status when the CR originator requests that the CR be withdrawn from the CMP process and the CR is not sponsored by another party.

5.7 Change Request Suffixes

In certain circumstances CR numbers will require special suffix designations to identify certain characteristics. Suffixes include:

- "CM" - Changes to the CMP framework
- "DR" - Dispute Resolution Process invoked on a CR
- "ES" - Escalation Process invoked on a CR
- "EX" - Change being implemented utilizing the Exception process
- "IG" - Industry Guideline CR
- "MN" – CR for a manual workaround related to an OSS Interface Change Request
- "RG" - Regulatory CR
- "SC" - Change being implemented as an SCRP request
- "X" - Crossover CR

6.0 OSS INTERFACE RELEASE CALENDAR

Qwest will provide a rolling 12 month OSS Interface release calendar in the distribution package of the first scheduled CMP Systems Meeting of each quarter. The calendar will show release schedules, for all OSS Interfaces within the scope of CMP starting in that quarter and for a total of 12 months in the future. The schedule entries will be made when applicable for application to application interfaces:

- Name of OSS Interface
- Date for CMP CR Submission Cutoff
- Date for issuing Draft Release Notes
- Date when Initial Notice for New Interfaces and Interface Retirements will be issued; date when comparable functionality will be available.
- Date for issuing Initial or Draft Technical Specifications
- Comment cycle timeline
- Prioritization, packaging and commitment timeline
- Date for issuing Final Technical Specifications
- Testing period
- Date for issuing Final Release Notes
- Planned Implementation Date
- Release sunset dates

The release calendar will be posted on the CMP web site as a stand-alone document.

7.0 INTRODUCTION OF A NEW OSS INTERFACE

The process for introducing a new interface will be part of the CMP. Introduction of a new OSS interface may include an application-to-application or a Graphical User Interface (GUI).

It is recognized that the planning cycle for a new interface, of any type, may be greater than the time originally allotted and that discussions between CLECs and Qwest may be held prior to the announcement of the new interface.

With a new interface, CLECs and Qwest may define the scope of functionality introduced as part of the OSS Interface.

7.1 Introduction of a New Application-to-Application Interface

At least nine (9) months in advance of the target implementation date of a new application-to-application interface, Qwest will issue a Release Announcement, post the Preliminary Interface Implementation Plan on Qwest's web site, and may host a design and development meeting.

7.1.1 Release Announcement

- Where practicable, the Release Announcement and Preliminary Interface Implementation Plan will include: Proposed functionality of the interface including whether the interface will replace an existing interface
- Proposed implementation time line (e.g., milestone dates, CLEC/Qwest comment cycle)
- Proposed meeting date to review the Preliminary Interface Implementation Plan
- Exceptions to industry guidelines/standards, if applicable
- Planned Implementation Date

7.1.2 CLEC Comments/Qwest Response Cycle and Preliminary Implementation Plan Review Meeting

CLECs have fourteen (14) calendar days from the initial release announcement to provide written comments/questions on the documentation. Qwest will respond with written answers to all CLEC issues within twenty-one (21) calendar days after the Initial Release Announcement. Qwest will review these issues and its implementation schedule at the Preliminary Implementation Plan Review Meeting approximately twenty-eight (28) calendar days after the Initial Release Announcement.

7.1.3 Initial Interface Technical Specification

Qwest will provide draft technical specifications at least one hundred twenty (120) calendar days prior to implementing the release. In addition, Qwest will confirm the schedule for the walk-through of technical specifications, CLEC comments, and Qwest response cycle.

7.1.4 Initial Notification Content

This notification will contain:

- Purpose

- Logistical information (including a conference line) for walk-through
- Reference to draft technical specifications, or web site
- Additional pertinent material
- CLEC Comment/Qwest Response cycle
- Draft Connectivity and Firewall Rules
- Draft Test Plan

7.1.5 Walk Through of Draft Interface Technical Specifications

Qwest will sponsor a walk through, including the appropriate internal subject matter experts (SMEs), beginning one-hundred and ten (110) calendar days prior to implementation and ending one-hundred and six (106) calendar days prior to implementation. A walk through will afford CLEC SMEs the opportunity to ask questions and discuss specific requirements with Qwest's technical team. CLECs are encouraged to invite their technical experts, systems architects, and designers, to attend the walk through.

7.1.6 Conduct Walk-through

Qwest will lead the review of technical specifications. Qwest technical experts will answer the CLEC SMEs' questions. Qwest will capture action items such as requests for further clarification. Qwest will follow-up on all action items.

7.1.7 CLEC Comments on Draft Interface Technical Specifications

If the CLEC identifies issues or requires clarification, the CLEC must send written comments/concerns to the Systems CMP Manager no later than one-hundred and four (104) calendar days prior to implementation.

7.1.8 Qwest Response to Comments

Qwest will review and respond with written answers to all CLEC issues, comments/concerns and action items captured at the walk through, no later than one hundred (100) calendar days prior to implementation. The answers will be shared with all CLECs, unless the CLECs question(s) are marked proprietary. Any changes that may occur as a result of the responses will be distributed to all CLECs in the final notification letter. The notification will include the description of any change(s) made as a result of CLEC comments. The change(s) will be reflected in the final technical specifications.

7.1.9 Final Interface Technical Specifications

Generally, no less than one hundred (100) calendar days prior to the implementation of the new interface, Qwest will issue the Final Release Requirements to CLECs via web site posting and a CLEC notification.

Final Release Requirements will include:

- Final Notification Letter, including:
  - Summary of changes from Qwest response to CLEC comments on Draft Technical Specifications

- If applicable, Indication of type of change (e.g., documentation change, business rule change, clarification change)
- Purpose
- Reference to final technical specifications, or web site
- Additional pertinent material
- Final Connectivity and Firewall Rules
- Final Test Plan (including Joint Testing Period)
- Release date

Qwest's planned implementation date will not be sooner than one hundred (100) calendar days from the date of the final release requirements. The implementation time line for the release will not begin until final specifications are provided. Production Support type changes within the thirty (30) calendar day test window can occur without advance notification but will be posted within 24 hours of the change.

7.2 Introduction of a New GUI

Qwest will issue a Release Notification forty-five (45) calendar days in advance of the Release Production Date. This will include:

- Proposed functionality of the interface including whether the new interface will replace an existing interface.
- Implementation time line (e.g., milestone dates, CLEC/Qwest comment cycle, Interface overview date)
- Implementation date
- Logistics for GUI Interface Overview

At least twenty-eight (28) calendar days in advance of the target implementation date of a new GUI interface, Qwest will issue a Release Announcement. At a minimum, the Release Announcement will include:

- Draft User Guide
- How and When Training will be administered

7.2.1 Interface Overview

The Interface Overview meeting should be held no later than twenty-seven (27) calendar days prior to the Release Production Date. At the meeting, Qwest will present an overview of the new interface.

7.2.2 CLEC Comments and Qwest Response

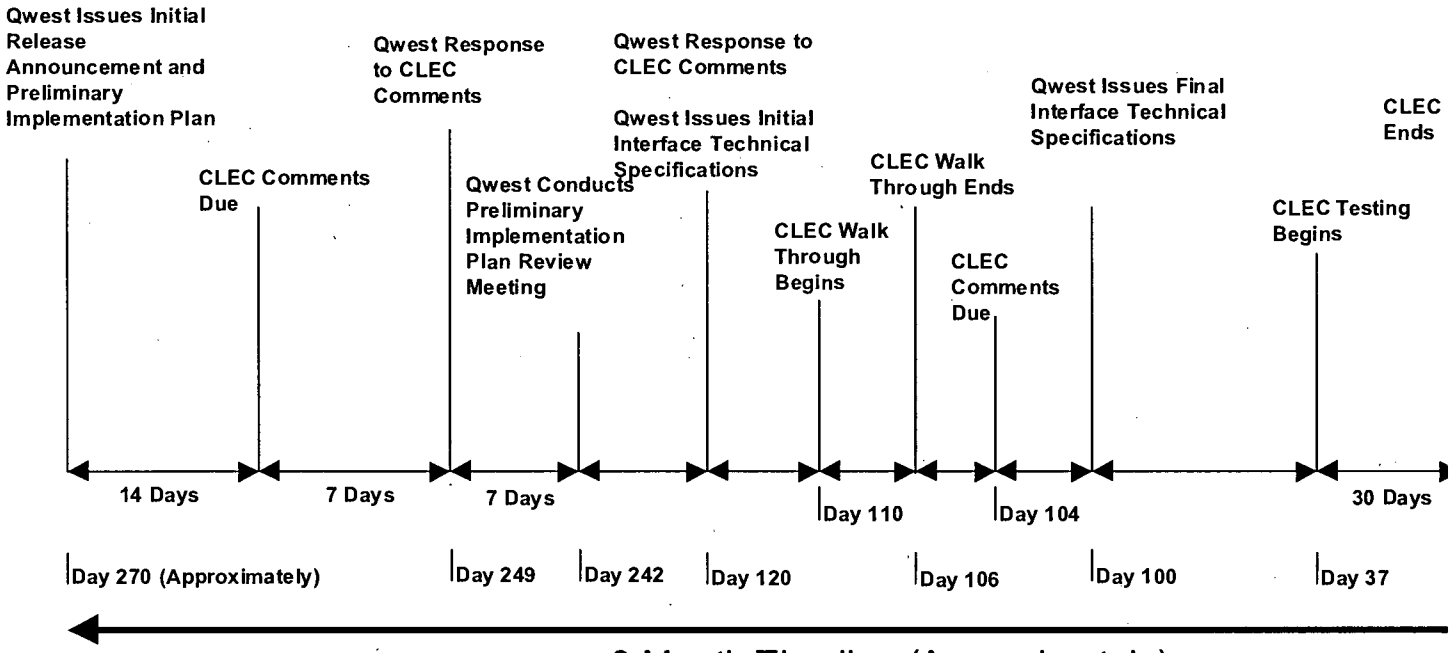
At least twenty-five (25) calendar days prior to the Release Production Date. CLECs must forward their written comments and concerns to Qwest. Qwest will consider CLEC comments and may address them with the release of the Final Notification.

7.2.3 Final Notification

Qwest will issue a final notice no less than twenty-one (21) calendar days prior to the Release Production date. The final notice will include:

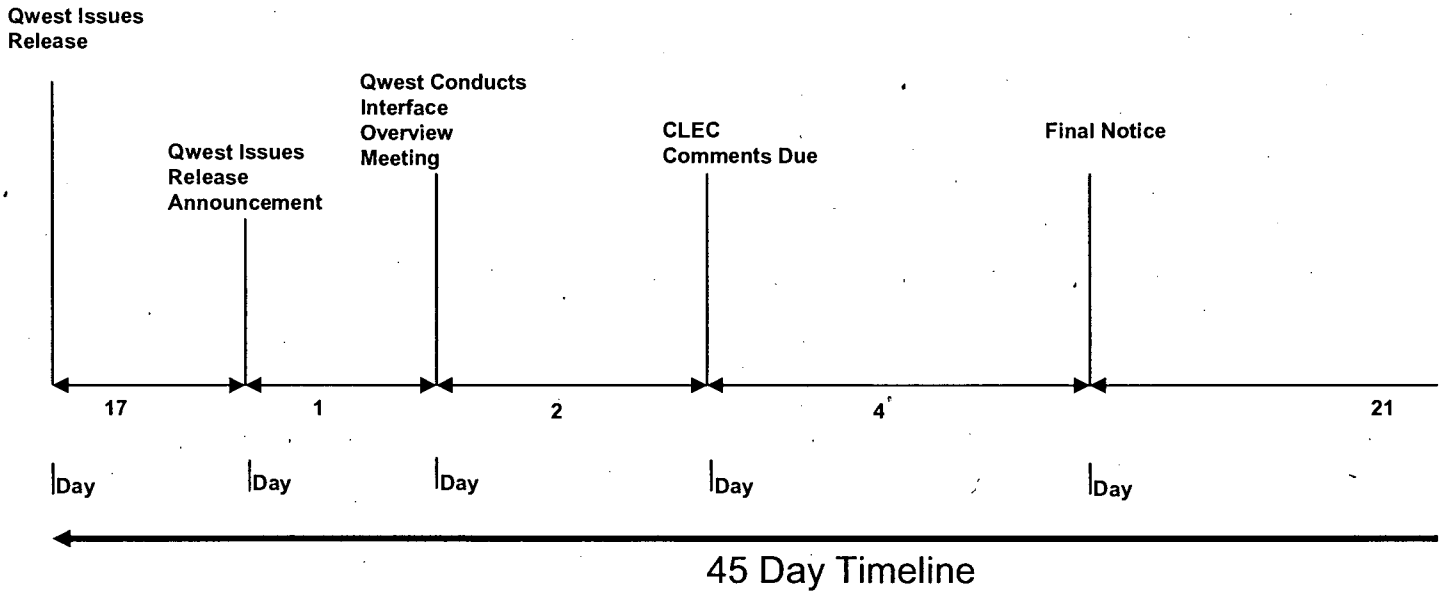
- A summary of changes from the initial notice, including type of changes (e.g., documentation change, clarification, business rule change).
- Final User Guide
- Final Training information
- Final Implementation date.

Qwest-CLEC Change Management Process
Introduction of A New Application-to-Application OSS Int
Timeline



The events listed above are intended to occur on business days. If the date on which any event is scheduled to weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

Qwest-CLEC Change Management Process
Introduction of A New Graphical User Interface (GUI) Timeline



The events listed above are intended to occur on business days. If the date on which any event is scheduled to weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

8.0 CHANGE TO EXISTING OSS INTERFACES

At the first CMP systems monthly meeting of each quarter, Qwest will also provide a rolling twelve (12) month view of its OSS interface development schedule.

Qwest standard operating practice is to implement 3 major releases and 3 point releases (for IMA only) within a calendar year. Unless mandated as a Regulatory Change, Qwest will implement no more than four (4) releases per IMA OSS Interface requiring coding changes to the CLEC interfaces within a calendar year. The Major release changes should occur no less than three (3) months apart.

Application-to-Application OSS Interface

Qwest will support the previous major Interconnect Mediated Access (IMA) EDI release for six (6) months after the subsequent major IMA EDI release has been implemented. Past Releases of IMA EDI will only be modified as a result of production support changes. When such production support changes are made, Qwest will also modify the related documentation.. All other changes become candidates for future IMA EDI releases.

Qwest makes one Release of the Electronic Bonding-Trouble Administration (EBTA) and billing interfaces available at any given time, and will not support any previous Releases.

Graphical User Interface (GUI)

Qwest makes one Release of a GUI available at any given time and will not support any previous Releases.

IMA GUI changes for a pre-order or ordering will be implemented at the same time as an IMA EDI release.

8.1 Application-to-Application Interface

This section describes the timelines that Qwest, and any CLEC choosing to implement on the Qwest Release Production Date, will adhere to in changing existing interfaces. [2]For any CLEC not choosing to implement on the Qwest Release Production Date, Qwest and the CLEC will negotiate a mutually agreed to CLEC implementation time line, including testing.

8.1.1 Draft Interface Technical Specifications

Prior to Qwest implementing a change to an existing interface, Qwest will notify CLECs of the draft Technical Specifications. Qwest will provide draft technical specifications at least seventy-three (73) calendar days prior to implementing the release unless an exception has been granted (see Section 8.0) Technical specifications are documents that provide information the CLECs need to code the interface. CLECs have eighteen (18) calendar days from the initial

[2] For a CLEC converting from a prior release, the CLEC implementation date can be no earlier than the weekend after the Qwest Release Production Date, if production LSR conversion is required.

publication of draft technical specifications to provide written comments/questions on the documentation.

8.1.2 Content of Draft Interface Technical Specifications

The Notification letter will contain:

- Written summary of change(s)
- Target time frame for implementation

Draft Technical Specifications documentation, or instructions on how to access the draft Technical Specifications documentation on the Web site.

8.1.3 Walk Through of Draft Interface Technical Specifications

Qwest will sponsor a walk through, including the appropriate internal subject matter experts (SMEs), beginning sixty-eight (68) calendar days prior to implementation and ending no less than fifty-eight (58) calendar days prior to implementation. A walk through will afford CLEC SMEs the opportunity to ask questions and discuss specific requirements with Qwest's technical team. CLECs are encouraged to invite their technical experts, systems architects, and designers, to attend the walk through.

8.1.3.1 Walk through Notification Content

This notification will contain:

- Purpose
- Logistical information (including a conference line)
- Reference to draft technical specifications, or reference to a web site with draft specifications
- Additional pertinent material

8.1.3.2 Conduct the Walk-through

Qwest will lead the review of technical specifications. Qwest technical experts will answer the CLEC SMEs' questions. Qwest will capture action items such as requests for further clarification. Qwest will follow-up on all action items and notify CLECs of responses 45 calendar days prior to implementation.

8.1.4 CLEC's Comments on Draft Interface Technical Specifications

If the CLEC identifies issues or requires clarification, the CLEC must send written comments to the Systems CMP Manager no less than fifty-five (55) calendar days prior to implementation.

8.1.5 Qwest Response to Comments

Qwest will review and respond with written answers to all CLEC issues, comments/concerns no less than forty-five (45) calendar days prior to implementation. The answers will be shared with all CLECs, unless the CLECs question(s) are marked proprietary. Any changes that may occur as a result of the responses will be distributed to all CLECs in the same notification letter. The

notification will include the description of any change(s) made as a result of CLEC comments. The change(s) will be reflected in the final technical specifications.

8.1.6 Final Interface Technical Specifications

The notification letter resulting from the CLEC's comments from the Initial Release Notification will constitute the Final Technical Specifications. After the Final Technical Specifications are published, there may be other changes made to documentation or the coding that is documented in the form of addenda. The following is a high level overview of the current disclosure, release and addendum process:

- Draft Developer Worksheets -- 45 days prior to a release the draft Developer Worksheets are made available to the CLEC's.
- Final Disclosure – 5 weeks prior to a release the Final Disclosure documents, including I charts and developer worksheets are made available to the CLECs.
- Release Day – On release day only those CLECs using the IMA GUI are required to cut over to the new release.
- 1st Addendum – 2 weeks after the release the 1st addendum is sent to the CLECs.
- Subsequent Addendum's – Subsequent addendum's are sent to the CLECs after the release as needed. There is no current process and timeline.
- EDI CLECs – 6 months after the release those CLECs using EDI are required to cut over to the new release. CLECs are not required to support all new releases.

8.1.7 Content of Final Notification Letter

The Final Release will include the following:

- Reference to Final Technical Specifications, or web site
- Qwest response to CLEC comments
- Summary of changes from the prior release, including any changes made as a result of CLEC comments on Draft Technical Specifications
- Indication of type of change (e.g., documentation change, business rule change, clarification change)
- Final Joint Test Plan including transactions which have changed
- Joint Testing Period
- Release date

Qwest's planned implementation date will be at least forty-five (45) calendar days from the date of the final release requirements, unless the exception process has been invoked. The implementation time line for the release will not begin until final specifications are provided. Production Support type of changes that occur within the thirty (30) calendar day test window can occur without advance notification but will be posted within 24 hours of the change.

8.1.8 Joint Testing Period

Qwest will provide a thirty (30) day test window for any CLEC who desires to jointly test with Qwest prior to the Release Production Date.

8.2 Graphical User Interface (GUI)

8.2.1 Draft GUI Release Notice

Prior to implementation of a change to an existing interface, Qwest will notify CLECs of the draft release notes and the planned implementation date.

Notification will occur at least twenty-eight (28) calendar days prior to implementing the release unless an exception has been granted. This notification will include draft user guide information if necessary.

CLECs must provide comments/questions on the documentation no less than twenty-five (25) calendar days prior to implementation.

Final notice for the release will be published at least twenty-one (21) calendar days prior to production release date.

8.2.2 Content of Draft Interface Release Notice

The notification will contain:

- Written summary of change(s)
- Target time frame for implementation
- Any cross-reference to draft documentation such as the user guide or revised user guide pages.

8.2.3 CLEC Comments on Draft Interface Release Notice

Any CLEC comments must be submitted in writing to the Systems CMP Manager.

8.2.4 Qwest Response to Comments

Qwest will consider CLEC comments and may address them in the final GUI release notice within four (4) calendar days after receipt of CLEC comments.

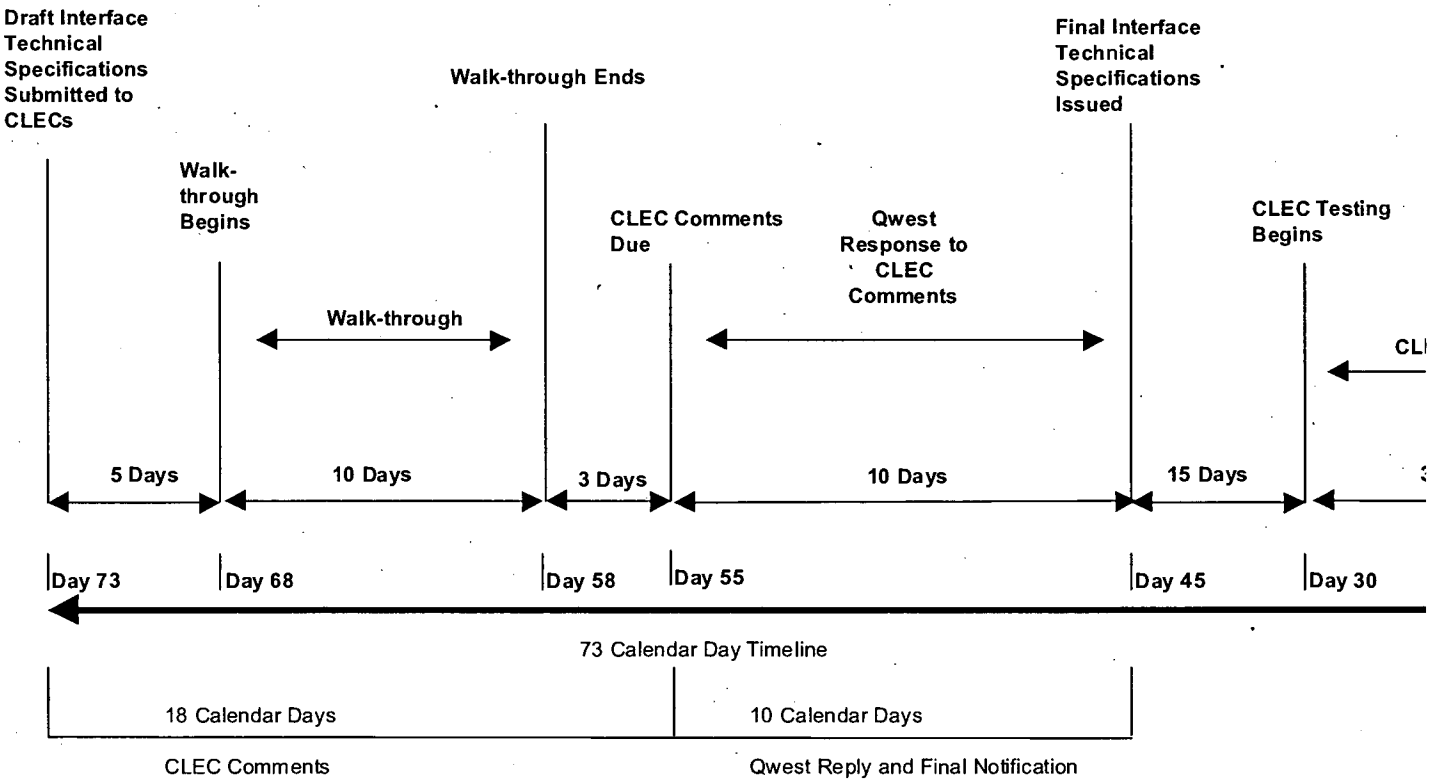
8.2.5 Content of Final Interface release Notice

CLEC comments to the draft notice may be incorporated into the final notice, which shall include:

- Final notification letter
- Summary of changes from draft interface release notice
- Final user guide (or revised pages)
- Release date

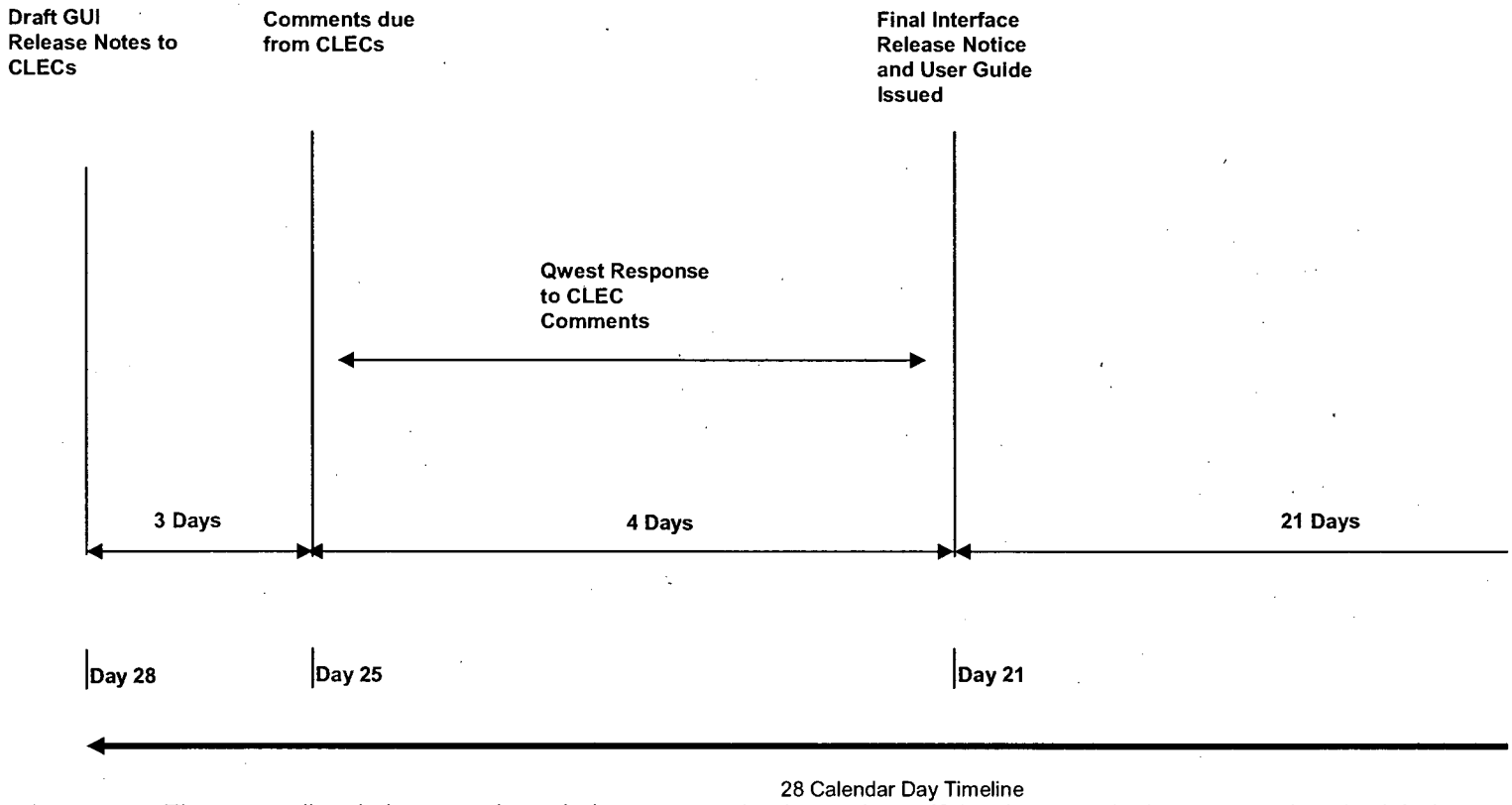
Qwest's planned implementation date will be no later than twenty-one (21) calendar days from the date of the final release notice. Qwest will post this information on the CMP web site. Production support type changes that occur without advance notification will be posted within 24 hours of the change. The implementation time line for the release will not begin until all related documentation is provided.

Qwest-CLEC Change Management Process
Changes to An Existing Application-to-Application OSS Int
Timeline



The events listed above are intended to occur on business days. If the date on which any event is scheduled to occu
weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

Qwest-CLEC Change Management Process
Changes to An Existing Graphic User Interface (G



The events listed above are intended to occur on business days. If the date on which any event is scheduled to oc
weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

9.0 RETIREMENT OF EXISTING OSS INTERFACES

The retirement of an existing OSS Interface occurs when Qwest ceases to accept transactions using a specific OSS Interface. This may include the removal of a Graphical User Interface (GUI) or a protocol transmission of information (Application-to-Application) interface.

9.1 Application-to-Application OSS Interface

9.1.1 Initial Retirement Plans

At least nine (9) months before the retirement date of Application-to-Application interfaces, Qwest will share the retirement plans via web site posting and CLEC notification. The scheduled new interface is to be in a CLEC certified production release prior to the retirement of the older interface.

Alternatively, Qwest may choose to retire an interface if there is no CLEC usage of that interface for the most recent three (3) consecutive months. Qwest will provide thirty (30) calendar day notification of the retirement via web posting and CLEC notification.

9.1.2 Initial Retirement Notice to CLECs:

Initial Retirement Notices will include:

- The rationale for retiring the OSS Interface
- Available alternative interface options for existing functionality
- The proposed detailed retirement time line (e.g., milestone dates, CLEC-Qwest comment and response cycle)
- Targeted retirement date

9.1.3 CLEC Comments to Initial Retirement Notice

CLEC comments to the Initial Retirement Notice are due to Qwest no later than fifteen (15) calendar days following the Initial Retirement Notice.

9.1.4 Comparable Functionality

Unless otherwise agreed to by Qwest and a CLEC user, when Qwest announces the retirement of an interface for which a comparable interface does or will exist, a CLEC user will not be permitted to commence building to the retiring interface. CLEC users of the retiring interface will be grandfathered until the retirement of the interface. Qwest will ensure that an interface with comparable functionality is available no less than six months prior to retirement of an Application-to-Application interface.

9.1.5 Final Retirement Notice

The Final Retirement Notice will be provided to CLECs no later than two-hundred and twenty-eight (228) calendar days prior to the retirement of the application-to-application interface. The Final Retirement Notice will contain:

- The rationale for retiring the OSS Interface (e.g., no usage or replacement)
- If applicable, where the replacement functionality will reside in a new interface and when the new interface has been certified by a CLEC
- Qwest's responses to CLECs' comments/concerns
- Actual retirement date

9.2 Graphical User Interface (GUI)

9.2.1 Initial Retirement Plans

At least two (2) months in advance of the target retirement date of a GUI, Qwest will share the retirement plans via web site posting and CLEC notification. The scheduled new interface is to be in a CLEC certified production release prior to the retirement of the older interface.

Alternatively, Qwest may choose to retire an interface if there is no CLEC usage of that interface for the most recent three (3) consecutive months. Qwest will provide thirty (30) calendar day notification of the retirement via web posting and CLEC notification.

9.2.2 Initial Retirement Notice to CLECs:

Initial Retirement Notices will include:

- The rationale for retiring the OSS Interface
- Available alternative interface options for existing functionality
- The proposed detailed retirement time line (e.g., milestone dates, CLEC-Qwest comment and response cycle)
- Targeted retirement date

9.2.3 CLEC Comments to Initial Retirement Notice

CLEC comments to the Initial Retirement Notice are due to Qwest no later than fifteen (15) calendar days following the Initial Retirement Notice.

9.2.4 Comparable Functionality

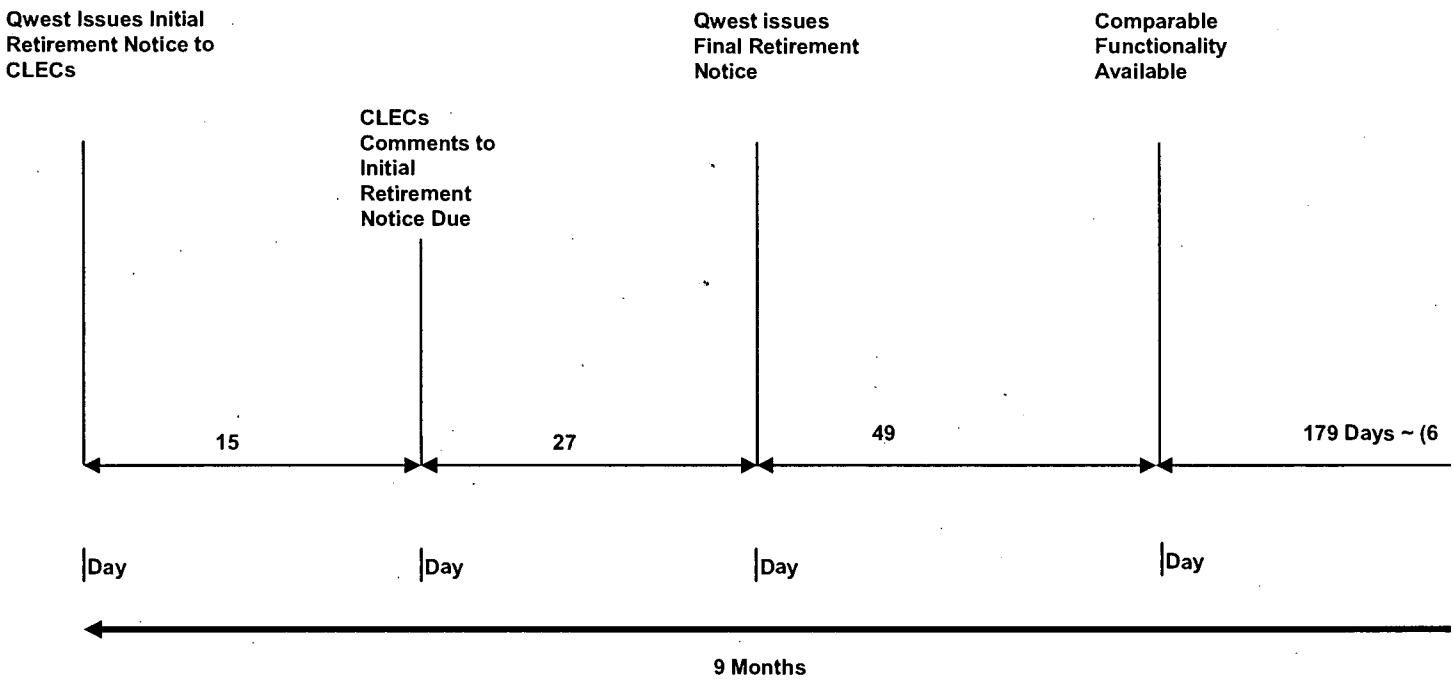
Qwest will ensure comparable functionality no less than thirty-one (31) days before retirement of a GUI.

9.2.5 Final Retirement Notice

The Final Retirement Notice, for GUI retirements, will be provided to CLECs no later than twenty-one (21) calendar days before the retirement date. The Final Retirement Notice will contain:

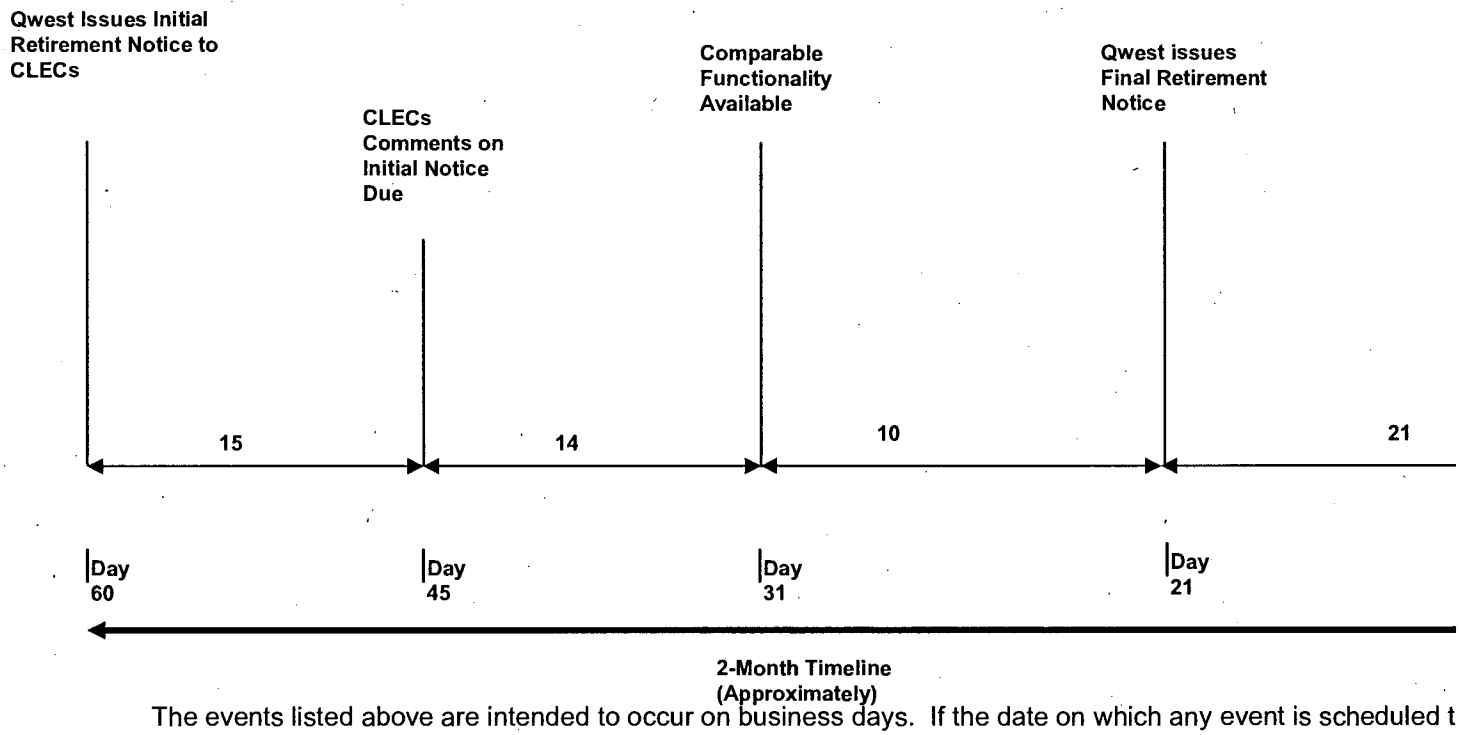
- The rationale for retiring the OSS Interface (e.g., no usage or replacement)
- If applicable, where the replacement functionality will reside in a new interface and when the new interface has been certified by a CLEC
- Qwest's responses to CLECs' comments/concerns
- Actual retirement date

Qwest-CLEC Change Management Proce
Retirement of An Existing Application-to-Applic Interface
Timeline



The events listed above are intended to occur on business days. If the date on which any event is scheduled t weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

Qwest-CLEC Change Management Process
Retirement of An Existing Graphic User Interfac
Timeline



The events listed above are intended to occur on business days. If the date on which any event is scheduled t
weekend or holiday, then Qwest and the CLECs may negotiate a revised timeline.

10.0 PRIORITIZATION

Each OSS Interface and Test Environment release is prioritized separately. If the Systems CMP Change Requests for any interface or test environment do not exceed release capacity, no prioritization for that release is required. The prioritization process provides an opportunity for CLECs to prioritize CLEC and Qwest originated OSS Interface change requests (CRs). CLEC or Qwest originated CRs for introduction of a new interface or retirement of an existing interface are not subject to prioritization and will follow the introduction or retirement processes outlined in Sections 7.0 and 9.0, respectively.

10.1 Regulatory and Industry Guideline Change Requests

Regulatory and Industry Guideline changes, are defined in Section 4.0. , Separate procedures are required for prioritization of CRs requesting Regulatory and Industry Guideline changes to ensure that Qwest can comply with the recommended or required implementation date, if any. The process for determining whether a CR is Regulatory Change or Industry guideline is set forth in Section 5.1.

Qwest will send CLECs a notice when it posts Regulatory or Industry Guideline CRs to the Web and identify when comments are due, as described in Section 5.1. Regulatory and Industry Guideline CRs will also be identified in the CMP Systems Monthly Meeting Distribution Package.

10.1.1 Regulatory Changes

For Regulatory Changes, Qwest will implement changes no later than the time specified in the legislation, regulatory requirement, court ruling, . If no time is specified, Qwest will implement the change as soon as practicable.

Regulatory CRs will be ranked with all other CRs. If the implementation date for a Regulatory CR requires all or a part of the change to be included in the upcoming Major Release, the CR will not be subject to ranking and will be automatically included in that Major Release.

10.1.2 Industry Guideline Changes

For Industry Guideline changes, Qwest will use the national implementation timeline, if any. If no national implementation timeline is specified, Qwest will implement any related changes as soon as practicable, taking into account the benefit of the guideline change and CLEC input regarding the implementation timeline.

Industry Guideline CRs will be ranked with all other CRs. If the recommended implementation date for a Industry Guideline CR requires all or a part of the change to be included in the upcoming Major Release, the CR will not be subject to ranking and will be automatically included in that Major Release, unless Qwest and CLECs unanimously agree otherwise.

10.1.3 Regulatory and Industry Guideline Change Implementation

When more than one Major Release is scheduled before the mandated or recommended implementation date for a Regulatory or Industry Guideline CR, Qwest will present information to CLECs regarding any technical, practical, or development cycle considerations, as part of the CR review and up to the packaging options, that may affect Qwest's ability to implement the CR in any particular Major Release. At the monthly CMP meeting where the Regulatory or Industry Guideline CR is presented, Qwest will advise CLECs of the possible scheduled releases in which Qwest could implement the CR and the CLECs and Qwest will determine how to allocate those CRs among the available Major Releases, taking into account the information provided by Qwest regarding technical, practical, and/or development considerations. If the Regulatory or Industry Guideline CR is not included in a prior release, it will be implemented in the latest release specified by Qwest.

10.2 Prioritization Process

10.2.1 Prioritization Review

At the last Monthly Systems CMP Meeting before Prioritization, Qwest will facilitate a Prioritization Review including a discussion of all CRs eligible[3] for prioritization in a major release. Qwest will distribute all materials five (5) calendar days prior to the prioritization review. The materials will include:

- Agenda
- Summary document of all CRs eligible for prioritization. (see Appendix A - Sample – IMA 11.0 Rank Eligible CRs)

Both CLECs and Qwest should have appropriate subject matter experts in attendance at the Prioritization Review. The review and discussion meetings are open to all CLECs.

The Prioritization Review objectives are to:

- Introduce newly initiated CLEC and Qwest OSS Interface and test environment change requests.
- Allow CLECs and Qwest to prioritize eligible OSS Interface or test environment change requests by providing specific input as to the relative importance that CLECs, as a group, and Qwest assign to each such change request.

10.2.2 Ranking

Within three (3) business days following the CMP Meeting that includes the Prioritization Review, Qwest will distribute the Prioritization Form for ranking. Ranking should be conducted according to the following guidelines:

- Each CLEC and Qwest may submit one numbered ranking of the Release Candidate List. The ranking must be submitted by the primary Point of Contact (POC, the secondary POC, or CMP Team Representative). The ranking will be submitted to the Qwest Systems CMP Manager in accordance with the guidelines described in Section 10.2.3 below. Refer to Appendix B: Sample – IMA 11.0 Initial Prioritization Form

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- Qwest and each CLEC ranks each change request on the Release Candidate List by providing a point value from 1 through n, where n is the total quantity of CRs. The highest point value should be assigned to the CR that Qwest and CLECs wish to be implemented first. The total points will be calculated by the Qwest Systems CMP Manager and the results will be distributed to the CLECs in accordance with the Prioritization Process described in Section 10.2.3 below. Refer to Appendix C – Sample – IMA 11.0 Prioritization List.

10.2.3 Ranking Tabulation

CLECs and Qwest who choose to vote must submit their completed Prioritization Form via e-mail within three (3) business days following Qwest's distribution of the Prioritization Form. Within two (2) business days following the submission of ranking, Qwest will tabulate all rankings and e-mail the resulting Initial Prioritization List to the CLECs. The results will be announced at the next scheduled CMP Monthly Meeting. Prioritization is based on the results of the votes received by the deadline. Based on the outcome of the final ranking of the CR candidates, an Initial Prioritization List is produced. Qwest will place in order the candidates based on the ranking responses received by the deadline.

10.2.4 Ranking of Late Added CRs

For those late added CRs that are eligible for inclusion, as a candidate, in the most recently prioritized release (Section 10.2.4), the prioritization process will be as follows.

- Within three (3) business days following the CMP Meeting that resulted in the decision to include the late added CR as a candidate in the recently prioritized release, Qwest will distribute the late added CR for ranking, along with the initial prioritization.
- Each CLEC and Qwest may submit a suggested rank for the late added CR. The suggested rank will be the number, from 1-n, corresponding to the position on the Initial Prioritization List that the CLEC or Qwest believes the late added CR should be inserted.
- CLECs and Qwest who choose to vote must return their suggested rank for the late added CR via e-mail within three (3) business days following Qwest's distribution of the late added CR for ranking.

Within two business days following the return of the suggested rank, Qwest will tabulate the results by averaging the returned suggested ranks for the late added CR. Qwest will insert the late added CR into the Initial Prioritization List at the resulting point on the list and will renumber the remaining candidates on the list based on this insertion. Qwest will e-mail the newly resulting Initial Prioritization List to the CLECs. The results will be announced at the next scheduled CMP Monthly Meeting.

10.2.5 Withdrawal of Prioritized CRs

A CLEC or Qwest may elect to withdraw a CR that has been prioritized for an OSS release. This process may be invoked at any time between the prioritization process and the commitment for the release. Qwest will determine its ability to work additional candidates for the release based upon the timing of the withdrawal request. After commitment, a CLEC or Qwest could request the CR be withdrawn, however, the withdrawal of the candidate may not be feasible based upon the development status at the time of the withdrawal request. The process will be as follows:

The originating CLEC or Qwest will submit a written request to the Qwest Systems CMP Manager indicating that they wish to withdraw the CR. This notification must be sent no later than 21 calendar days prior to the monthly Systems CMP meeting at which the request will be discussed. The written request must contain:

- the CR number
- the CR title
- an explanation of why the originator wishes to withdraw the CR

Within 2 business days after receipt of the request to withdraw the CR the Systems CMP Manager will notify, in writing, all of the CLECs that submitted a prioritization ranking. The subject line will note "INTENT TO WITHDRAW PRIORITIZED CR [number]." The notice will include

- the CR number
- the CR title,
- the ranking that it received from the prioritization,
- the explanation of why the originator wishes to withdraw the CR

If a CLEC or Qwest disagrees with the withdrawal of the CR from the release, they have the option to assume sponsorship of that CR. They may do so by notifying the Systems CMP Manager in writing of their intent to assume sponsorship of the CR within 5 business days after the Systems CMP Manager has sent the intent to withdraw e-mail. If the Systems CMP Manager receives no response within 5 business days, then the CR will be withdrawn. The new status will be reviewed in the next monthly Systems CMP meeting.

10.3 Special Change Request Process (SCRP)

In the event that a Systems CR is not ranked high enough in prioritization for inclusion in the next Release, or as otherwise provided in the CMP, the CR originator may elect to invoke the CMP Special Change Request Process (SCRP) as described in this section.

The SCRP may be requested up to five (5) calendar days after prioritization results are posted. However, the SCRP does not supercede the process defined in Section 5.0 (Change Request Initiation Process).

The foregoing process applies to Qwest and CLEC originated CRs. In the event a CR is submitted through this process, Qwest agrees that it will not divert IT resources available to work on the CMP systems CRs, to support the SCRP request. Qwest will have to apply additional resources to, and track, the additional work required for the CR it seeks to implement through the SCRP.

All time intervals within which a response is required from one Party to another under this section are maximum time intervals. Each Party agrees that it will provide all responses in writing to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

10.3.1 SCRP Request From

To invoke the SCRP, the CR originator must send an e-mail to the Qwest CMP SCRP mailbox (URL TBD). The subject line of the e-mail message must include:

- "SCRP FORM"
- CR originator's company name
- CR number and title

The text of the e-mail message must include:

- Description of the CR
- A completed SCRP Form (See Appendix XX)
- A single point of contact for the SCRP request including:
  - Primary requestor's name and company
  - Phone number
  - E-mail address
- Circumstances which have necessitated the invocation of the SCRP
- Desired implementation date
- If more than one company is making the SCRP request, the names and point of contact information for the other requesting companies.

10.3.2 Qwest Acknowledges Receipt with a Confirmation E-mail

Within two (2) business days following receipt of the SCRP e-mail, Qwest will acknowledge receipt of the complete SCRP e-mail with a confirmation e-mail and advise the SCRP Requestor of any missing information needed for Qwest to process and analyze the request. When the SCRP e-mail is complete, the confirmation e-mail will include:

- Date and time of receipt of complete SCRP e-mail
- Date and time of confirmation e-mail
- SCRP title and number
- The name, telephone number and e-mail address of the Qwest contact assigned to process the SCRP
- Amount of the non-refundable Processing Fee as specified in Section 9.3.8 below.

10.3.3 Process Fee Invoice

Within one (1) business day of sending the confirmation email Qwest will bill the SCRP Requestor a non-refundable Processing Fee as specified in Section 9.3.8 below.

10.3.4 SCRP Review Meeting

Within ten (10) business days after the confirmation e-mail, Qwest will schedule and hold a review meeting with the SCRP Requestor to review Qwest's analysis of the request.

10.3.5 Preliminary SCRP Quote and Review

During business and systems requirements analysis, Qwest will review the SCRP request to determine if it has any affinities with CRs packaged for the targeted OSS Interface release. As

soon as feasible, but in any case within thirty (30) business days, after receipt of a completed SCRP form, Qwest will schedule and hold a meeting with the SCRP Requestor to provide and review:

- An estimated Preliminary SCRP quote. The SCRP quote will, at a minimum, include the following information:
  - A description of the work to be performed
  - Estimated Development costs with a cap on cost
  - Targeted release
  - An estimate of the terms and conditions surrounding the firm SCRP quote. (If the estimate increases before Qwest issues the Firm SCRP Quote, Qwest will communicate the cost increases to the SCRP Requestor. The SCRP Requestor must comply with payment terms as outlined in Section 9.3.7 before Qwest proceeds with the request.)
- An invoice covering the business and systems requirements analysis
  - Payment for this invoice is due no later than 30 calendar days following Qwest written issuance of the Preliminary Quote. Qwest will not proceed with further development in support of the SCRP Request until the business and systems analysis and processing invoices are paid.

The SCRP Requestor has ten (10) business days, upon receipt of the SCRP quote, to either agree to purchase under the quoted price or cancel the SCRP request.

10.3.5.1 SCRP Requestor Accepts the Preliminary Quote and Decision for Qwest to Proceed

If the SCRP Requestor accepts the SCRP Preliminary Quote, the SCRP Requestor must send an e-mail to Qwest with the following information:

The subject line of the e-mail message must include:

- "SCRP PRELIMINARY QUOTE ACCEPTED"
- CR originator's company name
- CR number and title

The text of the e-mail message must include:

- Statement of accepting SCRP Preliminary Quote, targeted OSS Interface Release date, and terms and conditions
- CR originator's name, phone number, and e-mail address

10.3.5.2 SCRP Requestor Asks to Change the SCRP Request

If the SCRP Requestor decides to modify the SCRP request after Qwest provides the preliminary SCRP Quote, the requestor must submit a written request for change to the assigned Qwest manager . If changes are acceptable to Qwest, Qwest will notify the SCRP Requestor by e-mail within five (5) business days after receipt of such request for a change with a revised preliminary SCRP Quote, if applicable. The SCRP Requestor must inform Qwest, in writing, within five (5) business days, if the modified SCRP quote is acceptable, further changes are required, or the SCRP request is cancelled.

10.3.5.3 SCRP Requestor Cancels the SCRP Request

The last point at which a SCRP Request may be cancelled is at the CMP Meeting at which Qwest presents the CRs that Qwest has committed in the release. Otherwise, the request will be implemented with the release and the SCRP Requestor is obligated to pay the full amount of the firm quote consistent with the payment schedule described below in Section 10.3.7.

10.3.6 Firm SCRP Quote and Review

Qwest will provide the SCRP Requestor a final and Firm SCRP Quote after the completion of business requirements, systems requirements and packaging of the OSS Interface Release, and when Qwest commits CRs to the specific OSS Interface Release.

Qwest will send an e-mail to the SCRP Requestor with the following information:

The subject line of the e-mail message must include:

- "FIRM SCRP QUOTE"
- CR originator's company name
- CR number and title

The text of the e-mail message must include:

- Final SCRP quote and terms and conditions
- Committed implementation date, or OSS Interface Release
- Qwest contact name, phone number, and e-mail address

No less than ten (10) days following issuance of the Firm SCRP Quote Qwest will schedule and hold a meeting to review the quote. At this meeting Qwest will review the elements of the Firm Quote and the firm Release Date of the Targeted Release.

10.3.7 Payment Schedule

The SCRP Requestor must pay 50% of the Firm SCRP Quote no more than ten (10) calendar days following the scheduled release date and the remaining 50% of the Firm SCRP Quote within 30 calendar days after the scheduled release date.

10.3.8 Applicable SCRP Charges

This section describes the different costs for a SCRP request.

- Processing Fee – a one-time flat fee that must be paid within 30 calendar days after the Qwest-SCRP Requestor meeting to prepare the SCRP form. This fee is non-refundable and is treated separately from those charges for development and implementation as described under "Charges for the SCRP Request" below.
- Charges for Business and Systems Requirements - These charges include the costs of developing business and systems requirements.
- Charges for the Development of the SCRP Request – These charges, included in the Preliminary and Firm SCRP Quotes, including labor charges, time and capital costs incurred as a result of developing code and performing testing.

11.0 APPLICATION-TO-APPLICATION INTERFACE TESTING

If CLEC is using an application-to-application interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing in production. If multiple CLECs are using a service bureau provider, the service bureau provider need only be certified for the first participating CLEC; subsequent CLECs using the service bureau provider need not be certified. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the application-to-application interface. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel if technically feasible.

New releases of the application-to-application interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the initial and final Technical Specifications. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, if technically feasible. If multiple CLECs are using a service bureau provider, the service bureau provider need only be re-certified for the first participating CLEC; subsequent CLECs using the service bureau provider need not be re-certified.

Qwest provides a separate Customer Test Environment (CTE) for the testing of transaction based application-to-application interfaces for pre-order, order, and maintenance/repair. The CTE will be developed for each major release and updated for each point release that has changes that were disclosed but not implemented as part of the major release. Qwest will provide test files for batch/file interfaces (e.g. billing). The CTE for Pre-order and Order currently includes:

- Stand Alone Test Environment (SATE)
- Interoperability Testing
- Controlled Production Testing

The CTE for Maintenance and Repair currently includes:

- CMIP Interface Test Environment (MEDIACC)

Qwest provides initial implementation testing, and migration testing (from one release to the next) for all types of OSS Interface change requests. Controlled Production Testing is also provided for Pre-Order and Order. Such testing provides the opportunity to test the code associated with those OSS Interface exchange requests. The CTE will also provide the opportunity for regression testing of OSS Interface functionality.

11.1 Testing Process

Qwest will send an industry notification, including testing schedules (see Section 8.0 – Changes to Existing OSS Interfaces), to CLECs so they may determine their intent to participate in the test. CLECs wishing to test with Qwest must participate in at least one joint planning session and determine:

- Connectivity (required)
- Firewall and Protocol Testing (required)
- Controlled Production (required)
- Production Turn-up (required)
- Test Schedule (required)

A joint CLEC-Qwest test plan may also include some or all of the following based on type of testing requested:

- Requirements Review
- Test Data Development
- Progression Testing Phase

Qwest will communicate any agreed upon changes to the test schedule. CLECs are responsible for establishing and maintaining connectivity to the CTE.

Provided a CLEC uses the same software components and similar connectivity configuration as it uses in production, the CLEC should, in general, experience response times similar to production. However, this environment is not intended for volume testing. The CTE contains the appropriate applications for pre-ordering and Local Service Request (LSR) ordering up to but not including the service order processor. Qwest intends to include the service order processor as part of the SATE component of the CTE by the end of May, 2002. Production code problems identified in the test environment will be resolved by using the Production Support process as outlined in Section 12.0.

12.0 PRODUCTION SUPPORT

12.1 Notification of Planned Outages

Planned Outages are reserved times for scheduled maintenance to Operations Support Systems (OSS). Qwest sends associated Notifications to all CLECs. Planned Outage Notifications must include:

- Identification of the subject OSS.
- Description of the scheduled OSS maintenance activity.
- Impact to the CLECs (e.g. geographic area, products affected, system implications, and business implications).
- Scheduled date and scheduled start and stop times.
- Work around, if applicable.
- Qwest contact for more information on the scheduled OSS maintenance activity.

Planned Outage Notifications will be sent to CLECs and appropriate Qwest personnel within 2 days after the scheduling of the OSS maintenance activity.

12.2 Newly Deployed OSS Interface Release

Following the release production date of an OSS Interface change, Qwest will use production procedures for maintenance of software as outlined below. Problems encountered by the CLEC should be reported to the IT Wholesale Systems Help Desk (IT Help Desk). Qwest will monitor, track, and address troubles reported by CLECs or identified by Qwest. Problems reported will be known as IT Trouble Tickets. A week after the deployment of an IMA Release into production, Qwest will host a conference call with the CLECs to review any identified problems and answer any questions pertaining to the newly deployed software. Qwest will follow CMP process for documenting the meeting (includes issues/action items and status/solution). Issues will be addressed with specific CLECs and results/status will be reviewed at the next Monthly OSS CMP Meeting.

12.3 Request for a Production Support Change

The IT Help Desk supports Competitive Local Exchange Carriers who have questions regarding connectivity, outputs, and system outages. The IT Help Desk serves as the first point of contact for reporting trouble. If the IT Help Desk is unable to assist the CLEC, it will refer information to the proper subject matter expert, also known as Tier 2 or Tier 3 support, who may call the CLEC directly. Often, however, an IT Help Desk representative will contact the CLEC to provide information or to confirm resolution of the trouble ticket.

Qwest will assign each CLEC-generated and Qwest-generated IT Trouble ticket a Severity Level 1 to 4, as defined in Section 12.5. Severity 1 and Severity 2 IT trouble tickets will be implemented immediately by means of an emergency release of process, software or documentation (known as a patch). If Qwest and CLEC deem implementation is not timely, and a work around exists or can be developed, Qwest will implement the work around in the interim. Severity 3 and Severity 4 IT trouble tickets may be implemented when appropriate taking into

consideration upcoming patches, major releases and point releases and any synergies that exist with work being done in the upcoming patches, major releases and point releases.

The first time a trouble is reported by Qwest or CLEC, the Qwest IT Help Desk will assign a IT Trouble Ticket tracking number, which will be communicated to the CLEC at the time the CLEC reports the trouble. The affected CLEC(s) and Qwest will attempt to reach consensus on resolution of the problem and closing the IT Trouble Ticket. If no consensus is reached, any party may use the Technical Escalation Process. When the IT Trouble Ticket has been closed, Qwest will notify CLECs with one of the following disposition codes:

- No Trouble Found – to be used when Qwest investigation indicates that no trouble exists in Qwest systems.
- Trouble to be Resolved in Patch – to be used when the IT Trouble Ticket will be resolved in a patch. Qwest will provide a date for implementation of the patch. This is typically applied to Severity 1 and Severity 2 troubles, although Severity 3 and Severity 4 troubles may be resolved in a patch where synergies exist.
- CLEC Should Submit CMP CR – to be used when Qwest's investigation indicates that the System is working pursuant to the Technical Specifications (unless the Technical Specifications are incorrect), and that the IT Trouble Ticket is requesting a systems change that should be submitted as a CMP CR.
- Date TBD – to be used when the IT Trouble Ticket is not scheduled to be resolved in a patch or change, but Qwest may resolve in a patch, release, or otherwise, if possible where synergies exist. This disposition is applied to Severity 3 and Severity 4 troubles.

Qwest will track "Date TBD" trouble tickets and report status and resolution of these trouble tickets and associated systems work on its CMP website. The status of these trouble tickets will be regularly discussed in CMP meetings.

For "Date TBD" trouble tickets, either Qwest or a CLEC may initiate the Change Request to correct the problem. (See Section 5.0 for CR Initiation.) If the initiating party knows that the CR relates to a trouble ticket, it will identify the trouble ticket number on the CR.

Instances where Qwest or CLECs misinterpret Technical Specifications and/or business rules must be addressed on a case-by-case basis. All parties will take all reasonable steps to ensure that any disagreements regarding the interpretation of a new or modified OSS Interface are identified and resolved during the change management review of the change request.

12.4 Reporting Trouble to IT

Qwest will open a trouble ticket at the time the trouble is first reported by CLEC or detected by Qwest. The IT Help Desk representative will communicate the ticket number to the CLEC at the time the CLEC reports the trouble.

If a ticket has been opened, and subsequent to the ticket creation, CLECs call in on the same problem, and the IT Help Desk recognizes that it is the same problem, a new ticket is not created. The IT Help Desk documents each subsequent call in the primary ticket.

If one or more CLECs call in on the same problem, but it is not recognized as the same problem, one or more tickets may be created. When the problem is recognized as the same,

one of the tickets becomes the primary ticket, and the other tickets are linked to the primary ticket. When the problem is closed, the primary and all related tickets will be closed.

12.5 Severity Levels

Severity level is a means of assessing and documenting the impact of the loss of functionality to CLEC(s) and impact to the CLEC's business. The severity level gives restoration or repair priority to problems causing the greatest impact to CLEC(s) or its business.

Guidelines for determining severity levels are listed below. Severity level may be determined by one or more of the listed bullet items under each Severity Level (the list is not exhaustive). Examples of some trouble ticket situations follow. Please keep in mind these are guidelines, and each situation is unique. The IT Help Desk representative, based on discussion with the CLEC, will make the determination of the severity level and will communicate the severity level to the CLEC at the time the CLEC reports the trouble. If the CLEC disagrees with the severity level assigned by the IT Help Desk personnel, the CLEC may escalate using the Technical Escalation Process.

Severity 1: Critical Impact

- Critical.
- High visibility.
- A large number of orders or CLECs are affected.
- A single CLEC cannot submit its business transactions.
- Affects online commitment.
- Production or cycle stopped – priority batch commitment missed.
- Major impact on revenue.
- Major component not available for use.
- Many and/or major files lost.
- Major loss of functionality.
- Problem can not be bypassed.
- No viable or productive work around available.

Examples:

- Major network backbone outage without redundancy.
- Environmental problems causing multiple system failures.
- Large number of service or other work order commitments missed.
- A Software Defect in an edit which prevents any orders from being submitted.

Severity 2: Serious Impact

- Serious.
- Moderate visibility.
- Moderate to large number of CLECs, or orders affected.
- Potentially affects online commitment.
- Serious slow response times.
- Serious loss of functionality.
- Potentially affects production – potential miss of priority batch commitment.

- Moderate impact on revenue.
- Limited use of product or component.
- Component continues to fail. Intermittently down for short periods, but repetitive.
- Few or small files lost.
- Problems may have a possible bypass; the bypass must be acceptable to CLECs.
- Major access down, but a partial backup exists.

Examples:

- A single company, large number of orders impacted
- Frequent intermittent logoffs.
- Service and/or other work order commitments delayed or missed.

Severity 3: Moderate Impact

- Low to medium visibility.
- Low CLEC, or low order impact.
- Low impact on revenue.
- Limited use of product or component.
- Single CLEC device affected.
- Minimal loss of functionality.
- Problem may be bypassed; redundancy in place. Bypass must be acceptable to CLECs.
- Automated workaround in place and known. Workaround must be acceptable to CLECs.

Example:

- Hardware errors, no impact yet.

Severity 4: Minimal Impact

- Low or no visibility.
- No direct impact on CLEC.
- Few functions impaired.
- Problem can be bypassed. Bypass must be acceptable to CLECs.
- System resource low; no impact yet.
- Preventative maintenance request.

Examples:

- Misleading, unclear system messages causing confusion for users.
- Device or software regularly has to be reset, but continues to work.

12.6 Status Notification for IT Trouble Tickets

There are two types of status notifications for IT Trouble Tickets:

- Ticket Notifications: for tickets that relate to only one reporting CLEC
- Event Notifications: for tickets that relate to more than one CLEC
- Event Notifications are sent by Qwest to all CLECs who subscribe to the IT Help Desk. Event Notifications will include ticket status (e.g. open, no change, resolved) and as much of the following information as is known to Qwest at the time the notice is sent:
- Description of the problem

- Impact to the CLECs (e.g. geographic area, products affected, business implications)
- Estimated resolution date and time if known
- Resolution if known
- Severity level
- Trouble ticket number(s), date and time
- Work around if defined
- Qwest contact for more information on the problem
- System affected
- Escalation information as available

Both types of notifications will be sent to the CLECs and appropriate Qwest personnel within the time frame set forth in the table below and will include all related system trouble ticket number(s).

12.7 Notification Intervals

Notification Intervals are based on the severity level of the ticket. "Notification Interval for any Change in Status" means that a notification will be sent out within the time specified from the time a change in status occurs. "Notification Interval for No Change in Status" means that a notification will be sent out on a recurring basis within the time specified from the last notification when no change in status has occurred, until resolution. "Notification Interval upon Resolution" means that a notification will be sent out within the time specified from the resolution of the problem.

Notification will be provided during the IT Help Desk normal hours of operation. Qwest will continue to work severity 1 problems outside of Help Desk hours of operation which are Monday-Friday 6:00 a.m. - 8:00 p.m. (MT) and Saturday 7:00 a.m. - 3:00 p.m. (MT), and will communicate with the CLEC(s) as needed. A severity 2 problem may be worked outside the IT Help Desk normal hours of operation on a case-by-case basis.

The chart below indicates the response intervals a CLEC can expect to receive after reporting a trouble ticket to the IT Help Desk.

Severity Level of Ticket	Notification interval for initial ticket	Notification Interval for any Change in Status	Notification Interval for No Change in Status	Notification Interval upon Resolution
Severity Level 1	Immediate acceptance	Within 1 hour	1 hour	Within 1 hour
Severity Level 2	Immediate acceptance	Within 1 hour	1 hour	Within 1 hour
Severity Level 3	Immediate acceptance	Within 4 hours	48 hours	Within 4 hours
Severity Level 4	Immediate acceptance	Within 8 hours	48 hours	Within 8 hours

13.0 TRAINING

Qwest will incorporate all substantive changes to existing Graphical User Interfaces (GUI), including the introduction of new GUI, into CLEC training programs. Qwest will execute CLEC training for pre-order, ordering, billing, and maintenance and repair GUI.

13.1 Introduction of a New GUI

Qwest will include a CLEC training schedule with the Introduction of a New GUI Release Notification issued no less than forty-five (45) calendar days prior to the Release Production date. Qwest will make available CLEC training beginning no less than twenty-one (21) calendar days prior to the Release Production Date. Web based training will remain available for the life of the release.

13.2 Changes to an Existing GUI

Qwest will include a CLEC training schedule with the Draft Release Notes issued no less than twenty-eight (28) calendar days prior to the Release Production date. Qwest will make available CLEC training beginning no less than twenty-one (21) calendar days prior to the Release Production date. Web based training will remain available for the life of the release.

CEMR training will not be available before the release but will be conducted for 90 days in the live environment after the Release Production date.

13.3 Product and Process Introductions and Changes Qwest may offer CLEC training for product and process introductions and changes based on the complexity of the introduction or change. This training is offered in many forms, but is most commonly offered in the following delivery methods: web-based, instructor-led, job aids, or conference calls.

14.0 ESCALATION PROCESS

14.1 Guidelines

- The escalation process will include items that are defined as within the CMP scope.
- The decision to escalate is left to the discretion of the CLEC, based on the severity of the missed or unaccepted response/resolution.
- Escalations may also involve issues related to CMP itself, including the administration of the CMP.
- The expectation is that escalation should occur only after change management procedures have occurred per the CMP.

14.2 Cycle

Item must be formally escalated as an e-mail sent to the Qwest CMP escalation e-mail address, http://www.qwest.com/wholesale/cmp/escalations_dispute.html.

- Subject line of the escalation e-mail must include:
  - CLEC Company name
  - "ESCALATION"
  - Change Request (CR) number and status, if applicable
- Content of e-mail must enclose appropriate supporting documentation, if applicable, and to the extent that the supporting documentation does not include the following information, the following must be provided:
  - Description of item being escalated
  - History of item
  - Reason for Escalation
  - Business need and impact
  - Desired CLEC resolution
  - CLEC contact information including Name, Title, Phone Number, and e-mail address
  - CLEC may request that impacted activities be stopped, continued or an interim solution be established.
- Qwest will acknowledge receipt of the complete escalation e-mail with an acknowledgement of the e-mail no later than the close of business of the following business day. If the escalation email does not contain the following specified information Qwest will notify the CLEC by the close of business on the following business day, identifying and requesting information that was not originally included. When the escalation email is complete, the acknowledgement email will include:
  - Date and time of escalation receipt
  - Date and time of acknowledgement email
  - Name, phone number and email address of the Qwest Director, or above, assigned to the escalation.
- Qwest will post escalated issue and any associated responses on the CMP web site within 1 business day of receipt of the complete escalation or response.
- Qwest will give notification that an escalation has been requested via the Industry Mail Out process
- Any other CLEC wishing to participate in the escalation must submit an e-mail notification to the escalation URL within one (1) business day of the mail out. The subject line of the e-mail must include the title of the escalated issue followed by "ESCALATION PARTICIPATION"
- Qwest will respond with a binding position e-mail including supporting rationale as soon as practicable, but no later than:

  - For escalated CRs, seven (7) calendar days after sending the acknowledgment e-mail,.
  - For all other escalations, fourteen (14) calendar days after sending the acknowledgment e-mail.
- The escalating CLEC will respond to Qwest within seven (7) calendar days with a binding position e-mail.
- When the escalation is closed, the resolution will be subject to the CMP.

15.0 DISPUTE RESOLUTION PROCESS

CLECs and Qwest will work together in good faith to resolve any issue brought before the CMP. In the event that an impasse issue develops, a party may pursue the dispute resolution processes set forth below: Item must be formally noticed as an e-mail sent to the Qwest CMP Dispute Resolution e-mail address, http://www.qwest.com/wholesale/cmp/escalations_dispute.html. Subject line of the e-mail must include:

- CLEC Company name
- "Dispute Resolution"
- Change Request (CR) number and status, if applicable
- Content of e-mail must enclose appropriate supporting documentation, if applicable, and to the extent that the supporting documentation does not include the following information, the following must be provided:
  - Description of item
  - History of item
  - Reason for Escalation
  - Business need and impact
  - Desired CLEC resolution
  - CLEC contact information including Name, Title, Phone Number, and e-mail address
  - Qwest will acknowledge receipt of the complete Dispute Resolution e-mail within one (1) business day
- Qwest or any CLEC may suggest that the issue be resolved through an Alternative Dispute Resolution (ADR) process, such as arbitration or mediation using the American Arbitration Association (AAA) or other rules. If the parties agree to use an ADR process and agree upon the process and rules to be used, including whether the results of the ADR process are binding, the dispute will be resolved through the agreed-upon ADR process.
- Without the necessity for a prior ADR Process, Qwest or any CLEC may submit the issue, following the commission's established procedures, with the appropriate regulatory agency requesting resolution of the dispute. This provision is not intended to change the scope of any regulatory agency's authority with regard to Qwest or the CLECs.

This process does not limit any party's right to seek remedies in a regulatory or legal arena at any time.

APPENDIX A: SAMPLE - IMA 11.0 RANK ELIGIBLE CRS

#	CR Number	Interface	Submit Date	Company	Status	Title	Shirt Size	Est LOE Min	Est LOE Max	CR
1	14886	IMA Common	9/28/01	Qwest	Pending Withdrawal	Pre-order Transaction: Due Date availability & standard Intervals	Extra Large	5501	8000	Winstc
2	23943	IMA Common	9/28/01	Qwest	Pending Withdrawal	Shared Distribution Loop- Long Term	Large	3001	5500	Winstc
3	25505	IMA Common	9/28/01	Qwest	Pending Withdrawal	Line Splitting for UNE-P accounts	Large	3001	5500	Winstc
4	25591	IMA Common	9/26/01	Qwest	Pending Withdrawal	Flowthrough validate LPIC LSR Entries	Medium	751	3000	Winstc
5	25800	IMA Common	9/28/01	Qwest	Pending Withdrawal	Add New Auto Push Statuses	Medium	751	3000	Winstc
6	27751	IMA Common	9/28/01	Qwest	Pending Withdrawal	Intrabuilding Cable.	Large	3001	5500	Winstc
7	27756	IMA Common	9/26/01	Qwest	Pending Withdrawal	Cancellation Remarks	Small	201	750	Winstc
1	SCR013002-6	IMA Common	1/30/02	Qwest	Clarification	PID Impact - PO-2B: Unbundled Loop and Local Number Portability Edits	Large	3001	5500	Martai
2	SCR013002-7	IMA Common	1/30/02	Qwest	Clarification	PID Impact - PO-2B: Resale POTS Edits	Large	3001	5500	Martai
1	24652	IMA Common	9/28/01	Qwest	Presented	Unbundled DID/PBX Trunk Port Facility move from LS to PS	Medium	751	3000	Winstc
2	25091	IMA Common	9/26/01	Qwest	Presented	DSL Flowthrough - Re-Branding	Large	3001	5500	Winstc
3	26636	IMA Common	9/28/01	Qwest	Presented	Shared Loop Enhancements	Medium	751	3000	Winstc
4	30212	IMA Common	9/28/01	Qwest	Presented	Add New UNE-P PAL to IMA	Large	3001	5500	Winstc
5	30215	IMA Common	10/23/01	Qwest	Presented	Wholesale Local Exchange Freeze	Large	3001	5500	Winstc
6	31766	IMA Common	9/28/01	Qwest	Presented	Reject Duplicate LSRs	Medium	751	3000	Martai
7	5043011	IMA GUI	8/31/00	Eschelon	Presented	Add an online glossary of the field title abbreviations to help menu of IMA GUI	Medium	751	3000	Esche

APPENDIX B: SAMPLE - IMA 11.0 INITIAL PRIORITIZATION FORM

Assigned Point Value (see instructions)	#	CR Number	Title	Company	Interface	Products Impacted
	1	24652	Unbundled DID/PBX Trunk Port Facility move from LS to PS	Qwest	IMA Common	Unbundled PID/PBX Trunk Port
	2	25091	DSL Flowthrough - Re-Branding	Qwest	IMA Common	DSL
	3	26636	Shared Loop Enhancements	Qwest	IMA Common	Shared Loop
	4	30212	Add New UNE-P PAL to IMA	Qwest	IMA Common	UNE-P PAL
	5	30215	Wholesale Local Exchange Freeze Based on CSRs	Qwest	IMA Common	All
	6	31766	Reject Duplicate LSRs	Qwest	IMA Common	All Products
	7	5043011	Add an online glossary of the field title abbreviations to help menu of IMA GUI	Eschelon	IMA GUI	All Products
	8	5043076	Create a separate field for line numbers in EDI responses	Eschelon	IMA EDI	
	9	5206704	Add OCn capable loop LSR to IMA	ELI	IMA Common	DS1, DS3 & OCn Loop Orders
	10	5405937	CLECs require availability to view completed LSR information in IMA GUI	Verizon	IMA GUI	Resale
	11	5498578	Ability to send dual CFA information on an LSR for HDSL orders	WorldCom	IMA Common	HDSL
	12	SCR010902-1	Limited IMA GUI Access for Pre-Order Transactions Only	McLeodUSA	IMA GUI	All
	13	SCR012202-1	Incorrect Consolidation of DR5 USOC in IMA	Qwest	IMA Common	ISDN PRI
	14	SCR013002-3	IMA Pre-Order - Use CCNA to retrieve a Design Layout Report (DLR)	Qwest	IMA Common	
	15	SCR013002-4	Revision of TOS field in IMA	Qwest	IMA GUI	UNE-P, Resale
	16	SCR013002-5	PIC Freeze Documentation	Qwest	IMA Common	Resale, UNE

APPENDIX C: SAMPLE - IMA 11.0 INITIAL PRIORITIZATION LIST

RANK	TOTAL POINT VALUE	CR Number	Title	Company	Interface	Products Impacted	Shirt Size
1	251	SCR013102-15	LSOG 6 - Upgrade Field Numbering and Naming to Existing Qwest Forms & EDI Maps **(FOUNDATION CANDIDATE) (NOTE: Per February CMP Meeting Discussion, this CR should be ranked higher than all other LSOG 6 Change Requests)**	Qwest	IMA Common	All Products	Extra Large
2	231	SCR013002-8	Flowthrough on Sup 2 Category Due Date	Qwest	IMA Common	All Products except Designed Products	Large
3	227	SCR101901-1	Allow customers to move and change local service providers at the same time. **(NOTE: Per February CMP Meeting Discussion, this CR should be ranked higher than #26)**	Eschelon	IMA Common	Centrex Resale, UNE-P	Extra Large
4	214	31766	Reject Duplicate LSRs	Qwest	IMA Common	All Products	Medium
5	211	SCR013002-3	IMA Pre-Order - Use CCNA to retrieve a Design Layout Report (DLR)	Qwest	IMA Common		Medium

APPENDIX D

CHANGE REQUEST FORM

CR # _____ **Status:** _____

Originated By: Date Submitted: _____

Company: _____ Internal Ref# _____

Originator: _____, _____, _____/_____

Name, Title, and email/phone#

Proprietary for submission to Account Manager Only? Please click appropriate box.

☐ Yes ☐ No

Optional -Available Dates/Time for Clarification Meeting
1.
2.
3.
4.

Area of Change Request: Please click appropriate box and fill out the section below.

☐ Product/Process ☐ System

Title of Change:

Description of Change:

Expected Deliverables:

OPTIONAL - THIS SECTION TO BE COMPLETED FOR PRODUCT & PROCESS CHANGES

Products Impacted: Please Click all appropriate boxes and also list specific products within product group, if applicable.

☐ Ancillary _____
- ☐ LIDB _____
- ☐ 8XX _____
- ☐ 911 _____
- ☐ Calling Name _____
- ☐ SS7 _____

☐ AIN _____

☐ DA _____

☐ Operation Services _____

☐ INP / LNP _____

☐ Centrex _____

☐ Collocation _____
- ☐ Physical _____
- ☐ Virtual _____
- ☐ Adjacent

☐ LNP _____

☐ Private Line _____

☐ Resale _____

☐ Switched Service _____

☐ UDIT _____

☐ Unbundled Loop _____

☐ UNE _____
- ☐ Switching _____
- ☐ Transport (Include EUDIT) _____
- ☐ Loop _____
- ☐ UNE-P _____
- ☐ EEL (UNE-C) _____
- ☐ Other _____

☐ Wireless _____

☐ LIS / Interconnect

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☐ ICDF Collocation _____
☐ Other _____
☐ Enterprise Data Source
☐ Other _____
☐ EICT
☐ Tandem Trans. / TST
☐ DTT / Dedicated Transport
☐ Tandem Switching
☐ Local Switching

OPTIONAL - THIS SECTION TO BE COMPLETED IF REQUESTING A PROCESS CHANGE

Area Impacted: Please click appropriate box.

☐ Pre-Ordering
☐ Provisioning
☐ Ordering
☐ Billing
☐ Maintenance / Repair
☐ Other _____

OPTIONAL - THIS SECTION TO BE COMPLETED IF REQUESTING A SYSTEM CHANGE

OSS Interfaces Impacted: Please click all appropriate boxes.

☐ CEMR
☐ EXACT
☐ Directory Listing
☐ IMA EDI
☐ IMA GUI
☐ HEET
☐ MEDIACC
☐ Product Database
☐ SATE
☐ Other _____
☐ TELIS
☐ Wholesale Billing Interface

APPENDIX D

Change Request Form Instructions

The Change Request (CR) Form is the written documentation for submitting a CR for a Product, Process or OSS interface (Systems) change. The CR should be reviewed and submitted by the individual, which was selected to act as a single point of contact for the management of CRs to Qwest. Electronic version of the CR Form can be downloaded from the Qwest Wholesale WEB Page at http://www.qwest.com/wholesale/cmp/changerequest.html.

Product/Process and System CRs may be submitted to Qwest via e-mail at: cmpcr@qwest.com

To input data to the form, use the Tab Key to navigate between each field. The following fields on the CR Form must be completed as a minimum, unless noted otherwise:

Submitted By

- Enter the date the CR is being submitted to the Qwest CMP Manager.
- Enter Company's name and Submitter's name, title, and email/Phone#.
- Optional – identify potential available dates Submitter is available for a Clarification Meeting.
- Optional – enter a Company Internal Reference No. to be identified.

Proprietary Submission

- If the CR is proprietary (i.e., confidential) and is meant to be directed only to your account manager and not flow through the CMP, then select "Yes". If the CR is not proprietary and is meant to flow through the CMP, then select "No". If this field is left blank, the default will be "No".

Area of Change Request

- Select the type of CR that is being submitted (Product, Process, or Systems).

Title of Change

- Enter a title for this CR. This should concisely describe the CR in a single sentence.

Description of Change

- Describe the Functional needs of the change being requested. To the extent practical, please provide examples to support the functional need. Also include the business benefit of this request.

Expected Deliverables

- Enter the desired outcome required of Qwest (e.g. revised process, clarification, improved communication, etc.).

Products Impacted – Optional

- To the extent known, check the applicable products that are impacted by the CR.

Area Impacted – Optional

- To the extent known, check the applicable process areas that are impacted by the CR.

OSS Interfaces Impacted – Optional

- To the extent known, check the applicable systems that are impacted by the CR.

Qwest's CMP Manager will complete the remainder of the Form.

DEFINITION OF TERMS

Term	Definition
CLEC	A telecommunications provider that has authority to provide local exchange telecommunications service on or after February 8, 1996, unless such provider has been declared an Incumbent Local Exchange Carrier under the Federal Telecommunications Act of 1996.
Software Defects	A problem with system software that is not working according to the Technical Specifications and is causing detrimental impacts to the users.
Design, Development, Notification, Testing, Implementation and Disposition	Design: To plan out in a systematic way. Design at Qwest includes the Business Requirements Document and the Systems Requirements Document. These two documents are created to define the requirements of a Change Request (CR) in greater detail such that programmers can write system software to implement the CR. Development: The process of writing code to create changes to a computer system or sub system software that have been documented in the Business Requirements and Systems Requirements. Notification: The act or an instance of providing information. Various specific notifications are documented throughout the CMP. Notifications apply to both Systems and Product & Process changesTesting: The process of verifying that the capabilities of a new software Release were developed in accordance with the Technical Specifications and performs as expected. Testing would apply to both Qwest internal testing and joint Qwest/CLEC testing. Implementation: The execution of the steps and processes necessary in order to make a new release of a computer system available in a particular environment. These environments are usually testing environments or production environments. Disposition: A final settlement as to the treatment of a particular Change Request.
Good Faith	"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Term	Definition
OSS Interface	Existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and billing capabilities for local services provided by CLECs to their end users.
OSS Application to Application Interface Testing Controlled Production Testing	Controlled Production process is designed to validate CLEC ability to transmit transactions that meet industry standards and complies with Qwest business rules. Controlled Production consists of submitting requests to the Qwest production environment for provisioning as production orders with limited volumes. Qwest and CLEC use Controlled Production results to determine operational readiness for full production turn-up.
Initial Implementation Testing	This type of application-to-application testing allows a CLEC to validate its technical development of an OSS Interface before turn-up in production of new transactions or significantly changed capabilities.
Interoperability Testing Environment	A production copy of IMA. It interfaces directly with Qwest's production systems for pre-order and order processing. As a result, all interoperability pre-order queries and order transactions are subjected to the same edits as production orders. A CLEC uses account data valid in Qwest production systems for creating scenarios on Qwest-provided templates, obtains approval on these scenario templates, and then submits a minimum set of test scenarios for all transactions it wishes to perform in production. Interoperability testing provides CLECs with the opportunity to validate technical development efforts and to quantify processing results.
Level of Effort	Estimated range of hours required to implement a Change Request
Migration Testing	Process to test in the Customer Testing Environment a subsequent application-to-application Release from a previous Release. This type of testing allows a CLEC to move from one release to a subsequent release of a specific OSS Interface.
Regression Testing	Process to test, in the Customer Test Environment, OSS Interfaces, business process or other related interactions. Regression Testing is primarily for use with 'no intent' toward

Term	Definition
	meeting any Qwest entry or exit criteria within an implementation process. Regression Testing includes testing transactions previously tested, or certified.
Release • Major Release • Point Release • Patch Release	A Release is an implementation of changes resulting from a CR or production support issue for a particular OSS Interface There are three types of releases for IMA.: • Major Release may be CLEC impacting (to systems code and CLEC operating procedures) via EDI changes, GUI changes, technical changes, or all. Major Releases are the primary vehicle for implementing systems Change Requests of all types (Regulatory, Industry Guideline, CLEC-originated and Qwest-originated). • Point Release may not be CLEC code impacting, but may affect CLEC operating procedures. The point release is used to fix bugs introduced in previous releases, technical changes, make changes to the GUI, and/or deliver enhancements to IMA disclosed in a major release that could not be delivered in the timeframe of the major release. • Patch Release is a specially scheduled system change for the purpose of installing the software required to resolve an issue associated with a trouble ticket.
Release Production Date	The Release Production Date is the date that a software Release is first available to the CLECs for issuance of production transactions.
Sub-systems	A collection of tightly coupled software modules that is responsible for performing one or more specific functions in an OSS interface.
Stand-alone Testing Environment (SATE)	A Stand-Alone Testing Environment is a test environment that can be used by CLECs for Initial Implementation Testing, Migration Testing and Regression Testing. SATE takes CLEC pre-order and order transaction requests, passes the requests to the stand-alone database, and returns responses to the CLEC user. SATE uses pre-defined test account data and requests that are subject to the same BPL IMA/EDI edits as those used in production. The SATE is intended to mirror the production environment (including simulation of all legacy systems). SATE is part of the Customer Test Environment.
Technical Specifications	Detailed documentation that contains all of the information that a CLEC will need in order to build a particular release of an OSS application-to-application interface. Technical Specifications

Term	Definition
	include: • A chapter for each transaction or product which includes a business (OBF forms to use) description, a business model (electronic transactions needed to complete a business function), trading partner access information, mapping examples, data dictionary Technical Specification Appendices for IMA include: • Developer Worksheets • IMA Additional Edits (edits from backend OSS systems) • Developer Worksheets Change Summary (field by field, release by release changes) • EDI Mapping and Code Conversion Changes (release by release changes) • Facility Based Directory Listings • Generic Order Flow Business Model The above list may vary for non-IMA application to application interfaces
Version	A version is the same as an OSS Interface Release (Major or Point Release)

EXHIBIT H

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Exhibit I – Individual Case Basis

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Qwest.

2. ICB Rate Intervals

   2.1 For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.

   2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Qwest shall provide CLEC with an ICB quote within the stated specific intervals:

      2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.

      2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Exhibit F.

      2.2.3 Quotes for all collocation requests, regardless of the type of collocation, shall be provided in accord with the Section 8 interval.

      2.2.4 Quotes for all Field Connection Point requests shall be provided in accord with Section 9.3.

      2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.

   2.3 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Qwest shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Qwest shall request the release of vendor cost information when Qwest communicates with the vendor(s) when Qwest seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Qwest under the non-disclosure sections of this Agreement.

3. ICB Provisioning Intervals

3.1 For those products and services provided pursuant to this SGAT that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.

3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Qwest representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.

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Exhibit K
PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided with Tier 1 payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provides to its own retail customers, or Qwest fails to meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by the state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC is equivalent to that which it provides to its retail customers. The PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC and for Qwest retail analogue result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when a benchmark standard and low CLEC volume are such that a 100% performance result would be required to meet the standard and has not been attained. In such a situation, the determination of whether Qwest meets or fails the benchmark standard

will be made using performance results for the month in question, plus a sufficient number of consecutive prior months so that a 100% performance result would not be required to meet the standard. For purposes of section 6.2, a meet or fail determined by this procedure shall count as a single month. In cases where there is insufficient prior data to determine if the standard has been met or missed using this "look-back" procedure, Qwest shall be allowed to round the product of the benchmark and the sample size up to one, such that one miss would be permitted.

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth in Attachment 1. Each performance measurement identified is defined in the Performance Indicator Definitions ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, and which are included in the SGAT at Exhibit B. The measurements have been designated as Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The formula for determining parity using the modified z-test is:

$$z = DIFF / \sigma_{DIFF}$$

Where:

$DIFF = M_{Qwest} - M_{CLEC}$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root $[\sigma^2 Qwest\ (1/ n_{CLEC} + 1/ n_{Qwest})]$

σ^2_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., $M_{CLEC} - M_{QWEST}$.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:
Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).
Compute and store the modified z-test score (Z_S) for this sample.
Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The α shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5a, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8. For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for Tier 1 payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

Exhibit K
PERFORMANCE ASSURANCE PLAN

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "per measurement."

TABLE 2: TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following

						month
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payments, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per day payment will be applied to any collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will be performed by applying the per day payment amounts as specified in Table 3. Thus, for days 1 through 10, the payment is $150 per day. For days 11 through 20, the payment is $300 per day and so on.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day
21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

6.4 A minimum payment calculation shall be performed at the end of each year for each CLEC with annual order volumes of no more than 1,200. The payment shall be calculated by multiplying $2,000 by the number of months in which at least one payment was made to the CLEC. To the extent that the actual CLEC payment for the year is less than the product of the preceding calculation, Qwest shall make an additional payment equal to the difference.

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated in section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrence payments and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.2 Determination of Non-Conforming Measurements: The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2 performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements)

and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements failing performance standards for a third month in any twelve month period for Tier 2 measurements with Tier 1 counterparts and for a second month in any twelve month period for Tier 2 measurements that do not have Tier 1 counterparts. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

7.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4 for the "Per Measurement" category.

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

7.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has two sub-measurements: GA-1A and GA-1D. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5: Tier 2 Per Measurement Payments to State Funds.

TABLE 5: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. Or less	$1,000	$14,000
	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7. 5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Until such time as the North Dakota Legislature determines the uses by the Commission of Tier 2 funds, Tier 2 payments shall be made to the ND Performance Assurance Fund as set forth in QPAP Section 11.3 and its subsections. Upon the effective date of legislation, the receipt and administration of Tier 2 funds shall be as directed by the North Dakota Legislature.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: Qwest shall identify the Tier 2 parity performance measurements that measure the service provided by Qwest to all CLECs for the month in question. The statistical testing procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2.

9.1.2 Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month when 1) for Tier 2 measurements that have Tier 1 counterparts it is determined that Qwest missed the performance standard for a third month in any twelve-month period or 2) for Tier 2 measurements that do not have Tier 1 counterparts it is determined that Qwest missed the performance standard for a second month during any twelve-month period.

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated . The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall

be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The average for three months (rounded to the nearest integer) shall be calculated and multiplied by the result of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages for each of the three non-conforming months shall be calculated. The calculation for parity measurement is diff = (CLEC result – calculated percentage). This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period shall be calculated. The calculation is: diff = (CLEC rate – calculated rate). This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step for each month. The average for

three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, the payment to the State Fund shall be the dollar amount shown on the "per measure" portion of the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5a, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC, the State, or the Special Fund shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. Bill credits shall be identified on a summary format substantially similar to that distributed as a prototype to the CLECs and the Commissions. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

11.3 A ND Performance Assurance Fund shall be created for the purpose of receiving Tier 2 payments.

11.3.1 Qwest shall establish the ND Performance Assurance Fund as an interest bearing escrow account upon FCC section 271 approval of the PAP. Qwest shall deposit all Tier 2 payments into the ND Performance Assurance Fund. The cost of the escrow account will be paid for from account funds.

11.3.2 All charges against the funds shall be presented to the Commission.

11.3.3 Qwest shall advance, upon request, sufficient funds to any consolidated multistate Special Fund established by participating states, set up for the purpose of a regional audit as specified in sections 15.1-15.4, not to exceed $200,000 (or $500,000 in the event 6 or more states participate in the regional audit) in order to meet initial claims against that fund to the extent that contributions from Tier 2 payments directed to the fund by the participating states are insufficient. Qwest shall be allowed to recover any such advances plus interest from the fund at the rate that such an escrow account would have earned from future Tier 2 payments.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be an annual cap on the total payments made by Qwest beginning with the effective date of the PAP for the State of North Dakota. The annual cap, beginning with the effective date of the PAP for the State of North Dakota, shall be 36% of the 1999 ARMIS Net Return (which is $13,000,000). Subsequent annual caps determined pursuant to section 12.2 and its subsections are expressed as a percent and are applied to Qwest's most recently reported ARMIS Net Return to determine the dollar amount of the annual cap. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of any Tier-1 liquidated damages (including any such damages paid pursuant to this Agreement or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan) and Tier-2 Assessments or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan.

12.2 The 36% annual cap may increase to 44% of ARMIS Net Return as follows:

12.2.1 An increase in the "existing annual cap" of 4 percentage points at any one time (i.e. first to 40 percent then to 44 percent) shall occur in cases where the cap would have been exceeded for any consecutive period of 24 months by that same 4 percent or more. Qwest may file a petition with the NDPSC seeking relief for payments exceeding the existing annual cap. Qwest will not be required to make payments in excess of the existing annual cap pending the outcome of the proceeding before the Commission. Qwest shall have the burden of establishing that it could not have remained below the existing annual cap through use of reasonable and prudent effort. If the Commission determines that Qwest should make payments in excess of the existing annual cap, Qwest shall make any and all payments that were suspended with interest.

12.2.2 A decrease in the existing annual cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission that it is appropriate to do so after performance for any consecutive period of 24 months which produces calculations of total payment responsibility that is 8 or more percentage points (i.e., 26 percent or less) below the cap amount for that period, provided that:

a. the Commission shall determine that the preponderance of the Qwest evidence shows the performance results underlying those payment calculations results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets, and

b. the Commission shall have made that determination after providing all interested parties an opportunity to be heard.

12.2.3 The provisions of 12.2.1 and 12.2.2 shall be applicable to the next 24 month period commencing at the completion of the first, provided that the maximum annual cap shall be 44 percent; the minimum annual cap shall be 36 percent.

12.3 If the annual cap is reached, each CLEC shall, as of the end of the year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage equalization shall take place as follows:

12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the sum of the year-to-date monthly caps (a month's cap is defined as $1/12^{th}$ of the annual cap in effect during that month) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."

12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments received by each the percentage necessary to generate the required total Tier 1 amount.

12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.

12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due to any CLEC for that month and any succeeding months, as necessary.

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) with respect to performance measurements with a benchmark standard, a Force Majeure event as defined in section 5.7 of the SGAT. Qwest will provide notice of the occurrence of a Force Majeure event within 72 hours of the time Qwest learns of the event or within a reasonable time frame that Qwest should have learned of it; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are explicitly required by the SGAT; 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year. If a Force Majeure event or other excusing event recognized in this section merely suspends Qwest's ability to timely perform an activity subject to a performance measurement that is an interval measure, the applicable time frame in which Qwest's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-

conformance with the performance measurement was excused on one of the grounds described in this PAP. A party may petition the Commission to require Qwest to deposit disputed payments into an escrow account when the requesting party can show cause, such as grounds provided in the Uniform Commercial Code for cases of commercial uncertainty.

13.3.2 Notwithstanding any other provision of this PAP, it shall not excuse performance that Qwest could reasonably have been expected to deliver assuming that it had designed, implemented, staffed, provisioned, and otherwise provided for resources reasonably required to meet foreseeable volumes and patterns of demands upon its resources by CLECs.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier –1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that Tier 1 payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety in its interconnection agreement with Qwest in lieu of other alternative standards or relief for

the same wholesale services governed by the QPAP. Where alternative standards or remedies for Qwest wholesale services governed by the QPAP are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either PAP standards and remedies or the standards and remedies available under rules, orders, or contracts and CLECs choice of remedies shall be specified in its interconnection agreement.

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

13.8 Qwest shall not be liable for both Tier 2 payments under the PAP and assessments, sanctions, or other payments for the same underlying activity or omission pursuant to any Commission order or service quality rules.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds $3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the $3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of $3 million into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, its application. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of $3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT with the CLEC.

13.10 Qwest will not attempt to recover in intrastate rates payments made under the QPAP.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day

grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission. Pursuant to the terms of an order of the Commission, Qwest may provide CLEC-specific data that relates to the PAP, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion. Data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are 6 to 10 business days past the due date; $1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and $2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this PAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable format for one year. For the remaining two years,

the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of the Commission in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The Commission shall select the independent auditor with input from Qwest and CLECs.

15.1.1 [This section intentionally left blank.]

15.1.2 The initial audit plan shall be conducted over two years, with audit periods subsequent to the initial audit to be determined by the Commission. The Commission will determine the scope of and procedure for the audit plan, which, at a minimum, will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The initial audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The Commission will attempt to coordinate its audit plan with other audit plans that may be conducted by other state commissions so as to avoid duplication. The audit shall be conducted so as not to impede Qwest's ability to comply with the other provisions of the PAP and should be of a nature and scope that it can be conducted with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the Commission

15.2 Qwest shall carefully document any and all changes that Qwest makes to the Performance Measurement and Reporting System. This change log shall be displayed on a public website dedicated to the QPAP. The Performance Measurement and Reporting System is defined to include at least: elements of Qwest's Regulatory Reporting System that constitute the data collection programs (i.e., the software code used by Qwest to determine which data fields are used and how they are used), the underlying data extracted by the data collection programs and data reference tables (e.g., USOC tables, wire center tables, etc., used in the calculation of measurements), the data staging programs (programming code used to organize and consolidate the data), the calculation programming (the code used to implement the formula defined for a measurement), and the report generation programs (including the report format and report file creation). This change log shall contain, at a minimum, a

detailed description of the change (in plain English); the effects of the change, the reason for the change, the dates of notification and of implementation, and whether the change received Commission approval. Qwest shall also record if the change is fundamental or non-fundamental (see Sections 15.2.1 and 15.2.2).

15.2.1 Qwest shall be allowed to change the Performance Measurement and Reporting System as defined in Section 15.2 in ways that are non-fundamental (i.e. system changes for which the relevant performance data can be replicated under the old approach) without preapproval, but shall promptly record these changes on the change log. Omitted or inaccurate changes to the change log shall result in Qwest being required to pay a $250 fine, plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect. The payment shall go to the Tier 2 ND Performance Assurance Fund and does not count against the annual cap described in QPAP Section 12.

15.2.2 Before making any changes to the Performance Measurement and Reporting System in a manner whereby the relevant data cannot be reconstructed under the prior approach (i.e., a fundamental change to its measurement system), Qwest shall record the proposed change to the change log and notify the Commission staff and the Auditor retained for the purpose of auditing performance measurements under this QPAP to request an evaluation of the proposed change. The Commission staff or the Auditor will evaluate the impact of the proposed change and report, in writing, the results of that evaluation to the Commission and Qwest. Qwest shall immediately post this report on the public QPAP website. Upon receiving the report of the impact evaluation from the Commission staff or the Auditor, the Commission shall have 15 days to take action to prevent Qwest from making such a change and to decide on a process for resolving the issue. During the first seven-day period following the filing and recording of the Commission staff or Auditor's report, interested parties may file comments on the proposed change and the report. If the Commission takes no action on the issue during the 15-day period, Qwest shall be free to make the proposed change.

15.2.3 If Qwest makes a fundamental change pursuant to Section 15.2.2 without obtaining approval, it shall be liable for $10,000 payable to the ND Performance Assurance Fund. If Qwest cannot reproduce reliable performance data, the Commission shall determine what payments are due based upon the data collected by the affected CLECs plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the

audit plan for the current cycle. The Commission will resolve any dispute by any party questioning the independent auditor's decision to conduct or not conduct a CLEC request audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing test initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

15.4 Expenses for the audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds. If Tier 2 funds are not sufficient to cover audit costs, the Commission will develop an additional funding method which may include contributions from CLEC's Tier 1 payment.

15.5 Qwest will investigate any second consecutive Tier 2 miss to determine the cause of the miss and to identify the action needed in order to meet the standard set forth in the performance measurements. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against future Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made. The relevant portion of subsequent Tier 2 payments will not be owed until any responsible CLEC problems are corrected. For the purposes of this sub-section, Tier 1 performance measurements that have not been designated as Tier 2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, Qwest, CLECs, and the Commission shall review the performance measurements in the QPAP to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any disputes regarding adding, deleting, or modifying performance measurements shall be resolved by the Commission. The NDPSC retains the right to add topics and criteria to the six-month review, retains the ability to order changes if

the QPAP is not in the public interest, and retains the ability to hear any disputes regarding the six-month review. The Commission may conduct joint reviews with other states. Any changes at the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC.

16.1.1 To limit the potential for increased liability due to changes in the PAP, Qwest shall be allowed to limit its liability for changes made pursuant to the six-month review. Accordingly, Qwest shall calculate, separately, payments owed under the PAP that do not include changes made at the six month review (baseline PAP), as well as payments owed under a PAP revised to reflect changes made at the six month review (revised PAP). If payments calculated under the revised PAP are more than 110% of payments calculated under the baseline PAP, Qwest shall limit payments for the changed measurements to the affected LECs and to the Special Fund to a 10% increase (10% collar) above the total baseline PAP payment liability. At any six-month review, if the total payment liability for the revised PAP is below 110% of the total payment liability for the baseline PAP for the preceding six-month period, the revised PAP shall become the baseline PAP for the next six-month period, otherwise, the same baseline PAP shall remain in effect for the next six month period.

16.2 Two years after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, the Commission may conduct a review by an independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist the Commission in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions. The Commission may conduct a joint review with other states.

16.3 Notwithstanding section 16.1, if any agreements on adding, modifying or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission, whether before or after a six-month review. Any changes made pursuant to this section shall be subject to and included in the calculation and application of the 10% payment collar identified in section 16.1.

16.4 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

Exhibit K
PERFORMANCE ASSURANCE PLAN

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act.

18.0 Dispute Resolution

For the purpose of resolving disputes over the meaning of the provisions of the PAP and how they should be applied, the dispute resolution provisions of the SGAT, section 5.18, shall apply whether the CLEC uses the SGAT in its entirety or elects to make the PAP part of its interconnection agreements (i.e., the unique dispute resolution provisions of interconnection agreements should not apply).

Exhibit K
PERFORMANCE ASSURANCE PLAN

Attachment 1: Tier 1 and Tier 2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						X
(Expanded) – Manual Service Order Accuracy	PO-20[c]		X				
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3			X		X	
Installation Intervals	OP-4[d]			X		X	
New Service Quality	OP-5a,b[e]			X		X	
Delayed Days	OP-6[f]			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c,d[g], e[g]			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c. Low Volume Exception: In lieu of Section 2.4 for PO-20, where CLEC order volumes for a given month are less than 17 in Phase 1, less than 13 in Phase 2, and less than 10 in Phase 3 and subsequent phases, a benchmark standard of "no more than one order with PO-20 errors" is applied. Under this provision, no payment applies if there is only one order with errors.

Stabilization Period: For each phase beginning with Phase 1, there will be no more than a 3-month measurement stabilization period for all fields introduced in that phase. Performance results that include all such fields are not subject to payments during the measurement stabilization period.

d. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

e. Low volume treatment for OP-5b will apply if both (1) the CLEC volume of orders is less than or equal to 29 (the denominator of OP-5t) and (2) the number of orders with trouble in OP-5a is no more than one. When these two conditions are met, a standard of no more than one order with new service trouble applies.

f. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

g. Applicable only to xDSL-I capable loops.

Exhibit K
PERFORMANCE ASSURANCE PLAN

Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)
Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)
Billing Completeness – BI-4 (Tier 1/Tier 2)

EXHIBIT L

ADVICE ADOPTION LETTER

Manager Interconnection
Qwest
1801 California, Room 2410
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: _____

_____

Dear Sir or Madam:

By its signature below, _____ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an amendment to its Interconnection Agreement with Qwest for the state(s) of _____.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

CLEC

By:_____

Title:_____

Date:_____

EXHIBIT M

INTERIM ADVICE ADOPTION LETTER

Manager Interconnection
Qwest
1801 California, Room 2410
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: _____

_____

Dear Sir or Madam:

By its signature below, _____ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an interim amendment to its Interconnection Agreement with Qwest for the state(s) of _____.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

Qwest acknowledges that CLEC believes that the rates, terms and conditions for the Qwest New Product should be altered and that CLEC enters into this Interim Advice Adoption Letter with the express intention to renegotiate the rates, terms and conditions associated with the Qwest New Product pursuant to the terms of Section 1.7.1.2 of the SGAT. CLEC enters into this Interim Advice Adoption Letter without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Advice Adoption Letter under the Interconnection Agreement, the Act, FCC or state Commission rules.

CLEC

By:_____

Title:_____

Date:_____

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

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 **9th day of February, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick PLLP
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 2773

Linda Miles
Qwest Corporation
1600 7th Ave RM 3007
Seattle WA 98191
Cert. No. 7004 2510 0004 8815 2780

Gregory Diamond Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver CO 80230

Cert. No. 7004 2510 0004 8815 2797

John Devaney
Mary Rose Hughes
Perkins Coie LLP
607 14th St N W Ste 800
Washington DC 20005-2011
Cert. No. 7004 2510 0004 8815 2803

Sharon Helbling further deposes and says that on the **9th day of February, 2006,** 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.

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

Subscribed and sworn to before me
this **9th day of February, 2006**.

Notary Public

SEAL

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

APPROVED
DATE: 2-8-06
KMF

MOTION

February 8, 2006

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

I move the Commission adopt the Order in Case No. PU-05-165, DIECA Communications, Inc.'s Interconnection Arbitration application.

wwb

46 **PU-05-165** Pages: 1

Motion

by Public Service Commission
02/08/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

DIECA Communications, Inc **Case No. PU-05-165**
Interconnection Arbitration
Arbitration

ORDER

February 8, 2006

Preliminary Statement

On March 14, 2005 DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed a Petition for Arbitration to establish an interconnection agreement (ICA) with Qwest Corporation (Qwest).

On March 22, 2005, Covad filed a Substitute Exhibit "A" to its Petition for Arbitration.

On April 8, 2005, Qwest filed its Response to Covad's Petition for Arbitration. Qwest stated that through extensive and lengthy negotiations Covad and Qwest had resolved all but one issue regarding the proposed interconnection agreement. The single remaining issue relates to the obligation of Qwest to provide access to certain unbundled network elements (UNEs) at cost-based rates under Section 271 to the Telecommunications Act of 1996 (Act) and state law.

On April 10, 2005, Covad's counsel advised the Public Service Commission (Commission) via e-mail that Covad and Qwest agreed to resolve the one remaining issue by presenting it directly to the Commission rather than going through the arbitration process. The parties agreed to submit simultaneous opening briefs on May 13, 2005, simultaneous reply briefs on May 27, 2005, and agreed to present oral arguments if the Commission desired to have them do so.

Simultaneous opening and reply briefs were filed on May 13, 2005 and May 27, 2005 as agreed to by the parties.

On July 19, 2005, Covad filed a Notice of Supplemental Authority for the Commission's consideration containing an arbitration order issued by the Missouri Public service Commission in a case involving Southwestern Bell Telephone Company (SBC).

On July 21, 2005, counsel for Qwest filed a letter on behalf of Qwest and Covad confirming that the parties agreed to waive the deadline set forth in Section 252(b)(4)(C) of the Act for the Commission to issue a decision in this proceeding.

On July 21, 2005, Qwest filed a Notice of Supplemental Authority for the Commission's consideration containing a decision issued by the Idaho Public Utilities Commission and referencing an oral ruling from the South Dakota Public Utilities Commission in arbitration cases between Covad and Qwest.

On August 2, 2005, Qwest filed a Second Notice of Supplemental Authority providing the Commission with a copy of the written order issued by the South Dakota Public Utility Commission in the arbitration case between Covad and Qwest.

On September 23, 2005, Qwest filed a Third Notice of Supplemental Authority for the Commission's consideration containing a final order issued by the Oregon Public Utilities Commission in an arbitration case between Covad and Qwest.

On October 18, 2005, Covad and Qwest presented oral arguments before the Commission.

On November 10, 2005, pursuant to the Commission's request at the oral arguments, the parties submitted supplemental briefs on the issue of Commission authority under North Dakota law to compel Qwest to provide unbundled UNEs under Section 271 at cost-based rates.

On November 21, 2005, Covad filed a Second Notice of Supplemental Authority providing the Commission with a copy of the written order issued by the Tennessee Regulatory Authority in a BellSouth arbitration case.

On December 5, 2005, Qwest filed a response to Covad's Second Notice of Supplemental Authority.

On December 15, 2005, Covad filed a Third Notice of Supplemental Authority providing the Commission with a copy of a recommended decision issued by an Administrative Law Judge in Arizona in an arbitration case between Covad and Qwest.

On December 22, 2005, Qwest filed a response to Covad's Third Notice of Supplemental Authority.

On January 4, 2006, Qwest filed a Fifth Notice of Supplemental Authority providing the Commission with a copy of the decision issued by the arbitrator in an arbitration case between Covad and Qwest in Nebraska.

Statement of Issues

The dispute centers around proposed language in the following sections of the proposed interconnection agreement: Section 4.0 Definition of "unbundled Network Element," and sections 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6, 9.6.1.5, 9.6.1.5.1, 9.6.1.6, 9.6.1.6.1, and 9.21.2. Qwest also includes section 9.1.1.8 in its Response to Covad's Petition for Arbitration, but that is a

section that was intentionally left blank in the interconnection agreement filed with the petition.

Covad has proposed language for inclusion in the interconnection agreement to preserve its right to continue to obtain unbundled network elements under Section 271 of the Act and North Dakota law. Qwest opposes language that would require it to provide unbundled Section 271 elements in an interconnection agreement. Examples of Covad and Qwest differences are illustrated by the following proposals:

Section 4.0 (definition of Unbundled Network Element)

Covad proposed language.

Unbundled Network Element (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, for which unbundled access is required under Section 271 of the Act or applicable state law, or for which unbundled access is provided under this Agreement.

Qwest objected and proposed the following counter language.

Unbundled Network Element is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

Section 9.1.1

Covad proposed additional language to Section 9.1.1.

Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, or any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations.

Qwest objects to the inclusion of the additional language to Section 9.1.1.

Section 9.1.1.6

Qwest proposed language for Section 9.1.1.6.

On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.

(a) OCn Loops;
(b) Feeder Subloops;
(c) DS3 Loops in excess of two(2) DS3 Loops per End User Customer Location;
(d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Enhanced Dark Fiber) from a Qwest Wire Line Center to a CLEC Wire Center);
(e) OCn UDIT;
(f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 Circuits per route;
(g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P;
(h) Call Related Databases Including 8XX, LPN, ICNAM, LIDB and AIN, except in conjunction with Unbundled Switching and UNE-P;
(i) Packet Switching;
(j) UDIT and UDF as a part of a Meet-Point arrangement, billed entrance facility;
(k) Remote Node/Remote Port;
(l) Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section 9.4.2.3;
(m) Fiber to the Home, in accordance with Section 9.2.1.2;
(n) Operator Services and Directory Assistance, except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;
(o) Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0;
(p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;
(q) SONET add/drop multiplexing; and
(r) Non-copper distribution Subloop unless required to access Qwest owned inside wire at an MTE.

Covad objected and proposed the following counter language for Section 9.1.1.6.

On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant the Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

Section 9.1.1.7

Qwest Proposed language for Section 9.1.1.7.

If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable tariff. Such billing shall commence on the Effective Date of this Agreement.

Covad objected and proposed the following counter language for Section 9.1.1.7.

If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, then Qwest shall bill for such UNEs and services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs.

The remaining provisions Covad proposes for inclusion in the interconnection agreement are of a similar nature as the sections quoted above but require Qwest to provide access to specific unbundled network elements – see e.g., 9.1.5, 9.2.1.3 [access to loops], 9.2.1.4 [access to loops], 9.3.1.1 [feeder loops], 9.3.1.2 [feeder loop], 9.3.2.2 [DS-1 feeder loops], 9.3.2.2.1 [feeder subloops], 9.6 [dedicated interoffice transport], 9.6.1.5.1 [DS-3 transport] and [related 9.6.1.5], 9.6.1.6.1 [DS-1 dedicated interoffice transport] and [related Section 9.6.1.6].

Covad stated there are two issues of law that need to be resolved by the Commission in this proceeding: (1) whether the Commission has authority pursuant to Section 271 of the Act to order Qwest to unbundle certain network elements as part of the arbitration of an interconnection agreement; and (2) whether pursuant to North Dakota law the Commission can order Qwest to unbundle certain network elements in

this arbitration.[1] A portion of the unbundling argument involves a question regarding the Commission's authority to set rates for Section 271 elements. Following oral argument, the Commission requested the parties to brief the question of whether the Commission has the authority to act in the absence of state law that specifically gives the Commission such authority.

Section 271 Issue

Covad Position

Covad contends in its first issue that the Commission has jurisdiction pursuant to Qwest's ongoing obligations under Section 271 to order the unbundling of Section 271 checklist items and should use its authority to enforce the unbundling requirements of Section 271.[2] Covad asserts that the Act expressly preserves a state role by requiring FCC to consult with state commissions in the review of an RBOC's compliance with its Section 271 checklist obligations.[3]

Covad states that the Federal Communications Commission (FCC) held in its *Triennial Review Order*[4] (*TRO*) that Section 271 creates independent access obligations for the Regional Bell Operating Companies ("RBOCs") to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under Section 251.[5] Therefore, Covad states that Qwest retains an independent statutory obligation under Section 271 of the Act to provide competitors with access to the network elements listed in the Section 271 checklist.[6]

Covad contends that the Commission's authority extends not only to enforcement of Qwest's Section 271 obligations to provide the requested network elements, but also to set the price for those elements in an arbitration proceeding.[7]

Covad does acknowledge that the FCC has made it clear that a different pricing standard should be applied to network elements required to be unbundled under Section 271 as opposed to those required to be unbundled under Section 251.[8] Covad asserts that all that the FCC requires is that pricing of Section 271 unbundled network elements is not to be done pursuant to one particular forward-looking cost methodology,

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[1] Covad Opening Brief ("Covad Br.") at 1-2.
[2] Covad Br. At 2-3.
[3] Covad Br. At 6 citing 47 U.S.C. § 271(d)(2)(B).
[4] 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; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), vacated in part, remanded in part, *U.S. Telecom Ass'n V. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").
[5] *TRO* ¶ 653
[6] 47 U.S.C. § 271(c)(2)(B).
[7] Covad Br. at 7.
[8] *Id.*

TELRIC, but that the FCC does not preclude the use of other forward-looking, long-run incremental cost methodologies.[9]

Qwest Position

Qwest contends that Covad's unbundling proposals assume incorrectly that state commissions have the authority to impose binding unbundling obligations under Section 271.[10] Qwest states that Section 271(d)(3) expressly confers upon the FCC, and not state commissions, the authority to determine whether BOCs have complied with the substantive provisions of Section 271, including the checklist provisions, and that under the Act state commissions have only a consulting role.[11]

Qwest points out that Covad's petition for arbitration is filed under Section 252. Qwest states that the process mandated by Section 252 is concerned with the implementation of an ILEC's obligations under Section 251, not Section 271. Qwest argues that under the Act, state commissions only have authority to impose terms and conditions relating to Section 251 obligations as set forth in federal law.

Qwest states that a determination of whether the rate of any Section 271 checklist element satisfies the just and reasonable pricing standard is under the authority of the FCC. Qwest states that terms and conditions relating to offerings under Section 271 are properly addressed in commercial agreements and tariffs, not interconnection agreements.[12]

State Law Issue

Covad position

Covad contends in its second issue that the Commission has the authority to follow existing state law requirements to order Qwest to provide Covad with access to unbundled loops (including high capacity loops and subloop elements) and dedicated transport.[13] Covad argues that state unbundling authority is not preempted by federal law because Congress enacted explicit savings clauses in Sections 251(d)(3), 252(e)(3), and 261(c) that safeguard state authority.[14]

Covad contends that the Commission's authority to unbundle network elements under N.D.C.C. §§ 49-21-09 and 49-21-24(1)(b) is clear, specific and unequivocal. Covad contends that under these state laws, Qwest must make loops and transport in North Dakota available to Covad on an unbundled basis.

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[9] *Id*, at 8.
[10] Qwest Initial Brief ("Qwest Br.") at 15
[11] *Id.*
[12] Qwest Response Brief ("Qwest Resp. Br.") at 6.
[13] Covad Br. at 9-10.
[14] *Id.* at 14-15.

Covad contends that the Commission has express authority to set cost based rates for Section 271 network elements under N.D.C.C. § 49-21-02(3) which provides that the Commission has authority to "establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive practices."[15] Covad also asserts that the Commission has authority under Section 261(c) of the Act to require Qwest to establish cost-based or TELRIC-based rates for Section 271 network elements.[16] Section 261(c) provides:

> Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's [FCC's] regulations to implement this part."[17]

Covad also asserts that the Commission has implied authority under N.D.C.C. § 49-21-02(2) to exercise jurisdiction granted to the states under the federal Act. Covad states that under N.D.C.C. § 49-21-02(2), one of the purposes to be served by the regulation and supervision of telecommunications companies is to allow the development of competitive markets for telecommunications services. Covad contends the Commission has the implied authority to set rates for Section 271 network elements, because doing so will foster the development of competitive markets for telecommunications services.[18]

Covad requests that the Commission adopt the interconnection language Covad has proposed in order to preserve Covad's right to continue to obtain unbundled network elements under Section 271 of the Act and North Dakota state law.

Qwest position

Qwest argues that the Commission does not have authority under federal law to allow Covad to insert network elements set forth in Section 271 into the interconnection agreement. Qwest states that Covad's attempt to impose network unbundling obligations on Qwest conflicts with rulings by the FCC and is inconsistent with the Act.[19]

Qwest states that Covad's proposed language regarding the definition of UNEs would require Qwest to provide almost unlimited access to the elements in Qwest's North Dakota telecommunications network. Qwest states that Covad's proposal ignores findings by the FCC that competitive local exchange carriers (CLECs) are not impaired

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[15] *Id.* at 5
[16] Covad Supplemental Brief ("Covad Supp. Br.") at 2
[17] 47 U.S.C. § 261(c).
[18] Covad Supp. Br. at 4-5.
[19] Qwest Br. at 1.

without access to many network elements and that the incumbent local exchange carriers (ILECs) are therefore not required to unbundle them.[20]

Qwest states that Covad's proposals for unbundling under state law reflect its erroneous view that a state commission has plenary authority under state law to order whatever unbundling it chooses. Qwest argues that state commissions are generally without authority to require ILECs to unbundle network elements that the FCC has declined to require ILECs to unbundle.[21] Qwest asserts that the Act's savings clauses preserve independent state authority only to the extent that the exercise of that authority is consistent with the Act, including Section 251(d)(2)'s substantive limitations on the level of unbundling that may be authorized.[22]

Qwest states that the essential prerequisite for unbundling any given element under Section 251 is a formal finding by the FCC that the Section 251(d)(2) impairment test is satisfied for that element, and that absent such finding the Act does not permit any regulator, federal or state, to require unbundling under Section 251.[23] Qwest further states that any unbundling required by a state commission must be based upon a fact-specific impairment analysis required by Section 251(d). Qwest argues that no evidence has been provided to the Commission to prove that Covad would be impaired without the network elements it seeks under Commission ordered unbundling.[24]

Discussion

Section 271

As noted above, the questions presented to the Commission in this proceeding are (1) whether the Commission has authority pursuant to Section 271 of the Act to order Qwest to unbundle certain network elements as part of the arbitration of an interconnection agreement; and (2) whether pursuant to North Dakota law the Commission can order Qwest to unbundle certain network elements in this arbitration.

We agree that Qwest is obligated under Section 271 of the Act to provide access to certain network elements regardless of any unbundling analysis under Section 251. The FCC clearly stated in the *TRO* that Section 271 creates independent access obligations for the Regional Bell Operating Companies ("RBOCs") to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under Section 251.[25] That determination was upheld on appeal.[26] However, we disagree with

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[20] *Id.* at 1-2.
[21] *Id.* at 11 citing Memorandum Opinion and Order and Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers,* WC Docket No. 03-251, FCC 05-78 ¶¶ 25-30 (FCC rel. March 25, 2005). (*BellSouth Declaratory Order*).
[22] *Id. at 12-13.*
[23] *Id.* at 10.
[24] *Id. at 14.*
[25] *TRO* ¶ 653
[26] *U.S. Telecom Ass'n V. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

Covad's assertion that we have authority to order Qwest to unbundle Section 271 network elements in a Section 252 arbitration proceeding.

Covad's petition for arbitration is filed under Section 252 of the Act. Interconnection negotiations are limited to requests "for interconnection, services, or network elements pursuant to section 251. . . ."[27] The grounds upon which a state commission may approve or reject an arbitrated interconnection agreement are limited to non-compliance with Section 251 or 252(d), not Section 271.[28] The Commission's authority under state law is to "[m]ediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act."[29]

We find that we do not have the authority under the Act to impose unbundling obligations under Section 271. The FCC has the exclusive authority to determine whether Qwest has complied with the substantive provisions of Section 271 including the checklist provisions.[30] Enforcement of Section 271 requirements is also clearly under the exclusive jurisdiction of the FCC.[31] State commissions have only a consulting role under the Act.[32] Covad agrees that only the FCC may judge whether non-compliance with the competitive checklist requires enforcement under Section 271 of the Act.[33]

State law

Covad also contends that the Commission has authority under Section 261(c) of the Act and under N.D.C.C. § 49-21-02(3) to set prices for Section 271 network elements in an arbitration proceeding. We are not convinced that we have the authority or that we should set prices for Section 271 network elements in an interconnection arbitration proceeding. We believe and we find that the appropriate venue for establishing the just and reasonable prices for Section 271 network elements is in a Section 271 enforcement proceeding before the FCC. The FCC stated that under the no impairment scenario, "the appropriate inquiry for network elements required only under section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in Sections 201 and 202."[34] The FCC went on to state that "Section 271 requires RBOCs to provide unbundled access to elements not required to be unbundled under Section 251, but does not require TELRIC pricing."[35] The FCC made it clear that it has the enforcement authority and the authority to set rates for Section 271 network elements when it stated that "[w]hether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact finding inquiry that the Commission [FCC] will

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[27] 47 U.S.C. § 252(a).
[28] 47 U.S.C. § 252(e)(2)(B).
[29] N.D.C.C. § 49-21-01.7(8).
[30] 47 U.S.C. § 271(d)(3).
[31] 47 U.S.C. § 271(d)(6).
[32] 47 U.S.C. § 271(d)(2)(B).
[33] Covad Response Brief ("Covad Resp. Br.") at 12.
[34] *TRO* ¶ 656.
[35] *Id.* ¶ 659.

undertake in the context of . . . an enforcement proceeding brought pursuant to section 271(d)(6)."[36] Section 271(d)(6)(A) provides:

> (A) COMMISSION AUTHORITY. – If at any time after the approval of an application under paragraph (3), the Commission [FCC] determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing –
>
> (i) issue an order to such company to correct the deficiency;
> (ii) impose a penalty on such company pursuant to title V; or
> (iii) suspend or revoke such approval.

Covad contends that state unbundling authority is not preempted by federal law, and that the Commission has authority to unbundle network elements under N.D.C.C. §§ 49-21-09 and 49-21-24(1)(b). N.D.C.C. § 49-21-09 provides in part that "[w]henever a connection can be made reasonable between the facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section." N.D.C.C. § 49-21-09 provides that a telecommunications company is not permitted to discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself or its affiliates.

We agree that in certain circumstances, this Commission has the authority under state law to designate network elements that should be unbundled. It is less clear whether the Commission has authority to order ILEC network elements to be unbundled when the FCC has determined that no impairment exists under Section 251. While substantial FCC and court precedent suggests a reading that would preempt this Commission's ability to order unbundling of elements deemed "non-impaired" by the FCC, we decline to unilaterally declare this Commission, or states generally, to be preempted lacking any indisputable final legal resolution. Rather, we decline to assert authority we may have under state law to impose unbundling obligations against Qwest in this proceeding. Furthermore, even if we chose to assert authority to unbundle network elements under state law authority in this case, Covad has not established an evidentiary record to meet its burden of proof under state law.

Where Section 251 impairment exists, Qwest must offer network elements in the interconnection agreement, but where the FCC has determined there is no impairment, Qwest may offer network elements that it is required to provide under Section 271 in a commercial agreement. Covad must address issues that relate to the offering or price of Section 271 network elements to the FCC.

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[36] *Id.* ¶ 664.

We conclude that:

1. Section 271 obligations cannot be enforced under a Section 252 arbitration proceeding;

2. Enforcement of Section 271 requirements rests with the FCC; and

3. In light of the foregoing and lacking any evidentiary record to determine whether Qwest should be required to unbundle network elements requested by Covad or determine the price for those elements, we decline to assert authority we may have under state law.

Order

The Commission orders:

1. That Qwest's proposed language for the disputed sections of the interconnection agreement is approved.

2. The parties shall file the final interconnection agreement with the Commission for approval within thirty days of the date of this order.

PUBLIC SERVICE COMMISSION

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

RECEIVED
JAN 4 2006
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S FIFTH NOTICE OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") submits this fifth notice of supplemental authority in this interconnection arbitration with Covad Communication Company's ("Covad"). Attached to this notice is a decision from the arbitrator in the Qwest-Covad Nebraska arbitration issued December 22, 2005.[1] The arbitrator rejects Covad's proposal to include language in the parties' interconnection agreement ("ICA") that would require Qwest to make available under the ICA network elements provided pursuant to Section 271 of the Telecommunications Act of 1996 ("the Act"). In so ruling, the Nebraska arbitrator becomes the 13th independent decision-maker in the multi-state Qwest-Covad arbitrations to reject the same network unbundling proposals that Covad has requested the Commission to adopt in this proceeding.[2]

In rejecting Covad's proposals and adopting all of Qwest's network unbundling language for the ICA, the Nebraska arbitrator rules that: (1) it is unnecessary to include Section 271 unbundling requirements in the ICA since Qwest is already making Section 271 elements available

[1] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, Nebraska Docket No. C-3351, Arbitrator's Ruling (Neb. Pub. Util. Commission Dec. 22, 2005) ("Nebraska Decision").

[2] The state commissions that have issued these decisions are the commissions in Iowa, Idaho, Minnesota, Oregon, South Dakota, Utah, Washington, and Wyoming. In addition to these commission decisions, ALJs or hearing examiners in Minnesota, New Mexico, Oregon, and Utah have issued rulings rejecting Covad's network unbundling proposals. The lone decision that adopts Covad's proposals is that issued last month by the ALJ in the Arizona Qwest-Covad arbitration. Qwest has filed exceptions to that decision with the Arizona Commission and, in a filing with this Commission submitted on December 21, 2005, has explained the unlawfulness of the decision.

44 PU-05-165 Pages: 48
Qwest's Fifth Notice of Supplemental Authority
by Qwest Corporation
01/04/2006 CC: Comm Legal Illona, Pat, Annette . .

to Covad "per commercial contracts not associated with ICAs;"[3] and (2) Covad did not provide a sufficient rationale to justify applying TELRIC ("total element long run incremental cost") rates to Section 271 elements.[4] The arbitrator explains his rejection of Covad's proposal to obtain Section 271 network elements at TELRIC rates with the observation that the proposal "essentially ends up with a Section 251/252 ICA that resembles the pre-*TRO* and pre-*TRRO* Section 251/252 ICA."[5] Discussing Covad's failure to provide a rationale supporting this result, the arbitrator states that "there needs to be a clear and Nebraska specific rationale for the Commission to craft a ruling that would *effectively ignore the FCC's TRO and TRRO and could be seen as thwarting federal intent.*"[6]

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[3] Nebraska Decision at 21.

[4] *Id.*

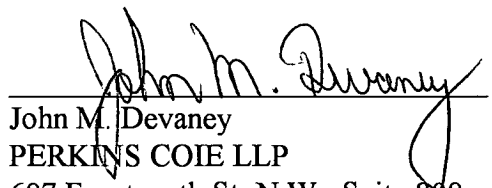
[5] *Id.* at 37. The "*TRO*" and the "*TRRO*" refer of course to the orders in which the FCC eliminated the obligations of incumbent local exchange carriers to provide certain network elements under Section 251 based on findings that competitive local exchange carriers are not competitively impaired without access to those elements under that section. *See* Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*TRRO*"); 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*").

[6] Nebraska Decision at 37 (emphasis added).

Consistent with this Nebraska decision and the rulings of the 12 other decision-makers who also have rejected Covad's network unbundling proposals, this Commission should reject Covad's proposals and adopt Qwest's ICA language.

DATED: January 4, 2006

Respectfully submitted,



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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	))))))	Docket No. C-3351 ARBITRATOR'S RULING Filed December 22, 2005

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I. Issues To Be Arbitrated

A. Issue To Be Arbitrated - As Presented By the Parties

On February 14, 2005, Dieca Communications, Inc., D/B/A Covad Communications Company ("Covad") filed a Petition for Arbitration with the Nebraska Public Service Commission ("Commission"). ("Covad Arbitration Petition") In Section G "Unresolved Issues Submitted for Arbitration and Positions of the Parties", Covad identified Issue 1 by referencing specific paragraphs of the proposed Interconnection Agreement ("ICA") in dispute, namely "Section 4 Definition of 'Unbundled Network Element' and Sections 9.1.1; 9.1.1.6; 9.1.1.7; 9.1.1.8; 9.1.5; 9.2.1.3; 9.2.1.4; 9.3.11; 9.3.1.2; 9.3.2.2; 9.3.2.2.1; 9.6; 9.6.1.5.1 (and related 9.6.1.5); 9.6.1.6.1 (and related 9.6.1.6); and 9.21.2". Covad then described the unresolved issue as follows: "[s]hould the Parties' Agreement provide for access to network elements pursuant to Section 271 of the Telecommunications Act as well as Section 251 of the Telecommunications Act?" (Covad Arbitration Petition at 5[1]). In the "Request for Relief" section Covad requested the Commission to: "

(a) Arbitrate the unresolved issues between Covad and Qwest;

(b) Issue an order directing the Parties to submit an Agreement reflecting: (i) the agreed upon language in Exhibit A and (ii) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Covad herein and in Exhibit A;

[1] Covad's Arbitration Petition did not have page numbers. Page numbers were therefore assigned sequentially by the arbitrator and are referenced for convenience only.

(c) Retain jurisdiction of this arbitration until the Parties have submitted an Agreement for approval by the Commission in accordance with section 252(e) of the Act;

(d) Further retain jurisdiction of this arbitration and the Parties hereto until Qwest has complied with all implementation time frames specified in the arbitrated Agreement and has fully implemented the Agreement; and

(e) Take such other and further actions as it deems necessary and appropriate."

(Covad Arbitration Petition at 10) The Covad Arbitration Petition was assigned Docket Number C-3351.

In Covad's Initial Brief dated April 19, 2005, Covad stated that there needs to be "... resolution of two issues of law: (1) whether the Commission has authority pursuant to Section 271 of the Telecommunications Act of 1996 (the "Act") to order Qwest Corporation ("Qwest") to unbundle certain network elements as part of the arbitration of an interconnection agreement; and (2) whether pursuant to Nebraska law the Commission can order Qwest to unbundle certain network elements in this arbitration." (Covad Initial Brief at 1) In the same initial brief Covad stated that "... Covad respectfully requests the Commission adopt its proposed interconnection agreement language regarding access to and the pricing of unbundled network elements." (Covad Initial Brief at 2) Later in the same initial brief, Covad requested that "... the Commission adopt its proposed interconnection agreement language requiring unbundling pursuant to Section 271 of the Act and the state law requirements ...". (Covad Initial Brief at 18)

In Qwest's Initial Brief dated April 19, 2005, Qwest stated there was "one disputed issue ...for resolution" (Qwest Initial Brief at 1). Therefore, per Qwest, "[t]o ensure that the ICA complies with governing law and the policies underlying the Act, the Nebraska Public Service Commission should adopt Qwest's proposed ICA language for the disputed issue". (Qwest Initial Brief at 3). Later in its Initial Brief, Qwest identified Issue 1 as "Section 4 Definition of 'Unbundled Network Element' and Sections 9.1.1; 9.1.1.6; 9.1.1.7; 9.1.1.8; 9.1.5; 9.2.1.3; 9.2.1.4; 9.3.11; 9.3.1.2; 9.3.2.2; 9.3.2.2.1; 9.6; 9.6.1.5.1 (and related 9.6.1.5); 9.6.1.6.1 (and related 9.6.1.6); and 9.21.2" (Qwest Initial Brief at 3) Later in the same Initial Brief, Qwest stated that "[i]n sum, the relevant question is not, as Covad presumes, whether sweeping unbundling obligations can be cobbled together out of state law, but rather whether any such obligations would be consistent with Congress's substantive limitation on the permissible level of unbundling, as authoritatively construed by the Supreme Court, the DC Circuit, and the FCC. (Qwest Initial Brief at 13) Qwest concluded by urging "the Commission to enter an order adopting Qwest's proposed language for the interconnection agreement between Qwest and Covad." (Qwest Initial Brief at18)

In Covad's Reply Brief dated May 10, 2005, Covad reiterated that "... in the initial brief and petition, Covad respectfully requests that the Commission adopt Covad's proposed language to resolve the issues set forth above, and enter an order consistent with this resolution." (Covad Reply Brief at 15)

In Qwest's Reply Brief dated May 10, 2005, Qwest referenced that "the Commission should adopt Qwest's proposal." (Qwest Reply Brief at 2) In conclusion, Qwest wrote that "[f]or the reasons stated here and in its initial brief, Qwest respectfully

requests that the Commission adopt Qwest's proposed language for each of the ICA provisions in dispute." (Qwest Reply Brief at 17)

In the Oral Argument held on October 4, 2005 ("Oral Argument"), Covad indicated that there were really three issues:

1. Whether the Commission has authority to order Qwest to unbundle Section 271 only Network Elements – either under federal and/or state law.

2. Whether the Commission has authority to set the rates of Qwest's Section 271 only Network Elements.

3. If the answer to question #2 is affirmative, what is the appropriate rate for Qwest's Section 271 only Network Elements?

(Oral Argument at 4 line 16 thru 5 line 2)

B. Issues To Be Arbitrated - Legal Arguments vs. Contract Language

Both parties did indicate the same individual paragraphs of the ICA that were in dispute. This could lead to the expectation that this arbitration would center on the proposed language of each of the individual paragraphs in dispute. However, the discussion almost exclusively was limited to legal arguments concerning the role and authority of the Commission with regards to Sections 251, 252, 271 201 and 202 of the Telecommunications Act of 1996 ("*TA96*")[2] rather than the specific ICA language in dispute. Covad stated during the Oral Argument that there "is a one-to-one correlation between the argument and the language ... [b]asically the language carries forward the argument into specific terms." (Oral Argument at 57 lines 11 – 16)

[2] Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 State. 56 (1996) ("*TA96*")

Therefore if the ruling in this arbitration will find the entire argument of one party to be completely acceptable, the proposed language of that party will be recommended to the Commission. However, if this ruling does not find the entire argument of one party to be completely acceptable, the a part of the ruling will be that the parties will conform the language to the arbitrator's ruling rather than making any attempt to order specific ICA language.

Based on the premise that the specific ICA language proposed by each party does follow directly from their respective view on the legal issue(s), the legal issues will be addressed and the specific ICA language will "fall out" accordingly.

C. Issues To Be Arbitrated – Legal Arguments

A simple reading of the numerous arbitration issues that were mentioned in the various filings of the parties indicates that the precise issues have not been consistent in some of the details. This does not include an issue that was implicitly raised by the Covad petition and addressed separately by Qwest, i.e., can Section 271 items be included in a Section 251/252 ICA.

Covad as the petitioner has the right and responsibility to define the issues to be arbitrated. Covad's most recent recital of the issues to be arbitrated occurred during the Oral Arguments held on October 4, 2005.

In an attempt to focus on the most relevant issues, the three issues as presented by Covad during the October 4, 2005 Oral Arguments will be the focus of this arbitration ruling. However, in order to best cross-reference the written filings, Covad's articulated three issues will be combined into two. The two arbitrated issues will be:

1. Whether the Commission has authority to order Qwest to unbundle Section 271 only Network Elements – either under federal and/or state law.

2. Whether the Commission has authority to set the rates of Qwest's Section 271 only Network Elements at Total Element Long Run Incremental Costs (TELRIC) – either under federal and/or state law.

D. Weight Given Documents Filed During This Arbitration

Focusing on the issues presented by Covad during the October 4, 2005 Oral Arguments in no way should be interpreted that the information presented during the October 4, 2005 Oral Arguments will be the only information relied upon to the exclusion of all previously filed arguments. All information filed by the parties was considered. However, not all information filed by the parties was given equal weight. For example in addition to their direct filings, e.g., Initial Brief, Reply Brief, responses to arbitrator's questions, each party filed orders from other jurisdictions usually without comment from the other party. (See List of Documents Filed.)

While all of these documents were read and considered, more weight was given to the direct filings made by both parties in response to this arbitration. This was because arguably only these direct filings could be expected to specifically address the Nebraska circumstances. Therefore while the non-direct filings were informative, it would be unreasonable to expect that they recognized, much less considered any Nebraska specific circumstances.

If both parties exercised their right to comment on a particular ruling from another state, then that filing and the associated comments were given more weight than an order

from another state filed without comment from either party. For example, a recent Minnesota Supreme Court ruling was an integral albeit last minute part of Covad's discussions during the Oral Arguments. Qwest responded to Covad's interpretation of the Minnesota Supreme Court ruling during the Oral Arguments and also filed an additional response to Covad's use of the Minnesota Supreme Court ruling on October 14, 2005.

II. Brief History of the Arbitration

Both parties filed with the arbitrator their Initial Briefs on April 19, 2005 and their Reply Briefs on May 10, 2005. On May 31, 2005, Covad's Initial Petition was sent and on June 20, 2005, the proposed ICA with disputed language was provided.

The Arbitrator asked two sets of questions. Written initial responses to the June 20, 2005 questions were filed with the Arbitrator on July 7, 2005 and the reply responses were filed on July 13, 2005[3]. Written initial responses to the August 2, 2005 questions were filed with the Arbitrator on August 16, 20905 and the reply responses were filed on August 19, 2005.

An Oral Hearing was held via conference call on October 4, 2005. A transcript with mutually agreed revisions was available October 13, 2005.

With the exception of the Oral Hearing, this arbitration was done almost exclusively via e-mail. Due to time constraints, there were a couple of telephone calls for administrative purposes only. All contact was done with the full knowledge and consent of both parties.

[3] Qwest filed its response to question 8 on August 2, 2005

IIA. Documents Provided to the Arbitrator

Description	Covad	Qwest
Initial Brief	4/19/05	4/19/05
Attachment 1 - Maine Order Docket 2002-682 - 9/3/2004	4/19/05	
Attachment 2 – New Hampshire Order #24,442 - 3/11/2005	4/19/05	
Attachment 3 - Maine Examiner's Report Docket 2002-682 - 7/23/2004	4/19/05	
Exhibit A - Minnesota Arbitrator's Report Docket P-5692,421/IC-04-549 - 12/15/2004 (partial)		4/19/05
Exhibit B - Minnesota Order Docket P-5692,421/IC-040549 - 3/14/2005 (partial)		4/19/05
Exhibit C - Washington State Order Docket UT-043045 - 2/9/2005 (partial)		4/19/05
Exhibit D - Utah Order Docket 04-2277-02 – 2/8/2005 (partial)		4/19/05
Reply Brief	5/10/05	5/10/05
Attachment 1 – New Hampshire Order #24,442 - 3/11/2005	5/10/05	
Initial Petition (Exhibit A not included)	5/31/05	
Exhibit B - Pennsylvania Reconsideration Order Docket I-00030100 - 5/27/2004 (partial)	5/31/05	
Interconnection Agreement with disputed language (Exhibit A of Initial Petition)		6/20/05
"Red lined" disputed language only		6/21/05
June 20 questions		
Initial response to June 20 questions	7/7/05	7/7/05
Reply response to June 20 questions	7/13/05	7/13/05
Supplemental response to question 8		8/2/05
August 2 questions		
Initial response to August 2 questions	8/16/05	8/16/05
Reply response to August 2 questions	8/19/05	8/19/05

IIA. Documents Provided to the Arbitrator, cont.

Description	Covad	Qwest
Other Orders Provided		
Iowa Order – ARB-05-1 - 5/24/2005		5/31/05
Missouri Order Case TO-2005-0336 – 7/11/2005	7/18/05	
Idaho Order 29825 – 7/18/2005		7/20/05
South Dakota Order TC05-056 – 7/26/2005		7/29/05
Oregon Arbitration Final Order		9/20/05
Minnesota Supreme Court Decision and Qwest's Response to Covad Discussion at Oral Hearing	10/4/05	10/14/05
New Mexico Arbitration Hearing Examiner's Decision		10/17/05
Tennessee Regulatory Authority Arbitration Order and Qwest's Response	11/16/05	12/2/05
Wyoming ruling mentioned in an e-mail		12/2/05
Arizona – ALJ Recommended Decision – T-03632A-04-0425 and T-01051B-04-0425	12/12/05	
Oral Hearing – 10/4/05		
Original Transcript		10/12/05
Revised Transcript (corrections agreed to by both parties)		10/13/05
Response to "revenue allocation" question from Oral Hearing		10/20/05

Note: On December 2, 2005, the FCC released a Memorandum Opinion and Order *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area* WC Docket 04-233. Neither party offered this Order as a part of this arbitration. Therefore it has not been considered in this arbitration.

III. Review of Relevant Background Information

Section 251 of *TA96* provided the Federal Communications Commission ("FCC") guidance in determining exactly what network elements of the Incumbent Local Exchange Carriers (ILECs) were to be unbundled. In particular Section 251(c)(3) requires ILECs to provide requesting telecommunications carriers with "non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and non-discriminatory in accordance with … the requirements of this section and section 252"[4].

In addition, Section 251(d)(2) authorizes the FCC to determine which ILEC network elements are required to be unbundled. The FCC must consider "at a minimum" whether access to proprietary network elements is "necessary" and whether failure to provide a non-proprietary network element on an unbundled basis would "impair" a requesting carrier's ability to provide service.[5]

Section 252 contains detailed procedures related to interconnection agreements ("ICAs"). Of particular interest, Section 252(d)(1) requires that the Section 251 Unbundled Network Elements ("UNEs") be made available at cost-based rates[6], which have been defined by the FCC as Total Element Long Run Incremental Costs (TELRIC). The FCC made the determination that the use of TELRIC as the specific pricing standard for Section 251 UNEs satisfies the "just, reasonable, and non-discriminatory" general pricing standard of Sections 201 and 202.

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[4] 47 U.S.C. § 251(c)(3)
[5] 47 U.S.C. § 251(d)(2)
[6] 47 U.S.C. § 252(d)(1)

On a seemingly related, but independent portion of the Act, Section 271 detailed the requirements (checklist items) that the Regional Bell Operating Companies (RBOCs) needed to meet in order to be allowed to provide in-region inter-LATA services. Checklist items 4, 5, 6, and 10 contained instructions as to the unbundling obligations of the RBOCs regarding loop, transport, switching and signaling, respectively. After an examination by the Commission resulting in a recommendation to the FCC that Qwest Nebraska had met the requirements of Section 271, and after an examination by the Department of Justice (DOJ) that resulted in a recommendation to the FCC, the FCC conducted its own investigation. On December 23, 2002, the FCC approved Qwest Nebraska's application to provide in-region, inter-LATA services in the state of Nebraska.

TA96 required the FCC to periodically review the level of unbundling required for Section 251 UNEs in light of the "necessary" and "impair" considerations of Section 251(d)(2), i.e., Triennial Review. *TA96* contained no such review mechanism for the level of unbundling required under Section 271.

On February 5, 2005 the FCC released its Triennial Review Remand Order ("*TRRO*")[7]. The *TRRO* was the result of several successful court challenges to the FCC's Triennial Review Order[8] ("*TRO*"), i.e., DC Circuit – USTA v. FCC (*USTA II*)[9]. The *TRO*

[7] *In the Matter of Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand (Rel. Feb 5, 2005) ("*TRRO*")
[8] Report and Order and Order on Remand on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of 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, FCC 03-36 (rel August 21, 2003) ("*TRO*")
[9] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir 2004) ("*USTA II*")

was released on August 21, 2003, which itself was the result of a successful court challenge, i.e., DC Circuit – USTA v FCC (*USTA I*)[10].

Prior to the *TRO* and the *TRRO*, the level of unbundling required per Section 251 and level of unbundling required under Section 271 were identical. In the *TRO* and the *TRRO*, the FCC no longer required the ILECs to continue to offer certain UNEs as part of Section 251/252 ICAs thereby reducing the number of UNEs that had to be provided under Section 251 by the ILECs.

However, neither the *TRO* nor the *TRRO* changed the Section 271 unbundling requirements for the RBOCs. Therefore the level of unbundling required under Section 271 for Qwest Nebraska remained identical to that required under the pre-*TRO* and pre-*TRRO* Sections 251/252 level of unbundling.

Neither the *TRO* nor the *TRRO* relieved the RBOCs from their Section 271 continuing obligation to offer these former Section 251 UNEs. In order to continue to satisfy the static unbundling requirements of Section 271, the FCC allowed the RBOCs to provide these former Section 251/252 UNEs (Section 271 only Network Elements) outside of the Section 251/252 ICAs. These Section 271 only Network Elements were instead offered as separate commercial contracts not governed by Sections 251 or 252.

As stated above, Section 251 UNEs offered under Section 251/252 ICAs are required to use TELRIC as the pricing standard. Per the *TRO* and the *TRRO*, Section 271 only Network Elements are not required to be priced at TELRIC and instead may be based at "market price" so long as the Sections 201 and 202 pricing standard of "just, reasonable and non-discriminatory" is met. Therefore the pricing standard required for

[10] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA I*")

Section 251 UNEs and the pricing standard of Section 271 only Network Elements are different.

IV. Arbitration Issue #1 - Whether the Commission has authority to order Qwest to unbundle Section 271 only Network Elements – either under federal and/or state law.

A. Position of the Parties

Covad

Initially Covad requested the Commission to order Qwest to continue to provide the Section 271 only Network Elements. In its initial petition, Covad argued that in the *TRO*, the FCC clearly stated that Section 271 created independent access obligations for the RBOCs regardless of the unbundling requirements contained in Section 251. In particular this independent access obligation is defined in the Section 271 checklist items 4, 5, 6,and 10. These checklist items relate to loop, transport, switching and signaling. (Initial Petition at 5 and Initial Brief at 2, 3)

Covad then argued that the Commission was granted independent plenary authority to enforce Section 271 unbundling obligations under the same statutes that allowed the Commission to verify compliance with Qwest's Section 271 obligations in Docket C-1830. "Neb. Rev. Stat. Sections 86-102, 86-122, and 86-126 grant the Commission the authority to (i) promote fair competition in a manner consistent with the Act, (ii) implement the Act, and (iii) protect the public interest upon a finding that a telecommunications company is, among other things engaging in unlawful anticompetitive activity." (Initial Petition at 7).

So long as state enforcement activities do not impair federal regulatory interests and such state activities have not been clearly precluded by *TA96*, then, per Covad, the

Commission has the "authority to review Qwest's obligations to provide unbundled access to loops (including high capacity loops, line splitting arrangements and subloop elements) and dedicated transport under Section 271 checklist item #4 (Initial Petition at 7-8 and Initial Brief at 2-5).

In response to Qwest's assertion that the Commission can only order unbundling after an impairment analysis per Section 251, Covad argued that it is not asking the Commission to act under Section 251, but rather under Section 271 which does not reference an impairment standard to make an unbundling determination. (Reply Brief at 4-5).

In response to Qwest's argument that the Commission lacks authority to unbundle network elements under Section 271 because of the unbundling limitations the FCC made pursuant to Section 251(c)(3), Covad reiterated that it is asking for the unbundling required under Section 271 and/or Nebraska state law, not the unbundling required under Section 251. Therefore per Covad, it is irrelevant what limitations the FCC has made pursuant to Section 251(c)(3). Furthermore, Covad argued that the Commission has not been directly preempted from ordering the unbundling that Covad requested. (Reply Brief at 6)

In replying to Qwest's reliance on the *BellSouth Declaratory Order* [11] Covad responded that the FCC only ruled on a very narrow, discreet issue. Per Covad the FCC did not rule that the states are preempted from issuing unbundling requirements. In addition, Covad does not seek the unbundling of any network element that the FCC has specifically concluded an ILEC is not required to unbundle, i.e., the unbundling

[11] Memorandum Opinion and Order of Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling*, WC Docket No. 03-251, FCC 05-78 (FCC rel. March 25, 2005) ("*BellSouth Declaratory Order*")

addressed in *BellSouth Declaratory Order*. As a result, this order is not applicable to the issues in this arbitration. (Reply Brief at 7-8)

Covad also argued that the Commission does have the authority to enforce the unbundling required in Section 271 despite the claim by Qwest that the Commission has no authority to enforce Section 271 obligations. Qwest cites the court case *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission* ("*Indiana Bell*")[12]. Per Covad, the court in *Indiana Bell* ruled that the Indiana Utility Regulatory Commission (IURC) did not have authority to order additional Section 271 obligations, i.e., a specific performance and remedy plan as a condition of interLATA authority. However, the court did explain that the IURC did have the authority to implement its performance and penalty plan through the Section 252 interconnection process. Since Covad did not propose additional Section 271 obligations, per Covad, *Indiana Bell* is not applicable to the issues addressed in this arbitration. (Reply Brief at 8-9)

In response to Qwest's assertion that the Commission has no continuing authority regarding Section 271, Covad pointed to language in the FCC's approval of the Qwest 271 application for Arizona where the FCC stated that it intends to work with the state commission to closely monitor post-approval compliance and their confidence in cooperative state and federal oversight and enforcement to address any backsliding. (Reply Brief at 11)

Covad provided the recent Recommended Decision of the Administrative Law Judge in Arizona that ruled in favor of the relief requested. Covad also referenced orders issues by the Maine Public Utilities Commission and the New Hampshire Public Utilities Commission. (Initial Brief at 3-4 and Reply Brief at 10)

[12] 2003, WL 1903363 at 13 (S.D. Ind. 2003 (*"Indiana Bell"*)

In response to Qwest's assertion that Covad is requesting "almost unlimited access" to Qwest's network elements, Covad replied that Qwest's assertion is blatantly false. Rather, Covad has proposed additional ICA provisions that would place a clear limitation on the scope of network elements available to Covad and the proposed ICA language has carefully defined network element to comply within the limits of applicable law, including Section 271. (Reply Belief at 3-4)

Qwest

Qwest steadfastly maintained that Covad's broad unbundling demands violate the FCC's new, more targeted unbundling standard as well as the rulings of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit. Furthermore, Qwest stated that Covad's proposed unbundling language incorrectly assumes that the Commission has authority to require Qwest to provide Section 271 only Network Elements. Qwest also pointed to the then recent rulings in Covad/Qwest arbitrations in Minnesota, Utah, Minnesota, Washington, Utah and Oregon that rejected Covad's proposed ICA unbundling language. (Initial Brief at 2-5 and 12-13, Reply Brief at 1-2) Qwest later provided orders from Idaho and New Mexico that reached similar conclusions in Covad/Qwest arbitrations.

Qwest argued that Covad's proposed ICA language would provide "almost unlimited access to network elements" (Initial Brief at 4)

Qwest consistently declared that under Section 251 there is no unbundling obligation without an FCC requirement to unbundle a specific network element. This unbundling requirement is based on a lawful impairment finding by the FCC per Section

251(d)(2). The FCC's *TRO*, *TRRO*, and *BellSouth Declaratory Order* as well as the DC District Court's *USTA I* and *USTA II* decisions have upheld this procedure. Qwest also points out that certain savings clauses in *TA96*, e.g., Section 251(d)(3), Sections 261 (b) and (c), Section 252(e)(3) do not preserve the authority of the Commission to adopt or enforce under state law unbundling requirements that have been rejected by the FCC or vacated in *USTA II*. (Initial Brief at 8-13, Reply Brief at 2)

Qwest also stated that the Commission has no authority to impose binding unbundling obligations under Section 271. Per Qwest Section 271(d)(3) expressly gave the FCC the authority to determine whether the requirements of Section 271 have been met and that the Commission has only a consultative role. (Initial Brief, page 14, Reply Brief, page 5) Qwest also noted that *Indiana Bell* "confirms the absence of a decision-making role for states under Section 271". (Reply Brief, at 7)

Qwest wrote that "a state administrative agency has no role in the administration of federal law, absent express authorization by Congress". Furthermore, per Qwest, since Covad filed this petition for arbitration under Section 251 and not Section 271, the Commission only has the authority to impose terms and conditions relating to Section 251 obligations. (Initial Brief at 15-16)

Qwest also argued that "state legislatures may not confer authority to administer federal law that has been withheld by Congress". (Reply Brief at 7)

Qwest consistently maintained that the Commission had not been granted specific authority per *TA96* and/or Nebraska statutes to order Qwest to unbundle any Section 271 only Network Elements. In addition, Qwest also consistently stated that it did indeed provide access to Section 271 only Network Elements in Nebraska through commercial

contracts and tariffs not associated with ICAs. Qwest indicated that these contracts were and are available to Covad in Nebraska. (Initial Brief at 6, June 20 questions 1, 2, 3, 4, 5, 6, August 2 questions 2, 3, 4)

B. Findings

During the October 4th Oral Argument, Covad stated that despite this issue being strenuously argued, Qwest has acknowledged that the unbundling Covad is requesting is a preexisting legal duty. Covad stated that "[i]n this docket, it's not necessary so much for the Commission to say, Qwest[13], you must unbundle." (Oral Argument at 5 lines 3 – 16).

In addition, it is clear that Qwest's Section 271 only Network Elements have been and are available to Covad in Nebraska per commercial contracts not associated with ICAs.

For the above two reasons, Covad's request to have the Commission order Qwest to unbundle Section 271 only Network Elements is not an issue. There is no need to order Qwest to make these Section 271 only Network Elements available to Covad in Nebraska.

It is a moot issue whether or not the Commission can or cannot order Qwest to unbundle Section 271 only Network Elements.

[13] Actually reported as "Quest" in the transcript. Such obvious errors will be corrected.

V. Arbitration Issue #2 - Whether the Commission has authority to set the rates of Qwest's Section 271 only Network Elements at TELRIC[14] – either under federal and/or state law?

A. Position of the Parties

Covad

General

In the Oral Argument, Covad indicated that there was nothing that could be pointed to "in Section 251 of the Act or Section 271 of the Act or, for that matter, anywhere else in the Act that says the state commissions have authority to set rates for Section 271 elements." (Oral Argument at 6 lines 2-9) Conversely, "there's really nothing in the Act that says the FCC is the party that's charged with setting rates with 271 network elements." (Oral Argument at 6, lines 10-13) Therefore, per Covad, there is a "kind of a void, at least with respect to the Act, and it's a void in the sense that there's nothing explicit right on point on all fours." (Oral Argument at 6 lines 13-16)

Covad summed up its position by stating that there may not need to be explicit authority expressed in a Congressional statute since there is express authority in the savings clauses. So even though the Act does not specifically state that the Commission has authority to set rates for Section 271 only Network Elements, the savings clauses allow such Commission actions. (Oral Argument at 47 lines 8 – 21) Since Covad is

[14] In its Petition for Arbitration, Covad suggested the use of other forward-looking, long run incremental cost methodologies, such as TSLIRC (Covad Initial Petition at 9). Qwest recognized Covad's mention of TSLIRC (Qwest Initial Brief Footnote 15). In the Oral Argument, Covad indicated that it is only interested in the use of TELRIC (Oral Argument at 24 line 18 – at 25 line 1and Oral Argument at 51 line 19 to 52 line 18)

starting with Section 271 rather than starting with Section 251, Qwest's reliance on Section 251 to determine its obligations as well as the powers of the Commission is incorrect. (Oral Argument at 48 lines 2 – 10)

Savings Clauses

Since there is nothing that expressly authorizes the state commission to set Section 271 Network Element rates, the authority is by default authorized by the savings clauses, most notably 47 U.S.C. Section 261(c)[15], which says that: "Nothing in this part precludes the State from imposing requirements on a carrier for intrastate services that are – this is the key word – "necessary to further competition." (Oral Argument at 7 lines 14 - 20) Covad referenced 3 other savings clauses U.S.C. Sections 251(d)(3), 252(e)(3) and Act Section 601(c)(1)[16]. (Initial Brief at 13)

Minnesota Supreme Court Decision[17]

Before the Oral Argument, Covad provided the Minnesota Supreme Court Decision regarding Qwest's appeal of a Minnesota Public Utilities Commission's adoption of wholesale service quality standards for Qwest's wholesale services provided to CLECs. The Minnesota Supreme Court stated that the authority of the Minnesota State Commission to establish wholesale service quality standards flows from a specific savings clause in *TA96* that relates to the ability for States to impose service quality standards, i.e., Section 253(b). Per Covad, there is little difference between the

[15] The transcript referenced Section 253(b), but the quote was from Section 261(c). Section 261(c) was inserted for ease of reading.
[16] Act Section 601(c)(1), 110 Stat. 56, 143 (1996) (Uncodified note to 47 U.S.C. Section 152)
[17] State of Minnesota In Supreme Court A03-1409 *In the Matter of Qwest's Wholesale Service Quality Standards* filed August 19, 2005

Commission's authority to set rates per the savings clause in Section 261(c) and the Commission's authority to set wholesale service quality standards per the savings clause in 253(b). (Oral Argument at 8 line 10 to 10 line 21)

Nebraska State Law

Covad points to Sections 86.102, 86.122 and 126 in the Nebraska statutes where the "legislature has declared that it's the public policy of the State to promote diversity in the supply communication services and products throughout the State and promote fair competition." This authority flows to the Commission. (Oral Argument at 11 line 1 - 12)

Covad agreed with the statement that there is nothing in a State statute that expressly authorizes or prohibits the Commission from moving Section 271 only Network Elements into a Section 251/252 ICA and pricing those Network Elements at TELRIC. (Oral Argument at 69 lines 2 – 13)

TELRIC

Covad argued that since the FCC stated that setting rates for Section 251 Unbundled Network Elements at TELRIC is in and of itself a way to promote competition, so "the way to do that in connection with Section 271 elements is to set rates at the TELRIC level, which is what we have proposed at the draft Interconnection Agreement". (Oral Argument at 7 line 21 to 8 line 8) After pointing to the FCC's First Report and Order[18] paragraph 2, Covad stated that since pricing Section 251 UNEs at TELRIC will encourage investment and entry into the market, i.e., promoting

[18] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd 15499 (1996)

competition, then logically pricing Section 271 only Network Elements at TELRIC will also promote the State and Federal goal of promoting competition. (Oral Argument at 12 lines 4 – 21)

The FCC found that its TELRIC pricing rule resulted in just, reasonable and non-discriminatory prices per 47 C.F.R. § 51.503 and 51.505 for Section 251 UNEs. TELRIC as a pricing standard does result in just, reasonable and non-discriminatory rates. Logically if TELRIC does meet the Section 201/202 pricing standard for Section 251 TELRIC will also meet the Section 201/202 pricing standard for Section 271. (Oral Argument at 14 line 14 – line 22 and at 65 line18 to 66 line 13, Covad answer to June 30, 2005 Question 7)

Actual rates to be used

In the Oral Argument, Covad stated that it is only asking for a finding of TELRIC as the basis for setting the rates for Section 271 only Network Elements. Covad stated that it was not asking for this arbitration to actually set the rates, merely to find that TELRIC is the appropriate basis. Covad noted that "Qwest frequently in many states where there hasn't been a cost docket or an order by a State Commission setting rates, Qwest routinely commissions cost studies and sets what they identified in their rate cases as estimated TELRIC, which we frequently pay and that would be set unless Qwest wants to open a cost docket with respect to these elements, but I don't think that – we're not requesting that right now." (Oral Argument at 24 line 22 – at 25 line 11)

Covad also indicated that Qwest's Commission approved Section 251 Unbundled Network Element rates do meet the requirements of Section 201 and 202, but there are

some Qwest – Nebraska rates set on "estimated" TELRIC and/or set on an Individual Case Basis (ICB) which may not necessarily meet these requirements. (June 20, 2005 Questions, Covad response to Question 7)

Covad's proposed language states that existing TELRIC rates would apply to the Section 271 only Network Elements until new rates are established that meet the requirements of Sections 201 and 202 or applicable state law. (Covad proposed language Section 9.1.1.7 and Initial Brief at 10-11)

Qwest

General

Qwest consistently advanced the position that in the context of an arbitration conducted under Section 252 the Commission only has the authority to impose terms and conditions that are set forth in Sections 251(b) and (c) of the Act. Section 251(b) and (c) contain no reference to obligations to provide elements under Section 271. Therefore in the context of this Interconnection Arbitration, the Commission does not have the authority to impose terms and conditions relating to Section 271.

In addition, there in nothing in Section 271 that suggests that the Commission has pricing authority over Section 271 only Network Elements. Qwest contrasted this lack of Commission pricing authority to the explicit authority granted the Commission to price Section 251 UNEs provided under Section 251. (Oral Argument at 36 - 37) "If Congress had wanted the State Commissions to have pricing authority over 271 elements, it would

have said so just like it said the Commissions do have authority for 251 elements ..." (Oral Argument at 38)

Qwest consistently maintained the position that as a fundamental principle, "a state administrative agency has no role in the administration of federal law, absent express authorization by Congress." (Initial Brief at 15) Since there is no explicit authority in the Act granting the state commissions authority to set rates for the Section 271 only Network Elements, the state commissions have no such authority and therefore are precluded from setting the rates for those elements. (Initial Brief at 12 – 15 and Reply Brief at 5 and at 11) Furthermore, the FCC in its *TRO* stated that Section 271 only Network Element prices must meet the requirements of Sections 201/202 and that TELRIC pricing does not apply. (Reply Brief at 12)

Qwest summed up its position as follows: "...this is a Federal Act that we're implementing. This is not a State Act. So any authority that a State has must come from Congress, and it can't come from the FCC. It has got to come directly from Congress and it's got to be in express language of the statute, and there is no language in the statute that gives State Commissions unbundling authority or pricing authority over 271 elements." (Oral Arguments at 44 lines 6 – 13)

Savings Clauses

Qwest stated that "the Act's savings clauses preserve independent state authority *only to the extent that the exercise of that authority is consistent with the Act* ..." (Initial Brief at 11 - 12) In discussing specific savings clauses, Qwest continued that Section 251(d)(3) only protects state actions that are consistent with the requirements of Section

251. Regarding the savings clause Section 261(b) and (c) Qwest stated that these clauses only protect state regulations that "are not inconsistent with the provisions of this part of the Act"[19], which includes Section 251 and 252, but does not include Section 271. The savings clause in Section 252(e)(3) states that "nothing in this section" prohibits a state from enforcing its own laws but this only applies to Section 252, not Section 271. (Initial Brief at 12)

Minnesota Supreme Court Decision

Qwest pointed out that this decision did not involve an ICA, but rather a generic docket on wholesale quality standards and therefore is unrelated to this arbitration. The Court ruled that there is language in the Act that would grant the Minnesota Commission the authority to impose wholesale service quality standards on an ILEC. However, the Court stated "the savings clauses at issue here themselves expressly preclude state action that is inconsistent with the Act or prevents its implementation." (Minnesota Supreme Court Decision at 9)

This ruling does not "establish that state commissions are free to impose any network unbundling obligations that they deem appropriate as a matter of policy." (Qwest Supplemental – Minnesota Decision at 2) Per Qwest, Covad acknowledged during the Oral Argument that it is seeking to "return to the world that existed prior to the FCC's *Triennial Review Order* and *Triennial Review Remand Order*". This would be clearly inconsistent with the Act and FCC rulings and thus would be prohibited under the express language of this decision. (Qwest Supplemental – Minnesota Decision at 3)

[19] 47 U.S.C. § 261(b) and (c)

Nebraska State Law

Qwest pointed out that while the states do indeed have some authority under the Act, that authority must be exercised in a manner that is consistent with the Act. (Oral Argument at 39) While noting that these issues are governed by Federal statute not state statute, Qwest agreed with the statement that there is nothing in a Nebraska State statute that expressly prohibits the Commission from moving Section 271 only Network Elements into a Section 251/252 ICA and pricing those Network Elements at TELRIC. (Oral Argument at 69 lines 2 – 18)

TELRIC

Qwest agreed that TELRIC is the pricing standard with respect to Section 251 UNEs and in that context meets the requirements of Section 201/202. However, Qwest argued that the FCC has not found that TELRIC pricing for Section 271 only Network Elements would meet the pricing standard of Sections 201/202 for those elements. The only exception agreed to by Qwest, is if Qwest voluntarily agreed to offer Section 271 only Network Elements at TELRIC. (Oral Argument at 66 line 22 - 68 line 5)

Section 201 and 202

The FCC indicated in its *TRO* that it has the responsibility for setting the prices and the finding as to whether a particular rate meets the just and reasonable standard is a fact specific inquiry undertaken by the FCC in the context of a 271 application and/or an enforcement proceeding per section 271(d)(6). There is no role for a state commission in either Section 201 or Section 202. (Oral Argument at 38 and Reply Brief at 11)

B. Discussion

This arbitration often had the look of the Indian fable about the six blind men describing an elephant – each had an accurate, albeit different description based on their point of reference and yet each may not have described the elephant completely.[20] Simply stated, the parties have two decidedly different approaches to this issue.

Covad's Basic Position

Covad's position starts with the continuing Section 271 requirements for unbundling. Arguably this is because the now Section 271 only Network Elements that used to be available via Section 251/252 ICAs prior to the *TRO* and *TRRO* were not available to Covad in Nebraska. As a result, Covad argued to have these Section 271 only Network Elements made an indistinguishable part of this contested 251/252 ICA.[21]

Since all network elements included in a 251/252 ICA are priced at TELRIC and since TELRIC meets the same Section 201/202 pricing requirements that is applicable to Section 271 and since the FCC has determined that TELRIC is pro-competitive, the Section 271 only Network Elements included in this 251/252 ICA should be priced at TELRIC.

In addition, Covad based the Commission's authority to grant the relief requested on the fact that the Commission was neither expressly authorized to nor expressly

[20] See the poem "The Blind Men and the Elephant" by John Godfrey Saxe. This observation is not intended to be disrespectful to the efforts of either Covad or Qwest or to blind men and elephants for that matter.

[21] Covad provided little legal argument regarding the use of a Section 251/252 ICA for Section 271 only Network Elements that would be indistinguishable from Section 251 Unbundled Network Elements.

prohibited from granting such relief by either Federal or Nebraska statute. Furthermore the pro-competitive nature of the requested relief coupled with the pro-competitive objective of the Act would allow the Commission to act favorably on its request.

Qwest's Basic Position

Because this is a Section 251/252 ICA and because the end result of the relief that Covad was requesting looked like a 251/252 ICA pre-*TRO* and pre-*TRRO*, Qwest's starting point was Section 251/252. Qwest argued that these Section 271 only Network Elements are and have been available to Covad in Nebraska through individual non-251/252 ICA commercial contracts. Per the FCC the prices for Section 271 only Network Elements need to meet the Section 201/202 pricing standard, and are not required to meet the Section 251/252 TELRIC pricing standard. Nothing in Sections 251/252 specifies the reinclusion of former 251/252 UNEs that are now Section 271 only Network Elements in an ICA.

Qwest is already meeting all of the requirements specified by the FCC and/or *TA96*. Covad has not indicated that Qwest is in fact violating any specific FCC ruling and/or *TA96* statute.

Qwest based its belief regarding the Commission's lack of authority to grant Covad's request on the fact that the Commission was not expressly authorized in Federal statute to grant Covad's request. Because *TA96* is a Federal statute not a state statute and any state action must not thwart Federal intent, it is not particularly relevant what particular powers a state statute may grant the Commission. Per Qwest, the Commission

can only do what it has been expressly authorized to do by the US Congress. There can be no interpretation of Congressional intent due to changing conditions.

Chevron Test

As in the case of the fable, with little agreement on the starting premises, it seemed at times as if the parties were arguing past each other. Be that as it may, there are certain facts. The first being that neither Federal nor state statutes clearly and unequivocally granted the Commission the authority to do precisely what Covad requested. Since this precise situation was not unambiguously addressed by statute, it would normally be left to the discretion of the appropriate administrative body, e.g., the Commission to interpret the legislative intent. If a particular party felt that the interpretation of the administrative body did not accurately reflect legislative intent, a suit could be filed with the judiciary, who would then decide whether the particular interpretation met legislative intent. Generally the judiciary uses the "*Chevron* test" as advanced by the U.S. Supreme Court.

When reviewing whether an administrative body's interpretation does in fact meet legislative intent, the US Supreme Court in *Chevron U.S.A., Inc. v. National Resources Defense Council* developed the "*Chevron* test".

> "When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, [467 U.S. 837, 843] as well as the agency, must give effect to the unambiguously, expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with

> respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."[22]

Application of the *Chevron* Test to This Arbitration

It is not known if Nebraska has its own version of the *Chevron* test. Regardless, if this decision were to be reviewed by a federal court, it is likely that the *Chevron* test would be useful in the deliberations of that court. Rather than using the *Chevron* test to review a decision, the *Chevron* test in this arbitration will be used as the litmus test for the decision itself.

In other words, for purposes of this arbitration, the first test will be to see if Congress and/or the relevant state statutes have directly spoken to the precise issue under arbitration. If the intent of Congress and/or the state legislature is clear and unambiguous regarding the precise issue under arbitration, then that will be the decision.

If on the other hand Congress either has not directly spoken to or is silent on the precise issue under arbitration, then the second test will be to see if the relief requested by each party is a reasonable interpretation of the statute and/or results in a reasonable policy choice for the Commission. In practice, it is not uncommon for an administrative body to provide a justification for its interpretation in order to demonstrate the reasonableness of its decision.

In other words there must be sound logic underlying the relief requested and the end result must make sense. For example, the relief requested cannot thwart federal intent. This type of information needs to be provided by the requesting party. If these requirements are met, then that requested relief should be awarded.

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[22] US Supreme Court in *Chevron U.S.A., Inc. v. National Resources Defense Council* 467 US 837 (1984) (footnotes omitted)

Analysis

Chevron test – first step

In this instance, it is clear that neither *TA96* nor Nebraska state statutes have directly addressed this precise issue. In fact, it could be easily gleaned from the filings of the parties and the above discussion that the both *TA96* and the Nebraska state statutes are silent on this precise issue. Covad insists that the Commission's authority primarily rests on the fact that the Act did not prohibit the actions requested by Covad and Qwest insists that the Commission's lack of authority rests on the fact that the Act did not authorize the actions requested by Covad. Therefore the Commission may have some latitude in its actions so long as it satisfies the second step.

Chevron test – second step

In applying the second step of the *Chevron* test to this arbitration, there must be an underlying logic to demonstrate that whatever action is taken is a permissible interpretation of legislative intent. In addition, whatever action the Commission takes cannot thwart federal intent.

The end result that Covad is requesting looks strikingly similar to the end result of Section 251/252 ICAs prior to the *TRO* and the *TRRO*, namely Section 271 only Network Elements available to Covad in Nebraska priced at TELRIC. This would have the effect of ignoring the FCC's TRO and TRRO. There needs to be a good reason why such relief should be granted.

When the FCC made its Section 251impairment assessment, it did so on a national basis. It is reasonable to assume that the FCC from its national vantage point

clearly understood the ramifications of allowing the use of non-251/252 commercial contracts and of no longer requiring the use of the TELRIC pricing standard for Section 271 only Network Elements. It is also reasonable to assume that the FCC did not consider its actions to be anti-competitive on a national basis. However, it is also reasonable that the FCC's macro view of the national market place may not accurately capture the market place on a more local basis, e.g., state level.

If Nebraska were demonstrably different than the underlying national assumptions, this could cause the FCC's national assessment when applied to Nebraska to be less accurate and therefore less successful. It is even possible that the FCC's national assessment could be incorrect in certain instances.

For example, if there were Nebraska specific information detailing how the actual telecommunications landscape in Nebraska did not comport with the FCC's view of the national telecommunications landscape and/or if there were Nebraska specific information showing that Qwest's implementation of the FCC's *TRO* and *TRRO* in Nebraska had the opposite effect on Nebraska than the FCC intended, e.g., anti-competitive, then there the information may have been available to make a ruling to remedy these Nebraska specific deficiencies and more completely fulfill federal intent. Clearly it would have been helpful if Nebraska specific information had been provided to conclusively show that Nebraska did not fit the national norm, either in actual landscape and/or actual results.

However, such was not the case in this arbitration. While Covad did on occasion provide national and/or general information, Covad did not provide any Nebraska specific information that would have bolstered their claim. If information had been

provided to show how Qwest was harming Nebraska customers due to some "un-pro competitive" actions, then the Commission may have had reason to act and could have crafted a remedy to address the Nebraska specific situation. Potentially useful information could have included detailed information regarding specific harm to Nebraska consumers and/or specific harm to Covad in Nebraska.

C. Findings

1. The FCC found that TELRIC meets the Section 201/202 pricing standard of just, reasonable and non-discriminatory for the Section 271 only Network Elements when they were Section 251 UNEs. Arguably, these TELRIC based rates reflected the unique cost characteristics of the individual ILEC. Therefore it would seem reasonable that TELRIC rates for these former Section 251 UNEs would still meet the Section 201/202 pricing standard for these same now Section 271 only Network Elements.

This is not to say that TELRIC is the only pricing standard that would meet the Section 201/202 pricing standard for Section 271 only Network Elements, only that it is one of perhaps many prices that could meet the Section 201/202 pricing standard. A particular rate is not just, not reasonable and/or discriminatory simply because that rate was not chosen or unchosen by the company. Therefore logically TELRIC is one of perhaps many rates that would seem to meet the Section 201/202 pricing standard for Section 271 only Network Elements.

2. Neither federal law nor Nebraska state law clearly and unambiguously address the specific issues raised by Covad in this arbitration. Therefore using the logic

underlying the *Chevron* test, the Commission may indeed have the latitude to grant the remedies requested by Covad provided that there is a clear and specific rationale underlying the Commission's action. In this particular case, the relief requested by Covad essentially ends up with a Section 251/252 ICA that resembles the pre-*TRO* and pre-*TRRO* Section 251/252 ICA. While it is clear that the logic provided by Covad underlying this end result is via complete implementation of Section 271, nonetheless the end result resembles a Section 251/252 ICA that does not reflect the FCC's *TRO* and *TRRO*. Therefore while the Commission does have the authority to order the relief requested by Covad, there needs to be a clear and Nebraska specific rationale for the Commission to craft a ruling that would effectively ignore the FCC's *TRO* and *TRRO* and could be seen as thwarting federal intent.

3a. Covad has not ordered any Section 271 only Network Elements directly from Qwest in Nebraska. (August 2, 2005 Questions – 2C – Covad) Therefore it would seem difficult to determine/quantify what if any specific harm has occurred to either the citizens of Nebraska and/or Covad if the relief requested is not granted. Likewise, it would seem difficult to determine/quantify what specific advantage would accrue to either the citizens of Nebraska and/or Covad if the Commission if the relief requested is granted.

3b. The end result that Covad requested was that the Section 271 only Network Elements are available and are priced at TELRIC. Both Covad and Qwest agreed that the Section 271 only Network Elements are available to Covad from Qwest in Nebraska via commercial contracts and/or federal tariffs rather than a Section 251/252 ICA.

Surprisingly, both parties acknowledged that the current prices for Qwest – Nebraska's Section 271 only Network Elements have not changed from when they were available as Section 251 UNEs. In other words the current Qwest – Nebraska Section 271 only Network Elements are priced at TELRIC. (August 2, 2005 Questions 5A – Covad, 5B – Qwest)[23]

Therefore the relief requested by Covad, namely access to Qwest's Section 271 only Network Elements priced at TELRIC is currently available to Covad in Nebraska.

[23] Covad argued that Qwest could change the prices included in these commercial contracts and/or federal tariffs on short notice in the future. (August 2, 2005 Questions – 2C – Covad) There was no discussion by either party whether longer-term options were available to Covad from Qwest for these Section 271 only Network Elements.

VI. Arbitrator's Ruling

Issue 1 - Whether the Commission has authority to order Qwest to unbundle Section 271 only Network Elements – either under federal and/or state law.

Both Covad and Qwest stated that Section 271 only Network Elements are currently unbundled and available to Covad in Nebraska. The relief requested by Covad is already available. No ruling is required.

Issue 2 - Whether the Commission has authority to set the rates of Qwest's Section 271 only Network Elements at TELRIC – either under federal and/or state law?

The Commission has the latitude to grant the remedies requested by Covad provided that there is clear and specific reason and/or rationale underlying the Commission's action that does not thwart federal intent. Covad did not provide the necessary Nebraska specific reason and/or rationale. The relief requested by Covad is not granted.

Interconnection Agreement

The parties are instructed to modify the ICA to include Qwest's proposed language for the disputed paragraphs identified in the arbitration. The parties are to file the revised ICA with the Commission as soon as practical.

Respectfully Submitted,

Paul M. Hartman
Arbitrator

Appendix A – List of Abbreviations

This list of abbreviations is provided for convenience purposes only.

Commission – Nebraska Public Service Commission

DOJ – Department of Justice

FCC – Federal Communications Commission

ICA – Interconnection Agreement

ICB – Individual Case Basis

ILEC – Incumbent Local Exchange Carrier

RBOC – Regional Bell Operating Company

TA96 – Telecommunications Act of 1996

TELRIC – Total Element Long Run Incremental Cost

TRO – Triennial Review Order

TRRO – Triennial Review Remand Order

UNE – Unbundled Network Element

USTA I – First United States Telecommunications Association v. FCC – D.C Circuit Court Decision

USTA II – Second United States Telecommunications Association v. FCC – D.C Circuit Court Decision

Appendix B - An Unresolved Matter of Jurisdiction

The following discussion is informational only. This is an attempt to identify a potential problem that was discovered in the course of this arbitration. This issue had no part in this arbitration decision.

One of the contested issues in this arbitration was jurisdiction, namely, which regulator, FCC or state commission had authority over Section 271 only Network Elements. Qwest argued that the jurisdiction/authority over Section 271 only Network Elements rested exclusively with the FCC. In other words, the Commission had no authority over the rates of these elements. In the course of this arbitration, Qwest acknowledged that there are costs and revenues associated with at least some of these Section 271 only Network Elements that are allocated to the intrastate jurisdiction.

In theory if the FCC had exclusive jurisdiction over Section 271 only Network Elements, all of the costs and revenues associated with these elements would be allocated to the interstate jurisdiction. As Qwest acknowledged, such is not the case. This disconnect between the jurisdictional authority to set rates and the jurisdictional responsibility regarding revenues and costs appears to be caused by the failure to address this industry change caused by *TA96*. For example, the Separations Manual has not been updated to reflect any changes caused by *TA96*.

Background

Historically the measurement of jurisdictional authority and responsibility was jurisdictional revenues and costs, respectively. Generally each of the services offered by

traditional telephone companies were regulated exclusively by one of the two regulators. The Federal Communications Commission (FCC) regulated interstate and international services and the state utility commission regulated intrastate and local services. Tariffs were filed with the respective regulator and were used to determine the jurisdiction of the revenues. If the service was purchased under an interstate tariff, the service and the resulting revenues were interstate. Conversely if the service was purchased under an intrastate tariff, the service and the resulting revenues were intrastate.

As a result of being regulated, ILECs are protected from confiscation by the 5th amendment of the US Constitution. The traditional test for confiscation is a determination as to whether total regulated revenues recover total regulated costs plus a reasonable profit, usually measured as a return on net investment.

Because two independent regulators regulate ILECs, confiscation is measured independently by jurisdiction. Interstate revenues and interstate costs are used to determine the interstate return. Conversely intrastate revenues and intrastate costs are used to determine the intrastate return. If the interstate return were to be confiscatory, the responsibility for addressing this would be the FCC, as the interstate regulator. Conversely, if the intrastate return were to be confiscatory, the responsibility for addressing this would be the state commission, as the intrastate regulator.

As stated earlier, historically tariffs were filed by jurisdiction and were used to determine the revenues by jurisdiction. Costs by jurisdiction were more difficult in that a single network was used to offer both interstate and intrastate services. Therefore the costs associated with that one, dual jurisdiction network had to be allocated between the two jurisdictions. As an oversimplification, costs by jurisdiction were determined

according to the Separations Manual, i.e., Part 36. This manual is the product of a Federal-State Joint Board made up of both federal and state regulators.

Effective July 1, 2001, the FCC adopted the recommendation of the Federal-State Separations Joint Board to impose a five-year an almost complete freeze of the Part 36 category relationships and jurisdictional cost allocation factors. The jurisdictional dollar amount could change based on the total dollar amount subject to Part 36 rules, but the percentage split between the jurisdictions of the total dollar amount was essentially frozen. This limited the possibility of changes in the jurisdictional allocation of costs. For the most part, jurisdictional revenues were not frozen.

Historically adjustments were made in the allocation of costs via changes in the Separations Manual to try and balance costs and revenues by jurisdiction. Arguably one motivation was so that both jurisdictions shared in the costs and benefits of changes in the ILEC industry, e.g., technological, operational, legislative, legal, etc. The Separations Manual attempted to match jurisdictional authority/revenues with jurisdictional responsibility/costs. Arguably there has not yet been any recognition in Part 36 of changes as a result of *TA96*.

Summary

As stated above, if the FCC has exclusive jurisdiction over Section 271 only Network Elements, historically it would be expected that the costs and revenues associated with these elements would likewise be interstate. Such is not the case. As a result, costs may be allocated to the intrastate jurisdiction as a result of the new regimen initiated by *TA96*. Some parties have interpreted this new mandated regimen to give the

FCC exclusive jurisdiction over the rates. *TA96* did not address the allocation of the associated costs and revenues.

A confiscation claim could address ILEC under-earning, over-earning or stranded costs. Whether an ILEC can still make a confiscation claim may be an issue, but suffice to say, no ILEC to date has legally surrendered their right to be protected from confiscation via a confiscation claim. If there is absolutely, positively no chance that there will ever be another ILEC confiscation claim, then this issue is moot.

Part 36 must be followed by both jurisdictions. If confiscation does become an issue in a state, the options available to that state commission may be limited. To the extent that this is potentially a multi-state issue, the proper place for this to be addressed is the Federal-State Separations Joint Board.

CERTIFICATE OF SERVICE

I hereby certify that on this the 4th day of January, 2006, I caused to be served a true and correct copy of **QWEST CORPORATION'S FIFTH NOTICE OF SUPPLEMENTAL AUTHORITY** by U.S. mail and electronic mail to the following:

Patrick W. Derrick
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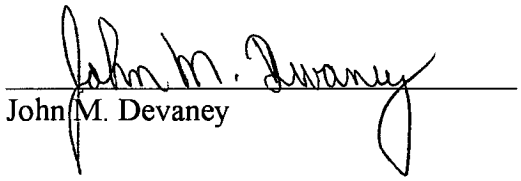

John M. Devaney

RECEIVED
DEC 22 2005
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S RESPONSE TO COVAD COMMUNICATION COMPANY'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") submits this response to Covad Communication Company's ("Covad") third notice of supplemental authority filed December 14, 2005. Covad's notice provides the Commission with a copy of a recent recommended opinion and order ("Arizona ROO") from an administrative law judge ("ALJ") in the Arizona arbitration between Qwest and Covad. Prior to the Arizona ROO, eight state commissions and four ALJs had issued orders addressing the same network unbundling issues presented in this arbitration conducted under Section 252 of the Telecommunications Act of 1996 ("the Act"). Each of these 12 decisions rejects Covad's network unbundling requests, finding that there is no legal support for including network elements provided under Section 271 in an interconnection agreement ("ICA") and that state commissions do not have authority to require network unbundling under state law that the FCC has rejected under Section 251.[1] The Arizona ROO, which is still only a recommended order and which Qwest is challenging before the Arizona Commission, is the first and only decision that has found for Covad on these issues. For the multiple reasons discussed below, the

[1] Qwest has cited these decisions in its briefs and, in notices of supplemental authority, has provided the Commission with copies of the decisions that were issued after the parties completed their briefing. The state commissions that have issued these decisions are the commissions in Iowa, Idaho, Minnesota, Oregon, South Dakota, Utah, Washington, and Wyoming. The Wyoming Commission has issued an oral ruling and is expected to issue soon a written order reflecting the oral ruling. In addition to these commission decisions, ALJs in Minnesota, New Mexico, Oregon, and Utah issued rulings. The parties are awaiting rulings from commissions or arbitrators in Montana, Nebraska, and North Dakota.

12 decisions from other state commissions and ALJs, not the Arizona ROO, correctly resolve these issues.

II. DISCUSSION

A. The Arizona ROO Incorrectly Assumes That State Commissions May Impose Section 271 Unbundling Requirements In A Section 252 Arbitration.

The threshold jurisdictional question that the Section 271 unbundling issue presents is the scope of a state commission's authority as an arbitrator under Section 252 and, in particular, whether that authority permits a commission to render decisions relating to obligations arising under Section 271. The Arizona ROO responds to this jurisdictional question not with an analysis of the arbitration authority Congress granted in Section 252 but, instead, with a discussion of the types of agreements that carriers must file with state commissions for approval. Arizona ROO at 17-20. This analysis does not answer the relevant question.

To answer the relevant question, it is necessary to focus on Section 252(b)(4)(C), the provision that defines a state commission's duties and powers as an arbitrator:

> The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

Importantly, this subsection *mandates* through the term "shall" that state commissions are to resolve arbitration issues by imposing conditions "*required to implement subsection [252](c).*" In turn, subsection 252(c), which sets forth "standards for arbitration," expressly directs state commissions to resolve "open issues" by imposing "conditions [that] *meet the requirements of section 251.*" This plain linkage between the "open issues" that state commissions are permitted to arbitrate and the "requirements of section 251" demonstrates that the open issues state commissions are authorized to resolve are only those relating to the duties imposed by Section 251. Significantly, Congress neither directed nor authorized state commissions to resolve open

issues relating to duties imposed by Section 271.

In its decision rejecting Covad's Section 271 unbundling demands, the South Dakota Commission provided a succinct statutory analysis of why state commissions do not have authority to impose Section 271 unbundling obligations in a Section 252 arbitration. The commission explained that Section 252(a), which describes the negotiations that are a prerequisite to a Section 252 arbitration, establishes that negotiations "are limited to requests 'for interconnection, services, or network elements *pursuant to section 251* . . . .'"[2] Relatedly, the South Dakota Commission explained, "section 252(c)(1) requires the Commission to ensure that the Commission's resolution of open issues '*meet the requirements of section 251 of this title*, including the regulations prescribed by the [FCC] pursuant to section 251 of this title . . . .'"[3] The language in these provisions, the commission concluded, "clearly anticipates that section 252 arbitrations will concern section 251 requirements, not section 271 requirements."[4]

The Arizona ROO improperly fails to analyze or give effect to these clear limitations on the arbitration authority of state commissions.

B. The Arizona ROO Concludes Incorrectly That Section 271 Grants States Authority To Require Unbundling Of Section 271 Elements.

The Arizona ROO concludes erroneously that the Arizona Commission has an ongoing role in ensuring Qwest's compliance with Section 271, and that this enforcement authority permits the Arizona Commission to impose Section 271 unbundling requirements in an arbitration. Arizona ROO at 20-21.

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[2] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, TC056, Arbitration Order at 6 (S.D. Commission July 26, 2005) (emphasis added).

[3] *Id.* (emphasis added).

[4] *Id.*

The first flaw in this finding is that nothing in Section 271 grants arbitration authority to state commissions. Only Section 252 gives states the authority to conduct arbitrations and, as discussed above, that authority is limited to imposing obligations that implement the duties in Section 251, not Section 271.

Equally significant, there is no statutory support for the Arizona ROO's conclusion that state commissions have Section 271 enforcement authority that permits imposing unbundling obligations under that section. The Arizona ROO does not cite any statutory language to support this proposition and, indeed, there is none. The only authority that Section 271 gives to state commissions is that relating to the requirement in Section 271(d)(2)(B) that the FCC consult with state commissions *before* making a determination relating to a BOC's application to provide in-region interLATA services. Section 271 does not grant state commissions any authority to enforce requirements *after* a BOC has received approval to provide interLATA services and does not even provide state commissions with a consulting role relating to post-approval enforcement.

Quoting Section 271(d)(6), which speaks only of the FCC having enforcement authority, the South Dakota Commission concluded correctly that "the language of section 271 places enforcement authority of that section with the FCC."[5] The Idaho Commission reached the same conclusion based on a plain reading of Section 271(d)(6), stating that "enforcement authority for Section 271 obligations is granted exclusively to the FCC."[6]

These rulings are consistent with the fact that Section 271 does not grant state commissions any decision-making authority and, hence, does not authorize state commissions to impose unbundling requirements. As explained by one federal court, a state commission has a

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[5] *Id.*

[6] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. CVD-T-05-1, Order No. 29825 at 4 (Idaho Public Utility Commission July 18, 2005).

fundamentally different role in implementing Section 271 than it does in implementing Sections 251 and 252:

> Sections 251 and 252 contemplate state commissions may take affirmative action towards the goals of those Sections, *while Section 271 does not contemplate substantive conduct on the part of state commissions*. Thus, a "savings clause" is not necessary for Section 271 because the state commissions' role is investigatory and consulting, not substantive, in nature.[7]

Accordingly, the Arizona ROO's conclusion that Section 271 authorizes this Commission to impose Covad's proposed Section 271 unbundling requirements is legal error.

C. The Arizona ROO Improperly Applies TELRIC Prices To Section 271 Elements.

The Arizona ROO's recommendation that TELRIC prices the Arizona Commission has established for Section 251 UNEs should apply to Section 271 elements (Arizona ROO at 23) directly violates the FCC's and the D.C. Circuit's rulings that these elements are not governed by TELRIC.

The Arizona ROO attempts to support the application of TELRIC to Section 271 elements by asserting that the FCC's *Triennial Review Order*[8] requires Qwest to continue using the TELRIC prices for UNEs that were in effect when the FCC approved Qwest's application to provide interLATA services in Arizona. Arizona ROO at 23. The ROO cites paragraph 665 of the *TRO* for this proposition, asserting implicitly that the FCC intended that prices for network elements would not change after the FCC's approval of a Section 271 application even if a network element has been de-listed as a Section 251 UNE. However, that is not what paragraph 665 says; indeed, that paragraph makes it clear that a Bell Operating Company's ("BOC") post-

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[7] *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (S.D. Ind. 2003) (state commission not authorized by section 271 to impose binding obligations), *aff'd*, 359 F.3d 493 (7th Cir. 2004) (emphasis added).

[8] 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, ¶

approval obligations under Section 271 will change as the law changes.

While the FCC stated in paragraph 665 that "BOCs must continue to comply with any conditions required for approval," it qualified that statement with the important condition that such continued compliance should be "*consistent with changes in the law.*"[9] The FCC emphasized that Congress could not have intended that a BOC's compliance obligations would remain unchanged despite changes in the law, stating that such an approach would be "antithetical to public policy because it would require the enforcement of out-of-date or even vacated rules."[10]

The Arizona ROO's recommended application of TELRIC to Section 271 elements that were de-listed as Section 251 elements in the *TRO* or the *Triennial Review Remand Order*[11] would lead to precisely the type of result that paragraph 665 of the *TRO* is intended to avoid. Specifically, under the ruling, the Commission would apply a pricing structure reserved exclusively for Section 251 UNEs to network elements that the FCC has determined are no longer UNEs under that section.

Although the Arizona ROO is silent on the subject, there can be no dispute that TELRIC pricing does not apply to network elements that the FCC has removed from Section 251 and that BOCs are now providing only pursuant to Section 271. In the *TRO*, the FCC ruled unequivocally that any elements a BOC provides pursuant to Section 271 are to be priced based on the Section 201-02 standard that rates must not be unjust, unreasonable, or unreasonably discriminatory.[12] In

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62, n.198 (2003) ("*TRO*").

[9] *Id.* at ¶ 665 (emphasis added).

[10] *Id.*

[11] Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*TRRO*").

[12] *TRO* ¶¶ 656-64.

so ruling, the FCC confirmed, consistent with its prior rulings in Section 271 orders, that TELRIC pricing does not apply to these network elements.[13] In *USTA II*, the D.C. Circuit reached the same conclusion, rejecting the CLECs' claim that it was "unreasonable for the Commission to apply a different pricing standard under Section 271" and instead stating that "we see nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment."[14] The ROO fails to give effect to these binding rulings.

D. The Arizona Commission Does Not Have Authority To Require Unbundling Under Arizona Law That The FCC Has Rejected Under Section 251.

The Arizona ROO erroneously concludes that the Arizona Commission has authority to require network unbundling state law that the FCC has rejected under Section 251. Arizona ROO at 21. This ruling violates the Act and misinterprets the unbundling authority that the Commission has under Arizona law.

An essential prerequisite for unbundling any given element under Section 251 is a formal finding by the FCC that the Section 251(d)(2) "impairment" test is satisfied for that element. Simply put, if there has been no such FCC finding, the Act does not permit any regulator, federal or state, to require unbundling under Section 251. In the *TRO*, the FCC reaffirmed this:

> Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 and do not "substantially prevent" the implementation of the federal regulatory regime.
>
> ***
>
> If a decision pursuant to state law were to require unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits of section 251(d)(2))—or otherwise declined to require unbundling on a national basis, we believe it unlikely that such a decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of section

[13] *Id.*

[14] *USTA II*, 359 F.3d at 589; *see generally id.* at ¶¶ 588-90.

251(d)(3)(c).[15]

Federal courts interpreting the Act have reached the same conclusion.[16] For example, the United States District Court of Michigan observed that in *USTA II*, the D.C. Circuit "rejected the argument that the 1996 Act does not give the FCC the exclusive authority to make unbundling determinations."[17] The court emphasized that while the Act permits states to adopt some "procompetition requirements," they cannot adopt any requirements that are inconsistent with the statute and FCC regulations. Specifically, the court held, a state commission "cannot act in a manner inconsistent with federal law and then claim its conduct is authorized under state law."[18]

Section 251(d)(3), the provision the Arizona ROO relies upon to support the Arizona Commission's alleged unbundling authority, expressly protects only those state enactments that are "consistent with the requirements of this section" — which a state law unbundling order ignoring the Act's and the FCC's limits would clearly not be. The savings clause in this section does not preserve the authority of state commissions to adopt or enforce under state law unbundling requirements that have been rejected by the FCC or vacated in *USTA II*.

Accordingly, the Arizona ROO's ruling that state commissions may require unbundling under state law that the FCC has rejected under Section 251 violates the Act's requirement that state regulation must be consistent with the Act and the FCC's rules and orders implementing the Act.

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[15] *TRO* ¶¶ 193, 195.

[16] *See Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 395 (7th Cir. 2004) (citing the above-quoted discussion in the *TRO* and stating that "we cannot now imagine" how a state could require unbundling of an element consistently with the Act where the FCC has not found the statutory impairment test to be satisfied).

[17] *Michigan Bell Tel. Co. v. Lark*, Case no. 04-60128, slip op. at 13 (E.D. Mich. Jan. 6, 2005).

[18] *Id.*

III. CONCLUSION

For the reasons stated, the network unbundling rulings in the Arizona ROO are unlawful. Consistent with the rulings of the eight state commissions and four ALJs that preceded the Arizona ROO, this Commission should reject Covad's unbundling demands and adopt Qwest's proposed language for the ICA.

DATED: December 22, 2005

Respectfully submitted,

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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of December, 2005, I caused to be served a true and correct copy of **QWEST CORPORATION'S RESPONSE TO COVAD COMMUNICATION COMPANY'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY** by U.S. mail and electronic mail to the following:

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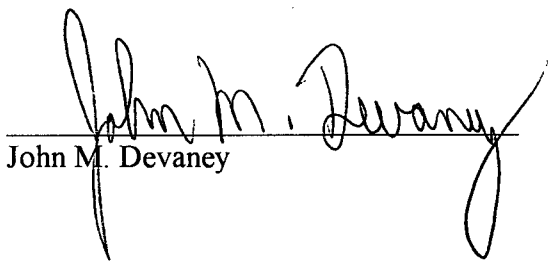

John M. Devaney

COVAD

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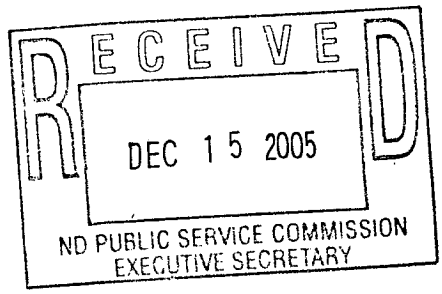
December 14, 2005



Via UPS Overnight Delivery
Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation; Case No. PU-05—165

Dear Mr. Mielke:

Enclosed for filing are the original and eight copies of Covad's Third Notice of Supplemental Authority in the above docket, along with a Certificate of Service.

Please feel free to call if you have any questions.

Very truly yours,

Lynn Hankins

Lynn Hankins

Enclosures
cc: Service list (w/enclosures)

42 **PU-05-165** Pages: 2

Cover letter re Third Notice of Supplemental Authority
by DIECA Communications, Inc. by
12/15/2005 CC: Comm Legal Illona, Pat, Annette . .

CERTIFICATE OF SERVICE
Case No. PU-05-165

I HEREBY CERTIFY that on the 14th day of December, 2005, a true and correct copy of the foregoing Covad's Third Notice of Supplemental Authority was sent overnight mail to the following:

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismark, ND 58505 (Original and eight copies)

And via e-mail and U.S. Mail, first class, postage prepaid to the following:

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Melissa K. Thompson
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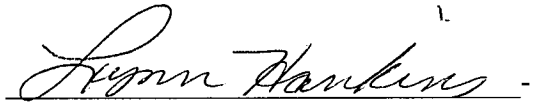

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ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY**

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") submits this third notice of supplement authority:

1. On December 9, 2005, the Administrative Law Judge presiding over Covad's and Qwest's pending interconnection agreement arbitration in Arizona entered a recommended decision in favor of Covad on the issues of section 271 unbundling and pricing, the identical issues before this Commission. A copy of that decision is attached to this notice. See, *In the Matter of the Petition of Dieca Communications, Inc. dba Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Arizona Corporation Commission, Docket Nos. T-03632A-04-0425, T-01051B-04-0425, Recommended Decision of Administrative Law Judge (12/9/05). Specifically, the Arizona ALJ ruled that the Arizona Corporation Commission has jurisdiction to consider and order Qwest to make unbundled network elements available to Covad in the context of an arbitration brought pursuant to section 252 of the Telecommunications Act of 1996. Moreover, the ALJ ruled that the proper pricing standard applicable to section 271 network elements is the FCC adopted Total Element Long Run Incremental Cost (TELRIC) standard.

41 PU-05-165 Pages: 46
Third Notice of Supplemental Authority
by DIECA Communications, Inc. by
12/15/2005 CC: Comm Legal Illona, Pat, Annette . .

2. In ruling that the Arizona Corporation Commission held the requisite jurisdiction with regard to section 271 network elements, the ALJ concluded (page 19 & 20 – emphasis added):

> The Commission's authority to review and approve interconnection agreements is set forth in Section 252(e) which requires that "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." (Section 252(e)(1), emphasis added). Contrary to Qwest's assertion, there is no constraint in Section 252(e)(1) that would limit the type of negotiated agreements that must be approved by state commissions to only those addressing network elements, interconnection or access under Section 251. Rather, Section 252 is clear on its face that "any interconnection agreement" must be submitted for state commission approval. If the drafters of the 1996 Telecom Act had intended the type of limitation suggested by Qwest, they could easily have added the same language to Section 252 that is contained in Section 251. The absence of such language is a clear indication that the Telecom Act intended broad review authority for state commissions.
>
> When read in conjunction with the entirety of the Telecom Act, the Section 271 obligations described above must be considered the type of interconnection and access requirements contemplated under Section 252. Indeed, Section 271(c)(2) is titled "SPECIFIC INTERCONNECTION REQUIREMENTS" and, under subsection (A) of that provision, the requesting BOC is considered to have met the requirements of the section if it is providing access or interconnection pursuant to its SGAT or an interconnection agreement, both of which require state commission approval under Section 252. Since Section 271 does not contain any separate provisions for approval of interconnection agreements or SGAT provisions, it must be presumed that the review process of such Section 271 provisions would occur within the Section 252 review process.

3. Likewise, in adopting the TELRIC standard for section 271 network elements, the Arizona ALJ concluded (page 23):

> With respect to pricing of Section 271 elements, we agree Covad that the current TELRIC pricing of those network elements should remain in place because they have previously been found to have complied with state and federal law. As Covad points out, the FCC has required continued access at current (TELRIC) wholesale prices for those elements for which wholesale prices were established and relied upon in the FCC's granting

of Qwest's Section 271 application (*TRO*, ¶665). The previously established prices for these elements would clearly qualify as fair, just and reasonable rates, and should be continued absent a request by Qwest to alter the conditions of its interLATA entry into the Arizona market.

For these reasons and the reasons set forth in Covad's other submissions in this docket, Covad requests that the arbitrator adopt Covad's proposed language.

RESPECTFULLY SUBMITTED,

Dated: December 14, 2005

DIECA COMMUNICATIONS, INC.

By: _____

Gregory Diamond
Senior Corporate Counsel
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(720) 670-3350 Fax

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
Executive Director

DEC 2005
RECEIVED
M.W.P.

DATE: December 9, 2005

DOCKET NOS: T-03632A-04-0425 and T-01051B-04-0425

TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

DIECA COMMUNICATIONS, INC. dba COVAD COMMUNICATIONS COMPANY/QWEST CORPORATION
(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 19, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC., dba COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION.	DOCKET NO. T-03632A-04-0425 DOCKET NO. T-01051B-04-0425 DECISION NO. _____ **OPINION AND ORDER**

DATES OF HEARING:	February 7 and 18, 2005
PLACE OF HEARING:	Phoenix, Arizona
ARBITRATOR:	Dwight D. Nodes
APPEARANCES:	Michael W. Patten, ROSHKA, HEYMAN & DeWULF, P.L.C.; Andrew R. Newell, KRYS BOYLE, P.C.; and Karen Shoresman Frame, on behalf of Covad Communications Company; and John M. Devaney, PERKINS COIE, L.L.P.; Timothy Berg, FENNEMORE CRAIG, P.C.; and Norman G. Curtright and Winslow B. Waxter, on behalf of Qwest Corporation.

BY THE COMMISSION:

On June 8, 2004, DIECA Communications, Inc., dba Covad Communications Company ("Covad") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration ("Petition") of a proposed interconnection agreement with Qwest Corporation ("Qwest") pursuant to A.A.C. R14-2-1505 and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Telecom Act" or "Act").

On July 6, 2004, Qwest filed a Response to the Petition for Arbitration. On July 21, 2004, Qwest filed a Motion to Dismiss Portions of Covad's Petition for Arbitration. Qwest's Motion requested a Commission Order dismissing Issue 2 in Part G of Covad's Petition, to the extent Covad seeks Commission authority to: require Qwest to provide unbundled network elements ("UNEs")

pursuant to Section 271 of the Act; set UNE rates that Qwest provides under Section 271; or require Qwest to provide UNEs under state law in a manner that conflicts with the access ordered by the Federal Communications Commission ("FCC") in its *Triennial Review Order*.[1]

A Procedural Conference was conducted on August 9, 2004 to discuss scheduling and other procedural issues. The parties agreed on dates for filing testimony, conducting the hearing, and filing of briefs. A schedule for filing pleadings regarding Qwest's Motion to Dismiss, and for oral argument on the Motion, was also discussed.

Pursuant to the schedule established at the August 9, 2004 Procedural Conference, Covad filed its Response to Qwest's Motion to Dismiss on August 16, 2004; the Commission's Utilities Division Staff ("Staff") filed its Opposition to Qwest's Motion to Dismiss on August 31, 2004; and Qwest filed its Combined Reply to the Responses of Staff and Covad on September 10, 2004. On September 29, 2004, Qwest, Covad, and Staff filed their respective Comments regarding the effect on this proceeding of the FCC's interim unbundling rules and Notice of Proposed Rulemaking[2].

By Procedural Order issued October 6, 2004, in accordance with the schedule requested by the parties, oral argument on Qwest's Motion to Dismiss was set for December 15, 2004[3], and the hearing was scheduled to commence on February 7, 2005. The Procedural Order also set dates for submitting pre-filed testimony.

On December 20, 2004, Covad filed the Direct Testimony of Michael Zulevic and Elizabeth Balvin, and Qwest filed the Direct Testimony of William Easton, Karen Stewart, and Michael Norman.

A Procedural Conference was conducted on January 6, 2005 to discuss scheduling of witnesses and the status of the previously scheduled oral argument. During the Conference, Covad and Qwest agreed that no ruling on the Motion to Dismiss should be made prior to the February 7,

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[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* ("*Triennial Review Order*" or "*TRO*"), 18 FCC Rcd. 16978 (2003), *aff'd in part and rev'd and vacated in part, United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[2] *Triennial Review Order, supra*; Order and Notice of Proposed Rulemaking, Review *of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel. Aug. 20, 2004).

[3] By Procedural Order issued December 7, 2004, the oral argument was cancelled at the request of the parties due to the expectation that the FCC would be issuing revised rules in accordance with the *USTA II* decision.

2005 arbitration hearing, and the parties would brief the issues raised by Qwest's Motion to Dismiss as part of their post-hearing briefs on all of the disputed arbitration issues.

On January 18, 2005, Covad filed the Rebuttal Testimony of Michael Zulevic and Elizabeth Balvin, and Qwest filed the Rebuttal Testimony of William Easton, Karen Stewart, Renee Albersheim, and Michael Norman.

On January 31, 2005, Covad filed the Joint Issues Matrix setting forth the issues that had been resolved through negotiation and the issues that remained in dispute.

Hearings were held February 7 and 18, 2005 at the Commission's offices in Phoenix, Arizona.

Post-hearing briefs were filed by Covad and Qwest on March 11, 2005. Reply briefs were filed on March 28, 2005.

On June 3, 2005, Qwest filed Supplemental Authority in the form of an Arbitration Order issued by the Iowa Utilities Board (Covad/Qwest Arbitration Docket No. ARB-05-01, Issued May 24, 2005).

On July 20, 2005, Covad filed Supplemental Authority from an Arbitration Order issued on July 11, 2005 by the Missouri Public Service Commission (*Southwestern Bell Telephone dba SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement*, Case No. TO-2005-0336).

On July 20, 2005, Qwest filed additional Supplemental Authority from an Order issued on July 18, 2005 by the Idaho Public Utilities Commission (Covad/Qwest Arbitration Docket No. CVD-T-05-01, Order No. 29825) and an oral ruling by the South Dakota Public Service Commission on July 12, 2005.

On August 1, 2005, Qwest filed Supplemental Authority in the form of an Order issued by the South Dakota Public Service Commission (Covad/Qwest Arbitration Docket TC05-056, *Arbitration Order* issued July 26, 2005).

By Procedural Order issued August 12, 2005, Covad, Qwest and Staff were directed to file statements by August 26, 2005 regarding the impact on this proceeding, if any, of the FCC's August 5, 2005 press release regarding its decision to eliminate facilities sharing requirements on facilities-based wireline broadband Internet access service providers.

On August 26, 2005, Covad filed a Statement indicating that the FCC's Decision would have no impact on any of the issues in this arbitration docket.

On August 26, 2005, Qwest filed a Statement that the FCC's Decision potentially would have a profound effect of this proceeding, and further deliberation should be undertaken once the FCC's Decision is issued.

On August 26, 2005, Staff filed a Request for Extension to File Comments. Staff stated that it would need at least three weeks from the date the FCC's Decision was issued to offer a response on the effect of the FCC's Decision.

By Procedural Order issued August 30, 2005, Staff's request for an extension of time was granted.

On September 22, 2005, Qwest filed a Fourth Notice of Supplemental Authority in the form of an Order issued by the Oregon Public Utility Commission (Order No. 05-980, issued September 6, 2005, *In the Matter of Covad Communication Company Petition for Arbitration*).

On October 24, 2005, Qwest filed a Fifth Notice of Supplemental Authority in the form of a Recommended Decision of the Hearing Examiner of the New Mexico Public Regulation Commission (Case No. 04-00208-UT, issued October 14, 2005, *In the Matter of Covad Communication Company Petition for Arbitration*).

On November 3, 2005, Staff filed a Request for Procedural Order. Staff stated that the FCC had issued the anticipated Decision on September 23, 2005[4], and Staff therefore requested that a Procedural Order should be issued allowing two additional weeks for the parties to comment on the impact of the FCC's Order on the issues raised in this proceeding.

On November 7, 2005, a Procedural Order was issued directing Staff, Covad, and Qwest to file comments regarding the impact of the FCC's Order on this proceeding, by no later than November 21, 2005.

On November 21, 2005, Covad filed a Second Notice of Supplemental Authority in the form of an Arbitration Order issued by the Tennessee Regulatory Authority (Docket No. 03-00119, issued

[4] *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33 et al. (Rel. September 23, 2005) ("*Broadband Order*").

October 20, 2005, *Petition for Arbitration of ITC Deltacom Communications, Inc. with Bellsouth Telecommunications, Inc.*).

On November 21, 2005, Covad filed its Comments Regarding the FCC's *Broadband Order*. Covad contends that nothing in the *Broadband Order* affects the issues presented in the arbitration petition that is before the Commission in this docket.

On November 21, 2005, Qwest filed its Comments Relating to the FCC's *Wireline Broadband Order*. Qwest argues that the FCC's Broadband Order does affect the arbitration issues, especially with respect to Covad's "alternative service" proposal for copper loop retirements. Qwest also claims that the *Broadband Order* draws into question whether Covad is a telecommunications carrier entitled to an interconnection agreement, or whether Covad is an information services provider.

On November 21, 2005, Staff filed a Statement regarding the *Broadband Order*'s effect on this arbitration proceeding. According to Staff, the *Broadband Order* "would have no impact on the unbundling issues raised in this case, to the extent Covad seeks the unbundled network elements to provide a telecommunications service." Staff cites to the FCC's statement that "nothing in this Order changes a requesting telecommunications carrier's UNE rights under section 251 and our implementing rules" (*Broadband Order*, at ¶127).

On December 2, 2005, Covad filed a *Reply to Qwest's Comments Regarding the FCC's Broadband Order*. Covad contends that the FCC has already responded to the question raised by Qwest and found that the *Broadband Order* has no effect on Covad's rights under 47 U.S.C. §251 and, by extension, 47 U.S.C. §252. Covad claims that Qwest's arguments ignore the FCC's specific statement that the *Broadband Order* does not impact UNE and interconnection issues. Covad also argues that the Commission has already determined that Covad is a telecommunications carrier pursuant to the granting of a CC&N for the provision of such services.

Having reviewed the various arguments regarding the impact of the FCC's *Broadband Order* on the issues presented herein for arbitration, we believe the arbitration issues are properly before us for consideration in this proceeding. We will therefore proceed to a determination of those issues based on the record presented through testimony and exhibits at the arbitration hearing.

ISSUES FOR ARBITRATION

Covad's Petition contains five remaining disputed issues: 1) copper retirement requirements; 2) unified agreement/unbundled network elements; 3) commingling; 4) regeneration of Competitive Local Exchange Carrier ("CLEC") signals; and 5) billing/payment issues.

Issue No. 1: What are Qwest's obligations when it retires copper facilities?

Positions of the Parties

Covad and Qwest are in agreement with a portion of the language set forth below in Section 9.1.15. However, Covad proposes additional language for Section 9.1.15, as well as adding additional subsections (9.1.15.1 and 9.1.15.1.1). The language proposed by each of the parties is set forth below, with proposed deletions shown in "strike-through" format and proposed additions underlined.

Qwest Proposed Language	**Covad Proposed Language**
9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its website (www.qwest.com/disclosures); and (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.	9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its website (www.qwest.com/disclosures); and (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements. The e-mail notice provided to each CLEC shall include the following information: city and state; wire center; planned retirement date; the FDI address; a listing of all impacted addresses in the DA; a listing of all CLEC's customer impacted addresses; old and new cable media, including transmission characteristics; circuit identification information; and cable and pair information. 9.1.15.1 Continuity of Service During Copper Retirement. This section applies where Qwest

	retires copper feeder cable and the resultant loop is comprised of either (1) mixed copper media (i.e., copper cable of different gauges or transmission characteristics); or (2) mixed copper and fiber media (i.e., hybrid copper-fiber loop)(collectively, "hybrid loops") over which Qwest itself could provide a retail DSL service. This section does not apply where the resultant loop is a fiber to the home (FTTH) loop or a fiber to the curb (FTTC) loop (a fiber transmission facility connecting to copper distribution plant that is not more than 500 feet from the customer's premises) serving mass market or residential End User Customers. 9.1.15.1.1 When Qwest retires copper feeder for loops serving CLEC-served End User Customers or the CLEC at the time such retirement is implemented, Qwest shall adhere to all regulatory and legal requirements pertaining to changes in the Qwest network. Qwest will not retire copper facilities serving CLEC's End User Customers or CLEC, at any time prior to discontinuance by CLEC or CLEC's End User Customer of the service being provided by CLEC, without first provisioning an alternative service over any available, compatible facility (i.e., copper or fiber) to CLEC or CLEC End User Customer. Such alternative service shall be provisioned in a manner that does not degrade the service or increase the cost to CLEC or End User Customers of CLEC. Disputes over copper retirement shall be subject to the Dispute Resolution provisions of this Interconnection Agreement.

Covad

Covad states that the dispute on this issue centers on the conditions under which Qwest may retire copper plant that is used to serve Covad's digital subscriber line ("xDSL") customers. Covad contends that the FCC limited application of its copper retirement rules to situations where CLECs would not be denied access to loops. According to Covad, the *TRO* addressed only copper retirement and fiber replacement regarding fiber to the home ("FTTH") and fiber to the curb ("FTTC"). Covad

claims that it has made substantial investments in deploying its xDSL network and Qwest's retirement of copper facilities has the potential to destroy Covad's investment which relies on copper facilities.

Covad also argues that the Commission has authority pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1307[5] to enforce additional requirements regarding the retirement of copper facilities. Covad asserts that the Commission's policy objectives of protecting both competitors and consumers would be furthered by adopting Covad's copper retirement proposals because Qwest is not provisioning broadband services to Arizona customers over fiber cable that has replaced retired copper facilities.

Covad further contends that, contrary to Qwest's assertions, its alternative service proposal is sufficiently defined because it includes parameters for service quality and price stability. According to Covad, there are means to determine if service has been degraded by a copper retirement and the current wholesale rate for line sharing should be maintained for any alternative service necessary for Covad to serve its customers in the event copper facilities are replaced with fiber.

Covad also argues that Qwest's proposed notice provisions are inadequate when copper retirements are contemplated. Covad asserts that Qwest's proposed notice fails to provide CLECs with specific customer information that would enable the CLECs to readily determine if specific customers would be affected by the retirement. Covad contends that Qwest's proposed notice is inferior to the procedures employed in Bellsouth's territory, in which specific customer addresses are provided to affected DSL providers. Covad argues that even if the Commission believes that FCC rules do not require the type of notice proposed by Covad, the Commission should assert its authority to require the notice requirements requested by Covad.

Qwest

According to Qwest, this issue arises from the practice of Incumbent Local Exchange Carriers ("ILECs") retiring copper facilities and replacing them with fiber. Qwest witness Karen Taylor testified that the ability to retire copper facilities is important from a cost perspective because,

[5] A.A.C. R14-2-1307 requires ILECs to provide "essential facilities or services" (including unbundled loops) under terms and conditions that are equivalent to the terms and conditions under which the ILEC provides such facilities and services to itself.

otherwise, ILECs would be required to maintain redundant copper and fiber networks when fiber facilities are installed to replace copper (Qwest Ex. 2, at 2). Ms. Taylor also stated that being able to replace copper with fiber advances the FCC's objective of increasing economic incentives for carriers to deploy fiber facilities (*Id.* at 4-5).

Qwest contends that the FCC's *Triennial Review Order* confirms the right of ILECs to retire copper facilities that are replaced with fiber facilities. In Paragraph 271 of the *TRO*, the FCC stated: "we decline to prohibit incumbent LECs from retiring copper loops or copper subloops that they have replaced with fiber." Qwest argues that Covad's proposal to prohibit Qwest from retiring copper facilities unless it provides Covad, or Covad's end-users, with an alternative service is inconsistent with the FCC's rules and is ambiguous to the point of being incapable of implementation with respect to what constitutes an acceptable alternative service. Qwest argues that Covad's proposed interconnection agreement ("ICA") does not define the "alternative service" that would have to be provided and Qwest would have no way of knowing what service to provide to comply with the ICA. According to Qwest, state regulatory commissions in Colorado, Minnesota, Utah, and Washington have rejected Covad's proposal regarding retirement of copper facilities.

Qwest also asserts that, contrary to Covad's contention, there is no FCC limitation on copper retirements only for FTTH and FTTC replacements. Qwest cites a decision by the Colorado Commission[6] which rejected the same argument raised by Covad.

Regarding the practical effects of copper retirements, Qwest claims that no Covad customer has ever been disconnected in Arizona or anywhere in Qwest's region due to a copper loop retirement. Ms. Stewart testified that Qwest routinely leaves copper loops in place when it deploys fiber and out of the approximately 286,000 copper/fiber hybrid loops installed in Arizona, Qwest has never disconnected a Covad line sharing customer as a result of hybrid loop installation (Tr. 76). Qwest contends that, even if Covad customers were affected by a copper loop retirement, Covad could continue serving the affected customers by purchasing other services from Qwest (Qwest Ex. 2, at 18).

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[6] *Petition of Qwest Corporation for Arbitration of an Interconnection Agreement*, Docket No. 04B-160T, Decision No. C04-1348, Colorado Public Utilities Commission *Order Granting in Part and Denying in Part Application for Rehearing, Reargument, or Reconsideration* (Nov. 16, 2004), at ¶35.

With respect to notice, Qwest claims that the only condition placed on retirement of copper facilities is the requirement that ILECs provide notice of intent to retire specific copper facilities when those facilities are being replaced with FTTH loops, so that CLECs can object to the FCC. Qwest contends that its proposed language goes beyond the FCC's requirements by providing CLECs with notice of *all* planned copper retirements, not just FTTH replacements. Qwest asserts that the *TRO* requires only the filing of a public notice with the FCC or notice through industry publications or an accessible internet site. However, Qwest's proposed ICA would provide notice of copper retirements through Qwest's website, by a public filing with the FCC, and through an e-mail notice to CLECs, as well as any additional notices required under state law. According to Qwest, its proposed language provides additional protection for Covad and other CLECs by Qwest's commitment to leave copper loops and subloops in service where technically feasible, and by coordinating with Covad the transition from old to new facilities to keep service interruption to a minimum.

Qwest also disputes Covad's contention that FCC rules require Qwest to identify specific Covad customers affected by copper retirements. Ms. Stewart testified that Qwest's database provides a "raw loop data tool" from which Covad can determine the addresses of its customers that are affected by the retirements (Tr. 77-78).

Resolution of Issue No. 1

We agree with Qwest that Covad's copper retirement proposals are not supported by FCC rules. As Qwest points out, the FCC's *TRO* rejected CLEC arguments that ILECs should be precluded from retiring copper loops, stating: "we decline to prohibit incumbent LECs from retiring copper loops or copper subloops that they have replaced with fiber" (*TRO* ¶271). The ability of ILECs, subject to proper notice requirements, to replace copper facilities with fiber is consistent with the FCC's, as well as this Commission's, policy of encouraging deployment of advanced telecommunications services. We also believe that Covad's "alternative service" proposal (which would prohibit Qwest from retiring copper facilities unless the cost to Covad or its customers is not increased or the quality of service is not degraded) is insufficiently defined to allow any meaningful ability of the parties or the Commission to determine if the standard proposed by Covad has been satisfied on a case-by-case basis. There is no such requirement in any FCC Order, and state

commissions in Colorado, Minnesota, Washington, and Utah have rejected Covad's proposal on this issue.

Imposition of the type of requirement suggested by Covad would potentially saddle Qwest with the obligation to maintain duplicative copper and fiber facilities, a result that is inconsistent with sound public policy and encouragement of investment in forward-looking technology. Although there is no requirement for Qwest to maintain duplicative facilities, Qwest's witness Karen Stewart pointed out that "when Qwest puts overlay facilities in its network it tends to leave the copper facilities in place when it is technically feasible" (Tr. 76). Indeed, Covad witness Michael Zulevic conceded that Qwest has never retired a copper loop anywhere in Qwest's 14-state region, including Arizona, that resulted in Covad losing service to a customer (*Id.* at 27-28). Even if such were to occur, Ms. Stewart testified that Covad would be able to maintain service to its affected customer by purchasing other services from Qwest (Qwest Ex. 3, at 13-14).

We also find that Qwest's proposed notice provisions comply with applicable requirements. As set forth in the *TRO*, an ILEC must provide notice of planned modifications to its network by either filing a public notice to the FCC, or through industry publications or an accessible internet site (*TRO* ¶¶ 273 and 288). Qwest's proposed form of notice would list planned copper retirements on Qwest's website, through a public filing with the FCC, and by an e-mail notice to CLECs. Qwest has also agreed to provide any additional notices that may be required by Arizona law. We do not believe it is appropriate to impose a requirement on Qwest to inform Covad whether service to Covad's customers may be affected by retirement of copper facilities. Such a condition could require speculation by Qwest as to potential impacts on specific Covad customers, a requirement that is not contemplated by the FCC's rules, and would improperly shift responsibility from Covad to Qwest. Qwest's witness indicated that CLECs can determine the addresses of their customers affected by the copper facilities retirement by accessing Qwest's "raw loop data tool" and comparing those addresses to the CLEC's customer records. With respect to Covad's claim that specific address information is provided in Bellsouth's territory, the document submitted in the record (Qwest Ex. 1) shows only that a list of all customers in a given distribution area, and not Covad-specific customer information, is provided where copper retirements are planned (Tr. 49-50).

Based on the record and applicable rules and regulations, we find that Qwest's proposed copper retirement proposal, including notice requirements, is reasonable and should be adopted.

Issue No. 2: May Section 271 Elements and Unbundled Elements Under State Law be Included in the Interconnection Agreement? [7]

Section 251(c)(3) of the 1996 Telecom Act requires ILECs to provide access to their networks (via unbundled network elements), and Section 252(d)(1) sets the pricing standard to be employed for the UNEs (*i.e.*, through total element long run incremental cost ("TELRIC") pricing). Section 251(c)(3) also requires compliance with Section 251(d)(2) which requires access only for those UNEs that meet the so-called "necessary and impair" standard[8].

Section 271 of the 1996 Telecom Act details the specific requirements that ILECs must meet as a condition of being permitted to provide interLATA toll services. Under Section 271, state commissions reviewed the 14 competitive checklist items prior to approval being granted by the FCC. Section 271 Checklist Item No. 2 requires ILECs to provide nondiscriminatory access to UNEs in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). In the *TRO*, the FCC limited the Section 251 and 252 unbundling and pricing standards to specific types of loops, subloops, and transport (although the *USTA II* decision overturned the *TRO*'s mass market switching requirements, thus eliminating switching as a Section 251 UNE for all practical purposes).

Section 271 Checklist Items 4, 5, 6, and 10 require ILECs to provide access to loops, transport, switching and signaling. Although a number of Section 251 UNEs were eliminated, Paragraph 653 of the *TRO* stated that an independent obligation continues to exist for ILECs to provide access to those UNEs pursuant to Section 271. Unlike Checklist Item 2, the other checklist items do not cross-reference Sections 251(c)(3) and 252(d)(1) and, therefore, UNEs unbundled under

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[7] As noted above, Qwest moved to dismiss Issue No. 2 as a matter beyond the Commission's jurisdiction. Prior to the hearing, Covad and Qwest agreed that there was no need for the Commission to separately rule on the Motion to Dismiss prior to the hearing because the Commission could address the issue as part of the Order in this proceeding. Due to the fact that Issue No. 2 is a legal issue, the parties did not submit testimony on this issue but relied on post-hearing briefs to support their positions.

[8] The *TRO* maintained the prior definition of "necessary" (where lack of access to a given UNE would as a practical, economic, and operational matter preclude the requesting carrier from providing the services it seeks to offer)(*TRO* ¶170). The definition of "impairment" was modified by the *TRO* to situations where "lack of access to an incumbent LEC network poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic" (*TRO* ¶84).

Checklist Items 4, 5, 6, and 10 need only meet the "just and reasonable" set forth in 47 U.S.C. ¶¶ 201-202, as opposed to the TELRIC pricing standard under Section 251 (*TRO* ¶656).

Positions of the Parties

Covad

Covad and Qwest disagree regarding whether Qwest has a continuing obligation to provide certain network elements, including certain unbundled loops (including high capacity loops, line splitting, and subloop elements), and dedicated transport, after the FCC's *TRO* decision. Covad contends that Qwest's obligations to provide network elements pursuant to Section 271 of the 1996 Telecom Act should be memorialized in the interconnection agreement and this Commission has authority to arbitrate disputes regarding such obligations. Covad also argues that Qwest continues to be obligated to provide unbundled access to "essential facilities" under Arizona law, pursuant to A.A.C. R14-2-1310.

This issue arises due to differences in interpretation of the FCC's statements in the *TRO* and the *USTA II* decision. The FCC determined that Bell Operating Companies ("BOCs") have an independent obligation under Section 271 to provide unbundled access to certain network elements set forth in the Section 271 checklist (*TRO* ¶¶ 653-655). The court in *USTA II* upheld the FCC's decision on this point (*USTA II*, at 588), and thus BOCs remain obligated to provide access to local loops, local transport, local switching, and databases and signaling for call routing and completion in accordance with Section 271 checklist items 4, 5, 6, and 10 (47 U.S.C. §271(c)(2)(B)(iv),(v),(vi), and (x)). Thus, according to Covad, separate and distinct unbundling obligations remain in place under Sections 251 and 271.

Covad argues that the *TRO* made clear that Section 271 created independent access obligations for BOCs regardless of the FCC's analysis of competitor impairment and unbundling obligations for ILECs under Section 251. The *TRO* stated that [Section 271] "Checklist items 4, 5, 6, and 10 separately impose access requirements regarding loop, transport, switching, and signaling, without mentioning Section 251" (*TRO* ¶654). Covad relies on a decision by the Maine Public Utilities Commission which found that state commissions have the authority to arbitrate Section 271 pricing in the context of Section 252 arbitrations. *See, Order – Part II, Verizon-Maine Proposed*

Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21), Maine PUC Docket No. 2002-682 (September 3, 2004).

According to Covad, the Commission's enforcement of Qwest's 271 checklist obligations would not conflict with any other provision of the 1996 Telecom Act and therefore no federal preemption concerns are implicated. Covad cites to Section 271(d)(2)(B), which requires the FCC to consult with state commissions in reviewing BOC compliance with the Section 271 checklist, as well as the FCC's Order approving Qwest's ability to offer interLATA services in Arizona, which refers to "cooperative state and federal oversight" over Qwest's entry into the long distance market in Arizona[9].

With respect to pricing of Section 271 UNEs, Covad concedes that the *TRO* applies a different legal standard (*i.e.*, "just and reasonable") than is required for Section 251 UNEs ("necessary and impair"). However, Covad argues that the Arizona Commission has already established through its rules (A.A.C. R14-2-1310) that TSLRIC is the cost methodology to be employed for pricing essential facilities sought by CLECs. Covad claims that TSLRIC is a forward-looking cost methodology that is closely related to the TELRIC standard in place for Section 251 UNEs and, therefore, the Section 271 UNEs should continue to be priced at existing TELRIC rates until new 271 rates are established for those UNEs (*See, Verizon-Maine 271 Order,* at 19-20).

Covad also contends that existing state rules authorize the Commission to require access to loops, including high capacity loops, line splitting arrangements, and subloop arrangements, as well as dedicated transport. Covad cites A.A.C. R14-2-1307(C), which lists "essential facilities or services" as termination of local and long-distance calls; interconnection with 911 calls; access to numbering resources; dedicated channel network access connections; and unbundled loops. According to Covad, the issue of whether the Commission's rules are preempted by the 1996 Telecom Act has already been decided in the Commission's Order enacting the unbundling rules. In that Decision, the Commission stated the 1996 Telecom Act did not preclude issuance of the Commission's rules and that "[a]lthough the Proposed Rules cover similar issues as the Act, we

[9] *In the Matter of the Application of Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, FCC 03-309 (December 3, 2003) ("*Qwest 271 Order*"), ¶61.

believe they are consistent." Decision No. 59671 (July 22, 1996), ¶ 6.

Citing Paragraphs 191 and 192 of the *TRO*, Covad also argues that the FCC specifically recognized that Congress did not intend to preempt the states with respect to access to UNEs. Covad asserts that the savings clause of Section 251 limits preemption only to those instances where state actions "substantially prevent" the implementation of the federal regulatory regime and that "merely an inconsistency" between state and federal regulations was not sufficient for FCC preemption under Section 251(d)(3). *TRO* ¶ 192. According to Covad, the FCC's statements regarding preemption are consistent with existing boundaries between state and federal regulations. Covad also claims that the FCC established a process for parties to seek a declaratory ruling in situations where they believe state regulations overstep or conflict with federal law.

Finally, Covad argues that although this Commission's unbundling rules are not likely to be preempted, the Commission should refrain from "adjudication of the constitutionality of legislative enactments" because such action is beyond the jurisdiction of administrative agencies.

Qwest

Qwest disputes the arguments raised by Covad regarding interpretation of federal standards and the ability of state commissions to impose additional unbundling obligations on ILECs in an arbitration proceeding. Qwest claims Covad fails to recognize the 1996 Telecom Act's limits on state law authority, which must be exercised in accordance with Section 251 and the FCC's federal unbundling regime. Qwest contends that Covad is seeking access to network elements without any showing that it will be impaired without access to those elements. Qwest also asserts that Covad is improperly seeking the Commission's authority to require unbundling and set rates under Section 271, given the FCC's exclusive jurisdiction over the availability and pricing of Section 271 UNEs. Qwest cites an Order by the Washington Commission which decided that it "has no authority under Section 251 or Section 271 of the Act to require Qwest to include Section 271 elements in an interconnection agreement." The Washington Commission also concluded that "any unbundling requirement based on state law would likely be preempted as inconsistent with federal law, regardless

of the method the state used to require the element."[10]

According to Qwest, there is no statutory or legal basis for including terms and conditions for network elements under Section 271 in a Section 252 interconnection agreement. Qwest claims that the FCC has defined the "interconnection agreements" that must be submitted to state commissions for approval as "only those agreements that contain an ongoing obligation relating to section 251(b) or (c) ..."[11] Therefore, Qwest contends that only Section 251 elements must be included in interconnection agreements and that Section 271 UNEs are properly addressed only through commercial agreements and tariffs.

Qwest argues further that there is no legal authority for Covad's claim that state commissions have authority to impose unbundling obligations under Section 271. Qwest asserts that Section 271(d)(3) confers exclusive authority on the FCC to determine if BOCs have complied with Section 271 checklist items, and state commissions have only a non-substantive, consulting role in that determination. Qwest contends that *USTA II* made clear that the only authority that state commissions have under the Act is that which Congress has expressly delegated. *USTA II, supra*, at 565-568. Qwest also cites decisions by federal courts in the 7th and 3rd Circuits to support its arguments that state commissions have no independent sovereign authority under the Act. *See, Indiana Bell Telephone Co., Inc. v. Indiana Utility Regulatory Comm'n*, 359 F.3d, 493, 494 (7th Cir. 2004); *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 510 (3rd Cir. 2001). Qwest claims that these decisions make clear that state commissions have only investigative and consulting roles under Section 271, compared to the substantive authority assigned to the states under Sections 251 and 252. Qwest argues that adoption of Covad's claim of independent state unbundling authority would result in an impermissible conflict with federal law and the federal scheme of regulation, and is therefore barred under the doctrine of federal preemption.

With respect to pricing, Qwest claims that Covad's arguments are flawed because states have no power to set rates for Section 271 elements. According to Qwest, the only network elements over

[10] *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Washington State Utilities and Transportation Commission Docket No. UT-043045, Order No. 06 (February 9, 2005), at 15-16.

[11] Memorandum Opinion and Order, *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)*, FCC 02-276, WC Docket No. 02-89, ¶ 8, n. 26 (October 2, 2004) ("*Qwest Declaratory Order*").

which states have pricing authority are those elements provided by an ILEC pursuant to Section 251(c)(3). Qwest also disputes Covad's contention that state commissions may use TELRIC pricing for Section 271 elements. Qwest cites the *TRO* where the FCC stated that Section 271 rate elements are to be priced based on the Section 201-202 standard that such rates must not be unjust, unreasonable, or unreasonably discriminatory and that TELRIC pricing standards are not applicable to Section 271 elements (*TRO*, ¶¶ 656-664). Qwest also quotes the *USTA II* decision which found that there was "nothing unreasonable in the [FCC's] decision to confine TELRIC pricing to instances where it has found impairment." *USTA II, supra*, at 589.

Qwest also opposes Covad's attempt to raise the issue of line-splitting in this proceeding. Qwest claims that Covad failed to raise line-splitting as a contested issue for arbitration until its post-hearing brief and thus consideration of the issue is procedurally improper. Qwest disputes Covad's contention that Qwest has acceded line-splitting as a loop-based product through its position regarding commercial agreements. Qwest argues that Covad's claims about Qwest's position are factually incorrect and, if given a chance to present testimony on the issue, Qwest could have shown why Covad's arguments are incorrect. Qwest asserts that consideration of this issue without an evidentiary record would be prejudicial to Qwest, and Covad's attempt to introduce the issue for consideration by the Commission should therefore be rejected.

Finally, Qwest contends that the Commission should adopt Qwest's proposed listing of network elements that the FCC has ruled ILECs are not required to provide under Section 251. Qwest points to its proposed language in Section 9.1.1.6 of the ICA, which lists 18 separate elements and services that Qwest contends ILECs are not required to unbundle pursuant to the *TRO*. Qwest asserts that, absent a specific delineation of the "de-listed" UNEs in the ICA, Covad is likely to demand unbundling of those elements. Therefore, Qwest seeks adoption of its proposed language.

Resolution of Issue No. 2

Unresolved Issue No. 2 seeks a decision regarding whether the Commission has authority to require Qwest to unbundle certain network elements under the provisions of Section 271 and Arizona rules pertaining to competitive telecommunications services. In determining the proper scope of the Commission's review of this issue, it is appropriate to discuss what constitutes an "interconnection

agreement" and what types of interconnection agreements are required to be filed.

47 U.S.C. §252(a)(1) encourages ILECs and competitive carriers to voluntarily negotiate agreements for interconnection, services, or network elements without regard to the standards set forth in subsections (b) and (c) of Section 251[12]. In the event disputes arise with respect to negotiated agreements, any party may seek arbitration of the disputed issues by a state commission (Section 252(b)).

Section 252(e)(1) requires that "*any* interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission" (emphasis added). Pursuant to Section 252(c), the applicable standards of review by state commissions for consideration of an arbitration request are as follows:

> In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State Commission shall-
> (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
> (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In a request for a declaratory ruling by Qwest, the FCC addressed the types of agreements that must be filed under Section 252, stating that:

> [A]n 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 section 252(a)(1). (emphasis original)[13]

The *Qwest Declaratory Order* also stated that state commissions "should be responsible for applying, in the first instance, the statutory interpretation...to the terms and conditions of specific agreements" (*Declaratory Order* at ¶ 7). The FCC stated that its Decision is "consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to

[12] Subsections (b) and (c) of Section 251 describe the obligations of all local exchange carriers and incumbent local exchange carriers, respectively, with regard to interconnection.
[13] *Qwest Declaratory Order, supra.*

interconnection agreements" (*Id.*).

Through its arbitration request on this issue, Covad seeks to include provisions in its interconnection agreement defining Qwest's interconnection and access obligations under 47 U.S.C. § 271 of the 1996 Telecom Act. Section 271 includes Specific Interconnection Requirements that must be provided by a BOC to comply with the Competitive Checklist prerequisites of Section 271 (47 U.S.C. §271(c)(2)(B)). This provision requires, among other things, that the BOC must provide:

> (iv) Local loop transmission from the central office to the customer's premises, unbundled from the local switching or other services.
> (v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.
> (vi) Local switching unbundled from transport, local loop transmission, or other services.

In the *TRO*, the FCC reinforced these ongoing requirements for BOCs pursuant to Section 271 stating that "the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching transport, and signaling regardless of any unbundling analysis under section 251" (*TRO*, ¶ 653).

Qwest relies heavily on the language of Section 252(a)(1), which states in relevant part:

> "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." (emphasis added)

Qwest's reliance on this language ignores the fact that Qwest is obligated pursuant to Section 271 to make network elements available independent of its Section 251 obligations. Moreover, the language cited by Qwest clearly states that ILECs may negotiate binding agreements *without regard to the standards* set forth in Section 251.

The Commission's authority to review and approve interconnection agreements is set forth in Section 252(e) which requires that "*Any* interconnection agreement adopted by negotiation or arbitration *shall be submitted for approval to the State commission.*" (Section 252(e)(1), emphasis added). Contrary to Qwest's assertions, there is no constraint in Section 252(e)(1) that would limit

the types of negotiated agreements that must be approved by state commissions to only those addressing network elements, interconnection, or access under Section 251. Rather, Section 252 is clear on its face that "any interconnection agreement" must be submitted for state commission approval. If the drafters of the 1996 Telecom Act had intended the type of limitation suggested by Qwest, they could easily have added the same language to Section 252 that is contained in Section 251. The absence of such language is a clear indication that the Telecom Act intended broad review authority for state commissions.

When read in conjunction with the entirety of the Telecom Act, the Section 271 obligations described above must be considered the type of interconnection and access requirements contemplated under Section 252. Indeed, Section 271(c)(2) is titled "SPECIFIC INTERCONNECTION REQUIREMENTS" and, under subsection (A) of that provision, the requesting BOC is considered to have met the requirements of the section if it is providing access or interconnection pursuant to its SGAT or an interconnection agreement, both of which require state commission approval under Section 252. Since Section 271 does not contain any separate provisions for approval of interconnection agreements or SGAT provisions, it must be presumed that the review process of such Section 271 provisions would occur within the Section 252 review process.

We are also cognizant of the fact that, in approving Qwest's Section 271 application, the FCC intended an ongoing role for the Arizona Commission in monitoring Qwest's operations with respect to the provision of interLATA services in Arizona. In approving Qwest's application, the FCC stated:

> Working in concert with the Arizona Commission, we intend to closely monitor Qwest's post-approval compliance for Arizona...
>
> ...
>
> We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Qwest's entry into Arizona[14].

We believe that our ongoing oversight and monitoring role may be exercised in any appropriate proceeding before the Commission, including this Section 252 arbitration matter, wherein Qwest's actions are being reviewed with respect to compliance with the provision of services being

[14] *Qwest 271 Order, supra,* ¶¶ 59-60.

provided to competitive carriers. We believe that our exercise of jurisdiction in this matter is consistent with the joint state and federal scheme of ensuring compliance by Qwest with the Section 271 checklist requirements, in conjunction with the FCC's authority to hold Qwest accountable for deviations from the FCC's Section 271 approval.

Qwest also argues that the Commission has no jurisdiction to impose unbundling requirements under Arizona law that the *TRO* or *USTA II* decisions struck down. We disagree with Qwest's assertions and believe that our independent authority under state law is not preempted by the FCC's *TRO* decision or *USTA II*. Section 251(d)(3) specifically prohibits the FCC from preventing "the enforcement of any regulation, order, or policy of a State commission that – (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." Absent some evidence that this Commission's Rules related to interconnection and access conflict with federal law, we do not believe that the Rules are preempted.

Pursuant to A.A.C. R14-2-1506(A), interconnection agreements must be submitted to the Commission for approval under 47 U.S.C. §252(e) within 30 days of a Commission Order regarding an arbitration petition or within 30 days of execution of a negotiated agreement. Under the Commission's Rules, an Interconnection Agreement is defined as a "formal agreement between any telecommunications carriers providing or intending to provide telecommunications services in Arizona, setting forth the particular terms and conditions under which interconnection and resale services, as appropriate, will be provided." A.A.C. R14-2-1502. With respect to whether the agreement contains "interconnection services," A.A.C. R14-2-1302 defines such services as "those features and functions of a local exchange carrier's network that enable other local exchange carriers to provide local exchange and exchange access services. Interconnection services include, but are not limited to, those services offered by local exchange carriers which have been classified by the Commission as essential services."

Although Qwest cites decisions by other in-region state commissions in support of its arguments, those decisions reflect a variety of conclusions with respect to assertion of state

jurisdiction. For example, the Utah Public Service Commission declined to adopt Covad's proposed language on this issue, but also specifically declined to accept Qwest's argument that the Utah Commission was preempted from asserting jurisdiction under state law. The Utah Commission stated:

> We agree with Covad's general proposition that states are not preempted as a matter of law from regulating in the field of access to network elements... [and] we reject Qwest's apparent view that we are totally prempted by the federal system from enforcing Utah law requiring unbundled access to certain network elements.
>
> ...
>
> The fact that under a careful reading of the law the Commission may under certain circumstances impose Section 271 or state law obligations in a Section 252 arbitration does not lead us to conclude it would be reasonable in this case to do so.[15]

In its Covad/Qwest arbitration proceeding, the Minnesota Public Utilities Commission rejected the language proposed by both Covad and Qwest regarding this issue. The Minnesota Commission directed the parties to adopt language consistent with its conclusion that it is premature to remove any Section 251 elements from the ICA[16]. Covad contends that the net effect of this decision is that the parties are required to re-insert language into the ICA providing access to all of the elements Covad seeks, but pursuant to Section 251 of the Act, rather than Section 271.

The decision by the Washington Commission most closely aligns with Qwest's preemption arguments. The Washington Commission concluded that any effort by the state to enforce state unbundling laws would be preempted by federal law[17].

For the reasons described above, we disagree that state law unbundling requirements are necessarily preempted under existing federal law and we therefore decline to follow the reasoning set

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[15] *In the Matter of the Petition of DIECA Communications, Inc., DBA Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Arbitration Report and Order, Utah PSC Docket No. 04-2277-02 (February 8, 2005), at 19-21.

[16] *In the Matter of the Petition of Covad Communications Co. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Minnesota Public Utilities Commission Docket No. P-5692, 421/IC-04-549, Arbitrator's Report (December 16, 2004), at 15-16; Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement (March 14, 2005), at 5.

[17] *In the Matter of the Petition for Arbitration of Covad Communications Co. with Qwest Corporation Pursuant to 47 U.S.C. § 252 and the Triennial Review Order*, Washington State Utilities and Transportation Commission Docket No. UT-043045, Final Order Affirming, in Part, Arbitrator's Report and Decision; Granting, in Part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement (February 9, 2005), at 15-23.

forth in the Washington Commission's Order.

With respect to pricing of Section 271 elements, we agree with Covad that the current TELRIC pricing of those network elements should remain in place because they have previously been found to have complied with state and federal law. As Covad points out, the FCC has required continued access at current (TELRIC) wholesale prices for those elements for which wholesale prices were established and relied upon in the FCC's granting of Qwest's Section 271 application (*TRO* ¶665). The previously established prices for these elements would clearly qualify as fair, just and reasonable rates, and should be continued absent a request by Qwest to alter the conditions of its interLATA entry into the Arizona market.

Issue No. 3: What are Qwest's obligations regarding "commingling" of network elements?

"Commingling" is the "connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC *pursuant to any method other than unbundling under section 251(c)(3) of the Act*, or the combining of a UNE or UNE combination with one or more such wholesale services" (*TRO* ¶579, emphasis added). The *TRO* permits "requesting carriers to commingle UNEs and combinations of UNEs with services (*e.g.*, switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request" (*Id.*). As explained below, this issue requires consideration of the FCC's definition of "commingling" and other parts of the *TRO* related to ILEC obligations to provide elements under Section 271.

Qwest Proposed Language	**Covad Proposed Language**
"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled	"251(c)(3) UNE" means any unbundled network element obtained by CLEC pursuant to Section 251 of the Act. "Commingling" means the connecting, attaching, or otherwise linking of ~~an Unbundled Network Element,~~ 251(c)(3) UNEs or a Combination of ~~Unbundled Network Elements~~, 251(c)(3) UNEs

Network Elements, with one or more such facilities or services.	to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combination of an ~~Unbundled Network Element,~~ 251(c)(3) UNE or a Combination of ~~Unbundled Network Elements,~~ 251(c)(3) UNEs with one or more such facilities or services.
9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251 (c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.	9.1.1.1 Commingling - CLEC may commingle 251 (c)(3) UNEs and combinations of 251 (c)(3) UNEs with any other services obtained by any method other than unbundling under section 251 (c)(3) of the Act, including switched and special access services offered pursuant to tariff and resale. Qwest will perform the necessary functions to effectuate such commingling upon request. This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251 (c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLECs request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.

Positions of the Parties

Covad

Covad concedes that Section 271 elements are not required to be commingled with other Section 271 elements. However, Covad contends that Section 271 elements should be considered wholesale facilities and services that may be commingled with Section 251(c)(3) UNEs. Covad asserts that paragraph 579 and footnote 1990 of the *TRO* require BOCs to commingle Section 251(c)(3) UNEs based on the distinct nature of Section 271 elements as wholesale services.

Qwest

Qwest argues that the *TRO* does not require BOCs to commingle or combine Section 271 elements with other Section 271 elements or with Section 251(c)(3) UNEs. According to Qwest, the

FCC's definition of commingling obligations for Section 251(c)(3) UNEs must be read in conjunction with its determination that Section 271 elements are not required to be combined. Qwest claims that Covad's interpretation of paragraph 579 of the *TRO* is incorrect because Section 271 Checklist Items 4, 5, 6, and 10 do not cross-reference the combination requirements set forth in Section 251.

Resolution of Issue No. 3

Paragraph 579 of the FCC's *TRO* states, in part, that:

> An incumbent LEC shall permit a requesting telecommunications carrier to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251(c)(3) of the Act. In addition, upon request, an incumbent LEC shall perform the functions necessary to commingle a UNE or UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to a method other than unbundling under section 251(c)(3) of the Act. As a result, competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (e.g., switched and special access services offered pursuant to tariff), and incumbent LECs shall not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services.

Paragraph 584 addressed ILEC commingling obligations with respect to Section 251(c)(3) as they relate to resale services provided under Section 251(c)(4). Paragraph 584, as amended by a subsequent errata to the *TRO* (errata shown in strike through form), also includes the following discussion of ILEC commingling obligations:

> As a final matter, we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including ~~any network elements unbundled pursuant to section 271 and~~ any services offered for resale pursuant to section 251(c)(4) of the Act.[18]

In considering whether state commissions may independently require ILECs to commingle Section 271 elements with Section 251(c)(3) UNEs, we must first determine whether Section 271

[18] *TRO*, ¶584, as modified by Errata Order, *In the Matter of 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, 96-098, 98-147, FCC 03-227 (September 17, 2003), at ¶27 ("*Errata Order*").

elements are "wholesale" services under the FCC's commingling definition. We agree with Covad that Section 271 elements are wholesale facilities or services that are obtained from an ILEC by a method other than unbundling under Section 251(c)(3).

With respect to whether the FCC intended to exclude Section 271 elements from commingling obligations entirely, we agree with Covad's interpretation of the *TRO*'s footnote 1990 which (as amended in the *Errata Order*) provides as follows:

> We decline to require BOCs, pursuant to section 271, to combine network elements that are no longer required to be unbundled under section 251. Unlike section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain no mention of "combining" and, as noted above, do not refer back to the combination requirement set forth in section 251(c)(3). ~~We also decline to apply our commingling rule, set forth in Part VI[redacted] above, to services that must be offered pursuant to these checklist items.~~[19]

Given the FCC's removal of the language cited above, it is reasonable to conclude that although ILECs are not required to commingle 271 elements, they must permit requesting carriers to commingle Section 251(c)(3) UNEs with wholesale services such as Section 271 elements. It is also reasonable to conclude that the FCC's removal of the phrase "any network elements unbundled pursuant to section 271" from paragraph 584 of the *TRO* was not intended to indicate that Section 271 elements are not wholesale services that may be commingled with Section 251 UNEs. We believe it is appropriate for the interconnection agreement to include language regarding commingling of Section 251(c)(3) UNEs with Section 271 elements and we therefore adopt Covad's proposed language regarding commingling of network elements.

Issue No. 5: What are Qwest's obligations regarding channel regeneration between CLEC collocation sites?

Regeneration refers to the "boosting" of a digital signal to meet applicable technical standards for a particular type of loop or service (Covad Ex. 3, at 32). Regeneration of a signal is sometimes required if the distance is too great between two CLEC collocation spaces or between a CLEC and an ILEC's switch within the central office. The issue in dispute is whether Qwest is required to provide channel regeneration for CLEC-to-CLEC connections as a wholesale product, as Covad argues, or

[19] *Errata Order*, ¶31.

whether the FCC's rules and decisions except ILECs from this regeneration obligation (Qwest Ex. 4, at 2). The parties' proposed language is set forth below.

Qwest Proposed Language	**Covad Proposed Language**
8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration may be required, depending on the distance parameters of the combination.	8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Depending on the distance parameters of the combination, regeneration may be required. Qwest shall assess charges for CLEC to CLEC regeneration, if any, on the same terms and conditions, and at the same rates as ILEC to CLEC regeneration.
8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2. (EICT). Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy-Electrical Interface; Annex B".	8.3.1.9 Channel Regeneration Charges. Required when the distance from CLEC's leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network ("ILEC to CLEC regeneration"), to CLEC's non-contiguous Collocation space ("CLEC to CLEC regeneration"), or to the Collocation space of another CLEC ("CLEC to CLEC regeneration") is of sufficient length to require regeneration based on the ANSI Standard for cable distance limitations. Channel Regeneration Charges shall not apply until the Commission approves a wholesale Channel Regeneration Charge. After approval of such charge, Channel Regeneration Charges shall be assessed for ILEC to CLEC and CLEC to CLEC regeneration on the same terms and conditions, and at the same rates. If CLEC requests Channel Regeneration in spite of the fact that it is not required to meet ANSI standards, Qwest will provide such regeneration, and CLEC will pay the Channel Regeneration Charge described herein.

9.1.10 Intentionally left blank	~~9.1.10 Channel Regeneration. Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel Regeneration will not be charged separately for Interconnection between a collocation space and Qwest's network. Cable distance limitations are addressed in ANSI Standard T1.102 1993 "Digital Hierarchy Electrical Interface; Annex B".~~

Positions of the Parties

Covad

Covad has proposed language for the interconnection agreement that would require Qwest to provide regenerated cross connects between Covad collocations, as well as between a Covad collocation and another CLEC's collocation, when requested by Covad. Covad claims that the FCC's cross-connection rules must be viewed in the context of the FCC's intent to protect CLECs from discrimination related to ILEC collocation restrictions. Covad argues that Qwest's proposed language would impose technically infeasible and/or costly requirements on CLECs needing regeneration of cross connects between CLEC collocation spaces. According to Covad, Qwest's requirement that CLECs must self-provision regeneration is contrary to Section 251(c)(6), which requires ILECs to provide physical collocation on terms and conditions that are "just, reasonable, and nondiscriminatory."

Covad cites to the FCC's *Fourth Report and Order*[20] to support its argument that ILECs must provision cross-connections between CLECs. In that Order, the FCC stated its concern that ILECs would be acting in an unreasonable and discriminatory manner if they refused to provide cross-connects between collocators and that an ILEC's "refusal to provide a cross-connect between two collocated carriers would violate the [ILEC's] duties under section 251(c)(6)" (*Id.* at ¶¶79-80).

Covad claims that the exception to the ILEC cross-connect requirement contained in 47

[2020] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Fourth Report and Order ("Fourth Report and Order")* CC Docket No. 98-147, FCC 01-204 (August 8, 2001).

C.F.R. Sec. 51.323(h)(1)[21] assumes that CLECs could self-provision the necessary cross-connects under conditions that would not violate the just and reasonable standards set forth in Section 251(c)(6). Covad contends that although Qwest may make a technically feasible route available between collocators, unlike the facilities available to collocators, Qwest regenerates its own signals at or near mid-span using equipment located near its distribution frame. As a result, Covad argues that Qwest's cross-connect requirements are discriminatory and should be rejected.

Qwest

According to Qwest, it currently provides several methods for Covad to connect its facilities with other CLEC facilities in Qwest central offices, including by a direct connection and by COCC-X[22]. Qwest witness Michael Norman testified that, for direct connections with another CLEC, Covad is responsible for engineering, provisioning, and designing the connection circuit (Tr. 186-187). When COCC-X is used, Covad and the connecting CLEC are responsible for bringing their connections to a common ICDF in the central office, where Qwest provides a cross-connect or jumper wire connecting the Covad and connecting CLEC facilities (*Id.*). Mr. Norman testified that, in both types of connections, if the circuit length prevents adequate signal strength between the CLEC facilities, regeneration of the signal would be required (Qwest Ex. 4, at 3). Mr. Norman indicated that Covad's collocated facilities have never required regeneration of a signal at any of Qwest's Arizona offices. If regeneration were required, Mr. Norman stated that Covad could purchase a regeneration product called expanded interconnection channel termination ("EICT"), which is available through Qwest's FCC access tariff (Tr. 187).

As set forth above, Qwest's proposed language provides that Qwest will not charge for regeneration between Qwest's network and Covad's collocation spaces; that Qwest will not charge separately for regeneration for Covad to connect two of its non-contiguous collocation spaces; and that a connecting CLEC may order the EICT product out of Qwest's FCC 1 Access tariff (Qwest

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[21] This section states that an ILEC must provide, at the request of a collocating telecommunications carrier, "a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves or a connection is not required under paragraph (h)(2) of this section."

[22] COCC-X refers to "cross-connection" of facilities on the same interconnection distribution frame ("ICDF") (Tr. I, 186).

proposed ICA Section 8.3.1.9).

Qwest argues that the FCC has clearly addressed ILEC obligations for regeneration in its *Fourth Report and Order, supra*. Qwest claims that ILECs are required to provide a connection between two CLEC collocation spaces in only two specific instances: 1) if the ILEC does not permit the CLEC to provide the connection for themselves; and 2) pursuant to Section 201 where the requesting carrier submits certification that more than 10 percent of the amount of traffic will be interstate. Qwest contends that since it permits Covad to make its own cross connections, Qwest has no legal obligation to provide connections, or regeneration of the connection's signal between Covad and another CLEC (Qwest Ex. 4, at 5-6).

Qwest disputes Covad's contention that it is discriminatory for Qwest to charge for regeneration of a CLEC-to-CLEC connection due to economic infeasibility. According to Qwest, the FCC has clearly defined the only instances where regeneration must be provided by ILECs, and cost to the CLEC is not a factor to be considered. Qwest contends that it makes its collocation space available in a non-discriminatory manner and there is no basis for Covad to claim otherwise. Qwest witness Norman testified that in the event Covad requested collocation space midway between its collocation space and the space of a partnering CLEC, Qwest would make every attempt to accommodate the request subject to space availability (Tr. 200-202). Therefore, Qwest requests that its proposed language on regeneration be adopted in this proceeding.

Resolution of Issue No. 5

The FCC's rules (47 C.F.R. 51.323(h)(1)) regarding CLEC-to-CLEC connections provide in relevant part:

> (h) As described in paragraphs (1) and (2) of this section, an incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises, provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.
>
> (1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, *except to*

> *the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves* or a connection is not required under paragraph (h)(2) of this section. Where technically feasible, the incumbent LEC shall provide the connection using copper, dark fiber, lit fiber, or other transmission medium, as requested by the collocating telecommunications carrier. (emphasis added)

There is no dispute that Qwest permits collocating CLECs to provide their own cross connections and thus the FCC's rules make such connections, as well as necessary regeneration, the responsibility of the collocating CLECs. This CLEC responsibility for regeneration of cross connects assumes that the ILEC is in compliance with the requirement set forth in Section 251(c)(6), that the ILEC provides collocation on terms and conditions that are just, reasonable, and nondiscriminatory. The evidence supports Qwest's contention that it provides collocation in accordance with Section 252(c)(6) and we agree, therefore, that Qwest's proposed language on this issue should be adopted.

Issue No. 8: What are the appropriate terms for billing and payment due dates, and timing for discontinuance of orders and discontinuance of service for non-payment?

Covad has requested that the due date for payment of bills issued by Qwest should be 45 days for invoices containing: line splitting or loop splitting products; bills without a circuit ID or USOC; or new rate elements, new services, or new features not previously ordered by Covad. Qwest maintains that the payment due date should remain 30 days for all services rendered by Qwest to Covad. The parties' respective proposed language is described below.

Qwest Proposed Language	**Covad Proposed Language**
5.4.1 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.	5.4.1 Amounts payable for any invoice containing (1) line splitting or loop splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new rate elements, new services, or new features not previously ordered by CLEC (collectively "New Products") (hereinafter collectively referred to as "Exceptions") are due and payable within forty-five (45) calendar Days after the date of invoice, or within twenty (20) calendar days after receipt of the invoice, whichever is later (payment due date) with respect to the New Products Exception, the forty-five (45) day time period shall apply for twelve (12) months. After twelve (12) months' experience, such New Products shall be subject to the thirty (30) day time frame hereinafter

	discussed. Any invoice that does not contain any of the above Exceptions 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. If the payment due date is not a business day, the payment shall be due the next business day.
5.4.2 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 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. 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.	5.4.2 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 5.4.4 of this Agreement, for the relevant services provided under this Agreement within ~~thirty (30)~~ sixty (60) calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business Days prior to discontinuing the processing 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.
5.4.3 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 Sections 5.4.4 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 reconnect charge set forth in Exhibit A required to reconnect each resold 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	5.4.3 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 5.4.4 of this Agreement, for the relevant services within ninety (90) calendar Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each resold 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

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 will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 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.	(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 will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 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.

Positions of the Parties

Covad

Covad argues that Qwest's wholesale billing system currently produces invoices that require substantial human effort to process and verify. Covad witness Elizabeth Balvin testified that Qwest's invoices are not received by Covad for 5 to 8 days after they are issued (Covad Ex. 1, at 7). Covad also criticizes the fact that Qwest provides only the Billing Telephone Number ("BTN"), rather than the Circuit Identification Number ("CIN"), for line-shared and line-split loops, making electronic verification by Covad impossible (Tr. 266). Covad claims that allowing a 45-day period for review and payment of wholesale bills would enable Covad a meaningful amount of time to review and audit bills for accuracy, which would be beneficial to both parties.

Covad disagrees with Qwest's assertion that this issue should be resolved through the Change Management Process ("CMP"), rather than through arbitration. According to Covad, Qwest has previously refused a request through the CMP to include the CIN on bills issued to Covad. Covad also claims that Qwest has previously agreed to a billing arrangement whereby payment would be due 30 days following receipt by the CLEC (Tr. 296). Qwest witness William Easton conceded that

this arrangement was in effect in a prior agreement with AT&T, but stated that AT&T has now agreed to the same payment terms proposed by Qwest in this proceeding (*Id.* at 296-297).

Covad agrees that Qwest should have the ability to discontinue processing orders from Covad, and discontinue service to Covad, in the event that Qwest does not receive payment from Covad. However, Covad disagrees with the timing of Qwest's right to discontinue order processing or disconnect. Covad proposes that the time period for such actions should be extended from the 30 days proposed by Qwest to 60 days for discontinuance of order processing, and from Qwest's proposed 60 days to 90 days before Qwest could discontinue service to Covad altogether. Covad argues that its proposal would have only a minimal impact on Qwest's cash flow, compared to the devastating impact on Covad's business if Qwest were to stop processing orders or discontinue service.

Qwest

Qwest claims that its proposed language regarding payment due dates is consistent with industry standards, and that Covad has abided by the current 30-day timeframe for more than 5 years without adverse impact. Qwest also contends that Covad has ample remedies available for improper billing, including interest paid to Covad on amounts wrongfully paid. Qwest asserts that Covad has not established that Qwest's billing practices prevent Covad from processing and paying bills within the current 30-day time period.

According to Qwest, although the number of bills subject to manual review by Covad is minimal, other CLECs have agreed to the 30-day timeframe without problem, and Covad itself has accepted the 30-day payment due date when it entered into a Commercial Line Sharing Agreement with Qwest in April 2004[23] (Qwest Ex. 6, at 6-9; Qwest Ex. 7, at 13). Qwest contends that Covad's proposed language would effectively result in a 15-day interest free loan by Qwest to Covad, and if other CLECs were to opt-in to such terms, the effect on Qwest would be exacerbated. Qwest argues that its proposal is commercially reasonable, is consistent with industry standards, and has been agreed to by numerous CLECs.

[23] According to Qwest witness Renee Albersheim, the terms of the ICA approved in this proceeding will apply only to grandfathered Covad accounts established prior to October 1, 2003, a customer base that will continue to shrink over time. The Commercial Agreement referenced above applies to all Covad accounts after that date (Tr. II, 321).

With respect to the timing of discontinuance of order processing and disconnection of service, Qwest claims that its proposed language is in accord with industry standards and would limit Qwest's financial exposure due to unpaid bills. Mr. Easton pointed out that the potential harm to Covad is minimized due to the requirement that Qwest must provide notice to Covad prior to discontinuance or disconnection (Qwest Ex. 6, at 14, 16-17). In addition, Qwest may pursue the discontinuance and disconnection remedies only if Covad fails to pay the undisputed portion of its bills (*Id.*). Qwest argues that Covad's proposal would place an unfair burden on Qwest, by increasing the risk that Qwest would fail to be made whole in the event of a CLEC's insolvency. Qwest requests that its proposed language on payment of bills, as well as discontinuance of order processing and disconnection of service, be adopted by the Commission.

Resolution of Issue No. 8

We believe that Qwest has set forth credible arguments regarding the appropriateness of the 30-day payment due date. Qwest points out that the 30-day due date is the industry standard, and that Covad has agreed to that same standard in its 2004 Commercial Agreement with Qwest. The 30-day standard is also employed in numerous other CLEC agreements and is contained in Qwest's SGAT. Covad's attempt to limit its proposed 45-day timeframe only to billing for certain circumstances (*i.e.*, new services and missing CINs and USOCs) would likely lead to even further delays and confusion in the processing of bills and payments. We will therefore adopt Qwest's proposed language with respect to payment of bills issued to Covad.

Regarding the discontinuance and disconnection issue, we agree with Qwest that its proposed language is appropriate. As discussed above, Covad does not oppose Qwest's ability to discontinue processing of orders or discontinuance of service for non-payment. Covad simply seeks an additional 30 days beyond what is proposed by Qwest for each of these remedies. As discussed above, Qwest may seek the discontinuance and disconnection remedies only in instances where Covad fails to pay the undisputed portion of its bills and, further, Qwest must provide notice prior to taking such action thereby mitigating the chance that discontinuation or disconnection would occur if Covad failed to pay its bills due to an oversight. We believe that the Qwest proposal is consistent with industry standards and, after weighing the concerns expressed by Covad with the potential financial risk to

Qwest for non-payment, we agree that Qwest's language should be adopted.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On June 8, 2004, Covad filed with the Commission its Petition pursuant to 47 U.S.C. §252(b) of the 1996 Telecom Act.

2. Covad is a Virginia corporation authorized to provide local exchange service in Arizona, and is a competitive local exchange carrier under the Act.

3. Qwest is a Colorado corporation providing local exchange and other services in Arizona, and is a Bell Operating Company and incumbent local exchange carrier under the terms of the Act.

4. On July 6, 2004, Qwest filed a Response to Petition for Arbitration. On July 21, 2004, Qwest filed a Motion to Dismiss Portions of Covad's Petition for Arbitration. Qwest's Motion requested a Commission Order dismissing Issue 2 in Part G of Covad's Petition, to the extent Covad seeks Commission authority to: require Qwest to provide unbundled network elements pursuant to Section 271 of the Act; set UNE rates that Qwest provides under Section 271; or require Qwest to provide UNEs under state law in a manner that conflicts with the access ordered by the Federal Communications Commission in its Triennial Review Order.

5. A Procedural Conference was conducted on August 9, 2004 to discuss scheduling and other procedural issues. The parties agreed on dates for filing testimony, conducting the hearing, and filing of briefs. A schedule for filing pleadings regarding Qwest's Motion to Dismiss, and for oral argument on the Motion, was also discussed.

6. Pursuant to the schedule established at the August 9, 2004 Procedural Conference, Covad filed its Response to Qwest's Motion to Dismiss on August 16, 2004; the Commission's Utilities Division Staff filed its Opposition to Qwest's Motion to Dismiss on August 31, 2004; and Qwest filed its Combined Reply to the Responses of Staff and Covad on September 10, 2004. On September 29, 2004, Qwest, Covad, and Staff filed their respective Comments regarding the effect on

this proceeding of the FCC's interim unbundling rules and Notice of Proposed Rulemaking.

7. By Procedural Order issued October 6, 2004, in accordance with the schedule requested by the parties, oral argument on Qwest's Motion to Dismiss was set for December 15, 2004, and the hearing was scheduled to commence on February 7, 2005. The Procedural Order also set dates for submitting pre-filed testimony.

8. On December 20, 2004, Covad filed the Direct Testimony of Michael Zulevic and Elizabeth Balvin, and Qwest filed the Direct Testimony of William Easton, Karen Stewart, and Michael Norman.

9. A Procedural Conference was conducted on January 6, 2005 to discuss scheduling of witnesses and the status of the previously scheduled oral argument. During the Conference, Covad and Qwest agreed that no ruling on the Motion to Dismiss should be made prior to the February 7, 2005 arbitration hearing, and the parties would brief the issues raised by Qwest's Motion to Dismiss as part of their post-hearing briefs on all of the disputed arbitration issues.

10. On January 18, 2005, Covad filed the Rebuttal Testimony of Michael Zulevic and Elizabeth Balvin, and Qwest filed the Rebuttal Testimony of William Easton, Karen Stewart, Renee Albersheim, and Michael Norman.

11. On January 31, 2005, Covad filed the Joint Issues Matrix setting forth the issues that had been resolved through negotiation and the issues that remained in dispute.

12. Hearings were held February 7 and 18, 2005 at the Commission's offices in Phoenix, Arizona.

13. Post-hearing briefs were filed by Covad and Qwest on March 11, 2005. Reply briefs were filed on March 28, 2005.

14. On June 3, 2005, July 20, 2005, and August 1, 2005 Qwest and Covad filed various decisions by other state commissions as Supplemental Authority.

15. By Procedural Order issued August 12, 2005, Covad, Qwest and Staff were directed to file statements by August 26, 2005 regarding the impact on this proceeding, if any, of the FCC's August 5, 2005 decision to eliminate facilities sharing requirements on facilities-based wireline broadband Internet access service providers.

16. On August 26, 2005 Covad filed a Statement indicating that the FCC's decision will have no impact on any of the issues in this arbitration docket.

17. On August 26, 2005, Qwest filed a Statement that the FCC's Decision potentially would have a profound effect of this proceeding, and further deliberation should be undertaken once the FCC's Decision is issued.

18. On August 26, 2005, Staff filed a Request for Extension to File Comments. Staff stated that it would need at least three weeks from the date the FCC's Decision was issued to offer a response on the effect of the FCC's Decision.

19. By Procedural Order issued August 30, 2005, Staff's request for an extension of time was granted.

20. On September 22, 2005, Qwest filed a Fourth Notice of Supplemental Authority in the form of an Order issued by the Oregon Public Utility Commission (Order No. 05-980, issued September 6, 2005, *In the Matter of Covad Communication Company Petition for Arbitration*).

21. On October 24, 2005, Qwest filed a Fifth Notice of Supplemental Authority in the form of a Recommended Decision of the Hearing Examiner of the New Mexico Public Regulation Commission (Case No. 04-00208-UT, issued October 14, 2005, *In the Matter of Covad Communication Company Petition for Arbitration*).

22. On November 3, 2005, Staff filed a Request for Procedural Order. Staff stated that the FCC had issued the anticipated Decision on September 23, 2005, and Staff therefore requested that a Procedural Order should be issued allowing two additional weeks for the parties to comment on the impact of the FCC's Order on the issues raised in this proceeding.

23. On November 7, 2005, a Procedural Order was issued directing Staff, Covad, and Qwest to file comments regarding the impact of the FCC's Order on this proceeding, by no later than November 21, 2005.

24. On November 21, 2005, Covad filed a Second Notice of Supplemental Authority in the form of an Arbitration Order issued by the Tennessee Regulatory Authority (Docket No. 03-00119, issued October 20, 2005, *Petition for Arbitration of ITC Deltacom Communications, Inc. with Bellsouth Telecommunications, Inc.*).

25. On November 21, 2005, Covad filed its Comments Regarding the FCC's *Broadband Order*. Covad contends that nothing in the *Broadband Order* affects the issues presented in the arbitration petition that is before the Commission in this docket.

26. On November 21, 2005, Qwest filed its Comments Relating to the FCC's *Wireline Broadband Order*. Qwest argues that the FCC's Broadband Order does affect the arbitration issues, especially with respect to Covad's "alternative service" proposal for copper loop retirements. Qwest also claims that the *Broadband Order* draws into question whether Covad is a telecommunications carrier entitled to an interconnection agreement, or whether Covad is an information services provider.

27. On November 21, 2005, Staff filed a Statement regarding the *Broadband Order's* effect of this arbitration proceeding. According to Staff, the *Broadband Order* "would have no impact on the unbundling issues raised in this case, to the extent Covad seeks the unbundled network elements to provide a telecommunications service." Staff cites to the FCC's statement that "nothing in this Order changes a requesting telecommunications carrier's UNE rights under section 251 and our implementing rules" (*Broadband Order*, at ¶127).

28. On December 2, 2005, Covad filed a *Reply to Qwest's Comments Regarding the FCC's Broadband Order*. Covad contends that the FCC has already responded to the question raised by Qwest and found that the *Broadband Order* has no effect on Covad's rights under 47 U.S.C. §251 and, by extension, 47 U.S.C. §252. Covad claims that Qwest's arguments ignore the FCC's specific statement that the *Broadband Order* does not impact UNE and interconnection issues. Covad also argues that the Commission has already determined that Covad is a telecommunications carrier pursuant to the granting of a CC&N for the provision of such services.

29. Based on review of the various arguments regarding the impact of the FCC's *Broadband Order* on the issues presented herein for arbitration, the arbitration issues are properly before the Commission for consideration in this proceeding.

30. The parties submitted five issues to be arbitrated in this proceeding. The Commission has analyzed the evidence presented at the hearing, as well as the legal arguments raised in the briefs filed in this docket, and has resolved the issues as stated in the Discussion above.

31. The Commission hereby adopts the Discussion above and incorporates the parties' positions and the Commission's resolution of the issues described herein.

32. Pursuant to A.A.C. R14-2-1506(A), the parties will be ordered to prepare and sign an interconnection agreement incorporating the issues as resolved by the Commission, for review by the Commission pursuant to the Act, within 30 days from the effective date of this Decision.

CONCLUSIONS OF LAW

1. Covad and Qwest are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. Covad and Qwest are telecommunications carriers within the meaning of 47 U.S.C. §252.

3. The Commission has jurisdiction over Covad and Qwest and of the subject matter of the Petition.

4. The Commission's resolution of the issues described herein is just and reasonable, meets the requirements of the 1996 Telecom Act and regulations prescribed by the FCC pursuant to the Act, is consistent with the best interests of the parties, and is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order the resolution of the issues contained in the Discussion above.

IT IS FURTHER ORDERED that Covad and Qwest shall prepare and sign an interconnection agreement incorporating the terms of the Commission's Decision herein.

IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to the Commission for its review within 30 days of the effective date of this Decision.

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IT IS FURTHER ORDERED that Qwest's Motion to Dismiss is denied in accordance with the discussion and resolution set forth hereinabove regarding Issue 2 in Covad's Petition for Arbitration.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: DIECA COMMUNICATIONS, INC., dba COVAD COMMUNICAITONS COMPANY and QWEST CORPORATION

DOCKET NOS.: T-03632A-04-0425 and T-01051B-04-0423

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STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
DEC - 5 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S RESPONSE TO COVAD COMMUNICATION COMPANY'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") hereby provides this response to Covad Communications Company's ("Covad") second notice of supplemental authority filed on November 18, 2005.

In its notice, Covad provides the Commission with a recent order ("TRA Order") from the Tennessee Regulatory Authority ("TRA") in an arbitration involving BellSouth Telecommunications, Inc. and Deltacom Communications, Inc. Covad presents the order in support of its position that the interconnection agreement ("ICA") between Qwest and Covad should include language requiring Qwest to provide network elements offered under Section 271 of the Telecommunications Act of 1996 ("the Act") at rates determined through the FCC's total element long run incremental cost ("TELRIC") pricing methodology. For the reasons discussed below, the TRA Order violates the Act and does not provide support for Covad's Section 271 unbundling and pricing demands. The unlawful rulings in the order conflict directly with the orders of the nine state commissions that have rejected Covad's unbundling demands in these multi-state arbitrations between Qwest and Covad.[1] Those orders, not the TRA Order, correctly interpret and apply the governing provisions of the Telecommunications Act of 1996 ("the Act").

[1] The Wyoming Commission voted today to adopt Qwest's positions and virtually all of Qwest's proposed language relating to this issue, becoming the ninth commission to rule this way. No state commission has adopted Covad's positions or language.

40 PU-05-165 Pages: 7

Qwest's Response to Covad's Second Notice of Supplemental Authority by Qwest Corporation

12/05/2005 CC: Comm Legal Illona, Pat, Annette . .

The first of the multiple flaws in the TRA Order is the starting premise that the scope of a state commission's authority to decide issues in a Section 252 interconnection arbitration is dictated by the issues that the petitioning party decides to include in its arbitration petition. According to the TRA, a state commission "has broad authority to arbitrate any open issue submitted in a Section 252 arbitration." TRA Order at 29. Under this reasoning, any demand that a petitioning party includes in a petition can be arbitrated and incorporated into the terms and conditions of an interconnection agreement. Thus, Covad contends that because it included Section 271 unbundling demands in its petition, the North Dakota Commission is authorized to resolve those demands.

This premise in the TRA Order ignores the statutory language under that defines the arbitration authority of state commissions. As Qwest described in its opening brief, the process mandated by Section 252, the provision pursuant to which Covad filed its petition for arbitration, is concerned with implementation of an ILEC's obligations under Section 251, not Section 271. In an arbitration conducted under section 252, therefore, state commissions only have authority to impose terms and conditions relating to Section 251 obligations. In its arbitration order that rejected Covad's Section 271 unbundling demands, the South Dakota Commission explained in clear terms why state commissions do not have authority to impose requirements under Section 271 in an arbitration conducted under Section 252:

> With respect to the section 271 issue, the Commission finds that it does not have the authority to enforce section 271 requirements within this section 252 arbitration. Section 252(a) provides that interconnection negotiations are limited to requirements "for interconnection, services, or network elements pursuant to section 251 . . . ." In addition, as stated above, section 252(c)(1) requires the Commission to ensure that the Commission's resolution of open issues "meet the requirements of section 251 of this title, including the regulations prescribed by the [FCC] pursuant to section 251 of this title . . . ." *The language in these sections clearly anticipates that section 252 arbitrations will concern section 251 requirements, not section 271 requirements.*[2]

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[2] *In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection*

Based on a similar analysis, the Utah Commission reached the same conclusion as the South Dakota Commission and other commissions that have rejected Covad's Section 271 unbundling demands. The Utah Commission explained:

> [W]e differ with Covad in its belief that we should therefore impose Section 271 and state law requirements in the context of a Section 252 arbitration. Section 252 was clearly intended to provide mechanisms for the parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or state law.[3]

In an attempt to find authority where none exists, the TRA relies on Section 252(b)(4)(C), which provides in relevant part that in an interconnection arbitration, a state commission "shall resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to implement subsection [252](c) . . . ." *See* TRA Order at 29. The TRA concludes that this provision empowers a state commission to resolve any issue set forth in a petition regardless whether the issue relates to a duty imposed by Section 251. However, the TRA ignores the critical language in this subsection which directs state commissions to resolve arbitration issues by imposing conditions "*required to implement subsection [252](c)*." In turn, subsection 252(c), which sets forth "standards for arbitration," expressly directs state commissions to resolve "open issues" by imposing "conditions [that] *meet the requirements of section 251*." This plain linkage between the "open issues" that state commissions are permitted to arbitrate and the "requirements of section 251" demonstrates clearly the open issues state commissions are authorized to resolve are only those relating to the duties imposed by Section 251. Significantly, Congress neither directed nor authorized state commissions to resolve open

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Agreement with Qwest Corporation, Docket TC05-056, Arbitration Order at 6 (July 26, 2005) (emphasis added).

[3] Utah Arbitration Order at 19-20.

issues relating to duties imposed by Section 271.

In support of its flawed finding relating to the scope of a state commission's arbitration authority, the TRA cites the decision of the United States Court of Appeals for the Fifth Circuit in *Coserv Ltd. Liability Corp. v. Southwestern Bell*, 350 F.3d 482 (5th Cir. 2003). *See* TRA Order at 30. According to the TRA, *Coserv* supports the proposition that a state commission can decide any issue set forth in an arbitration petition regardless whether the issue relates to Section 251. In *Coserv*, however, the Fifth Circuit held that the Texas Commission was without jurisdiction to arbitrate a non-251 issue involving compensated access because the parties had not "mutually agreed" to negotiate the issue. As explained by the court, "[t]he PUC's ultimate refusal to arbitrate the compensated access issue was correct, because compensated access was not a *mutually agreed upon* subject of voluntary negotiations between SWBT and Coserv." *Id.* at 487-88 (emphasis added). In the TRA Order, the commission failed to address this important aspect of the *Coserv* holding. Given BellSouth's objection to the inclusion of Section 271 issues in the TRA arbitration, it is apparent that – just as in this case – there was not "mutual agreement" that those issues were a proper subject of negotiation and arbitration. Thus, instead of supporting the TRA Order, *Coserv* actually confirms that the order is unlawful.

An additional material flaw in the TRA Order is the commission's conclusion that state commissions have authority to set rates for any network elements regardless whether the elements are provided under Section 251 or Section 271. This conclusion is contradicted by the language of Section 252(c)(2), the very provision that the TRA invokes for its alleged authority. That section provides that in an arbitration a state commission shall "establish rates for interconnection, services, or network elements according to subsection (d)." According to the TRA, this provision gives state commissions authority to set rates for Section 271 elements. TRA Order at 26. However, the TRA failed to analyze the meaning of the directive in this section to set rates

"according to subsection (d)." That subsection – 252(d)(1) – sets forth the pricing standard unbundled network elements provided under Section 251(c)(3) and is expressly limited to those network elements. The section says nothing about Section 271 elements and does not grant state commissions any pricing authority over those elements.

Finally, the TRA Order improperly relies on Tennessee law for the proposition that state commission s have authority under the federal Act to arbitrate non-251 issues. TRA Order at 31. It is fundamental that a state legislature cannot confer authority to a state commission under a *federal* act, and the TRA cites no authority to support the alleged conferral of such authority. Only Congress can delegate authority to state commissions under the Act and, as discussed in Qwest's briefs, Congress has not conferred any authority to state commissions over Section 271 elements. That authority rests exclusively with the FCC.

For these reasons, the TRA Order is unlawful and does not provide any reason for the Commission to depart from the eight state commission orders in these Qwest-Covad arbitrations establishing that states are without authority to set rates or other terms and conditions for Section 271 elements.

DATED: December 5, 2005

Respectfully submitted,

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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of December, 2005, I caused to be served a true and correct copy of **QWEST CORPORATION'S RESPONSE TO COVAD COMMUNICATION COMPANY'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY** by U.S. mail and electronic mail to the following:

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314 East Thayer Avenue
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Bismarck, North Dakota 58502
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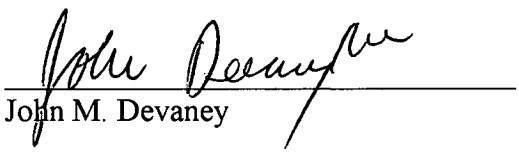

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ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

November 18, 2005

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ND PUBLIC

Via UPS Overnight Delivery
Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation; Case No. PU-05—165

Dear Mr. Mielke:

Enclosed for filing are the original and eight copies of Covad's Second Notice of Supplemental Authority in the above docket, along with a Certificate of Service.

Please feel free to call if you have any questions.

Very truly yours,

Lynn Hankins

Lynn Hankins

Enclosures
cc: Service list (w/enclosures)

39 PU-05-165 Pages: 1

Cover letter re Second Notice of Supplemental Authority
by Public Service Commission
11/21/2005 CC: Comm Legal Illona, Pat, Annette

RECEIVED
NOV 21 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") submits this second notice of supplement authority:

1. On October 20, 2005, the Tennessee Regulatory Authority entered an arbitration order regarding the arbitration of an interconnection agreement between BellSouth and a CLEC pursuant to section 251 of the Telecommunications Act of 1996 ("Act"). *Petition for Arbitration of ITC Deltacom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996,* Tennessee Regulatory Authority, Docket 03-00119 (October 20, 2005) (A copy of this order is attached as Exhibit 1) ("*Deltacom Order*").

2. In the *Deltacom Order*, the Tennessee Authority held that it had express authority under the Act to set rates for Section 271 elements within the context of an arbitration of an interconnection agreement pursuant to section 252 of the Act. This holding constitutes direct support for Covad's contention this Commission has the same authority and may therefore set just and reasonable rates for network elements that Qwest has a well-established obligation to provide to Covad on an unbundled basis.

3. The Tennessee Authority's supports its holding based upon express provisions of the Act itself:

38 PU-05-165 Pages: 86
Covad's Second Notice of Supplemental Authority
by DIECA Communications, Inc. by
11/21/2005 CC: Comm Legal Illona, Pat, Annette . .

- The Act expressly provides that state commissions have jurisdiction to arbitrate open issues presented in a section 252 arbitration. In addition, the Act makes it clear that state commissions must arbitrate all open issues in interconnection agreements. 47. U.S.C. sec. 252(b)(4)(C). Section 252 contains no exceptions for Section 271 elements presented as an open issue in an arbitration. *Deltacom Order*, p. 29. In this docket, Covad has presented the issue of this Commission's authority with regard to unbundling and rate setting for section 271 network elements.

- There is no language contained in the Act that prohibits state commissions from exercising jurisdiction over section 271 elements that are included in issues required to be arbitrated pursuant to section 252. Indeed, there is express language that indicates Congress gave states a role in determining Section 271 elements through state approval of both SGAT conditions and interconnection agreements. Under section 271(c)(1) of the Act, an ILEC must offer network elements either through a SGAT or an interconnection agreement. Each must be filed with and approved by the state commissions. Section 271 of the Act requires an ILEC to satisfy its competitive checklist obligations through interconnection agreements. These agreements are required to be approved by a state commission under section 252 of the Act. *Deltacom Order*, p. 31.

- Congress charged state commissions with the responsibility to arbitrate Section 252 disputes and this charge includes arbitrating the rates, terms and conditions of section 271 elements. Further, the fact that the FCC has the authority to enforce section 271 does not diminish or cut off the obligations of state commissions to arbitrate interconnection agreements required by section 271, which also includes establishing rates for elements required by the competitive checklist. In fact, section 271(c)(2)(A) directly links an ILEC's obligations under the competitive checklist to providing that access through an interconnection agreement. The language of section 271(c)(2)(A) demonstrates that section 271 network elements must be offered pursuant to the same, identical review process as Section 251 network elements. *Deltacom Order*, pp. 32-33.

- The FCC did not change the division of pricing responsibility defined in the Act. While the FCC will continue to set the pricing standards, it continues to be incumbent upon state commissions to apply those standards in the process of establishing rates. The FCC did not change the process utilized to resolve pricing disputes of section 271 elements. There is no indication that the FCC intended to remove section 271 elements from state arbitrations or from approval of interconnection agreements consistent with section 252 of the Act. *Deltacom Order*, p. 34.

For these reasons and the reasons set forth in Covad's other submissions in this docket, Covad requests that the arbitrator adopt Covad's proposed language.

RESPECTFULLY SUBMITTED,

Dated: November 18, 2005

DIECA COMMUNICATIONS, INC.

By: _____

Gregory Diamond
Senior Corporate Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax

CERTIFICATE OF SERVICE
Case No. PU-05-165

I HEREBY CERTIFY that on the 18th day of November, a true and correct copy of the foregoing Covad's Second Notice of Supplemental Authority was sent overnight mail to the following:

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismark, ND 58505 (Original and eight copies)

And via e-mail and U.S. Mail, first class, postage prepaid to the following:

William Binek, Hearing Examiner
North Dakota Public Service Commission
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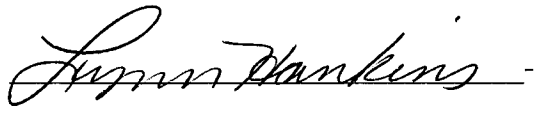

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 20, 2005

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF ITC^DELTACOM COMMUNICATIONS, INC. WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET NO. 03-00119

FINAL ORDER OF ARBITRATION AWARD

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This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the Arbitrators assigned to this docket, following hearings held Augusts 27-28, 2003 and September 12, 2003. The Arbitrators deliberated the issues in this docket on January 12, 2004, March 22, 2004, April 12, 2004 and June 21, 2004.

FACTUAL AND PROCEDURAL HISTORY AND SUMMARY OF DELIBERATIONS

On February 7, 2003, ITC^DeltaCom ("DeltaCom") filed a petition pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act") requesting that the Authority arbitrate the interconnection agreement between DeltaCom and BellSouth Telecommunications, Inc. ("BellSouth").[1] BellSouth filed a response to the petition on March 4, 2003. At the regularly scheduled Authority Conference on March 3, 2003, the Arbitrators appointed General Counsel or his designee to serve as mediator for the purpose of narrowing the issues.[2] On May 12, 2003, the Arbitrators accepted the petition for arbitration, appointed the Chief of the Telecommunications Division or his designee to act as Pre-Arbitration Officer and adopted the list of 71 issues contained in the original petition.[3] As a result of mediation and continuing negotiations, the parties resolved many issues, leaving the following twenty-nine (29) issues open for resolution: 2(a), 2(b), 2(c), 9, 11(a), 21, 25, 26(a), 26(b), 26(c), 26(d), 36(a), 36(b), 37, 44, 46, 47, 56(a), 56(b), 57(a), 57(b), 59, 60(a), 60(b), 62, 63, 64, 66 and 67.

Following a round of discovery, the parties filed direct testimony on August 4, 2003 and rebuttal testimony on August 11, 2003. An up-to-date revised joint issues matrix was filed on August 15, 2003 listing all settled and unresolved issues. A hearing in this matter was held

[1] *Petition for Arbitration of ITC^DeltaCom Communications, Inc with BellSouth Telecommunications, Inc Pursuant to the Telecommunications Act of 1996* (February 7, 2003). The petition contained seventy-one (71) issues

[2] *Order Appointing Mediator* (May 5, 2003)

[3] Transcript of Authority Conference, pp 49-59 (May 12, 2003)

on August 27 and 28 and September 12, 2003 before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones acting as Arbitrators. Participating in the Hearing were Mr. Henry Walker, Ms. Nanette Edwards, Mr. David Adelman and Mr. Clay Jones representing DeltaCom and Mr. Guy Hicks, Ms. Joelle Phillips and Mr. E. Earl Edenfield representing BellSouth. During the Hearing, the Arbitrators heard testimony from the witnesses relating to all open issues.

Following the hearing, post hearing briefs were filed on October 27, 2003. On January 12, 2004, the Arbitrators ruled on all of the outstanding issues except Issues 2, 26(d), 46, 47 and 62. As to these issues, the Arbitrators ordered the parties to file Final and Best Offers ("FBOs") by January 26, 2004. Additionally, the Arbitrators requested BellSouth to provide cost data associated with Issue 46, along with its FBOs. DeltaCom was given 10 days in which to respond to BellSouth's cost data filing. The parties requested, and were granted, two filing extensions and filed the FBOs on February 20, 2004. DeltaCom filed its response to BellSouth's Issue 46 cost data on March 2, 2004.

On March 22, 2004, the Arbitrators deliberated Issues 2, 46, 47 and 62, deferring consideration of Issue 26(d) until April 12, 2004 at the request of BellSouth. On April 12, 2004, the panel reconvened to rule on Issue 26(d). The Arbitrators deferred a decision on Issue 26(d) until 45 days after the 60 day stay of the Federal Communications Commission's ("FCC") *Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers* ("Triennial Review Order" or "TRO")[4] which would be June 15, 2004. On June 21, 2004, the Arbitrators reconvened and deliberated Issue No. 26(d).

[4] *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 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978 (2003), as modified by *Errata*, 18 FCC Rcd 19020 (2003), vacated in part, *U S Telecom Ass'n v FCC*, 359 F.3d 554 (D C. Cir 2004) ("Triennial Review Order" or "TRO")

ISSUE 2: DIRECTORY LISTINGS

(a) Is BellSouth required to provide DeltaCom the same directory listing language it provides AT&T?

(b) Is BellSouth required to provide an electronic feed of the directory listings of DeltaCom customers?

(c) Does DeltaCom have the right to review and edit its customers' directory listings?

A. Position of the Parties

DeltaCom opines that it should have access to its end user customer listings in a reasonable time prior to publication in the BellSouth Directory. Since BellSouth sends the listings to BellSouth Advertising and Publishing Company ("BAPCO"), DeltaCom should be able to verify that the listings have been accurately submitted. DeltaCom insists that listings of competitive local exchange carriers ("CLECs") are commingled with the BellSouth listings but distinguished by the company code.[5] These listings should be extracted prior to the release of the white page book for review. An electronic comparison of what was submitted versus what is being printed is in the best interest of both parties. DeltaCom should also be allowed to review and edit its customers' directory listings.[6]

According to DeltaCom witness Mary Conquest, DeltaCom wants to obtain an electronic file of its customer directory listing so that the listing can be automatically electronically validated.[7] DeltaCom avers that it needs to be able to validate its customer listing information electronically in order to avoid extended time and labor charges associated with manual validation. According to Ms. Conquest, BellSouth "has testified in other states that for a $30,000 fee that perhaps we could get these listings. We've submitted the bona fide business request. That request has been denied to us."[8]

[5] Transcript of Proceedings, v 1, pp. 240-246 (August 27, 2004)
[6] Mary Conquest, Pre-Filed Direct Testimony, p 3 (August 4, 2003)
[7] Transcript of Proceedings, v I, p 225 (August 27, 2003)
[8] *Id* at 226

Ms. Conquest also states that DeltaCom would consider receiving all CLEC listings in the state and would be willing to sign a contract stating that the listings would not be used for any marketing purposes. Ideally, DeltaCom would like the listing to be filtered by an operating company.[9] DeltaCom would be willing to pay a reasonable cost based rate for that service. BellSouth has provided no supporting documents for its suggested price.[10]

BellSouth asserts that DeltaCom can adopt rates, terms, and conditions for network elements, services, and interconnection from any interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. BellSouth proposes that the language adopted out of an interconnection agreement be incorporated into DeltaCom's agreement for the original term of the adopted agreement. In other words, any language adopted from AT&T's interconnection agreement would only be valid for the term of AT&T's agreement. Once AT&T's agreement expires, the language in DeltaCom's interconnection agreement would revert to BellSouth's proposed language. [11] DeltaCom asserts that the BellSouth/AT&T language should apply for the entire term of DeltaCom's agreement with BellSouth.[12]

BellSouth avers that directory listings are not a Section 251 requirement subject to Section 252(i) and further argues that while it is required to provide access to its directory assistance database by both its agreement and its tariff, it is not required to provide an electronic feed of directory listing for DeltaCom customers. BellSouth maintains that DeltaCom has the right to review and edit its customers' listings through access to customer service records and that this issue is between DeltaCom and BAPCO, not between DeltaCom and BellSouth. Nevertheless, BellSouth witness John Ruscilli stated that BellSouth has

[9] Transcript of Proceedings, v. I, p 240 (August 27, 2003).
[10] *Id*
[11] John A Ruscilli, Pre-Filed Direct Testimony, pp 5-6 (August 4, 2003)
[12] Mary Conquest, Pre-Filed Rebuttal Testimony, p 2 (August 11, 2003)

offered to provide an electronic feed to DeltaCom for a fee.[13]

B. Deliberations and Conclusions

DeltaCom witness Conquest testified that the language in the AT&T contract was insufficient to satisfy DeltaCom's needs.[14] Although DeltaCom wants BellSouth to furnish an electronic listing of directory listings, AT&T does not receive such a listing currently from BellSouth. The Arbitrators found that DeltaCom has not availed itself of and does not intend to utilize language from AT&T's interconnection agreement; therefore, Issue 2(a) is moot.[15]

DeltaCom has stated that it would be willing to pay BellSouth for an electronic listing of DeltaCom customers provided that the rate is cost-based.[16] While an electronic feed of the directory listings is not a specific requirement set forth in the 47 U.S.C. § 251 or 47 U.S.C. § 252, it is related to checklist item eight in 47 U.S.C. § 271(c)(2)(B) requiring BellSouth to provide white page listings. Ensuring the accuracy of end users' directory listings is an important customer service activity because directory books are only published once a year, and any errors may have long-term ramifications. While BellSouth affirmed that the electronic listing is technically feasible, it requested that the Authority order DeltaCom to continue negotiations regarding the appropriate rate, because the electronic listing is not an Unbundled Network Element ("UNE") required to be priced at Total Element Long Run Incremental Cost ("TELRIC") rates.[17]

The Arbitrators found that it is technically feasible for BellSouth to provide an electronic feed of directory listings of DeltaCom and that DeltaCom should be able to review

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[13] Transcript of Proceedings, v. III, pp. 614-615 (September 12, 2003)
[14] Transcript of Proceedings, v. I, pp 237, 239 (August 27, 2003).
[15] Transcript of Proceedings, p. 4 (January 12, 2004)
[16] Transcript of Proceedings, v I, p 241 (August 27, 2003)
[17] BellSouth states, "now that DeltaCom has finally recognized its obligation to pay BellSouth to develop and provide [an] electronic feed solely for DeltaCom, the Authority should order that DeltaCom continue its negotiations with BellSouth to establish a market-based price for this new service." *See BellSouth Telecommunications, Inc Post-Hearing Brief*, p 17 (October 27, 2003)

the listings of their customers and edit those listings for accuracy and completeness. Therefore, the Arbitrators adopted DeltaCom's position on Issue 2(b) and (c) and ordered BellSouth to provide an electronic feed of the directory listings of DeltaCom customers and allow DeltaCom to review and edit such listings of its customers.[18] Because no rate had been established, the Arbitrators ordered the parties to submit final best offers on the appropriate rate for providing the electronic listing along with the supporting basis and calculations for the rates proposed.[19]

C. Final Best Offers

The parties submitted FBO's for this issue on February 20, 2004. In its filing, BellSouth estimates a cost of $42,230 to develop a CLEC-specific product to extract directory listings from its Listing Information System ("LIST") database. In addition to this development cost, it proposes to charge DeltaCom $.04 per listing for each listing extracted, which it states is consistent with existing BellSouth tariffs.[20]

In its FBO, DeltaCom offers to pay $.04 per listing for the initial "load" of the base file of DeltaCom subscribers and $.06 for updates (those listings which have changed).[21] DeltaCom maintains that BellSouth has the ability to withhold DeltaCom's listings from third party publishers; therefore, it should be able to carve out DeltaCom's listings to send to DeltaCom. Alternatively, it proposes to accept all directory listings subject to a limited use, non-disclosure agreement similar to that which it has executed with another Incumbent Local Exchange Company ("ILEC").[22]

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[18] Transcript of Proceedings, p. 4 (January 12, 2004).
[19] Transcript of Proceedings, pp. 4-5 (January 12, 2004)
[20] *BellSouth Telecommunications, Inc 's Best and Final Offers*, pp 2-3 (February 20, 2004)
[21] DeltaCom proposes that the State Commission rates found in tariff pages A 38 2 (Directory Publishers Database Service) be applied, as this is a comparable service. *See BellSouth Telecommunications, Inc 's Best and Final Offers*, p 1 (February 20, 2004).
[22] *Id*

Although there is some cost associated with providing a service that does not currently exist, BellSouth's FBO in the amount of $42,230 for a CLEC-specific LIST extract is not properly supported. Though BellSouth provided a break-down of costs, this break-down was limited to estimated hours converted to dollars for Accenture Expense and Accenture Softcap.[23] Accenture is a vendor that provides the text software to BellSouth. No other supporting information was provided.

While both parties agree on a rate of $.04 for each listing, the tariffs BellSouth references do not contain an update rate. DeltaCom proposed a rate of $.06 for updates. The cost BellSouth quotes to develop a CLEC-specific LIST extract can be avoided by obtaining from BellSouth all directory listing information subject to a limited use, non-disclosure agreement as DeltaCom suggests. Based on these facts, on March 22, 2004, the Arbitrators voted unanimously to adopt DeltaCom's FBO on the pricing issue of $.04 per subscriber listing and $.06 per each directory listing change update and reaffirmed that BellSouth is to provide all listings subject to a nondisclosure agreement.[24]

[23] *Id* at 2 and Attachment No 1 (February 20, 2004).
[24] Transcript of Proceedings, p 12 (March 22, 2004).

ISSUE 9: OSS PARITY

IS BELLSOUTH REQUIRED TO PROVIDE INTERFACES FOR OSS TO DELTACOM WHICH HAVE FUNCTIONS EQUAL TO THAT PROVIDED BY BELLSOUTH TO BELLSOUTH'S RETAIL DIVISION?

A. Position of the Parties

DeltaCom states that BellSouth is required by the Act to provide Operational Support Systems ("OSS") in a nondiscriminatory manner. DeltaCom avers that delays due to lack of OSS support result in DeltaCom appearing inefficient and unreliable to its customers. DeltaCom alleges that twenty defects exist in OSS, fourteen of which will not be corrected until 2004 or later.[25] Meanwhile, BellSouth has reduced spending on OSS enhancements over the last three years. DeltaCom, therefore, proposes the following language in the interconnection agreement.

> BellSouth will provide to ITC^DeltaCom access to all functions for pre-order that are provided to the BellSouth retail groups. Systems may differ, but all functions will be at parity in all areas, i.e., operational hours, content performance. All mandated functions, i.e., facility checks, will be provided in the same timeframes in the same manner as provided to BellSouth retail centers.[26]

BellSouth responds that DeltaCom's proposed language is excessive and unnecessary and has the potential for abuse.[27] BellSouth asserts that the FCC and the nine state regulatory authorities in BellSouth's region have determined in all of BellSouth's 271 applications that BellSouth provides nondiscriminatory access to its OSS. The language proposed by DeltaCom exceeds the language defining nondiscriminatory access as defined by the FCC and the Authority.[28]

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[25] Mary Conquest, Pre-Filed Direct Testimony, p 4 (August 4, 2003)
[26] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, p. 5 (October 27, 2003).
[27] Ronald Pate, Pre-Filed Rebuttal Testimony, p 4 (August 11, 2003).
[28] Ronald Pate, Pre-Filed Direct Testimony, pp 9-10 (August 4, 2003)

B. Deliberations and Conclusions

In its *Local Competition Order*, the FCC concluded that ILECs are required to provide OSS in a nondiscriminatory manner.[29] The FCC adopted a definition that includes loop qualification information as part of the ILEC OSS in the *UNE Remand Order*.[30] As such, the ILEC must provide unbundled access to OSS including loop qualification. In the Authority's review of BellSouth's Section 271 application,[31] as well as subsequent service quality measurement ("SQM") filings, BellSouth has and continues to provide access to its OSS in a nondiscriminatory manner.[32] DeltaCom's proposed language has the potential for abuse. For example, the term "operational hours" could be construed to mean that OSS must be available whenever the retail equivalent is available, ignoring a Change Control Process ("CCP") decision to the contrary. During the deliberations on January 12, 2004, the Arbitrators voted unanimously to reject DeltaCom's proposed language and determined that BellSouth's language will suffice, provided that BellSouth provides OSS in accordance with the FCC's TRO which includes loop qualification and a continuing obligation to make modifications.[33]

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[29] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No 96-98, First Report and Order, 11 FCC Rcd 15499, 15514 (1996) ("Local Competition Order")

[30] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3884 (1999) ("UNE Remand Order")

[31] *See In re BellSouth Telecommunications Inc 's Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No 97-00309

[32] *See In re BellSouth Telecommunications Inc 's Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No 97-00309, *Advisory Opinion to the Federal Communications Commission*, pp 27-32 (October 10, 2002)

[33] Transcript of Proceedings, pp. 6-7 (January 12, 2004)

ISSUE 11: ACCESS TO UNES

(a) Should the interconnection agreement specify that the rates, terms and conditions of the network elements and combinations of network elements are compliant with state and federal rules and regulations?

A. Position of the Parties

BellSouth asserts that the interconnection agreement should specify that the rates, terms and conditions of network elements and combinations of network elements should be compliant with federal and state rules promulgated pursuant to 47 U.S.C. § 251. If a state commission orders BellSouth to provide access to network elements pursuant to any authority other than 47 U.S.C. § 251, then, according to BellSouth, those elements should not be included in a 47 U.S.C. § 251 agreement. BellSouth suggests that those elements could be tariffed or offered pursuant to a separate agreement between the parties.[34]

While BellSouth promises to abide by any rule issued by the Authority as long as such rule is consistent with 47 U.S.C. § 251, it is concerned that the Authority might issue requirements that are outside the authority granted to it by 47 U.S.C. § 251. Because any carrier can opt into arbitrated agreements, and because these requirements could continue into perpetuity, BellSouth does not want to continue to negotiate on the state compliant issue. Nevertheless, BellSouth states that it would comply with any order issued by the Authority. BellSouth does not want interconnection agreements, whether arbitrated or negotiated, to include references specific to state law that are generated outside of 47 U.S.C. § 251.[35] BellSouth admits that references to state law may exist in some of its other interconnection agreements, but that it wants to remove them from future agreements.[36] BellSouth's post-hearing brief asserts that the TRO clarifies and reiterates that state law may not be used to

[34] John A Ruscilli, Pre-Filed Direct Testimony, pp 8-9 (August 4, 2003)
[35] Transcript of Proceedings, v. III, pp 618-621 (September 12, 2003)
[36] *Id* at 625

impose additional unbundling requirements, and that any state action must be consistent with 47 U.S.C. § 251 and must not "substantially prevent" its implementation.[37] Furthermore, the TRO states that

> [I]n at least some instances existing state requirements will not be consistent with our new framework and may frustrate its implementation. It will be necessary in those instances for the subject states to amend their rules and alter their decisions to conform to our rules."[38]

BellSouth states, "To the extent the Authority is addressing unbundling under Section 251 of the 1996 Act or pursuant to directives of the FCC, then BellSouth is amenable to adding language to that effect to the interconnection agreement."[39]

DeltaCom believes that the interconnection agreement should specify that BellSouth's rates, terms and conditions for network elements and combinations of network elements are compliant with both state and federal rules and regulations. It argues that the Act explicitly preserves the authority of state commissions to enforce state-created interconnection obligations that are not inconsistent with the Act. DeltaCom cites 47 U.S.C. § 261(c) to support its position:

> [n]othing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.[40]

DeltaCom points out that the Act empowers the Authority to decide "any open issue" during arbitration, and as long as the provisions in question are not inconsistent with Section 251 and the FCC's regulations implementing that Section, the Authority has the discretion to

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[37] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p 20 (October 27, 2003) (quoting from *TRO*, ¶ 194)
[38] TRO, 18 FCC Rcd at 17101
[39] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p 21 (October 27, 2003)
[40] Jerry Watts, Pre-Filed Direct Testimony, pp 11-13 (August 4, 2003) (quoting 47 U.S C § 261(c) (2001))

incorporate these issues into the interconnection agreement.[41] DeltaCom states that it is hard to understand BellSouth's resistance to DeltaCom's desire to incorporate terms concerning other legitimately related services or requirements into the agreement by reference given BellSouth's desire to incorporate unilateral amendments to the interconnection agreement by reference. The terms of these services or requirements are not set by DeltaCom, but by the Authority.[42] DeltaCom takes issue with BellSouth's contention that the agreement should not reference state authority, because the TRO charges the states with establishing UNE rates and conducting the upcoming impairment analysis.[43] DeltaCom contends that BellSouth's opposition to inclusion of language requiring compliance with state law is dismissive of the TRA's authority and hypocritical in light of BellSouth's reliance on state law with regard to its position on back-billing (Issue No. 62).[44]

DeltaCom argues that the TRO reaffirms state authority to engage in arbitration hearings or other proceedings to ensure that UNEs are available to competitive carriers.[45] DeltaCom contends further that

> Section 252(e)(3) of the Telecommunications Act clearly preserves states' authority to establish or enforce other requirements of state law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.[46]

B. Deliberations and Conclusions

The FCC has reserved for the states the authority to enforce state-created interconnection obligations as long as those obligations are not inconsistent with the Act.

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[41] Jerry Watts, Pre-Filed Rebuttal Testimony, p 7 (August 11, 2003) (quoting 47 U S C §§ 252(c)(1) (2001) and 252(e)(2)(b) (2001) in support of this position)
[42] Jerry Watts, Pre-Filed Rebuttal Testimony, pp 7-8 (August 11, 2003)
[43] Transcript of Proceedings, v I, pp 57-58 (August 27, 2003)
[44] BellSouth cites Tenn Code Ann § 28-3-109 to support its position on Issue 62
[45] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, p. 7 (October 27, 2003) (citing ¶ 385 and ¶ 638 of the TRO to support its position that the TRO reaffirms state commission authority).
[46] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, pp 6-8 (October 27, 2003).

BellSouth implies that the Authority might create requirements that are in conflict with the Act, and it cites to the TRO in support of its position that states may not impose additional unbundling requirements that are inconsistent with 47 U.S.C. § 251. Nevertheless, the TRO specifically addresses state authority as follows:

> 191. Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in their review of interconnection agreements. Section 251(d)(3) of the 1996 Act preserves the states' authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations. Many states have exercised their authority under state law to add network elements to the national list.
>
> 192. We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act. We likewise do not agree with those that argue that the states may impose any unbundling framework they deem proper under state law, without regard to the federal regime. These commenters overlook the specific restraints on state action taken pursuant to state law embodied in section 251(d)(3), and the general restraints on state actions found in sections 261(b) and (c) of the Act. Their arguments similarly ignore long-standing federal preemption principles that establish a federal agency's authority to preclude state action if the agency, in adopting its federal policy, determines that state actions would thwart that policy. Under these principles, states would be precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order.[47]

The FCC acknowledges that the Act specifically grants to the states the duty to establish access and interconnection obligations of local exchange carriers, as long as such policies do not frustrate the implementation of the Act.[48] BellSouth has alleged no specific policy of the Authority that frustrates the implementation of the Act. The FCC has rejected the ILECs' arguments for preemption of state authority and has preserved state authority to establish obligations for local exchange carriers.[49]

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[47] TRO, 18 FCC Rcd at 17098-17099
[48] 47 U S C § 251(d)(3)
[49] TRO, 18 FCC Rcd at 17098.

During the deliberations on January 12, 2004, the Arbitrators voted unanimously to adopt DeltaCom's position on this issue and ordered that the interconnection agreement should state that the rates, terms and conditions of the network elements are compliant with both state and federal rules and regulations.[50]

[50] Transcript of Proceedings, pp. 7-8 (January 12, 2004).

ISSUE 21: DARK FIBER AVAILABILITY

Does BellSouth have to make available to DeltaCom dark fiber loops and transport at any technically feasible point?

A. Positions of the Parties

DeltaCom argues that it should be able to access dark fiber loops at areas other than the collocation site. Also, DeltaCom states that it may want to interconnect with another CLEC and, as such, DeltaCom would pick up the dark fiber loop at the other CLEC's collocation site.[51]

DeltaCom's witness Steve Brownworth testified

> ILECs regularly deploy fiber in segments with planned "breaks" in the path. These planned breaks also occur at points where larger backbone cable meets smaller distribution or lateral cables that connect to specific customer locations or remote terminals. In order to build maximum flexibility in how it uses its deployed fiber, the ILEC will place splice cases at these mid-span breaks. At these splice cases the ILEC can splice strands of fiber together in order to complete a path from one location (usually and ILEC central office) to another location, (usually a customer premises, remote terminal or with interoffice fiber another central office). Deployed fiber is also frequently left unconnected when that fiber path ends at a customer premises or remote terminal. . . . Further, the current NewSouth/BellSouth Tennessee interconnection agreement, . . . contains language whereby BellSouth has agreed to make dark fiber available to NewSouth at any technically feasible point.[52]

DeltaCom also cites other state commission findings in support of its request. DeltaCom cites the California Public Utilities Commission, which rejected SBC Communications' ("SBC's") position that it was not obligated to splice and terminate dark fiber because it unreasonably limits the amount of dark fiber available for CLECs.[53]

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[51] Steve Brownworth, Pre-Filed Direct Testimony, p 10 (August 4, 2003)

[52] *Id* at 10-11

[53] *Id* at 12-13, referencing *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L L C (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996,* A.01-01-010, Final Arbitrator's Report Cal. PUC, July 16, 2001 at 139

Likewise, the Texas Public Utilities Commission found that Southwestern Bell Telephone[54] had misinterpreted the FCC's intention in the *UNE Remand Order*. The Texas Public Utilities Commission distinguished dark fiber that was already in place as opposed to spooled in the warehouse and determined that deployed fiber constituted connectivity.[55]

BellSouth defines dark fiber under the FCC rules at 47 C.F.R. 51.319(a)(1) and 47 C.F.R. 51.319(d)(1). Accordingly, BellSouth states that it will make dark fiber loops available at the demarcation point associated with DeltaCom's collocation arrangements within BellSouth's central office.[56] BellSouth further explains that DeltaCom's request to have dark fiber available at any technically feasible point ignores the definitions of those UNEs established by the FCC and would result in the creation of a new UNE.[57] BellSouth also disagrees with the application of the findings of the Texas and California commissions. BellSouth explains that the issue in other states dealt with "un-terminated" fiber, and BellSouth currently makes no claim that un-terminated fiber strands are not subject to unbundling.[58]

B. Deliberations and Conclusions

The FCC rules are clear that an ILEC has a responsibility to provide unbundled network elements at any technically feasible point and that previous access to an unbundled element at a particular point in a network is evidence that access is technically feasible.[59] DeltaCom recounts that BellSouth not only provided dark fiber through a manhole but also

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[54] Southwestern Bell Telephone is part of SBC that serves the five-state region of Arkansas, Kansas, Missouri, Oklahoma and Texas.
[55] Steve Brownworth, Pre-Filed Direct Testimony, pp 13-14 (August 4, 2003), referencing Docket 23396, *Petition of CoServ, Inc for Interconnection Agreement with SWBT,* Arbitration Award at 139, TX PUC, April 17, 2001
[56] Keith Milner, Pre-filed Direct Testimony, p 18 (August 4, 2003)
[57] *Id* at 19.
[58] Keith Milner, Pre-Filed Rebuttal Testimony, p. 9 (August 11, 2003).
[59] 47 C.F R. §§ 51 311(d) (2003), 51 321(a)-(c) (2003) and 51 309 (2003)

provided access to dark fiber in its interconnection agreement[60] with NewSouth.[61] Both instances provide evidence that it is technically feasible to provide dark fiber per DeltaCom's request. Nevertheless, DeltaCom is requesting a specific unbundled network element–dark fiber loop and transport–as such there are specific rules that control an ILEC's unbundling responsibility.

Pursuant to FCC Rule 47 C.F.R. § 51.319(a):

> The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.[62]

A local loop can also be a dark fiber loop.[63] The dedicated transport network element is defined as including

> incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LECs and switches owned by requesting telecommunications carriers, including, but not limited to DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.[64]

DeltaCom wants to connect dark fiber at locations other than its collocation site, including other CLEC collocation sites and at splice cases located at planned breaks in the fiber path. DeltaCom's request ignores the FCC's definition of UNEs and amounts to the creation of a new UNE. DeltaCom did not specifically request and offered no evidence or testimony to enable the Arbitrators to apply the necessary and impairment standard required

[60] Steve Brownworth, Pre-Filed Direct Testimony, Exhibit A (August 4, 2003)
[61] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, p 11 (October 27, 2003)
[62] 47 C.F R. § 51 319(a) (2003).
[63] *Id*
[64] 47 C F R § 51 319(e)(1) (2003)

to create a new UNE. Existing FCC rules allow DeltaCom to purchase dark fiber loops, transport or both from BellSouth in every configuration with the exception of connecting to customer locations.[65] The Arbitrators found that in this configuration it is possible and appropriate for DeltaCom to order this service from the FCC tariff, and BellSouth should provide it, but not at UNE rates. There are additional maintenance costs, plant rearrangements and splicing costs associated with this type of special application that are outside those encountered in the course of normal daily network activity.[66]

During the deliberations on January 12, 2004, the Arbitrators voted unanimously that BellSouth is required to make available to DeltaCom dark fiber loops and transport at technically feasible points but is only required to provide dark fiber loops and transport at UNE rates in those instances that conform to the FCC loop and transport definition found in 47 C.F.R. § 51.319.[67]

[65] 47 C.F.R § 51.319(a)(1) (2003)
[66] Transcript of Proceedings, p 8-9 (January 12, 2004)
[67] *Id* at 9

ISSUE 25: PROVISION OF ASYMMETRIC DIGITAL SUBSCRIBER LINE ("ADSL")

Where DeltaCom is the UNE-P local provider should BellSouth continue providing the end-user ADSL service where DeltaCom provides UNE-P local service to that same end-user on the same line?

A. Positions of the Parties

BellSouth maintains that it is not obligated to provide digital subscriber line ("DSL")[68] services for customers served by a CLEC over the Unbundled Network Elements Platform ("UNE-P"). BellSouth argues that the FCC's conclusion in its *Line Sharing Order*[69] supports its position and goes on to cite the Order in support of its position that ILECs are not required to provide xDSL[70] service when they are not the voice provider.[71] BellSouth advocates that DeltaCom could enter into a line splitting arrangement with another carrier to provide DSL services. Further, BellSouth asserts that there are significant operational issues that would make it extremely burdensome for BellSouth to provide DSL service over a UNE-P loop purchased by a CLEC to provide voice service. The reasons given for this assertion include BellSouth's lack of access to the high frequency portion of the loop ("HFPL") as well as the incapability of BellSouth's systems to track different arrangements with different CLECs.[72] In its post-hearing brief, BellSouth, citing the TRO at length, claims "[t]he FCC reconfirmed its conclusion that an ILEC is not required to provide DSL service over UNE lines."[73]

DeltaCom asserts that no technical reasons exist for BellSouth's unwillingness to

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[68] A generic name for a group of enhanced speed digital services provided by telephone companies. DSL services operate on twisted-pair wires, which can carry both voice and data

[69] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, CC Docket No 98-147, CC Docket No. 96098, 14 FCC Rcd 20912 (1999) vacated, United States Telecom Ass'n v FCC, 290 F 3d 415 (D.C Cir. 2002) ("Line Sharing Order")

[70] xDSL refers collectively to all types of digital subscriber lines, the two main categories being ADSL and SDSL.

[71] John A Ruscilli, Pre-Filed Direct Testimony, pp 12-13 (August 4, 2003)

[72] *Id* at 13

[73] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p 32 (October 27, 2003) (quoting from *Triennial Review Order*, ¶ 259)

serve DeltaCom's UNE-P end-users with wholesale or retail DSL service.[74] DeltaCom's witness, Mary Conquest, alleges that this policy by BellSouth is a "tying arrangement" designed to forestall competition. Ms. Conquest goes on to explain that such a "tying policy" by BellSouth has the undesirable effect of forcing competitors to enter two markets (hence raising the cost of entry), allowing a monopoly such as BellSouth to "cherry pick" the most lucrative customers, and limiting consumer choice by locking customers into long term DSL contracts.[75] In her rebuttal testimony, Ms. Conquest states, "ITC^DeltaCom has offered BellSouth the use of the high frequency portion of UNE-P loops that serve ITC^DeltaCom customers for free so that BellSouth can continue providing its DSL service to its customers."[76] DeltaCom's witness also mentions the decisions of the Louisiana, Kentucky, and Georgia commissions on this issue as favorable to CLECs. Moreover, in its post-hearing brief addressing the TRO, DeltaCom claims that BellSouth is required to perform functions necessary to commingle a UNE-P line with its wholesale DSL service, if requested by a CLEC.[77]

In rebutting DeltaCom's testimony that its policy amounts to "tying arrangements" and hence is anti-competitive, BellSouth points out that the FCC has rejected this assertion in its Memorandum Opinion and Order, *In re Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No 02-307 (December 19, 2002).[78] Further, BellSouth argues that there is no evidence to support the assertion that BellSouth's DSL policy is an unlawful tying arrangement and therefore constitutes an anti-

[74] Mary Conquest, Pre-Filed Direct Testimony, p 5 (August 4, 2003)
[75] *Id* at 4-6
[76] Mary Conquest, Pre-Filed Rebuttal Testimony, p 5 (August 11, 2003)
[77] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , p 21 (October 27, 2003).
[78] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p 39 (October 27, 2003)

competitive practice.[79] BellSouth witness John A. Ruscilli also points out that CLECs such as DeltaCom have multiple choices for broadband service providers; the choices mentioned include wireless, cable modem and satellite.[80] Regarding the decisions of the Louisiana and Kentucky commissions, which were favorable to the CLECs, BellSouth indicates that it is appealing those decisions and further states that the commissions of North Carolina and South Carolina have ruled in BellSouth's favor on this issue.[81]

B. Deliberations and Conclusions

The refusal by BellSouth to provide xDSL services – retail or wholesale – on a UNE-P line could theoretically or potentially have an adverse impact on the further development of competitive local exchange markets in Tennessee. Nevertheless, the existing federal laws and regulations do not obligate BellSouth to provide DSL services when it is not the voice provider. BellSouth cites the FCC's *Line Sharing Order* as well as the *Line Sharing Reconsideration Order*[82] to support is position. BellSouth points out that the FCC ruled in these orders that an ILEC is not required to provide xDSL service when it does not provide the voice service.[83] DeltaCom did not dispute this characterization of the *Line Sharing Order* and the *Line Sharing Reconsideration* Order, and DeltaCom's witness conceded that the FCC did not require BellSouth to provide DSL over UNE-P.[84] Nevertheless, in its post-hearing brief, DeltaCom argues that the FCC has come up with "new rules" in its TRO requiring BellSouth to allow CLEC UNE-P voice customers to obtain DSL services from BellSouth.[85] DeltaCom cites paragraph 579 of the *Triennial Review Order* to conclude that BellSouth is

[79] *Id* at 38-49
[80] John A Ruscilli, Pre-Filed Rebuttal Testimony, pp. 5-6 (August 11, 2003)
[81] *Id* at 8-10
[82] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Third Report and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 16 FCC Rcd 2101 (2001) ("Line Sharing Reconsideration Order").
[83] John A Ruscilli, Pre-Filed Direct Testimony, pp 12-13 (August 4, 2003).
[84] Transcript of Proceedings, v I, p 250 (August 27, 2003)
[85] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, p 21 (October 27, 2003)

required to perform functions necessary to commingle a UNE-P line with its wholesale DSL service, if requested by a CLEC.[86] That paragraph states, "Thus, an incumbent LEC shall permit a requesting telecommunications carrier to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale . . . ."[87] Although this paragraph does not specifically address the issue of DSL and is arguably vague, DeltaCom ignores specific statements made by the FCC indicating that an ILEC is not required to provide DSL service over UNE-P lines. In paragraph 259 of the TRO, the FCC states, "[s]ince some incumbent LECs have thus far refused to provide xDSL service [over UNE-P] . . . customers served by competitive LECs who seek xDSL service would have to obtain that service from a competing carrier."[88] The FCC clearly does not obligate BellSouth to provide DSL service to the end user where DeltaCom provides that end-user with local service over UNE-P.

Both BellSouth and DeltaCom cite various state commissions' decisions in support of their respective positions. The North Carolina and South Carolina state commissions have ruled that BellSouth has no obligation to provide DSL service over UNE-P.[89] On the other hand, the Kentucky, Louisiana and Georgia commissions have ruled in favor of the CLECs on this issue.[90] Nevertheless, DeltaCom has not proven that BellSouth's policy of refusing to provide DSL over UNE-P is an anticompetitive practice.

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[86] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , p. 21 (October 27, 2003)
[87] TRO, 18 FCC Rcd at 17342
[88] TRO, 18 FCC Rcd at 17134
[89] *See In re South Carolina Public Service Commission,* Docket No. 2001-19-C (April 3, 2001), *see also North Carolina Utilities Commission Consultative Opinion to the FCC in BellSouth's Application for Alabama, Kentucky, Mississippi, North Carolina and South Carolina,* WC Docket No 01-0150, p 204 (July 9, 2002).
[90] *See In the Matter of Petition of Cinergy Communications Company for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc*, Kentucky Public Service Commission, Case No. 2001-00432, *Appendix to Order of the Order of the Kentucky Public Service Commission* (February 28, 2003), *In re Georgia PSC*, Docket No. 11901-U, *Louisiana Order U-22252-E*, Order No R-26173, Docket No R-26173 (January 24, 2003)

The Kentucky Commission has not indicated any federal law or public policy rationale for such a decision; if it has any justifications, they are not apparent from the order released on this matter.[91] On the other hand, the Louisiana Commission, based on the Louisiana State Constitution, its own "Local Competition Regulations" and policy considerations, ruled the anti-competitive effects of BellSouth's [DSL] policy are at odds with the Commission's policy to support competition in all telecommunications markets.[92] The Louisiana Order does not state how the Commission arrived at the conclusion that BellSouth's DSL policy is anticompetitive, other than re-iterating the CLEC's allegations.[93] Allegations of anticompetitive practices must be supported by verifiable evidence, not just mere assertions.

During the deliberations on January 12, 2004, a majority of the Arbitrators found no basis in the record that BellSouth's policy constitutes a tying arrangement and voted not to require BellSouth to provide DSL where DeltaCom provides the UNE-P local services.[94]

[91] *See In the Matter of Petition of Cinergy Communications Company for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc*, Kentucky Public Service Commission, Case No 2001-00432, *Appendix to Order of the Order of the Kentucky Public Service Commission* (February 28, 2003).
[92] *See In re Louisiana Public Service Commission, Clarification Order,* Order R-26173-A (January 24, 2003)
[93] *Id* at 5
[94] Transcript of Proceedings, pp 9-14 (January 12, 2004) Director Jones did not vote with the majority and filed a dissent.

ISSUE 26: LOCAL SWITCHING- LINE CAP AND OTHER RESTRICTIONS

(a) Is the line cap on local switching in certain designated MSAs only for a particular customer at a particular location?

(b) Should the Agreement include language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching?

(c) Is BellSouth required to provide local switching at market rates where BellSouth is not required to provide local switching as an Unbundled Network Element (UNE)?

(d) What should be the market rate?

A. Position of the Parties

DeltaCom opines that the existing language in the contract states that the four line cap only applies to a single physical end user location with four or more DS0 (Digital Signal, Level 0) equivalent lines. The current contract language also includes language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching. DeltaCom requests that this language continue in the new agreement.[95]

Joseph Gillan, witness for DeltaCom, recommends that the Authority reject BellSouth's market-based switching rates subject to the three line rule and that the existing TELRIC UNE rate of $1.89, established by the Authority, should remain in effect for all analog switch ports since those are the rates the Authority has found to be just and reasonable.[96] Finally, DeltaCom argues that to the extent that BellSouth is allowed to price a service at market rates, those rates must be approved by the Authority and supported by relevant market analysis.[97]

BellSouth witness, Kathy Blake, states that BellSouth is only required to provide local switching as set forth in 47 C.F.R. § 51.319(c)(2) and the interconnection agreement should not include language that prevents BellSouth from imposing restrictions on DeltaCom's use

[95] Jerry Watts, Pre-Filed Direct Testimony, pp. 14-15 (August 4, 2003)
[96] Joseph Gillan, Pre-Filed Direct Testimony, p. 4 (August 4, 2003)
[97] *Id* at 2-5

of local switching. The current FCC rules impose restrictions on DeltaCom's use of local switching and set forth criteria under which BellSouth may avail itself of the local switching exemption. Ms. Blake says that BellSouth will provide local switching at the market-based rate where it is not required to unbundle local switching. BellSouth maintains that its rates for local switching are not appropriate for consideration in an arbitration proceeding because local switching is not required by the Act or the FCC's rules implementing the Act and such rates are not governed by 47 U.S.C. §§ 251 or 252.[98] BellSouth points out that the Arbitrators voted in the AT&T arbitration to "permit BellSouth to aggregate lines provided to multiple locations of a single customer to determine compliance with FCC Rule 51.319(c)(2),"[99] and that the Authority clarified that "[a]lthough BellSouth can aggregate lines of a customer running from multiple locations for the purpose of determining if BellSouth is obligated to provide unbundled local switching pursuant to FCC Rule 51.319(c)(2), this aggregation must be based on each location within the Nashville Metropolitan Statistical Area served by AT&T."[100]

B. Deliberations and Conclusions – January 12, 2004

With respect to Issue 26(a), it was noted by a majority of the panel that the four-line carve out per customer should reflect the Authority's previous decision in the AT&T arbitration, in which the Authority has permitted BellSouth to aggregate lines provided to multiple locations of a single customer.[101] Furthermore, the majority stated that the four-line carve out and the language regarding line count per customer should continue unless altered

[98] Kathy Blake, Pre-Filed Direct Testimony, pp 3-4 (August 4, 2003)
[99] *Id* at 4-5 (quoting from *Final Order of Arbitration Award*, TRA Docket No 00-00079, p 20 (November 29, 2001))
[100] *Id* at 5 (quoting from *Order Granting Requests in Part for Reconsideration and Clarification*, TRA Docket No 00-00079, p. 5 (April 22, 2002))
[101] Transcript of Proceedings, p 16 (January 12, 2004); *see also In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., TCG MidSouth Inc., and BellSouth Telecommunications, Inc., Pursuant to 47 U S C § 252*, TRA Docket No. 00-00079, *Final Order of Arbitration Award*, p 20 (November 29, 2001).

as a result of TRA Docket No. 03-00491, the TRA's nine month proceeding to determine the availability of UNE switching.[102] As a result, a majority of the Arbitrators voted that the line cap on local switching in certain designated metropolitan statistical areas ("MSAs") permits BellSouth to aggregate lines provided to multiple locations of a single customer.[103]

As to Issue 26(b), DeltaCom asserted that the panel should adopt language from the parties' current interconnection agreement. The specific language states, "except as otherwise provided herein, BellSouth shall not impose any restrictions on ITC^DeltaCom regarding the use of Switching Capabilities purchased from BellSouth."[104] The Arbitrators disagreed with DeltaCom and stated that the proposed language from DeltaCom attempts to thwart prevailing rules.[105] The FCC rules, particularly as set forth in the TRO, specify how and when an ILEC may restrict the use of local switching.[106] DeltaCom's proposed language does not reference any state or federal rules or proceedings. As such, the Arbitrators disagreed with DeltaCom, and voted that the Agreement not include language that prevents BellSouth from imposing any restrictions on DeltaCom's use of local switching.[107]

As to Issues 26(c) and (d),[108] to the extent that the rate for a particular element has not been ordered in a generic proceeding and the rate is proposed in the context of negotiating an interconnection agreement, a party should not be precluded from litigating the issue before the Authority in an arbitration. Section 252(c)(2) of the Act states that in an arbitration a state

[102] Transcript of Proceedings, p. 16 (January 12, 2004).
[103] *Id* at 49. Director Jones disagreed with the majority on this part of Issue 26 Director Jones concluded that the local switching exemption should be applied on a per location basis In support of this conclusion, Director Jones cited the FCC's decision in CC Docket No. 00-251. *Petition of Worldcom, Inc Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc , and for Expedited Arbitration,* CC Docket No 00-218, CC Docket No 00-249, CC Docket No 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27,039, 27212 (2002) (concluding "that the local switching exemption applies on a 'per location' basis"). *See* Transcript of Proceedings, pp 16-17 (January 12, 2004)
[104] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , p 24 (October 27, 2003) (citing parties' current approved interconnection agreement, Attachment 2, Section 9 1 2)
[105] Transcript of Proceedings, p 16 (January 12, 2004)
[106] 47 C.F R § 51 319(d) (2003).
[107] Transcript of Proceedings, p. 15 (January 12, 2004)
[108] Chairman Tate did not agree with the majority decision on Issue 26(d) as deliberated June 21, 2004

that in an arbitration a state commission shall establish any rates for interconnection, services, or network elements. As a result, the Arbitrators rejected BellSouth's claim that market based rates for switching are not appropriate for an arbitration proceeding and found that BellSouth is required to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE.[109]

The Arbitrators observed that the record in this docket was not sufficient to allow the development of an appropriate rate for unbundled local switching.[110] While both parties proposed a rate, the $14 rate proposed by BellSouth was not presented with cost studies.[111] Therefore, it could not be determined that the $14 rate was just and reasonable as required by FCC rule. Additionally, TELRIC rate proposed by DeltaCom could not be supported since by law, and in this instance, switching is not a UNE under Section 251. It would be inconsistent with FCC rules to price non-251 network elements the same as 251 UNEs, i.e. at TELRIC. For these reasons, the Arbitrators did not support the rate proposed by either party and voted unanimously to require the parties to submit final and best offers as to the appropriate interim rate for local switching.[112]

C. Final Best Offers

The parties submitted FBOs on February 20, 2004. In its filing, BellSouth argued that the Authority lacks the jurisdiction to consider or mandate the pricing of network elements that BellSouth will provide under 47 U.S.C. § 271 (not 47 U.S.C. § 251) and that the FCC has subsequently determined that a checklist element that does not have to be unbundled (such as switching) is subject to the "just and reasonable" pricing standard set forth in 47 U.S.C. §§ 201 and 202. Furthermore, it avers that the jurisdiction to enforce 47 U.S.C. §§ 201 and 202

[109] *Id* at 16.
[110] *Id* at 15
[111] Transcript of Proceedings, v II pp 479-483 (August 27, 2003)
[112] Transcript of Proceedings, p 16 (January 12, 2004).

is vested with the FCC, not with state commissions. BellSouth agreed that it is required to provide switching pursuant to § 271 of the Act, and in satisfaction of that obligation, it offers a Wholesale Local Platform DS0 Service priced at $26.48 for Zone 1, $30.31 for Zone 2 and $35.32 for Zone 3. BellSouth explains that this rate includes the port, features and TELRIC-based analog Service Level 1 ("SL1") loop. As an alternative, BellSouth requested another thirty days to negotiate a rate acceptable to both parties.[113] BellSouth provided no cost justification for the rates proposed.

DeltaCom proposes to pay BellSouth a flat rate of $5.08 per month per analog switch port, with no additional usage or feature charges. In support of this proposed rate DeltaCom uses the embedded cost for central office switching, plus a contribution equal to the average contribution of BellSouth's services in Tennessee in 2002. The rate development for the charge of $5.08 is based on BellSouth's reported central office switching expenses for 2002 and includes an estimated share of its depreciation costs for switching plant in service. This expense is directly available in ARMIS[114] 43-08 (row 6210). The portion of its depreciation expense attributed to central office switching is estimated by applying the ratio of central office switching plant in service to Total Plant in Service to the annual depreciation of plant.

D. Deliberations and Conclusions – Issue 26(d)

Following three continuances, on June 21, 2004, the Arbitrators deliberated the final and best offers submitted by the parties regarding Issue 26(d). The majority of the panel adopted DeltaCom's FBO of $5.08 as an interim rate.[115]

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[113] *BellSouth Telecommunications, Inc 's Best and Final Offers*, pp 2-5 (February 20, 2004).

[114] ARMIS is an acronym for Automated Reporting Management Information System, which is maintained by the FCC's Industry Analysis and Technology Division

[115] Chairman Tate proposed a $14 interim rate on grounds that (1) TELRIC rates are not market-based, (2) the FBOs submitted by the parties did not constitute negotiated market-based rates; (3) one or more CLECs had entered into agreements that provided for the $14 rate and these CLECs operated under these agreements for three years, and (4) the $14 rate represented the only marked-based rate in the record Chairman Tate proposed that the $14 rate be adopted as an interim rate unless and until the FCC or the Authority set a different rate or the parties negotiate a different rate

Notwithstanding BellSouth's assertions that the Authority lacked jurisdiction, the Arbitrators deliberated the switching issue as an open issue presented in a § 252 arbitration proceeding.

The Act expressly provides for state commission jurisdiction to arbitrate all open issues presented pursuant to Section 252(b)(4)(C). In addition, the Federal Act makes it clear that state commissions must arbitrate all open issues in interconnection agreements. Section 252(b)(4)(C) states:

> (C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.[116]

In addition, Section 252 contains no exception for Section 271 elements presented as an open issue in an arbitration.

The TRA has broad statutory authority to arbitrate any open issue submitted in a Section 252 arbitration. Section 252(b)(4)(C) provides that "the State commission shall resolve each issue set forth in the petition" for arbitration "and the response" thereto. The scope of open issues presented for arbitration under Section 252 includes "issues on which incumbents are mandated to negotiate."[117] Switching is an element of access and interconnection which Bell operating companies are mandated to negotiate pursuant to Section 271(c)(2)(B)(vi).

Beyond those issues that are mandated for negotiation, "the parties are free to include interconnection issues that are not listed in § 251(b) and (c) in their negotiations" and may

[116] 47 U.S.C. § 252(b)(4)(C) (2001)
[117] *MCI v BellSouth*, 298 F 3d 1269, 1274 (11th Cir 2002)

"petition for compulsory arbitration of any open issue."[118] The Court of Appeals for the Fifth Circuit, in *Coserv Ltd Liability Corp. v. Southwestern Bell*:

> There is nothing in § 252(b)(1) limiting open issues only to those listed in § 251(b) and (c). By including an open-ended voluntary negotiations provision in § 252(a)(1), Congress clearly contemplated that the sophisticated telecommunications carriers subject to the Act might choose to include other issues in their voluntary negotiations, and to link issues of reciprocal interconnection together under the § 252 framework. In combining these voluntary negotiations with a compulsory arbitration provision in § 252(b)(1), Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that any issue left open after unsuccessful negotiation would be subject to arbitration by the PUC. We hold, therefore, that where parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). The jurisdiction of the PUC as arbitrator is not limited by the terms of § 251(b) and (c); instead, it is limited by the actions of the parties in conducting voluntary negotiations. It may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations . . . . An ILEC is clearly free to refuse to negotiate any issues *other than those it has a duty to negotiate* under the Act when a CLEC requests negotiation pursuant to § 251 and 252. [Emphasis added.][119]

BellSouth has a duty and cannot refuse to negotiate the price for the switching element pursuant to Section 271(c)(2)(B)(vi). The price for the switching element was presented as an open issue in DeltaCom's petition for arbitration. Upon the failure of the parties to reach agreement of this non-251 issue, DeltaCom properly presented the price for switching as an open issue in the arbitration. As an open issue in the arbitration, the issue was properly before the TRA for resolution under Section 252 of the Federal Act. Further, BellSouth did not include this issue (Issue No. 26(d)) in its July 2, 2003 motion to remove certain issues from the arbitration.

[118] *Coserv Ltd Liability Corp v Southwestern Bell*, 350 F 3d 482, 487 (5th Cir. 2003)
[119] *Id*, at 487-488

Further, there is no language contained in the Federal Act that expressly prohibits state jurisdiction over Section 271 elements that are included in issues required to be arbitrated pursuant to Section 252. Rather, there is language that indicates that Congress gave states a role in determining Section 271 elements through state approval of both SGAT conditions and interconnection agreements. Under Section 271(c)(1) of the Federal Act, an incumbent telephone company must offer network elements either through a statement of generally available terms and conditions or an interconnection agreement. Each must be filed with and approved by the state commission.[120] Section 271 of the Federal Act requires an incumbent telephone company to satisfy its competitive checklist obligations through interconnection agreements.[121] These interconnection agreements are required to be approved by a state commission under Section 252.[122]

BellSouth must provide switching pursuant to the requirements of Section 271. In its *Final Best Offer* BellSouth argued that the TRA does not have jurisdiction to establish the rate for switching. BellSouth argued that, because Section 271 elements are regulated under Sections 201 and 202 of the Federal Act, state commissions are precluded from setting a rate for a Section 271 switching element. BellSouth cites to ¶ 664 of the TRO as standing for the proposition that ". . .the jurisdiction to enforce Sections 201 and 202 of the Act is vested with the FCC, not with state public service commissions." Paragraph 664 of the TRO, in its entirety, states:

> Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions

[120] 47 U S C. § 252(e) and (f) (2001)
[121] 47 U.S C § 271(c)(2)(A) (2001)
[122] 47 U S.C § 271(c)(1)(A) (2001)

> to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.

Paragraph 664 offers two examples of situations where the FCC will make determinations of fact regarding whether a rate for a Section 271 element is just and reasonable. There is nothing, however, in the above-quoted language, to preclude a state commission from setting the rate for a Section 271 element.

Congress explicitly charged state commissions with the responsibility to arbitrate Section 252 disputes, and this charge includes arbitrating the rates, terms and conditions of Section 271 elements. Further, the fact that the FCC has the authority to enforce Section 271 does not diminish or cut off the obligations of the state commissions to arbitrate interconnection agreements required by Section 271 which also includes establishing rates for elements required by the competitive checklist.

Section 271(c)(2)(A) links BellSouth's obligations under the competitive checklist to its providing that access through an interconnection agreement (or SGAT):

> (A) AGREEMENT REQUIRED - A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—
>
> (i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) [Interconnection Agreement], or
>
> (II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) [an SGAT], and
>
> (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph [the competitive checklist].[123]

[123] 47 U S C § 271(c)(2)(A) (2001).

By directly tying interconnection agreements to Section 271(c)(1)(A) and (B), the Act explicitly ties compliance with the competitive checklist to the review process described in Section 252. As Section 271(c)(1) states:

> (1) AGREEMENT OR STATEMENT- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.
>
> (A) PRESENCE OF A FACILITIES-BASED COMPETITOR- A Bell operating company meets the requirements of this subparagraph if it has entered into one or more **binding agreements that have been approved under section 252** specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers.[124]

This language demonstrates that Section 271 network elements must be offered pursuant to the same, identical review process as Section 251 network elements.

The FCC's TRO determined that pricing of Section 271 elements must be more liberal than TELRIC prices but produce just and reasonable prices.[125] The TRO states:

> Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.[126]

Thus, the FCC recognized that the pricing standards of Section 271 elements must be the same as the pricing standards used before the Federal Act such as those standards in Sections

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[124] 47 U.S C. § 271(c)(1)(A) (2001) (Emphasis added)

[125] This does not mean that TELRIC prices are not just and reasonable On the contrary, TELRIC prices must first meet the just and reasonable definition of the Act

[126] TRO, 18 FCC Rcd at 17389

201 and 202. Nevertheless, it is significant that the FCC did not change the division of pricing responsibility defined in the Federal Act. While the FCC will continue to set the pricing standards, it continues to be incumbent upon state commissions to apply those standards in the process of establishing rates.[127] The FCC did not change the process utilized to resolve pricing disputes of Section 271 elements. There is no indication that the FCC intended to remove Section 271 elements from state arbitrations or from approval of interconnection agreements consistent with Section 252.

In the regulatory scheme set up by the Federal Act, state commissions are directed by provisions of the Federal Act and FCC regulations in making decisions, which are subject to federal court review.[128] Thus, cooperative federalism is a statutory framework in which there is both state and federal regulation of telecommunications services. The parameters of both federal and state regulation within this statutory framework are determined by the Federal Act and the state statutes establishing regulatory authority.

In construing the reach of the TRA's authority, the Tennessee Supreme Court has held:

> Any authority exercised by the Public Service Commission must be as the result of an express grant of authority by statute or arise by necessary implication from the expressed statutory grant of power. *Pharr v. Nashville, Chattanooga and St. Louis Railway,* 186 Tenn. 154, 208 S.W.2d 1013 (1948); *Nashville, Chattanooga and St. Louis Railway v. Railroad and Public Utilities Commission et al,* 159 Tenn. 43, 15 S.W.2d 751 (1929). In either circumstance, the grant of power to the Commission is strictly construed.[129]

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[127] The United States Supreme Court affirmed this division of responsibility in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U S 366, at 384 (1999), emphasis added:

> "252(c)(2) entrusts the task of establishing rates to the state commissions . . . The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in 252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances."

[128] *Id* at 352

[129] *Tennessee Pub Serv Comm'n v Southern Ry Co*, 554 S W 2d 612, 613 (Tenn 1977).

The Tennessee Court of Appeals has echoed this interpretation of the TRA's authority:

> The Commission, like any other administrative agency, must conform its actions to its enabling legislation. It has no authority or power except that found in the statutes. While its statutes are remedial and should be interpreted liberally, they should not be construed so broadly as to permit the Commission to exercise authority not specifically granted by law.[130]

The TRA must exercise its authority in accordance with legislative limitations, directives and policy. In other words, "its actions must be harmonious and consistent with its statutory authority."[131] Chapter 4 of Title 65 sets forth the statutory framework for the TRA's authority to regulate public utilities. Pursuant to Tenn. Code Ann. § 65-4-104, the statutory grant of authority over public utilities given to the TRA is extensive:

> The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter [Chapter 4].

Tenn. Code Ann. § 65-4-106 provides:

> This chapter [Chapter 4] shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority by this chapter or chapters 1, 3, and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

In addition to the general powers described in the above referenced statutes, the TRA has been given specific authority or power by Tenn. Code Ann. § 65-5-201(a) "to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof," by Tenn. Code Ann. § 65-4-117(3) "to fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed thereafter by any public

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[130] *BellSouth Telecommunications, Inc v Greer*, 972 S W.2d 663, 680 (Tenn Ct App 1997) (internal citations omitted)

[131] *Tennessee Cable Television Ass'n v Tennessee Pub Serv Comm'n*, 844 S.W 2d 151, 159 (Tenn Ct App. 1992)

utility," and by Tenn. Code Ann. § 65-4-114(1) to require every public utility to "furnish safe, adequate, and proper service."

With the passage of the Tennessee telecommunications act in 1995 (the "Tennessee Act"), the Tennessee General Assembly changed regulation of telecommunications companies in Tennessee and established a new direction for the State and a new mandate to the TRA. The expressed goal of the Tennessee Act is articulated at Tenn. Code Ann. § 65-4-123:

> The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

The Tennessee Act also recognizes and imposes certain requirements on providers of telephone services:

> All telecommunications services providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions; and all telecommunications services providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications services providers.[132]

In *Mich. Bell Tel. Co. v. MCImetro Access Transmission Servs*, the Sixth Circuit Court of Appeals stated:

> When Congress enacted the federal Act, it did not expressly preempt state regulation of interconnection. In fact, it expressly *preserved* existing state laws that furthered Congress's goals and authorized states to implement additional requirements that would foster local interconnection and competition, stating

[132] Tenn Code Ann § 65-4-124(a).

> that the Act does not prohibit state commission regulations "if such regulations are not inconsistent with the provisions of [the FTA]." 47 U.S.C. § 261. Additionally, Section 251(d)(3) of the Act states that the Federal Communications Commission shall not preclude enforcement of state regulations that establish interconnection and are consistent with the Act. 47 U.S.C. § 251(d)(3).[133]

The Tennessee statutes and the relevant provisions of the Federal Act together form the basis for the authority of the TRA to set an interim rate for switching in the context of an arbitration proceeding and to convene a generic proceeding for the purpose of determining a permanent rate for switching. While Section 271 establishes the enforcement authority of the FCC regarding Section 271 issues, it does not strip the TRA of its authority to set rates for Section 251 or Section 271 elements. The TRA is exercising its authority provided by the General Assembly prior to the enactment of the federal act as the legal foundation for its actions. Additionally, the TRA's decision is consistent with the requirement that its actions not conflict with any current federal requirements.

According to FCC rules, in situations where unbundled switching is not required under Section 251, the element must still be offered to competitors in order to comply with the requirements of Section 271; however, the rate does not have to comply with TELRIC pricing methodology. Instead, the FCC requires that rates for unbundled elements offered pursuant to Section 271 must be "just and reasonable."[134] The reason for requesting FBOs in this case was to determine a just and reasonable rate for unbundled switching.

In its FBO on Issue No. 26(d), DeltaCom proposed a rate of $5.08 (usage included) which was based on BellSouth's ARMIS 43-08 (row 6210) reported central office switching expenses for 2002 and an estimated share of its depreciation costs for switching plant in service.

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[133] *Mich Bell Tel Co v MCImetro Access Transmission Servs*, 323 F 3d 348, 358 (6th Cir 2003)
[134] TRO, 18 FCC Rcd at 17389

BellSouth's FBO was based on the price it charges for wholesale local platform DS0 service.[135] The proposed rates were $26.48 in Zone 1; $30.31 in Zone 2; and $35.32 in Zone 3. Inclusive in these rates are the port, features, and an analog SL1 loop. These rates did not include usage, which was an additional per-minute charge.

During the deliberations it was noted that BellSouth failed to demonstrate that its proposed switching rate is at or below the rate at which BellSouth offers comparable functions to similarly situated purchasing carriers under its interstate access tariff or that the rate is reasonable by showing that it had entered into arm's length agreements with other similarly situated purchasing carriers to provide the switching element at the rate proposed in its final best offer.[136] It was also noted that BellSouth's FBO did not contain a stand-alone rate for switching. Additionally, the Arbitrators noted that existing case law holds that a just and reasonable rate includes a utility's operating expenses as well as a fair return on investments and concluded that DeltaCom's proposed rate of $5.08 contained those elements.[137] Thereafter, a majority of the Arbitrators voted to adopt DeltaCom's Final Best Offer of $5.08 as an interim rate subject to true up.[138] The Arbitrators voted unanimously to have the Chair open a generic docket to adopt a rate for switching outside of 47 U.S.C. § 251

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[135] *See In Re Petition for Arbitration of ITC^DeltaCom Communications, Inc with BellSouth Telecommunications, Inc Pursuant to the Telecommunications Act of 1996,* TRA Docket No. 03-00119, BellSouth's Best and Final Offers, p 5 (February 20, 2004)

[136] Transcript of Proceedings, p. 4 (June 21, 2004) The *Triennial Review Order* states

> Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.

Triennial Review Order, ¶ 664

[137] Transcript of Proceedings, p. 4 (June 21, 2004), *see Farmers Union Central Exchange v FERC*, 734 F 2d 1486, 1502 (D C Cir 1984); *see also FPC v Hope Natural Gas Co* , 320 U S 591, 596-598, 605, 64 S.Ct 281, 88 L.Ed 333 (1994)

[138] See supra n 115, Chairman Tate did not vote with the majority with respect to the rate for local switching

requirements.[139] The Arbitrators unanimously found that the interim rate should be trued up to the earlier of establishment of: 1) a switching rate in the generic docket; 2) a commercially negotiated switching rate; or 3) FCC rules regarding switching rates outside of 47 C.F.R. §251.

[139] Transcript of Proceedings, pp. 2-9 (June 21, 2004)

ISSUE 36: UNE/SPECIAL ACCESS COMBINATIONS

(a) Should DeltaCom be able to connect UNE loops to special access transport?

(b) Are special access services being combined with UNEs today?

A. Positions of Parties

DeltaCom states that the parties' current interconnection agreement provides for the combination of loop and transport, that similar language exists in other interconnection agreements and that DeltaCom believes the issue may be addressed in the TRO.[140] BellSouth cites FCC rules regarding combinations, including 47 C.F.R. § 51.315, which contains requirements for an ILEC to combine UNEs with tariffed services. BellSouth admits that this issue is being addressed in the TRO proceedings,[141] but it suggests that since commingling elements will depend on further state proceedings to identify loops that will remain UNEs, it would be premature to address this issue now. BellSouth asserts that the Authority should defer any final resolution of this issue until concluding the state TRO proceedings.[142]

B. Deliberations and Conclusions

During the deliberations on January 12, 2004, the Arbitrators voted unanimously to allow DeltaCom to commingle UNE loops and special access services consistent with the TRO. The new rules in the TRO, 47 C.F.R. § 51.309(e) and (f), state that except as provided in 47 C.F.R. § 51.318, an ILEC shall permit "a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC." Furthermore, upon request, an ILEC "shall perform the functions necessary to commingle an unbundled network element or

[140] Steve Brownworth, Pre-Filed Direct Testimony, p 15 (August 4, 2003)
[141] Kathy Blake, Pre-Filed Direct Testimony, p. 6 (August 4, 2003)
[142] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p. 58 (October 27, 2003)

a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC."[143] The FCC does not make this rule contingent on the outcome of the nine-month proceedings in the states.

The Authority rejects BellSouth's assertion that this issue should be deferred until the end of the state proceedings. TRA Docket No. 03-00527, *Triennial Review Order - 9 Month Proceeding - Loop and Transport,*[144] was commenced to address which loops, on a location and route specific basis, will continue to be available as UNEs. The TRO requires the Authority to conduct further granular reviews,[145] which may become more frequent as more locations meet the necessary triggers to remove the UNE requirement. Therefore, now is the most appropriate time to address this issue.

[143] 47 C F R § 51 309(e) and (f) (2003)
[144] *See In re Implementation of the Federal Communications Commission's Triennial Review Order – 9 Month Proceeding – Loop and Transport*, TRA Docket No 03-00527.
[145] TRO, 18 FCC Rcd at 17237

ISSUE 37: CONVERSION OF A SPECIAL ACCESS LOOP TO A UNE LOOP THAT TERMINATES TO DELTACOM'S COLLOCATION SPACE

Where DeltaCom has a special access loop that goes to DeltaCom's collocation space, can that special access loop be converted to a UNE loop?

A. Positions of Parties

DeltaCom states that in some instances, it has special access loops that go to its collocation space, and that in such instances DeltaCom should be allowed to convert those circuits to UNE loops. DeltaCom adds that language exists currently in the interconnection agreement of AT&T Communications of the South Central States, Inc. ("AT&T") and BellSouth in other states that allows AT&T to convert special access loops to UNE loops. DeltaCom requests the same treatment.[146]

BellSouth opines that per the requirements of the FCC in the *Supplemental Order Clarification*,[147] special access conversions only apply to Enhanced Extended Loops ("EELs"). If a CLEC wants to roll its traffic from a special access service to a UNE loop, then the CLEC must order a UNE circuit, roll the traffic and then disconnect the special access circuit.[148]

BellSouth asserts that further state proceedings should ultimately decide whether such conversion is allowed. If the TRO is stayed, then BellSouth wants the Authority to reject DeltaCom's position and direct DeltaCom to avail itself of and pay for other options that are available. If the TRO is not stayed, then BellSouth wants the Authority to direct the parties to utilize the change of law provisions in the interconnection agreement.[149]

B. Deliberations and Conclusions

This issue should not be deferred until the end of the state proceedings. TRA Docket

[146] Steve Brownworth, Pre-Filed Direct Testimony, p 16 (August 4, 2003)
[147] *Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, 9602 (2000) ("Supplemental Order Clarification")
[148] Kathy Blake, Pre-Filed Direct Testimony, pp 7-8 (August 4, 2003).
[149] *BellSouth Telecommunications, Inc Post-Hearing Brief*, pp 58-59 (October 27, 2003)

No. 03-00527[150] has been commenced to address which loops, on a location and route specific basis, will continue to be available as UNEs. Pursuant to the TRO, the state commissions are expected to conduct further granular reviews, and these reviews may become more frequent as more locations meet the necessary triggers to remove the UNE requirement.[151] Now is the most appropriate time to address the issue.

The Arbitrators rejected BellSouth's proposal to address this issue through the change of law provision as an unnecessary delay.[152] The Arbitrators found that the TRO is clear on this issue and that upon request the ILEC shall convert a wholesale service to the equivalent UNE service.[153] The conversion process shall have no adverse effects on service quality, and, except as agreed to by the parties, an ILEC shall not impose any untariffed termination charges or any disconnect fees.[154]

Furthermore, a similar process already exists for converting special access service to EELs. This process is handled as a project with a project manager. The conversions consist of identifying and verifying the circuits and the renaming of the circuit identification numbers. This would indicate that the implementation of a process to convert special access circuits to UNEs, as now required by the TRO, should be a simple modification to an existing process.[155]

During the deliberations on January 12, 2004, the Arbitrators voted unanimously to allow DeltaCom to convert special access circuits to UNE loops in accordance with the new rules promulgated by the FCC in the TRO.

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[150] *See In re Implementation of the Federal Communications Commission's Triennial Review Order – 9 Month Proceeding – Loop and Transport*, TRA Docket No. 03-00527.
[151] TRO, 18 FCC Rcd at 17237
[152] Transcript of Proceedings, p. 19 (January 12, 2004)
[153] *Id* at 19, *see also* TRO, 18 FCC Rcd at 17348-17350.
[154] *See* TRO, 18 FCC Rcd at Appendix B, p 5
[155] *See Id* , ¶ 593

ISSUES 44 AND 46:[156]

Issue 44: ESTABLISHMENT OF TRUNK GROUPS FOR OPERATOR SERVICES, EMERGENCY SERVICES AND INTERCEPT

Should the interconnection agreement set forth the rates, terms and conditions for the establishment of trunk groups for operator services, emergency services, and intercept?

Issue 46: BUSY LINE VERIFICATION / BUSY LINE VERIFICATION WITH INTERRUPT

Does BellSouth have to provide Busy Line Verification / Busy Line Verification with Interrupt (BLV/BLVI) to ITC^DeltaCom consistent with the language proposed by ITC^DeltaCom?

A. Positions of the Parties

BellSouth contends that the rates, terms and conditions for the establishment of trunk groups for operator services, directory assistance, emergency services and intercept should not be included in the interconnection agreement, because these services are no longer UNEs. BellSouth argues that these trunk groups are provided under the access tariff, not the agreement. BellSouth states that it will provide BLV/BLVI in a nondiscriminatory manner and at parity with the manner it provides such functionality to its retail customers.[157] Nevertheless, in Tennessee, the Operator Services and Directory Assistance elements currently must be unbundled, and available at UNE rates and are handled in Attachment 2 of the interconnection agreement.[158]

BellSouth admits that trunks connecting the operator services platforms of BellSouth and DeltaCom do exist today and that there is no technical reason why BellSouth could not provide DeltaCom with the services that it seeks. Nevertheless, BellSouth argues that,

[156] Issues 44 and 46 are listed separately in the Joint Issues Matrix that was filed August 15, 2003, but DeltaCom addressed them together in Steve Brownworth's Direct Testimony filed on August 4, 2003 (pp 18-23) John Ruscilli's Direct Testimony filed on behalf of BellSouth on August 4, 2003 addressed the issues separately (pp 15-16), but his Rebuttal Testimony filed on August 11, 2003 addresses neither issue Issue 44 addresses trunk groups, and Issue 46 addresses services that are provided over the trunk groups.

[157] *Revised Joint Issues Matrix*, pp. 14-15 (August 15, 2003).

[158] John A Ruscilli, Pre-Filed Direct Testimony, p 15 (August 4, 2003)

although these trunks exist, a manual process is required for it to provide BLV and BLVI services to DeltaCom and that BellSouth is not required by law to offer to its retail customers a product that it chooses not to offer. BellSouth has made the business decision not to provide these services on switches where it cannot provide the process electronically. BellSouth will, however, provide the services for UNE-P customers of DeltaCom or any other customer who is served from BellSouth's own switches.[159] BellSouth claims that in order to verify the status of a non-BellSouth line, the BellSouth operator would have to determine which CLEC serves the customer, but that its operators do not have access to this information. Furthermore, BellSouth argues that its operator would also need to determine if BellSouth had an agreement with the CLEC to allow such inquiries, and that in order to query the CLEC operator, BellSouth would have to install additional equipment.

Finally, BellSouth contends that, for the service to be effective, it would have to have such operator service interconnection with every CLEC in Tennessee and that every CLEC in Tennessee would have to have such arrangements with every other CLEC in Tennessee.[160] BellSouth argues that BLV and BLVI are tariffed services, not UNEs, and, therefore, are not appropriate issues for a Section 251 arbitration. BellSouth also states that DeltaCom can obtain BLV and BLVI pursuant to the rates, terms and conditions in BellSouth's tariff.[161]

DeltaCom disagrees with BellSouth's decision to exclude rates, terms and conditions for the interconnection of the companies' operator services platforms. DeltaCom explains that, unlike most other CLECs, it has its own Operator/Directory Assistance ("DA") center and claims that it must be able to interconnect its Traffic Operator Position System ("TOPS") platform with BellSouth's operator service platform. DeltaCom argues that the parties'

[159] Transcript of Proceedings, v III, pp. 649-658 (September 12, 2003)
[160] *BellSouth's Response to Inquiries, Late-filed Hearing Exhibit No 3* (October 13, 2003)
[161] John A Ruscilli, Pre-Filed Direct Testimony, p. 16 (August 4, 2003).

platforms are connected today, fully paid for by DeltaCom at tariffed access rates, and that there is no technical reason the parties cannot provide BLV and BLVI services to one another.[162] DeltaCom takes the position that this arrangement mutually benefits BellSouth's and DeltaCom's operator services centers, and it has proposed language that exists in the parties' current interconnection agreement.[163]

DeltaCom contends that BellSouth's new position changes an understanding that the companies have had for many years without a reasonable business explanation and that BellSouth's position treats DeltaCom as a retail customer rather than a carrier. DeltaCom cites a hypothetical example of a BellSouth customer who needs to reach a DeltaCom customer on an emergency basis. The BellSouth customer would dial 0 to reach a BellSouth operator, who could reach a DeltaCom operator who can either intercept, verify busy or otherwise reach the DeltaCom customer. The example would also work in reverse for the DeltaCom customer who needs to reach a BellSouth customer. DeltaCom argues that the operator centers would have no reasonable way to communicate with one another without the trunks that connect the two companies' operator services platforms.

DeltaCom quotes from BellSouth's response to its *First Set of Interrogatories*, in which BellSouth stated that "BellSouth does not subscribe to busy line interrupt or busy line verification service from ITC^DeltaCom and BellSouth operators have no provision to contact ITC^DeltaCom operators for this service."[164] DeltaCom expects that interconnection between the companies' operator services platforms will increase over time. It wants to ensure that traffic (including operator calls) is exchanged on a reciprocal basis, and it wants the Authority to require the parties to interconnect such that emergency operator services and

[162] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, p 32 (October 27, 2003)
[163] *Revised Joint Issues Matrix*, pp 14-15 (August 15, 2003)
[164] Steve Brownworth, Pre-Filed Direct Testimony, Exhibit C (August 4, 2003).

BLV will continue for the benefit of both DeltaCom and BellSouth customers.[165]

DeltaCom also claims that it provides operator services on a wholesale basis to ILECs and other CLECs and argues that if BellSouth denies DeltaCom's customers the ability to receive important (and perhaps emergency) calls from BellSouth customers, it is not treating DeltaCom customers at parity with its own similarly situated customers. DeltaCom offers the following language from the AT&T Tennessee interconnection agreement that it believes may be appropriate for its own interconnection agreement:

> 3.13 Each party shall establish procedures whereby its operator bureau will coordinate with the operator bureau of the other Party in order to provide Busy Line Verification/Busy Line Verification Interrupts ("BLV/BLVI") services on calls between their respective line side and users for numbers that are not ported.[166]

DeltaCom opines that BellSouth's policy discriminates against facilities-based DeltaCom customers and presents safety concerns for Tennessee customers trying to reach loved ones in times of potential emergency. DeltaCom complains that BellSouth's policy requires customers to call 911 if they cannot get through to a loved one and that this wastes precious and limited emergency services resources. DeltaCom argues that BellSouth will perform BLV/BLVI for its own customers if they are calling customers on BellSouth's network but not customers on DeltaCom's network. DeltaCom contends that BellSouth's position on this issue suggests that BellSouth will not query a database to improve the safety of Tennessee consumers. DeltaCom also cites 47 C.F.R. §51.305(a)(1) that requires ILECs to interconnect for the "transmission and routing of telephone exchange traffic, exchange access traffic, or both." DeltaCom complains that BellSouth is asking DeltaCom to order the services from its access tariff, but it points out that BellSouth's access tariff does not address

[165] *Id* at 18-23

[166] DeltaCom admits that it does not fully understand the limitations of not being able to provide these services to ported number customers. *See* Steve Brownworth, Pre-Filed Rebuttal Testimony, pp. 19-20 (August 4, 2003)

local traffic. DeltaCom takes issue with BellSouth's complaint that DeltaCom's request is insincere because DeltaCom has not made its request to apply generally to the industry instead of just to DeltaCom. DeltaCom offers to participate in a generic TRA effort to interconnect all operator services platforms if the TRA deems such a proceeding appropriate.[167]

Neither party submitted evidence or testimony regarding the costs associated with creating the databases necessary to provide a BLV and BLVI. Therefore, the Arbitrators unanimously agreed to hold Issue 46 in abeyance, regarding BellSouth's provision of BLV and BLVI, until additional information is provided by the parties. The Arbitrators directed BellSouth to provide the costs associated with creating a database, and directed DeltaCom to respond to the filing of these costs. Upon receipt of this requested information, Issue 46 would be deliberated with the other FBOs.

Before providing the cost estimates, BellSouth clarified that because its verification network does not include all 10 digit numbers, its current retail BLVI service does not allow the operator to verify or interrupt a call. This is further complicated by local number portability because it has to be determined which switch and/or CLEC owns the number. To accomplish this query, the BellSouth operator would require access to the local number portability database in order to determine the CLEC owner. Also, an additional database would be required in order to identify all CLECs and their NPA-NXXs along with the associated Toll Test Code so BellSouth operators can reach the appropriate CLEC Operator Service Provider. These databases would require BellSouth to develop new methods and procedures for its operators along with new network trunking, service order procedures and a mechanized billing program to enable CLECs and BellSouth to bill end users. BellSouth

[167] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , pp. 32-36 (October 27, 2003).

provided two network descriptions and configurations for providing BLVI on CLEC numbers to BellSouth end users. For either option BellSouth estimates a total cost of approximately $900,000 to $1,100,000 and six to nine months to complete.[168]

DeltaCom responded that the trunking facilities are in place and available for this service. Additionally, DeltaCom claimed that BellSouth provided no justification for the cost estimates, and DeltaCom should not be responsible for paying for BellSouth to deliver a service to its end users. DeltaCom asserts that BellSouth maintains the local number portability ("LNP") database and can query this database to determine whether to call the DeltaCom operator or transfer the call. BellSouth currently charges other carriers $.000123 to query this database. DeltaCom is willing to provide BellSouth with a telephone number to DeltaCom's operator services center to enable the BellSouth operator to call and/or transfer a customer over to DeltaCom. This would enable the DeltaCom operator to perform the query for $1.00 charge to BellSouth. BellSouth could then pass this charge on to its end user.

B. Deliberations and Conclusions

BellSouth is required by 47 C.F.R. § 51.305(a)(1) to interconnect with DeltaCom for the "transmission and routing of telephone exchange traffic, exchange access traffic, or both." While BellSouth argues that DeltaCom should order operator services from its access tariff, such does not alter the fact that if a BellSouth customer needed to reach a non-UNE DeltaCom customer in an emergency, the BellSouth operator would instruct its customer to hang up and dial 911 instead of connecting the BellSouth customer with the DeltaCom customer. Thus, the interchange of operator services traffic between the parties for the purposes of BLV and BLVI can potentially enhance the safety of Tennessee consumers and avoid the unnecessary use of scarce emergency resources. Additional, BellSouth's proposal

[168] *BellSouth Telecommunications, Inc 's Best and Final Offers*, p. 8 (February 23, 2004).

essentially treats DeltaCom like a retail customer rather than like a carrier, and, as such, precludes DeltaCom from providing to its customers the same services that BellSouth provides to its own retail customers.

BellSouth protests that if it is required to provide these facilities and services to DeltaCom then it would be required to provide them to all CLECs. Nevertheless, this should not present a problem, as long as BellSouth is compensated for the costs it incurs in providing these facilities and services. Furthermore, as DeltaCom points out, BellSouth has been providing these facilities and services to DeltaCom for some time without additional requirements. Requiring BellSouth to continue this arrangement should not impose any additional obligations on it than are imposed under the parties' current arrangement. Further, BellSouth does not dispute DeltaCom's argument that it could recover its costs through the rates that DeltaCom pays for these trunks.

In TRA Docket 00-00079 the Directors, acting as arbitrators, determined that BellSouth should be required to continue offering Operator Services / Directory Assistance ("OS/DA") as a UNE until BellSouth demonstrate the existence of a sufficient customized routing solution.[169] The Final Order in Docket 00-00079 required that a customized routing solution be fully tested in the applicable service area before BellSouth would be relieved of its obligation to provide OS/DA services as a UNE. Such testing is necessary given the FCC's observation that some ILEC offices may have equipment dated to the point that it cannot provide customized routing.

BellSouth has submitted no evidence that it has implemented a sufficient customized routing solution in Tennessee. BellSouth made a business decision not to provide the trunk

[169] *See In re Petition for Arbitration of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc , and BellSouth Telecommunications, Inc Pursuant to 47 U S C § 252*, TRA Docket No 00-00079, (Final Order of Arbitration Award) pp 27-28 (November 29, 2001).

groups to DeltaCom's operator services platform over which the parties currently interconnect to provide BLV/BLVI services to their customers. BellSouth states that manual operations are required to provide these services, but it does not argue that it cannot recover its expenses for providing these manual functions through the rates that it charges DeltaCom

Therefore, the Arbitrators adopted DeltaCom's position and required BellSouth to include in the interconnection agreement rates, terms and conditions for the establishment of trunk groups for operator services, emergency services and intercept as well as to provide BLV and BLVI until such time as BellSouth has furnished the evidence that it has implemented a sufficient customized routing solution in Tennessee.[170]

[170] Transcript of Proceedings, pp. 22-23 (January 12, 2004), *see also* Transcript of Proceedings, pp. 12-13 (March 22, 2004) Director Jones commented that it is "in the public interest for all telephone subscribers in Tennessee to have the same type of services regardless of their telephone provider and not pursue any type of policy that may inadvertently devalue one provider's service-services compared to another." Transcript of Proceedings, pp 12-13 (March 22, 2004)

ISSUE 47: COMPENSATION FOR THE USE OF DELTACOM'S COLLOCATION SPACE ("REVERSE COLLOCATION")

Should BellSouth be required to compensate DeltaCom when BellSouth locates in DeltaCom's collocation space? If so, should the same rates, terms and conditions apply to BellSouth that BellSouth applies to DeltaCom?

A. Positions of the Parties

BellSouth acknowledges that it has installed equipment at various DeltaCom Points of Presence ("POPs"), but claims that the equipment is not for the purpose of interconnecting with DeltaCom's network and/or accessing unbundled network elements in the provision of telecommunications service to the end users.[171] Rather, BellSouth contends such equipment at DeltaCom POPs is for the sole purpose of providing special and switched access services ordered by DeltaCom and/or DeltaCom's end user customers. According to BellSouth, this equipment is not being used for collocation purposes.[172] BellSouth further states that it has installed additional equipment that uses some of the spare capacity to exchange local traffic with DeltaCom, with the qualification that this was done "only because DeltaCom requested it or it was to the parties' mutual benefit."[173] Therefore, BellSouth is requesting that "all of the existing POPs and any other locations in which BellSouth has placed equipment, including any augments to the equipment already placed at these sites, should be exempted from any future collocation agreement."[174]

DeltaCom maintains that it should be compensated by BellSouth for the processing, preparation and use of DeltaCom space at the same rates BellSouth charges for its collocation spaces.[175] According to DeltaCom, to allow BellSouth to use DeltaCom space without

[171] John A. Ruscilli, Pre-Filed Direct Testimony, pp. 17,19 (August 4, 2003).
[172] *Id* at 17
[173] *Id* at 22
[174] *Id* at 23.
[175] Steve Brownworth, Pre-Filed Direct Testimony, p 24 (August 4, 2003)

payment is confiscatory. The main reasons given by DeltaCom for the position it has taken on this issue are: 1) the equipment that BellSouth places into the DeltaCom network supports the products that BellSouth sells to other carriers; 2) BellSouth delivers its own DS service (Digital Signal, Level 3)[176] for BellSouth-originated traffic on this equipment; and 3) BellSouth has asserted its willingness to compensate DeltaCom when it collocates within a DeltaCom-owned POP in other arbitrations.[177]

B. Final Best Offers

During the January 12, 2004 deliberations, the Arbitrators voted unanimously to require the parties to submit FBOs on this issue.[178]

BellSouth proposes the following contract language for reverse collocation:

> BellSouth should not be required to pay collocation charges when such collocation is for the benefit of, and at the request of, DeltaCom. BellSouth should pay collocation charges when voluntarily collocating in a DeltaCom premise whereby BellSouth derives benefit from the collocation space. Consequently, the existing Points of Presence ("POPs"), including, but not limited to NVSMTN30AMD and CHTHTNDNH00, as well as any other locations in which BellSouth has placed equipment, including any augments to the equipment already place at these sites, should be exempted from any future collocation agreement.
>
> For any POPs or other DeltaCom locations that are established after the effective date of the new collocation agreement ("future sites"), BellSouth would agree to pay mutually negotiated collocation charges for BellSouth equipment located and used solely for the purposes of delivery of BellSouth's originated local interconnection traffic, and only if BellSouth voluntarily requests to place a point of interconnection ("POI") for BellSouth's originated local interconnection traffic in a particular POP or other DeltaCom location. In those instances in which DeltaCom requests that the DeltaCom POP or other location be designated as the POI for DeltaCom's originating traffic and where BellSouth must place equipment in order to receive this traffic, the POP or other location will NOT be deemed to be a location at which BellSouth has voluntarily chosen to place a POI for BellSouth's originated local interconnection traffic.

[176] DS3 describes digital transmission at 45 megabits per second.
[177] Steve Brownworth, Pre-Filed Direct Testimony, p 25 (August 4, 2003).
[178] Transcript of Proceedings, p 35 (January 12, 2004)

> Further, if DeltaCom has the right under the new Interconnection Agreement to choose the POI for both Parties' originated traffic and DeltaCom chooses to have the POI for BellSouth's originated traffic at a DeltaCom POP or other location, then such POP or other location will NOT be deemed as a location at which BellSouth has voluntarily chosen to place a POI for BellSouth's originated local interconnection traffic. The provisions of BellSouth's tariffs would control if BellSouth locates equipment in DeltaCom's premises pursuant to such tariffs.[179]

DeltaCom submits this language:

> Where BellSouth places equipment on ITC^DeltaCom space and uses that equipment to serve entities other than ITC^DeltaCom, BellSouth derives a benefit and shall abide by the same terms and conditions applied to ITC^DeltaCom for collocation and pay ITC^DeltaCom pursuant to the same rates, terms and conditions for collocation that BellSouth applies to ITC^DeltaCom.[180]

DeltaCom explains that because this language will be included in an interconnection agreement that is effective upon the TRA's approval going forward for the term of the new agreement, this language cannot be applied on a retroactive basis. It will charge the same applicable non-recurring and recurring charges BellSouth charges DeltaCom on a going forward basis for those locations where BellSouth has placed equipment in DeltaCom's space that is being used by BellSouth to sell to other entities.[181]

C. Deliberations and Conclusions

BellSouth admits[182] that it has equipment located in DeltaCom's POPs and that the equipment uses some of the spare capacity to exchange local traffic with DeltaCom. At the hearing, BellSouth further conceded that it derives revenues from services it provides to competitors using such equipment it has placed in DeltaCom's collocation space.[183] Nevertheless, BellSouth maintains that such collocation was needed only because DeltaCom

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[179] *BellSouth Telecommunications, Inc 's Best and Final Offers*, pp 8-9 (February 20, 2004)
[180] *Final Best Offer*, p 8 (February 23, 2004)
[181] *Id*
[182] John A. Ruscilli, Pre-Filed Direct Testimony, p. 22 (August 4, 2003)
[183] Transcript of Hearing, v. III, p 667 (September 12, 2003).

requested it, or it was found to be beneficial to both parties.[184] As a result, BellSouth insists that it should not be deemed to have voluntarily chosen DeltaCom's premises as the POI for BellSouth's originated local interconnection traffic.[185] Moreover, although BellSouth has in the past agreed to pay reverse collocation charges, its witness testified "BellSouth had no intention of electing to collocate its equipment."[186]

During the deliberations on March 22, 2004, a majority[187] of the Arbitrators voted to adopt DeltaCom's FBO with one exception and require BellSouth to compensate DeltaCom when BellSouth locates in DeltaCom's collocation space at the rates, terms and conditions that BellSouth applies to DeltaCom. Reverse collocation charges should be paid on a going-forward basis for existing as well as future collocations at DeltaCom locations. Nevertheless, BellSouth should not be required to pay any nonrecurring charges associated with existing collocations.[188]

[184] John A Ruscilli, Pre-Filed Direct Testimony, p 22 (August 4, 2003)
[185] *BellSouth Telecommunications, Inc , Post-Hearing Brief,* p 64 (October 27, 2003).
[186] John A Ruscilli, Pre-Filed Rebuttal Testimony, p 13 (August 11, 2003).
[187] Director Miller did not vote with the majority
[188] Transcript of Proceedings, pp. 13-14 (March 22, 2004). Chairman Tate reaffirmed her previous motion *See* Transcript of Proceedings, pp 30-31 (January 12, 2004)

ISSUE 56: CANCELLATION CHARGES

(a) May BellSouth charge a cancellation charge which has not been approved by the Commission?

(b) Are these costs already captured in the existing UNE approved rates?

A. Positions of Parties

DeltaCom asserts that there has not been a proceeding to establish a cost-based rate for cancellation charges and that no Authority-approved rate exists for such charges.[189] Additionally, the Authority has consistently treated such rates as subject to the same pricing requirements as the recurring rates for UNEs. BellSouth must therefore demonstrate that the rates it seeks to charge are cost-based and consistent with 47 U.S.C. § 252.[190] BellSouth proposes that DeltaCom pay for any costs incurred by BellSouth in conjunction with the provisioning of such requests in accordance with BellSouth's Private Line FCC Tariff No. 1. DeltaCom avers that the Authority does not regulate interstate rates nor investigate the reasonableness of those rates and insists that BellSouth must prove that its proposed rates comply with 47 U.S.C. § 252.[191]

BellSouth's witness testified that BellSouth is entitled to recover its costs for the provision of UNEs:

> When a CLEC cancels an LSR,[192] cancellation charges apply on a prorated basis and are based upon the point within the provisioning process that the CLEC cancels the LSR. The applicable percentages at different points in the provisioning process are included in BellSouth's FCC No. 1 Tariff. Any costs incurred by BellSouth in conjunction with the provisioning of that request will be recovered in accordance with BellSouth's Private Line Tariff, Section B2.4.14 (applicable for UNEs that are billed by BellSouth's CRIS[193] system)

[189] Transcript of Proceedings, pp. 170-171 (August 27, 2003).
[190] Don J Wood, Pre-Filed Direct Testimony, pp. 6-7 (August 4, 2003).
[191] *Id* at 8
[192] LSR is an acronym for Local Service Request
[193] CRIS is an acronym for Customer Record Information System

or BellSouth's FCC No. 1 Tariff, Section 5.4 (applicable for UNEs that are billed by BellSouth's CABS[194] system).[195]

The rate associated with the cancellation charge equals a percentage of the applicable installation nonrecurring charge. Since the Authority has already approved the rates for the nonrecurring charges, the cancellation rates are appropriately cost-based.[196]

B. Deliberations and Conclusions

It is reasonable for BellSouth to recover some of the cost of provisioning a service in the event that the request for service is cancelled. As BellSouth witness John Ruscilli testified, the rate varies based on the point in the process that the service order is cancelled and is a percentage of the nonrecurring installation charge associated with that UNE.[197] The percentage is determined in accordance with the FCC No. 1 Tariff.[198] If the order is cancelled soon after it is submitted, or the order is electronically submitted and does not fall out for manual handling, no cost is incurred.[199]

DeltaCom asserts that BellSouth is pulling rates out of the FCC tariff,[200] and that adopting rules in this manner could create a worrisome precedent. Nevertheless, the language in the FCC tariff specifies at which point in the provisioning process a fee should be levied, not what rate should be charged.

> Certain Telephone Company critical dates are associated with an Access Order provisioning interval, whether standard or negotiated. These dates are used by the Telephone Company to monitor the progress of the provisioning process. At any point in the Access Order interval the Telephone Company is able to determine which critical date was last completed and can thus determine what percentage of the Telephone Company's provisioning costs have been incurred as of that critical date.[201]

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[194] CABS is an acronym for Carrier Access Billing System

[195] John A Ruscilli, Pre-Filed Direct Testimony, p 25 (August 4, 2003) (footnotes 189-191 added for clarification of acronyms).

[196] *Id*

[197] John A Ruscilli, Pre-Filed Direct Testimony, p. 25 (August 4, 2003)

[198] *Id*

[199] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p. 66 n 40 (October 27, 2003)

[200] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , p. 40 (October 27, 2003).

[201] BellSouth FCC Tariff Section 5 4(B)(4)(a)

It is common business practice to charge for services rendered in the event of a cancellation. In this instance BellSouth is proposing to utilize a prorated percentage of nonrecurring installation rates. As long as these rates can be tied back to Authority approved cost-based rates (nonrecurring UNE installation rates), then BellSouth should be entitled to charge them. Finally, BellSouth's Tennessee Statement of Generally Accepted Terms and Conditions ("SGAT") includes cancellation language that references back to the FCC No. 1 Tariff.[202]

Therefore, the Arbitrators voted unanimously to allow BellSouth to charge cancellation fees based on the nonrecurring installation rates approved by the Authority.[203] BellSouth proposes to utilize a prorated percentage of the nonrecurring installation rates that have been approved by the Authority, and it is reasonable for Bellsouth to recover some of the cost of provisioning a service when the service order is cancelled.

[202] Tennessee SGAT, Attachment 2, Section 1 6 2, states, "If<<customer name>> cancels an order for Network Elements, Combination or other services, any costs incurred by BellSouth in conjunction with the provisioning of that order will be recovered in accordance with FCC Tariff No 1 Section 5 "
[203] Transcript of Proceedings, pp. 35-36 (January 12, 2004)

ISSUE 57: RATES AND CHARGES FOR CONVERSION OF CUSTOMERS FROM SPECIAL ACCESS TO UNE-BASED SERVICE

(a) Should BellSouth be permitted to charge for DeltaCom conversions of customers from a special access loop to a UNE loop?

(b) Should the conversion be completed such that there is no disconnect and reconnect (i.e. an outage to the customer)?

A. Positions of Parties

BellSouth maintains that it is not obligated to convert special access circuits to stand alone UNEs; nor does it have a process that converts access services to stand alone UNEs.[204] According to BellSouth, DeltaCom must compensate BellSouth for making the conversion. Otherwise, to minimize service outage for the end user, DeltaCom must order a new UNE circuit, roll the traffic to the UNE circuit and then disconnect the special access service.[205]

DeltaCom asserts that the conversion of customers from special access to a UNE loop is simply a billing change. In other words, DeltaCom claims there is no change in the physical makeup of the loop and the only applicable charge is administrative.[206] Therefore, DeltaCom asks that it be permitted to convert the special access loop to a UNE loop without taking the customer out of service and to pay only administrative charges.[207]

A. Deliberations and Conclusions

In the Triennial Review Order, the FCC recognized the "[existence] of a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges," which "could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC," and concluded that "such charges are inconsistent with an incumbent LEC's duty to provide

[204] Kathy Blake, Pre- Filed Direct Testimony, p 9 (August 4, 2003).
[205] *Id*
[206] Steve Brownworth, Pre-Filed Direct Testimony, p. 17 (August 4, 2003)
[207] Steve Brownworth, Pre-Filed Rebuttal Testimony, p 19 (August 4, 2003).

nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms and conditions."[208] Further, the FCC concluded that the conversions, which should be performed in an expeditious manner, are largely a "billing function."[209]

During the deliberations on January 12, 2004, the Arbitrators echoed the FCC's conclusions. Thereafter, based upon the conclusions and evidence in this proceeding, the Arbitrators found that DeltaCom should only be required to pay the appropriate billing charges for the conversion of customers from special access to UNE-P. These charges should not include termination charges, reconnect or disconnect charges or nonrecurring charges associated with establishing service for the first time. Further, the conversion should take place without any service outage to the customer.[210]

[208] TRO, 18 FCC Rcd at 17349.
[209] *Id*
[210] Transcript of Proceedings, pp 37-38 (January 12, 2004)

ISSUE 59: PAYMENT DUE DATE

Should the Payment Due Date be thirty days from receipt of the bill?

A. Positions of the Parties

DeltaCom maintains that BellSouth has a history of rendering bills late or in error. According to its witness, that DeltaCom receives thousands of invoices from BellSouth and generally the bills arrive up to seven days after the billing date.[211] Moreover, DeltaCom has found numerous errors and received credits from BellSouth in the millions of dollars due to such inaccuracies. DeltaCom argues that it should be permitted at least thirty days from the date of receipt of the bill to review the bill and make payment and/or lodge a dispute regarding any erroneous portion of the bill. DeltaCom states, "BellSouth's position appears to be that ITC^DeltaCom must meet the 'due date,' which is the next 'bill date' (again, the time the bill is generated within BellSouth), regardless of when ITC^DeltaCom actually receives the bill."[212] DeltaCom avers that utilizing the received date as the starting point for the thirty days is critical, because BellSouth has an extensive record of late or delayed billing,[213] and that DeltaCom needs every day of that time period to analyze the bills for accuracy and to dispute bills that are not correct.[214]

BellSouth argues that payment should be due by the next bill date, that BellSouth invoices DeltaCom every thirty days and that to the extent that DeltaCom has questions about its bills, BellSouth cooperates with DeltaCom to provide responses in a prompt manner to resolve any issue.[215] BellSouth also maintains that it is reasonable for payment to be due before the next bill date.

[211] Jerry Watts, Pre-Filed Rebuttal Testimony, pp 9-10 (August 11, 2003)
[212] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc* , p. 45 (October 27, 2003)
[213] Jerry Watts, Pre-Filed Direct Testimony, p. 18 (August 4, 2003)
[214] Jerry Watts, Pre-Filed Rebuttal Testimony, p. 10 (August 11, 2003).
[215] John A Ruscilli, Pre-Filed Direct Testimony, p 29 (August 4, 2003)

BellSouth claims that there is no legitimate reason to allow DeltaCom a full thirty days after receiving its bill to make payments. The bill date is the same each month and DeltaCom knows the date its bills will be due each month.[216] BellSouth argues that DeltaCom, like every other CLEC that does business with BellSouth, has a set bill date for every invoice BellSouth sends to DeltaCom. BellSouth states that based on that bill date, DeltaCom knows exactly what date the payment is due for each of those invoices.[217] In addition, BellSouth states that DeltaCom can dispute invoices long after the payment due date and, in fact, DeltaCom files such disputes. BellSouth states that "the current billing practice in no way prejudices DeltaCom's ability to dispute charges that it believes are improper."[218]

B. Deliberations and Conclusions

It is undisputed that most of BellSouth's bills to DeltaCom are transmitted electronically. This method of billing essentially renders the bill receipt date the same as the bill rendered date, in other words, the customer receives the bill as soon as it is sent.[219] Both parties also agree that the time between the bill date and the bill rendered date ranges from two to seven days.[220] Therefore, it is this time period, from the bill date to the bill rendered date, that is crucial to DeltaCom's ability to review the bill and which is with in BellSouth's control. Any delay by BellSouth in assembling DeltaCom's bills during this time period reduces the amount of time DeltaCom needs to process its bills and BellSouth presently has no incentive to become more efficient in this area.

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[216] *Id*

[217] *BellSouth Telecommunications, Inc Post-Hearing Brief,* p 72 (October 27, 2003)

[218] *Id* at 73

[219] DeltaCom's witness Mr Watts stated the figure of 95% *See* Jerry Watts, Pre-Filed Rebuttal at 10 (August 11, 2003) BellSouth's Post-Hearing Brief stated "well over ninety percent " *BellSouth Telecommunications, Inc Post-Hearing Brief,* p. 73 (October 27, 2003)

[220] The bill is assembled and printed during this time period

A majority[221] of the Arbitrators found that 25 days from the bill receipt date to the payment due date would give DeltaCom sufficient time to review its bills from BellSouth, and accordingly determined that the due date of bills should be 25 days from the date of receipt.[222]

[221] Director Miller did not vote with the majority.
[222] Transcript of Proceedings, pp 38-39 (January 12, 2004).

ISSUE 60: DEPOSITS

(a) Should the deposit language be reciprocal?

(b) Must a party return a deposit after generating a good payment history?

A. Positions of the Parties

DeltaCom supports language consistent with the FCC policy on deposits, including the basic principles of reciprocity, non-discrimination, transparency, payment history for timely billed undisputed charges and third party review. Additionally, DeltaCom maintains that the parties disagree whether a deposit should be assessed at all. According to DeltaCom, BellSouth is seeking more stringent deposit requirements than exist in the parties' current interconnection agreement. Furthermore, DeltaCom has proposed language that more accurately reflects DeltaCom's years of timely payments to BellSouth.[223]

DeltaCom maintains that the deposit language should be reciprocal.[224] DeltaCom argues that "the FCC recently, and correctly, rejected the requests of BellSouth and other ILECs to demand increased deposit requirements under their interstate services tariffs."[225] "In its Policy Statement, the FCC concluded that 'the risk posed by uncollectibles may not be as great as alleged by certain carriers.'"[226] "While certain factors may reasonably precipitate accelerated billing and collection cycles, the FCC nonetheless maintained the status quo with respect to deposit requirements, explaining, '[w]e do not believe, however, that additional deposit requirements are warranted at this time.'"[227]

[223] Jerry Watts, Pre-Filed Direct Testimony, pp 25-28 (August 4, 2003)
[224] *Id* at 19
[225] *Id* at 20
[226] *Id* at 20 (quoting from *In the Matter of Verizon Petition for Emergency Declaratory and Other Relief,* WC Docket No. 02-202, Policy Statement, ¶ 14 (2002) ("*Policy Statement*"))
[227] Jerry Watts, Pre-Filed Direct Testimony, pP 20-21 (August 4, 2003) (quoting from *Policy Statement,* ¶ 14 (Released December 23, 2002))

DeltaCom states that if a party has a good payment history, no deposit should be required.[228] DeltaCom supports this claim based on the fact that although BellSouth uncollectible revenues have increased by 2 million, revenues for all Tennessee interstate specials access services have increased by 72 million. DeltaCom also asserts that BellSouth faces no extraordinary risks other than those borne by other market participants.[229]

BellSouth argues that because BellSouth is not similarly situated with a CLEC provider it should not be subject to the same creditworthiness and deposit requirements/standards. BellSouth further states: "If BellSouth is buying services from a CLEC provider's tariff, the terms and conditions of such tariff will govern whether BellSouth must pay a deposit. Thus, the interconnection agreement is not an appropriate location for a deposit requirement to be placed on BellSouth."[230] Additionally, BellSouth maintains that it should not be required to return a deposit after a CLEC generates a good payment history, because payment history alone is not a measure of credit risk.[231]

BellSouth counters that the FCC acknowledged the concerns of the ILECs. "Although it did not agree to the 'broadly crafted' tariff changes requested by Verizon and other ILECs, the FCC recognized that narrower protections, including shortened intervals for discontinuance of service, may be appropriate."[232] BellSouth claims that its experience in negotiating with CLECs demonstrates that they want more time, not less time; therefore, the accelerated and advanced payments suggested by the FCC would not help protect the ILECs.[233]

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[228] Jerry Watts, Pre-Filed Direct Testimony, p. 19 (August 4, 2003)
[229] Jerry Watts, Pre-Filed Rebuttal Testimony, p 13 (August 11, 2003)
[230] John A. Ruscilli, Pre-Filed Direct Testimony, p 30 (August 4, 2003)
[231] *Id* at 31
[232] John A. Ruscilli, Pre-Filed Rebuttal Testimony, p. 19 (August 11, 2003)
[233] *Id*

B. Deliberations and Conclusions

As to Issue 60(a), the Arbitrators found that the two companies are not similarly situated. Therefore, the panel unanimously conclude that the deposit language should not be reciprocal.

As to Issue 60(b), it was noted during deliberations that there is a significant disparity between the monetary value of the services rendered by each party and that the deposits offer some indemnification against default in the rendering of those services.[234] For example, the record indicated that BellSouth bills DeltaCom approximately $8 million monthly, whereas DeltaCom bills BellSouth about $700,000 per month.[235] For these reasons, a majority of the Arbitrators found that deposits should be in place for the 36-month length of the agreement.[236]

[234] Transcript of Proceedings, p 41 (January 12, 2004).
[235] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p. 75 (October 27, 2003)
[236] Transcript of Proceedings, pp 39-42 (January 12, 2004). Director Tate did not join with the majority in finding that the deposit requirement should be in place for the length of the agreement

ISSUE 62: LIMITATION ON BACK BILLING

What is the limit on back billing for undercharges?

A. Positions of the Parties

BellSouth takes the position that limitations for back billing should be governed by the state's applicable statute of limitations and/or any applicable regulations. BellSouth cites Tenn. Code Ann. § 28-3-109, which sets the statute of limitations at six years for contract claims that are not otherwise expressly provided for in a statute, such as contracts for services.[237] BellSouth argues with DeltaCom's position that ninety days is sufficient time for BellSouth to retrieve data and program its systems to support the back billing of under billing charges. BellSouth contends that DeltaCom has cited no legal authority to support its position that back billing should be precluded after ninety days from the date the service was rendered. BellSouth stated that the Authority would commit error if it were to impose a new statute of limitation that is inconsistent with Tenn. Code Ann. § 28-3-109.[238]

BellSouth disputes DeltaCom's claim that it is unreasonable to bill it for the per-record ADUF[239] record charge for the period of February 2000 through November 2001. BellSouth maintains that it has been providing DeltaCom with the ADUF records necessary to bill its customers for these charges and the fact that DeltaCom has not passed these charges onto its customers is not the fault of BellSouth.[240]

DeltaCom believes that back billing between carriers should be limited to ninety days. DeltaCom argues that this provides ample time for the rendering of correct invoices, and proposes this as a reciprocal requirement. DeltaCom contends that allowing back billing for

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[237] John A Ruscilli, Pre-Filed Direct Testimony, pp. 32-33 (August 4, 2003)
[238] *BellSouth Telecommunications, Inc Post-Hearing Brief*, p. 79 (October 27, 2003)
[239] ADUF is an acronym for Access Daily Usage File
[240] John A. Ruscilli, Pre-Filed Rebuttal Testimony, pp 21-22 (August 11, 2003).

an extended period of time prevents both companies from establishing accurate cost structures with which to price retail services.

In addition, back billing based on revisions in policy or changes in interpretation of rules makes it difficult for the billed party to challenge the new or increased charges. Furthermore, DeltaCom claims that data that is readily available during the ninety day period may no longer be available over extended back billing periods. DeltaCom cites an instance in which it expects BellSouth to bill it $550,000 for ADUF record charges provided from February 2000 through November 2001. It complains that it has limited ability to charge its customers based on back-billed invoices for services and that such a potential liability severely jeopardizes its ability to compete against BellSouth.[241] DeltaCom suggests that the Authority should set different terms for carriers seeking recovery of carrier-to-carrier back-billed charges, as opposed to end user back-billed charges.

DeltaCom argues that BellSouth limits DeltaCom to thirty days from the billing date to analyze the accuracy of its bill, but that it wants six years to discover and bill for any errors that BellSouth commits. Furthermore, DeltaCom claims that due to the high rate of churn in the competitive market, many of its retail customers may no longer be with DeltaCom after the six year time period proposed by BellSouth. DeltaCom maintains that BellSouth has no incentive to improve its billing accuracy without a reasonable back billing window. It claims that BellSouth's agreements with other carriers have limits on back billing and that BellSouth has entered into contracts with multiple vendors where the back billing periods are limited to ninety or 180 days.[242] DeltaCom admits that it had agreed earlier to a back billing arrangement for the market-based rate, but it explains that at the time, it was under

[241] Jerry Watts, Pre-Filed Direct Testimony, pp 28-29 (August 4, 2003)
[242] Jerry Watts, Pre-Filed Rebuttal Testimony, pp 14-17 (August 11, 2003)

"operational duress" because its only alternative was to risk delays in BellSouth processing its orders while the dispute was settled.[243] DeltaCom reports that the North Carolina Utilities Commission Staff recently recommended a ninety day limit for back billing. DeltaCom states that limiting back billing to ninety days would accomplish two important public policy goals: (1) it would provide incentives to BellSouth to clean up its billing system, and (2) it would ensure stability and reasonable expectations between the parties regarding the costs of doing business.[244]

B. Final Best Offers

During the January 12, 2004 deliberations, the Arbitrators noted that this was a timing issue with six years being the longest period proposed for back billing and ninety days being the shortest period. The panel determined that the ninety day time period appears to be short considering the volume of bills, yet six years appears to be excessive. Therefore, a majority of the Arbitrators[245] voted to require the parties to submit FBOs on the appropriate limit on back billing for undercharges.[246]

The parties filed their FBOs on February 20, 2004. BellSouth proposes the following language:

> With the exception of charges for which BellSouth does not have billing capability yet developed and services for which either party relies on records from a third party for billing of charges, all charges under this Agreement shall be considered final two (2) years after such charges were either billed or should have been billed.[247]

DeltaCom proposes a back billing limit not to exceed three billing cycles.[248]

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[243] Transcript of Proceedings, v. I, pp 136-139 (August 27, 2003)
[244] *Post-Hearing Brief of ITC^DeltaCom Communications, Inc*, pp 49-51 (October 27, 2003)
[245] Chairman Tate did not vote with the majority to require FBOs, but rather proposed a ninety day limit on back billing, which is essentially what was unanimously adopted two months later on March 22, 2004
[246] Transcript of Proceedings, pp 42-44 (January 12, 2004)
[247] *BellSouth Telecommunications, Inc 's Best and Final Offers*, p 9 (February 20, 2004)
[248] *Final Best Offer*, p 9 (February 20, 2004).

C. Deliberations and Conclusions

BellSouth should not penalize its customers for its failure to bill for services in a timely manner. Two years is not a reasonable amount of time for a company to have to carry such liabilities on its books. Therefore, during the March 22, 2004 deliberations, the Arbitrators voted unanimously to accept DeltaCom's Final Best Offer to limit back billing to three billing cycles.[249]

[249] Transcript of Proceedings, pp 14-15 (March 22, 2004)

ISSUE 63: AUDITS

Is it appropriate to include language for audits of the parties' billing for services under the Agreement?

A. Positions of the Parties

DeltaCom maintains that it is appropriate to include language for audits of the parties' billing for services under the interconnection agreement and offers the language from AT&T's interconnection agreement. Additionally, DeltaCom argues that the pick and choose rule applies to all contract provisions and specifically, in the case of billing language. DeltaCom maintains that regardless of whether BellSouth is required by law to provide DeltaCom with the opportunity to pick and choose audit language from other carriers' interconnection agreements, DeltaCom should have the right to audit BellSouth's billing.[250] DeltaCom avers that the FCC has consistently held that access to OSS functionalities (of which billing is one) is a critical element of providing nondiscriminatory access to UNEs under 47 U.S.C. § 251©(3) and that deploying the necessary OSS functions that allow competing carriers to order network elements and combinations of network elements and receive the associated billing information is critical to provisioning of those network elements.[251]

BellSouth argues that 47 U.S.C. § 252(i), the pick and choose provision, only requires an ILEC to make available "any interconnection, service, or network element" under the same terms and conditions as the original interconnection agreement[252] and that billing audits are not required pursuant to 47 U.S.C. § 252(i). Additionally, BellSouth maintains that audits of BellSouth's billing for services under the interconnection agreement are not necessary,

[250] Jerry Watts, Pre-Filed Direct Testimony, pp 29-31 (August 4, 2003)
[251] *Id* at 30
[252] John A Ruscilli, Pre-Filed Direct Testimony, pp 33-34 (August 4, 2003)

because performance measurements addressing the accuracy and timeliness of BellSouth's billing provide sufficient mechanisms for monitoring BellSouth's billing. Thus, BellSouth contends inclusion of audit language for billing in the agreement would be duplicative.[253]

B. Deliberations and Conclusions

The inclusion of audit language in the parties' interconnection agreement is not necessary, because performance measurements addressing the accuracy and timeliness of BellSouth's billing provide sufficient mechanisms for monitoring. The agreement contains mechanisms to resolve billing disputes,[254] which include an escalation (if necessary) to the fourth level of management for each of the respective parties. Generally, this process should resolve a billing dispute within 120 days, following which either party would have the right to appeal to the Authority.[255]

The parties' interconnection agreement contains specific language to ensure billing quality for all billing elements covered by the Agreement.[256] This language calls for the parties to

> . . . mutually agree upon a billing quality assurance program for all billing elements covered in this Agreement that shall eliminate the need for post-billing reconciliation. Appropriate terms for access to any BellSouth documents, systems, records and procedures for the recording and billing of charges shall be part of that program.[257]

[253] *Id* at 33
[254] *Revised Joint Issues Matrix*, Attachment 7, Para. 3 (August 15, 2003)
[255] Transcript of Proceedings, v I, p. 152 (August 27, 2003)
[256] *Petition for Arbitration of ITC^DeltaCom Communications, Inc with BellSouth Telecommunications, Inc Pursuant to the Telecommunications Act of 1996*, Exhibit A, Attachment 7, p 4, Section 2 (February 7, 2003)
[257] *Id*

A majority of the Arbitrators[258] voted to reject DeltaCom's position that language for audits of the parties' billing for services be included in the parties' interconnection agreement.[259]

[258] Director Jones did not vote with the majority Instead, he expressed his opinion that there is nothing in the FCC's orders or the Act that prevent the application of 47 U.S C. § 252(i), the pick and choose statute, to language related to audits of billing records *See Triennial Review Order,* ¶ 715, *In the Matter of Global Naps South, Inc Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc*, CC Docket No 99-178, Memorandum Opinion and Order, 15 FCC Rcd 23,318, 23,322 at n 25 & 27 (1999) Therefore, he moved that Issue 63 be answered in the affirmative His motion failed for a second

[259] Transcript of Proceedings, pp. 44-45 (January 12, 2004)

ISSUE 64: ACCESS DAILY USEAGE FILE (ADUF)

What terms and conditions should apply to Access Daily Usage File ("ADUF")?

A. Positions of the Parties

When DeltaCom purchases unbundled local switching, BellSouth provides DeltaCom with the ADUF record, which allows DeltaCom to bill for access charges. Currently DeltaCom receives both local and toll records via the ADUF tape. Since access charges do not apply to local calls, DeltaCom opines that it should not be billed for those records.[260] DeltaCom asserted during the hearing that it should only pay for those ADUF messages that DeltaCom could use for billing.[261]

BellSouth believes that it is not required to isolate and provide only certain ADUF records. Currently, ADUF messages include toll calls as well as local calls placed with an access code (1010XXX) or local calls made to facilities-based CLECs.[262]

BellSouth contends that the FCC orders approving BellSouth's 271 applications have already found that it provides competing carriers with complete, accurate, and timely reports on the service usage of their customers in substantially the same manner as it provides such information to itself.[263] BellSouth avers that if DeltaCom wants a customized report, it should file a New Business Request.[264]

B. Deliberations and Conclusions

During the January 12, 2004 deliberations, the Arbitrators voted unanimously not to require BellSouth to provide specialized or filtered ADUF reports to DeltaCom at no

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[260] Mary Conquest, Pre-Filed Direct Testimony, p. 8 (August 4, 2003)
[261] Transcript of Proceedings, v I, p. 291 (August 27, 2003)
[262] *Id* at 292-293
[263] *See In the Matter of the Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc , and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services in Georgia and Louisiana,* Memorandum Opinion and Order, 17 FCC Rcd 9018, 9061, ¶ 85, n 292 (2002)
[264] John A Ruscilli, Pre-Filed Direct Testimony, p 35 (August 4, 2003)

additional cost, but any message errors or unbillable messages in the ADUF record should not result in a charge to DeltaCom.

BellSouth provides ADUF reports in a timely manner as it is required to do. If DeltaCom would like special reporting, it should submit a New Business Request. There are legitimate reasons to include some local calls on an ADUF report and it is unreasonable to force BellSouth to distinguish local calls at no cost.[265] However, according to testimony, ADUF records currently include errors and non-billable messages, for which DeltaCom should be credited.[266]

[265] Transcript of Proceedings, v I, p 293 (August 27, 2003)
[266] *Id* at 295

ISSUE 66: TESTING OF END-USER DATA

Should BellSouth provide testing of DeltaCom end-user data to the same extent BellSouth does such testing of its own end user data?

A. Positions of Parties

DeltaCom wants BellSouth to provide it with parity in terms of the advanced testing functions that it provides to its own retail arm. DeltaCom complains that BellSouth's existing test environment can only support the latest version of TAG[267] and the latest EDI[268] map.[269] The test deck is loaded with a catalogue of cases with expected results, whereas BellSouth is able to test its data "end to end" using the tools and format that will be in its production systems. For example, in order to test using the Operating Customer Number ("OCN"), CLECs must order test accounts and pay the associated rates.[270]

BellSouth contends that a two-party arbitration is not the appropriate forum for resolution of this issue, because it affects more than just DeltaCom and therefore would be better suited for the Change Control Process ("CCP").[271] In addition, BellSouth asserts that CAVE allows CLECs to perform optional, functional and pre-release testing for multiple versions of EDI as well as all TAG APIs[272] currently in production. These test environments are governed under the CCP. Furthermore, much of the enhanced functionality that DeltaCom is requesting is being addressed as part of the CCP process in change request CR0896 and parts of CR0897.[273]

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[267] TAG is an acronym for Telecommunications Access Gateway.
[268] EDI is an acronym for Electronic Data Interface
[269] BellSouth's existing test environment for CLECs is known as the CLEC Application Verification Environment ("CAVE")
[270] Mary Conquest, Pre-Filed Direct Testimony, p. 9 (August 4, 2003).
[271] Ronald Pate, Pre-Filed Direct Testimony, pp 19-20 (August 4, 2003)
[272] API is an acronym for Application Programming Interface
[273] Ronald Pate, Pre-Filed Direct Testimony, pp 10-13 (August 4, 2003) According to Mr Pate, CR0896 would be released in May 2004 and part of CR0897 had been implemented, with the remaining part scheduled for implementation in November 2003

B. Deliberations and Conclusions

During the January 12, 2004 deliberations, the Arbitrators voted unanimously to reject DeltaCom's position. DeltaCom failed to provide any evidence that the testing currently provided by BellSouth is inferior or inadequate. BellSouth agreed through the regional CCP to enhance testing functionality by May 2004. For the Authority to mandate explicit testing functionality in the interconnection agreement would interfere with the CCP, which is designed to support all CLECs in the BellSouth's region. Mandating language in an interconnection agreement in one state has the potential to put the interests of one CLEC ahead of any other.

ISSUE 67: AVAILABILITY OF OSS SYSTEMS

May BellSouth shut down OSS systems during normal working hours (8:00 a.m. to 5:00 p.m.) without notice or consent from DeltaCom?

A. Positions of the Parties

DeltaCom asserts that under no circumstances should BellSouth shut down DeltaCom's access to OSS during normal working hours without notice to or consent from DeltaCom. DeltaCom recounts that on December 27, 2002, BellSouth took all interfaces down at noon for a system upgrade. Meanwhile, BellSouth's own internal systems were operational that day.[274]

BellSouth asserts that it adheres to the operation and maintenance windows posted for its OSS. BellSouth is aware of a single event in which the system was taken down on a non-posted date. This single event does not support a claim that BellSouth violated its obligation. Unfortunately, systems do go down unexpectedly, and in that regard, the proposed language by DeltaCom is unrealistic.

BellSouth maintains that this issue involves process and system changes that affect all CLECs on a regional basis and should be addressed in the CCP. Most maintenance or upgrades are scheduled for off peak hours, but in the event that work must be performed during working hours, BellSouth sends a notice in advance to all CLECs. This was also the case in the aforementioned instance in which the system was taken down on an unscheduled date.[275]

B. Deliberations and Conclusions

During the January 12, 2004 deliberations, the Arbitrators voted unanimously that BellSouth may shut down OSS during normal working hours with consent and notification

[274] Mary Conquest, Pre-Filed Direct Testimony, p 10 (August 4, 2003)
[275] Ronald Pate, Pre-Filed Direct Testimony, pp 20-21 (August 4, 2003).

through the CCP. Since OSS is regional and used by all CLECs, it would be unfair to grant such power to only one CLEC. All situations, including the one example in December, were communicated and negotiated through the CCP. Furthermore, DeltaCom failed to provide any evidence that this was anything other than a one time occurrence. If this had been a compulsive act on the part of BellSouth, the appropriate course of action would have been for DeltaCom to file a complaint, as this would have been in violation of BellSouth's continued responsibilities under Section 271.

ORDERED

The foregoing *Final Order of Arbitration Award* reflects the Arbitrators' resolution of Issue Nos. 2, 9, 11, 21, 25, 26, 36, 37, 44, 46, 47, 56, 57, 59, 60, 62, 63, 64, 66 and 67. All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS

Deborah Taylor Tate, Chairman[276]

Pat Miller, Director[277]

Ron Jones, Director[278]

[276] Chairman Tate dissented in whole or in part as to Issues 26(d), 60(b) and 62
[277] Director Miller dissented in whole or in part as to issues 47 and 59
[278] Director Jones dissented in whole or in part as to Issues 25, 26(a) and 63

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PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU 05-165 Legal Brief at Request of Public Service Commission Concerning Question of State Authority

Qwest Corporation ("Qwest"), through undersigned counsel, hereby respectfully submits the following Legal Brief at Request of Public Service Commission Concerning Question of State Authority.

INTRODUCTION AND QUESTION OF LAW

On October 18, 2005, the parties presented oral argument to the Commission at a hearing on this matter. First, Qwest argued that the Commission does not have authority under federal law to allow Covad Communications Company ("Covad") to insert elements set forth in section 271 of the Telecommunications Act of 1996 (the "Act") into an interconnection agreement governed by sections 251 and 252 of the Act. The Commission can issue a decision in Qwest's favor in this case, just as eight other States have done, on this issue alone. Second, Qwest argued that the Commission does not have authority under North Dakota law to order Qwest to provide network elements under section 271 in the parties' interconnection agreement or to perform the impairment analysis required to order a telecommunications carrier to unbundle network elements.

In response to the parties' arguments at the hearing and in extensive briefing, the Commission asked the parties to brief a single issue, which is: under state law, what is the scope

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Qwest's Legal Brief
by Qwest Corporation
11/14/2005 CC: Comm Legal Illona, Pat, Annette . .

of the Commission's authority with respect to the issues raised in this proceeding and, more generally, what is the scope of the Commission's authority in the absence of express delegation by the state legislature?

APPLICABLE LAW

Public service commissions are administrative agencies whose power is derived from the state legislature.[1] They perform, by delegation, legislative functions and are subject to state administrative procedure acts.[2] Thus, it is for the state legislature, and not the public utility commissions, to determine the business activity that comes within the purview of the commission.[3] The legislature may narrow or redefine a public service commission's jurisdiction as it sees fit.[4]

The Commission is a constitutional body.[5] Article V, Section 2 of the North Dakota Constitution provides for the election of the Commission's members. Title 49 of the North Dakota Century Code sets forth the jurisdiction and powers of the Commission over public utilities. The Commission has general jurisdiction over "telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21".[6] Section 49-21-01.7 of the North Dakota Century Code enumerates the specific powers of the Commission over telecommunications companies.

The question of the scope of the Commission's authority and power has been addressed by the North Dakota Supreme Court. In the two seminal cases of *Williams Electric Cooperative v. Montana-Dakota Utilities Co.* and *City of Grafton v. Otter Tail Power Company*, the Court

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[1] 64 *Am. Jur. 2d* PUBLIC UTILITIES § 143.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *City of Grafton v. Otter Tail Power Co.*, 86 N.W.2d 197, 202 (N.D. 1957).
[6] N.D. Cent. Code § 49-02-01 (2005)

opined, "The Public Service Commission has only such powers as have been conferred upon it by the Legislature".[7] In *Williams Electric Cooperative*, the Court noted that the Public Service Commissioners are constitutional officers whose duties and powers are prescribed by law.[8] There, the case concerned whether the Commission had jurisdiction to construe and enforce the contract entered into by the parties.[9] The Court stated, "The Public Service Commission has no power to construe, enforce or adjudicate the validity or effect of the contract between the parties in question except as to its effect upon matters within its jurisdiction. That jurisdiction is dependent upon the statutes".[10]

In *City of Grafton*, the Court ruled that the Commission "[c]an initiate no public policies of its own".[11] Although the issues in the case involved the supply of light and power, the Court found that the Commission could not exercise control over the Board of Administration.[12] The basis of the Court's decision was that it could "find no provisions of law which vest in the Public Service Commission power to interfere with the lawful conduct of the Board . . ."[13]

The North Dakota Supreme Court has iterated its rulings in *Williams Electric Cooperative* and *City of Grafton* consistently over the course of more than 40 years. In *Public Service Commission v. Montana-Dakota Utilities Company,*[14] *MCI Telecommunications Corporation v. M.K. Heitcamp,*[15] and *Capital Electric Cooperative v. Public Service*

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[7] *Williams Electric Coop. v. Montana-Dakota Utilities Co.*, 79 N.W.2d 508 (N.D. 1956), *superseded on other grds by statute, Capital Electric Coop. v. Public Serv. Comm'n*, 534 N.W.2d 587 (N.D. 1995); *City of Grafton*, 86 N.W.2d at 202.
[8] *Williams Electric Coop., 79 N.W.2d* at 516.
[9] *Id.*
[10] *Id.* at 517-518.
[11] *City of Grafton*, 86 N.W.2d at 202.
[12] *Id.* at 203.
[13] *Id.*
[14] 100 N.W. 2d 140, 147 (N.D. 1959)
[15] 523 N.W.2d 548, 555 (N.D. 1994)

Commission,[16] the Court cited repeatedly the precept that the Commission has only the powers and duties conferred upon it by the Legislature.

The Court made clear in *Williams Electric Cooperative* that the scope of the Commission's jurisdiction depends upon the North Dakota statutes. The Legislature listed the Commission's powers and duties very specifically in N.D. Cent. Code § 49-21-01.7. Subsection (8) provides that the Commission can "[m]ediate or arbitrate agreements for interconnection, services or network elements under sections 251 and 252 of the federal act". Subsections (9), (10) and (11) similarly refer to specific Commission powers under sections 251 and 252. Subsections (7) and (12) mention sections 214, 253 and 254 of the Act. Where the Legislature intended to confer powers and duties on the Commission under the Act, it listed those powers and duties, and the corresponding sections of the Act.

The canon of construction *expressio unius est exclusio alterius* is one well-recognized and oft-applied by the North Dakota Supreme Court.[17] That canon holds that to express or include one thing implies the exclusion of another.[18] It is used to determine legislative intent in a statutory context.[19] The Court, in a case involving interpretation of North Dakota's Unfair Discrimination Law and Unfair Trade Practices Law, reasoned, "By creating a private right of action for injunctive relief, but not for damages, the legislature has clearly expressed its intent not to create a private remedy for damages. In constructing statutes, this Court has recognized the maxim expressio unius est exclusio alterius: 'The mention of one thing implies the exclusion of another'".[20]

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[16] 534 N.W.2d 587, 589 (N.D. 1995)
[17] *See Ex Parte Corliss*, 114 N.W. 962, 969 (N.D. 1907); *North Dakota v. Poindexter*, 183 N.W. 852, 854 (N.D. 1921); *Ernst v. Burdick*, 687 N.W.2d 473, 478 (N.D. 2004).
[18] 73 *Am. Jur. 2d* STATUTES § 129
[19] *Id.*
[20] *Trade 'N Post, L.L.C. v. World Duty Free Americas, Inc.*, 628 N.W.2d 707, 713-714 (N.D. 2001).

When applied here to interpretation of North Dakota Cent. Code § 49-21-01.7 setting forth the Commission's powers, the canon of construction *expressio unius est exclusio alterius* supports the conclusion that the Legislature conferred there exactly which powers and duties the Commission has authority to exercise. Because § 49-21-01.7 refers specifically to Commission responsibilities under sections 214, 251, 252, 253 and 254 of the Act, and does not mention section 271 of the Act or any undertaking by the Commission of an impairment analysis to determine which network elements a telecommunications company must unbundle, it is clear that the Legislature did not intend for the Commission to take such action. Indeed, the mention in § 49-21-01.7 to specific duties and sections of the Act implies the legislature's exclusion of other powers and other sections of the Act.

In response to this analysis, the Commission may question under what authority it has acted in the past concerning section 271 of the Act. Section 271(d)(3) expressly confers on the Federal Communications Commission ("FCC") the authority to determine whether Bell Operating Companies ("BOC") have complied with the substantive provisions of section 271. Section 271(d)(2)(B) provides for the FCC to consult with state commissions concerning whether a BOC has complied with section 271(c); states have a non-substantive, "consulting" role in that determination.[21]

When Qwest (formerly known as U S WEST) applied for authority to provide interLATA services under section 271, the Commission ordered that an investigation be opened to examine U S WEST's compliance with section 271 so that it could provide a recommendation to the FCC.[22] Section 49-21-01.7(1) of the North Dakota Century Code authorizes the Commission to

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[21] *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Comm'n*, 2003 WL 1903363 at 13 (S.D. Ind. 2003), aff'd, 359 F.3d 493 (7th Cir. 2004).

[22] *See* Order Opening Investigation, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, Case No. PU-314-97-193 (May 28, 1997).

"[i]nvestigate all methods and practices of telecommunications companies". Thus, in regard to the section 271 checklist proceedings, the Commission acted under section 271(d)(2)(B) of the Act and its express state law power to open investigations. The Commission has no such corresponding express power under either federal or state law to order Qwest to provide section 271 elements as part of an interconnection agreement, or to conduct an impairment analysis to require carriers to unbundle network elements.

In *Cass County Electric Cooperative v. Northern States Power Company*, the North Dakota Supreme Court considered whether flexible tariffs approved by the Commission were valid.[23] In so finding, the Court stated:

> Leaving the manner and means of exercising an administrative agency's powers to the discretion to the agency, comparable to a municipality's exercise of its legislative powers implies a range of reasonableness within an administrative agency's exercise of discretion will not be interfered with or upset by the judiciary. We normally defer to a reasonable interpretation of a statute by the agency responsible for enforcing it, especially when the interpretation does not contradict the statutory language.[24]

There, the Court ruled against the appellant's contention that the Commission had acted outside the scope of its authority. "Deference to an agency's interpretation of a statute is an important consideration when an agency interprets and implements a law that is complex and technical," reasoned the Court.[25]

Cass County Electric Cooperative stands for the proposition that when the Commission takes action under any one of the powers and duties specifically enumerated under § 49-21-01.7, the Court will defer to a reasonable interpretation by the Commission as to the scope and extent of those powers and duties. But this deference will not stand where the Commission acts outside the bounds of its statutory authority. Indeed, a specific grant of power by the Legislature also

[23] 518 N.W.2d 216 (N.D. 1994)
[24] *Id.* at 220 (citations omitted)
[25] *Id.* (citations omitted)

acts as a "limitation" in the sense that such a grant defines the power and no other.[26] As so frequently held by the North Dakota Supreme Court, the maxim *expressio unius est exclusio alterius* applies.[27] Setting aside federal preemption issues for purposes of making this particular point, if the Commission did issue an order under state law requiring Qwest to offer Covad section 271 network elements as part of an interconnection agreement governed by sections 251 and 252, it would be acting well beyond the powers and duties set forth by the Legislature in § 49-21-01.7. The same is also true with respect to any "necessary" or "impairment" analysis undertaken by the Commission for the unbundling of network elements.

CONCLUSION

To issue a ruling in this case, as set forth in the parties' extensive briefing, the Commission need not reach questions of state law. Section 271(d)(3) of the Act gives the FCC the authority to determine whether a BOC has complied with the substantive provisions of section 271. The arbitration process mandated by section 252 concerns only those requests for interconnection, service or network elements "pursuant to section 251". Under federal law, the Commission lacks jurisdiction to force Qwest to offer section 271 elements as part of Qwest's and Covad's interconnection agreement. For all of the reasons set forth above, the Commission also lacks jurisdiction under state law to grant Covad the relief it seeks.

Finally, even if the Commission determines that it has authority under the North Dakota Century Code to perform a "necessary and impair" unbundling analysis, and to order the provision of section 271 elements as part of a section 252 arbitration, Covad has not provided the Commission with an evidentiary record upon which to base such decisions.

---

[26] *North Dakota v. Poindexter*, 183 N.W. at 854.
[27] *Id.*

Qwest respectfully asks the Commission to issue an order in its favor, and against Covad, adopting the language proposed by Qwest on the disputed issue for the interconnection agreement between the parties.

RESPECTFULLY SUBMITTED this 10th day of November, 2005.

Melissa K. Thompson
QWEST SERVICES CORPORATION
1801 California Street, 10th Floor
Denver, CO 80202
303-383-6728
303-296-3132 (fax)
melissa.thompson@qwest.com

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2005, I caused to be served an original and seven true and correct copies of **Legal Brief at Request of Public Service Commission Concerning Question of State Authority** by U.S. mail and electronic mail to the following:

Illona Jeffcoat-Sacco
North Dakota Public Service Commission
600 East Boulevard Avenue, 12th Floor
Bismarck, North Dakota 58505-0480

with copies to:

Patrick W. Durick
PEARCE & DURICK, PLLP
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502
Telephone: (701) 223-2890
Facsimile: (701) 223-7865
pwd@pearce-durick.com

Gregory Diamond
COVAD COMMUNICATIONS CO.
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Telephone: (720) 670-1069
Facsimile: (720) 670-3350
gdiamond@covad.com

COVAD

7901 Lowry Blvd. Denver, CO 80230
W > http://www.covad.com

T > 720.670.2018
F > 720.670.3350

November 10, 2005

RECEIVED
NOV 14 2005
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

Via UPS Overnight Delivery
Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation; Case No. PU-05—165

Dear Mr. Mielke:

Enclosed for filing are the original and eight copies of Covad's Supplemental Brief – Commission Authority Under State Law to Set Rates for Section 271 Network Elements in the above docket, along with a Certificate of Service.

Please feel free to call if you have any questions.

Very truly yours,

Lynn Hankins

Enclosures
cc: Service list (w/enclosures)

36 PU-05-165 Pages: 1

Cover letter re Supplemental Brief

by DIECA Communications, Inc.
11/14/2005 CC: Comm Legal Illona, Pat, Annette . .

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S SUPPLEMENTAL BRIEF - COMMISSION AUTHORITY UNDER STATE LAW TO SET RATES FOR SECTION 271 NETWORK ELEMENTS**

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") submits this brief at the request of the Commission:

In this arbitration docket, Covad asked the Commission to decide several legal issues with regard to its proposed interconnection agreement with Qwest. The three issues before this Commission are:

1. Whether the Commission has authority to compel Qwest to unbundle network elements identified in §271 of the Telecommunications Act of 1996 ("Act") within an arbitration initiated pursuant to §252 of the Act.

2. Whether the Commission has authority to set rates that Qwest must charge Covad for §271 network elements.

3. Whether the Commission has authority to require Qwest to establish cost-based or TELRIC-based rates for §271 network elements.

The parties briefed these issues and submitted them for oral argument conducted at the Commission on October 18, 2005. During the course of the colloquy between Covad, Qwest and the Commission at oral argument, the Commission raised a corollary issue that the parties did not brief or argue. The Commission inquired whether it had the right to set cost-based rates for §271 network elements even though the North Dakota legislature has not expressly granted it authority to do so. The Commission asked the

parties to brief this issue. As discussed below, under state law, the Commission does indeed have authority to set cost-based rates for §271 network elements. This authority is both express and implied under the Commission's enabling statute.

Before discussing the Commission's state-based legal authority to set cost-based rates for §271 network elements, however, it is important to briefly review the sources of the Commission's federally-granted authority in this area. The source of the Commission's authority to set rates for §271 network elements exists in 47 U.S.C. §261(c). In that section, Congress preserved the following non-exclusive authority in state utility commissions:

> Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition. (emphasis added)

In order for Covad to be able to effectively compete it must be able to obtain local loop and transport facilities from Qwest. Local loop and transport facilities are identified as network elements under §271 of the Act, and the FCC has stated unequivocally that such elements must be available at "just and reasonable" rates. *In The Matter of Review of The Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16,978, 16991 (2003). Moreover, the FCC has issued rules establishing that cost-based rates for network elements meet the "just and reasonable" standard, a standard developed for the express purpose of promoting competition. See, 47 CFR §51.503(a) & (b); 47 CFR §51.505(a) & (b).[1] Accordingly, establishing cost-based rates for §271

[1] In its seminal Local Competition Order, the FCC stated, "The 1996 Act encourages competition by removing barriers to entry and providing an opportunity for potential new entrants to purchase unbundled incumbent LEC network elements to compete efficiently to provide local exchange services. We believe that the prices that potential entrants pay for these elements [just, reasonable and nondiscriminatory rates – 47 U.S.C. §251(c)(3)] should reflect forward-looking economic costs in order to encourage efficient levels of investment and entry." *In Re*

network elements in the context of this arbitration will have the intended effect of promoting competition, and the Commission has full authority to act in this area pursuant to the Act's savings clause.

A very recent decision of the Minnesota Supreme Court supports this conclusion. In *The Matter of Qwest's Wholesale Service Quality Standards*, 702 N.W.2d 246 (August, 2005), the Minnesota Supreme Court affirmed the Minnesota Public Utilities Commission's order establishing wholesale service quality standards applicable to Qwest. The Minnesota Supreme Court relied explicitly upon the savings clause in the Act cited above as the font of authority for the state commission to set service quality standards. The Court held:

> [W]e conclude that the fixed minimum performance standards required by the MPUC are within the proper scope of the state's authority because they are necessary to achieve the dual purposes of ensuring quality service [47 U.S.C. §253(b)] and fostering competition [47 U.S.C. §261(c)].

Id., 702 N.W.2d at 257 (emphasis added).

Establishing appropriate wholesale service quality standards and establishing cost-based rates for §271 network elements will advance the identical goal of the Act as articulated in the savings clause: fostering competition.

Given, then, that the Act provides the Commission with the authority necessary to set cost-based rates for §271 network elements, it is now time to turn to the question presented to the parties at oral argument: does the North Dakota Public Service Commission have the authority under state law to fully exercise the jurisdiction granted it under the federal Act? It does, and this authority is both express and implied.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15844 (1996) (emphasis added).

The Commission's implied authority under state law to set cost-based rates for §271 network elements is quite similar in fact to the authority preserved to it under the Act's savings clause. Under North Dakota law, the Commission has implied authority to implement regulations necessary to carry out the goals and purposes of the Commission that are expressly identified in its enabling statutes. One of these purposes is to implement regulation necessary to promote competition in telecommunications services in the state. As discussed above, it is clear that setting cost-based rates for §271 network elements has the effect of promoting competition. It follows therefore that the Commission has the implied power to set such rates because doing so will achieve the purpose of promoting telecommunications competition in North Dakota.

The North Dakota Supreme Court has long held that state agencies have "such powers as are expressly conferred by statute or are necessarily implied in order to effectuate the purposes for which it was created." *Chester v. Einarson*, 34 N.W.2d 418, 435 (ND, 1984), See also, *Walstad v. Dawson*, 252 N.W. 64, 67 (ND, 1934). This rule of administrative law is consistent with holdings in other states. For example, in North Dakota's sister state, the Supreme Court there has held as follows with regard to the state's public utility commission:

> This Court has recognized that the PUC has certain implied powers. In the *Matter of Northern States Power Co.,* 489 N.W.2d 365 (S.D.1992). Where the legislature prescribes a standard of guidance for the administrative agency to follow, the necessary implied authority may also be delegated to the administrative agency to carry out the specific purposes prescribed and to exercise the appropriate administrative power to regulate and control.

In the Matter of the Petition for Declaratory Ruling of Northwestern Public Service Company, 560 N.W.2d 925, 929 (South Dakota, 1997) (emphasis added).

Within this Commission's enabling statute under the subject of telecommunications, the North Dakota legislature has clearly articulated that one of the purposes of the Commission is to implement regulation to foster competition in telecommunications services. Specifically, the enabling statute states:

> All persons providing telecommunications service within this state shall be common carriers and are hereby declared to be affected with a public interest and subject to regulation and general supervision by the commission. Among the purposes to be served by such regulation and supervision are:
>
> * * *
>
> To allow the development of competitive markets for telecommunications services . . .

ND ST 49-21-02.2 (2005) (emphasis added).

Based on the foregoing, it is abundantly clear the Commission has the implied authority to set rates for §271 network elements because doing so will serve the purpose of fostering the development of competitive markets for telecommunications services.

Even though the Commission does not need express authority under state law to set cost-based rates for §271 network elements, the legislature has granted it such authority. Under the same enabling statute identified above but in a different section, the legislature has granted the Commission express authority to "establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive competitive practices." ND ST 49-21-02.3 (emphasis added). Elsewhere, the legislature has defined "telecommunications service" to mean "the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means." ND ST 49-21-01.20 (emphasis added). While a telecommunications

facility is not defined in the enabling statute, a straightforward and common sense interpretation of a telecommunication facility would necessarily include such facilities as unbundled loops and transport. Given these definitions, under ND ST 49-21-02.3, the Commission has authority to set reasonable charges for loops and transport facilities under §271 of the Act. Use of the term "reasonable" in this section of the statute is comparable to the "just and reasonable" standard under the Act. Should the Commission elect to set rates for §271 elements using a cost-based standard such as TELRIC, it would be well within its express authority that allows it to set "reasonable" charges for telecommunications facilities.

In light of the foregoing as well as the arguments set forth in Covad's petition, initial brief, reply brief and comments at oral argument, Covad prays that the Commission enter an order adopted Covad's proposed language for the interconnection agreement.

RESPECTFULLY SUBMITTED,

Date: November 10, 2005

DIECA Communications, Inc.

By:_____

Gregory T. Diamond
Senior Corporate Counsel
DIECA Communications, Inc. d/b/a
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax

CERTIFICATE OF SERVICE
Case No. PU-05-165

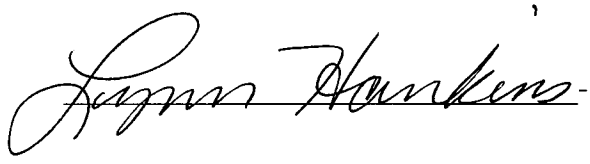
I HEREBY CERTIFY that on the 10th day of November, a true and correct copy of the foregoing Covad's Supplemental Brief – Commission Authority Under State Law to Set Rates for Section 271 Network Elements was sent overnight mail to the following:

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismark, ND 58505 (Original and eight copies)

And via e-mail and U.S. Mail, first class, postage prepaid to the following:

William Binek, Hearing Examiner
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismark, ND 58505
wbinek@state.nd.com

Melissa K. Thompson
Senior Attorney
Qwest Services Corporation
1801 California, 10th Floor
Denver, CO 80202
Melissa.Thompson@qwest.com



Scott, Sandi L.

From: Binek, William W.
Sent: Monday, November 07, 2005 9:35 AM
To: Scott, Sandi L.
Cc: Binek, William W.
Subject: FW: Oral arguments

Sandi: Please docket this e-mail in PU-05-165.

From: Binek, William W.
Sent: Wednesday, August 10, 2005 11:43 AM
To: 'Thompson, Melissa'; Binek, William W.
Cc: Diamond, Gregory; Patrick W. Durick; Fahn, Patrick J.
Subject: RE: Oral arguments

The Commission has scheduled oral arguments for October 18th at 1:30 p.m.

From: Thompson, Melissa [mailto:melissa.thompson@qwest.com]
Sent: Wednesday, August 10, 2005 10:10 AM
To: Binek, William W.
Cc: Diamond, Gregory; Patrick W. Durick; Fahn, Patrick J.
Subject: RE: Oral arguments

Bill,
The weeks of Oct. 10-14 and 17-21 work for me. Thanks.

Melissa K. Thompson
Senior Attorney
Qwest Services Corporation
1801 California, 10th Floor
Denver, CO 80202
Tel: 303-383-6728
Fax: 303-296-3132
Email: Melissa.Thompson@qwest.com

NOTICE: This e-mail message is for the sole review and use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, transmission or distribution is prohibited. If you are not the intended recipient, please inform the sender by reply e-mail and destroy all copies of the original message.

From: Binek, William W. [mailto:wbinek@state.nd.us]
Sent: Wednesday, August 10, 2005 7:28 AM
To: Thompson, Melissa; Binek, William W.
Cc: Devaney, John; Diamond, Gregory; 'Patrick W. Durick'; Fahn, Patrick J.
Subject: RE: Oral arguments

I would like to have the parties provide to me as soon as possible dates that will work in October. Please provide as many alternative dates as possible because scheduling is getting difficult. Thank you

-----Original Message-----
From: Thompson, Melissa [mailto:melissa.thompson@qwest.com]
Sent: Friday, July 29, 2005 10:52 AM
To: Binek, William W.
Cc: Devaney, John; Diamond, Gregory
Subject: Oral arguments

Bill,
Good morning. I am sending you this email in response to your message to John Devaney concerning the Commission's desire to schedule oral arguments in the Covad/Qwest arbitration. The Sept. dates work for Qwest, but Covad's attorney, Gred Diamond, has a conflict the week of Sept. 21st - 23rd because he will be in Washington for the Verizon/MCI merger proceedings. Are there other dates that the Commission would consider?

Thanks.

Melissa

Melissa K. Thompson
Senior Attorney
Qwest Services Corporation
1801 California, 10th Floor
Denver, CO 80202
Tel: 303-383-6728
Fax: 303-296-3132
Email: Melissa.Thompson@qwest.com

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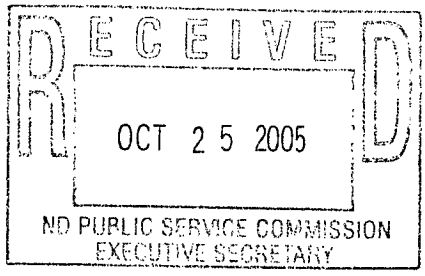
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦♦
LAWRENCE BENDER, PC ♦
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

October 24, 2005



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Case No. PU-05-0165
IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed for filing in the captioned matter is the original signed Affidavit of Gregory Diamond. Please replace the copy attached to the Motion for the Admission Pro Hac Vice of Gregory Diamond with the enclosed original.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/jf
Enclosure.

• ALSO LICENSED IN MONTANA • ALSO LICENSED IN

33 PU-05-165 Pages: 1

Cover letter re filing of original Affidavit of Gregory Diamond (doc. 28) by Covad Communications Company by
10/25/2005 CC: Comm Legal Illona, Pat, Annette

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

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

October 20, 2005

Mr. Patrick W. Durick
Pearce & Durick
Attorneys at Law
P. O. Box 400
Bismarck, ND 58502

Re: Case No. PU-05-165
DIECA Communications, Inc.
Interconnection Arbitration
Application

Dear Mr. Durick:

Enclosed is a copy of the Commission's Motion approving the request of attorney Gregory Diamond to practice before the Commission.

If you have any questions, please contact us.

Sincerely,

William W. Binek
Chief Counsel

Enclosure

C: Gregory Diamond
John M. Devaney
Melissa K. Thompson

32 **PU-05-165** Pages: 2

Copy of Commission Motion sent to parties

by Public Service Commission
10/20/2005 CC: Comm Legal Illona, Pat, Annette

APPROVED
DATE 10-18-05
KME

MOTION

October 18, 2005

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

I move the Commission admit attorney Gregory Diamond to practice before the Commission in Case No. PU-05-165, DIECA Communications, Inc.'s Interconnection Arbitration application.

wwb

APPROVED
DATE: 10-18-05
KME

MOTION

October 18, 2005

DIECA Communications, Inc
Interconnection Arbitration
Arbitration

Case No. PU-05-165

I move the Commission admit attorney Gregory Diamond to practice before the Commission in Case No. PU-05-165, DIECA Communications, Inc.'s Interconnection Arbitration application.

wwb

31 **PU-05-165** Pages: 1

Motion to admit Gregory Diamond to practice before the Commission by Public Service Commission

10/13/2005 CC: Comm Legal Illona, Pat, Annette . .

PEARCE & DURICK

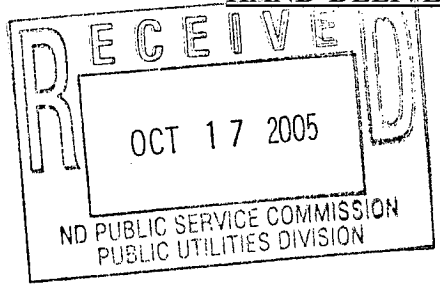
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE • •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

October 17, 2005

HAND-DELIVERED



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) MOTION FOR THE ADMISSION PRO HAC VICE OF GREGORY DIAMOND;
2) AFFIDAVIT OF GREGORY DIAMOND (the original signed affidavit will be brought to the hearing by Mr. Diamond); and
3) Certificate of Service.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/smc
Enclosures.
cc w/enc: Linda Miles, Qwest Corporation (via telecopy)
John Devaney, Perkins, Coie, LLP (via telecopy)
State Board of Law Examiners (via hand-delivery)

30 PU-05-165 Pages: 1
Cover letter re: filing
by Covad Communications Company by Patrick Durick
10/17/2005 CC: Comm Legal Illona, Pat, Annette . .

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502
701) 223-2890(701) 223-7865 Fax

Gregory Diamond
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax
gdiamond@covad.com

Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION	))))))	**Case No. PU-05-0165**

MOTION FOR THE ADMISSION PRO HAC VICE OF GREGORY DIAMOND

COMES NOW the undersigned Patrick W. Durick, pursuant to § 69-02-01-06, N.D.A.C. and requests permission for Gregory Diamond to appear before the Commission in the entitled matter.

Dated this 17 day of October, 2005.

29 PU-05-165 Pages: 2
Motion for the admission pro hac vice of Gregory Diamond
by Covad Communications Company by Patrick Durick
10/17/2005 CC: Comm Legal Illona, Pat, Annette

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
P. O. Box 400
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Covad Communications Company

Patrick W. Durick
Pearce & Durick
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Bismarck, North Dakota 58502
(701) 223-2890(701) 223-7865 Fax

Gregory Diamond
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax
gdiamond@covad.com

Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

RECEIVED
OCT 17 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION	))))))	**Case No. PU-05-0165**

AFFIDAVIT OF GREGORY DIAMOND

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The undesigned GREGORY DIAMOND being first duly sworn upon oath states from personal knowledge as follows:

1. That I am admitted to practice law in the following jurisdictions:

28 PU-05-165 Pages: 2
Affidavit of Gregory Diamond
by Covad Communications Company by Patrick Durick
10/17/2005 CC: Comm Legal Illona, Pat, Annette . .

Jurisdiction	Years admitted
Illinois	1987
Washington	1998

2. That I am not presently subject to disciplinary proceedings in any jurisdiction in which I am admitted to practice law.

3. That I am not presently under any restrictions or probation in the practice of law in any jurisdiction in which I am admitted.

4. That I am not now nor have I ever been suspended or disbarred from a court in any jurisdiction.

5. That I have appeared in 0 actions in North Dakota during the prior three years and that I have never registered under Rule 3(B), Admission to Practice Rules of the State of North Dakota.

Dated this 17TH day of October, 2005.

GREGORY DIAMOND

Subscribed and sworn to before me this 17th day of October, 2005.

Notary Public

My commission expires: 4/11/06

NOTARY PUBLIC
LYNN HANKINS
STATE OF COLORADO

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of October, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Linda Miles Qwest Corporation 1600 7th Ave Room 3007 Seattle, Washington 98191 (206) 345-0225 (Fax)	✔ U.S. Mail ____ Hand Delivered ____ Overnight Mail ✔ Telecopy (Fax) ____ Email
John Devaney Mary Rose Hughes Perkins Coie, LLP 607 Fourteenth Street, N.W., Suite 800 Washington, DC 20005-2011 (202) 434-1690 (Fax)	✔ U.S. Mail ____ Hand Delivered ____ Overnight Mail ✔ Telecopy (Fax) ____ Email

PATRICK W. DURICK

Scott, Sandi L.

From: Binek, William W.
Sent: Thursday, October 13, 2005 2:48 PM
To: Scott, Sandi L.
Cc: Binek, William W.
Subject: FW: Covad vs Qwest

From: Binek, William W.
Sent: Monday, April 11, 2005 2:45 PM
To: 'Patrick W. Durick'
Cc: gdiamond@covad.com; JCobb@perkinscoie.com; -Grp-PSC Commissioners; -Grp-PSC Public Utilities; -Grp-PSC Legal
Subject: RE: Covad vs Qwest

The Commission is agreeable to this proposal. Please give me a call to discuss the process in more detail. Thank you.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Sunday, April 10, 2005 10:09 AM
To: Binek, William W.
Cc: gdiamond@covad.com; JCobb@perkinscoie.com
Subject: Covad vs Qwest

Bill:

It is my understanding that Qwest has agreed to resolve the captioned matter by presenting it directly to the Commission rather than going though arbitration. It is further my understanding that only one issue remains between Covad and Qwest, whether the Commission has authority under section 271 of the Act or state law to order Qwest to unbundle network elements at cost-based rates. If the Commission is agreeable to this procedure Covad envisions simultaneous initial briefs and simultaneous response briefs. I have another trial scheduled in mid May and would appreciate it if any briefing schedule could be pushed into late in May. I am scheduled to be in trial all of next week, but will periodically check my email and my voice mail. Thank you for your consideration of these matters. I look forward to discussing the matter with you.

Patrick W. Durick
P.O. Box 400
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 333-0102 - Direct Dial
(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick.com

Scott, Sandi L.

From: Binek, William W.
Sent: Thursday, October 13, 2005 2:51 PM
To: Scott, Sandi L.
Cc: Binek, William W.
Subject: FW: Covad - Qwest

From: Binek, William W.
Sent: Wednesday, April 20, 2005 12:20 PM
To: 'Patrick W. Durick'
Cc: Diamond, Gregory; JDevaney@perkinscoie.com; -Grp-PSC Legal
Subject: RE: Covad - Qwest

Pat: The Commission agreed to the briefing schedule you proposed. The Commissioners will decide whether or not they want oral argument after they have a chance to review the briefs. If they decide to have oral argument, a date will have to be set later.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Monday, April 18, 2005 1:48 PM
To: Binek, William W.
Cc: Diamond, Gregory; JDevaney@perkinscoie.com; -Grp-PSC Legal
Subject: RE: Covad - Qwest

Thanks, Bill. I will be out of town on Wednesday so I can't make the meeting.

Pat

From: Binek, William W. [mailto:wbinek@state.nd.us]
Sent: Monday, April 18, 2005 1:42 PM
To: Patrick W. Durick
Cc: Diamond, Gregory; JDevaney@perkinscoie.com; -Grp-PSC Legal
Subject: RE: Covad - Qwest

Pat: I put it on the Commission's meeting agenda for discussion with them. The next meeting is Wednesday. I think the dates look good, but I will confirm after the meeting. I will also try to find out if they would like to have oral argument. Thanks for your prompt attention to this matter.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Monday, April 18, 2005 12:47 PM
To: Binek, William W.
Cc: Diamond, Gregory; JDevaney@perkinscoie.com
Subject: Covad - Qwest

Bill:

The parties agree to submit simultaneous opening briefs on May 13th, 2005, simultaneous reply briefs on May 27th, 2005 and if the Commission would like oral arguments, oral arguments on June 23, 2005 if that fits with the Commission's schedule. Please let me know if this meets with the Commission's approval.

Thanks for your help.

Patrick W. Durick
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314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 333-0102 - Direct Dial
(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick.com

Scott, Sandi L.

From: Binek, William W.
Sent: Thursday, October 13, 2005 2:54 PM
To: Scott, Sandi L.
Cc: Binek, William W.
Subject: FW: Covad vs. Qwest - Arbitration

From: Binek, William W.
Sent: Monday, July 18, 2005 4:27 PM
To: Fahn, Patrick J.
Cc: Binek, William W.
Subject: FW: Covad vs. Qwest - Arbitration

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Monday, July 18, 2005 4:24 PM
To: Binek, William W.
Subject: FW: Covad vs. Qwest - Arbitration

From: Patrick W. Durick
Sent: Monday, July 18, 2005 4:19 PM
To: 'William W. Binek (wwb@psc.state.nd.us)'
Cc: 'Gregory Diamond (gdiamond@covad.com)'
Subject: Covad vs. Qwest - Arbitration

Bill:

Covad agrees to waive the statutory decision deadline in this matter and will appear for oral arguments as requested by the Commission. Please let me know if you have any questions.

Patrick W. Durick
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Perkins Coie

John M. Devaney
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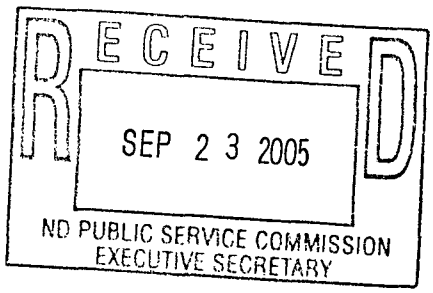


September 23, 2005

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

Re: ***In the Matter of the Petition of DIECA Communications,Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. PU-05-165**

Dear Ms. Jeffcoat-Sacco:

Enclosed please find an original and two copies of Qwest Corporation's Third Notice of Supplemental Authority.

Thank you for your assistance.

Very truly yours,

John M. Devaney

Enclosures

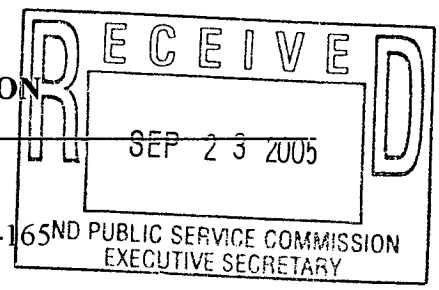
cc: Gina Buchholtz
Gregory Diamond
Patrick W. Durick
Melissa K. Thompson

[13141-0674/DA052660.028]

26 PU-05-165 Pages: 1
Cover letter re Qwest's Third Notice of Supplemental Authority by Qwest Corporation
09/23/2005 CC: Comm Legal Illona, Pat, Annette

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION



IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") hereby provides notice of a final order recently issued by the Oregon Public Utilities Commission in the arbitration between Qwest and Covad Communications Company ("Covad") in that state. One of the rulings in the Oregon Commission's order addresses the same issues presented in this arbitration. The relevant excerpts from that order are attached.

As in this case, in the Oregon arbitration, Covad's arbitration petition required the Oregon Commission to address whether it has authority (1) to impose on Qwest unbundling obligations pursuant to Section 271 of the 1996 Telecommunications Act ("Act") when arbitrating an interconnection agreement pursuant to Section 252 of the Act; and (2) to impose these unbundling obligations under state law.

In an order issued August 11, 2005, an Oregon administrative law judge ("ALJ") ruled against Covad and for Qwest on each of these issues.[1] In its final order issued September 6, 2005, the Oregon Commission adopted the ALJ's order in full.[2] Thus, the Commission adopted

[1] *In the Matter of Covad Communications Company Petition for Arbitration of an Interconnection Agreement with Qwest Corporation*, ARB 584, Arbitrator's Decision (OR Commission August 11, 2005) ("Arbitrator's Decision").

[2] *In the Matter of Covad Communications Company Petition for Arbitration of an Interconnection Agreement with Qwest Corporation*, ARB 584, Order No. 05-980, "Order: Arbitrator's Decision Adopted" (OR Commission Sept. 6, 2005).

the ALJ's ruling that the Commission is without authority in the context of an arbitration conducted under the Act to impose obligations under Section 271. As explained by the ALJ:

> Every state within the Qwest operating region that has examined this issue has done so in a thoughtful, thorough and well-reasoned manner. In each case, the agency with the authority to review the Covad/Qwest ICA dispute has found that there is no legal authority requiring the inclusion of Section 271 UNEs in an interconnection agreement subject to arbitration under Section 251 of the Act, and I adopt the legal conclusions that they all hold in common and, specifically, the findings and conclusions of the Minnesota Arbitrator recited above.[3]

The Commission also rejected Covad's argument that Oregon law requires Qwest to provide access to the network elements it is seeking through its proposed interconnection agreement ("ICA") language. Citing its own prior order in another proceeding, the Commission, through the ALJ, concluded that "[t]here is no such obligation."[4]

Finally, the Commission adopted all of Qwest's proposed ICA language for the disputed ICA provisions relating to this issue, endorsing the following explanation from the ALJ:

> I also note that in the vast majority of decisions by other state commissions, Qwest's proffered language has been adopted without modification. I find the language proposed by Qwest to be that which is most reasonably reflective of the intent of the Act and of the [*Triennial Review Order*], and direct that it be included in the ICA.[5]

Covad did not file any exceptions to these rulings and, accordingly, the Oregon Commission's order is final. With this order, all seven commissions that have considered the same issues presented in other arbitrations between Qwest and Covad have rejected Covad's positions and proposals and ruled for Qwest.[6]

---

[3] Arbitrator's Decision at 12.

[4] *Id.*

[5] *Id.*

[6] The commissions that have reached this result are the commissions in Idaho, Iowa, Minnesota, Oregon, South Dakota, Utah, and Washington.

DATED: September 23, 2005

Respectfully submitted,

John M. Devaney
PERKINS COIE LLP
607 Fourteenth St. N.W., Suite 800
Washington, D.C. 20005
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Facsimile: (202) 434-1690
jdevaney@perkinscoie.com

Melissa K. Thompson
QWEST CORPORATION
1005 Seventeenth Street, Suite 200
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melissa.thompson@qwest.com

Attorneys for Qwest Corporation

ORDER NO. 05-980

ENTERED SEP 06 2005

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 584

In the Matter of	)	
	)	
COVAD COMMUNICATIONS COMPANY	)	ORDER
	)	
	)	
Petition for Arbitration of an Interconnection Agreement with Qwest Corporation.	)	

DISPOSITION: ARBITRATOR'S DECISION ADOPTED

Procedural History

On July 9, 2004, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an interconnection agreement (ICA) with Qwest Corporation (Qwest), pursuant to the Telecommunications Act of 1996[1] (the Act). Qwest responded to the petition on August 2, 2004, and Covad filed a Reply on August 18, 2004. The following day, Qwest filed a Motion to Strike the Covad Reply. A prehearing conference was held on September 8, 2004, and, at the request of the parties, the Arbitrator held his ruling in abeyance until such time as a party requested a ruling. A procedural schedule was adopted, and Protective Order No. 04-507 was entered on September 9, 2004.

On September 16, 2004, Qwest filed a Motion to Dismiss Portions of Covad's Petition for Arbitration. Covad filed its Response on September 30, 2004, and Qwest filed a Reply October 7, 2004. A telephone conference was held on October 18, 2004, and, pursuant to a request of the parties, the Arbitrator withheld ruling on the Motion. On February 25, 2005, the parties filed direct testimony. On March 18, 2005, the parties jointly moved to waive hearing. On March 22, 2005, the Arbitrator granted the motion. The parties filed rebuttal testimony on March 23, 2005.

The parties filed a Joint Disputed Issues List on April 6, 2005. Initial Briefs were filed by the parties on April 29, 2005, and Reply Briefs were filed on May 13, 2005. The Arbitrator issued his decision in this proceeding on August 11, 2005. No exceptions to the Arbitrator's decision were timely filed by either party.

---

[1] Covad initiated negotiations with Qwest by letter dated January 31, 2003. The parties extended their negotiations by mutual agreement. The petition was timely filed.

Statutory Authority:

The standards for arbitration are set forth in 47 U.S.C. §252(c):

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission (FCC) pursuant to section 251;
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Commission Conclusion

The Commission has reviewed the Arbitrator's Decision. The Arbitrator's Decision complies with the requirements of the Act, applicable FCC regulations, and relevant state law and regulations, and should be approved.

ORDER

IT IS ORDERED that:

1. The Arbitrator's Decision in this case, attached to and made part of this Order as Appendix A, is adopted.

2. Qwest and Covad shall submit an interconnection agreement consistent with the terms of the Arbitrator's Decision within 30 days of the date of this Order.

Made, entered and effective SEP 0 6 2005.

Lee Beyer
Chairman

Ray Baum
Commissioner

John Savage
Commissioner

PUBLIC UTILITY COMMISSION OF OREGON

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

ARB 584 Order

ISSUED: August 11, 2005

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 584

In the Matter of	)	
	)	
COVAD COMMUNICATIONS COMPANY	)	ARBITRATOR'S DECISION
	)	
	)	
Petition for Arbitration of an Interconnection Agreement with Qwest Corporation.	)	

Procedural History

On July 9, 2004, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an interconnection agreement (ICA) with Qwest Corporation (Qwest), pursuant to the Telecommunications Act of 1996[1] (the Act). Qwest responded to the petition on August 2, 2004, and Covad filed a Reply on August 18, 2004. The following day, Qwest filed a Motion to Strike the Covad Reply. A prehearing conference was held on September 8, 2004, and, at the request of the parties, the Arbitrator held his ruling in abeyance until such time as a party requested a ruling. A procedural schedule was adopted, and Protective Order No. 04-507 was entered on September 9, 2004.

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The parties filed a Joint Disputed Issues List on April 6, 2005. Initial Briefs were filed by the parties on April 29, 2005, and Reply Briefs were filed on May 13, 2005.

[1] Covad and Qwest do not have any preexisting interconnection agreement in Oregon.

Discussion. The questions brought for arbitration by the parties with respect to the language to be adopted in Sections 9.1.15, 9.1.15.1 and 9.1.15.1.1 are not unique to Oregon. Most recently, the Washington State Utilities and Transportation Commission (WUTC) addressed these questions under the caption "Terms and Conditions Concerning Retirement of Copper Facilities" (also identified as Issue 1).[27] While the WUTC Order largely affirmed the Arbitrator's Decision on this issue, it found that the language that had been first offered by Qwest "does not specifically refer to the FCC's minimum notice requirements. Qwest agrees that it is obligated to comply with the FCC's rules, however, its proposed language...does not state that notices will comply with the FCC's rule. Including this reference in the agreement will allow Covad to seek enforcement of the agreement if it believes that Qwest is not complying.... Qwest's language should be modified to include a specific referent to the FCC's rule...as follows: Such notices shall be provided in accordance with FCC rules, including 47 C.F.R.§51.327(a), and in addition to any applicable state commission requirements."[28] The WUTC upheld the Arbitrator who sided with Qwest on the remaining issues raised by Covad with respect to conditions relating to the retirement of copper plant.[29]

In its Oregon ICA filing, Qwest included proposed language for Section 9.2.1.2.3, which requires Qwest to provide notice of planned retirements "in accordance with FCC Rules," and expanded its notice in Section 9.1.15, providing three forms of notice. Qwest further proposes that it will provide any additional notices that may be required by Oregon law.[30]

For the reasons set forth in Qwest's briefs and in the WUTC Order with respect to the FCC's requirements and the appropriate means for Covad to determine whether a planned change will affect its customers, I direct that the parties submit an ICA that adopts Qwest's language on this issue. For the reasons set forth in the WUTC Order,[31] I also reject Covad's proposed language in Section 9.1.15 and reject proposed Sections 9.1.15.1 and 9.1.15.1.1.

Issue 2 – Unified Agreement/Defining Unbundled Network Elements, Sections 4.0, 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6(g), 9.6.1.5, 9.6.1.5.1, 9.6.1.6, 9.6.1.6.1 and 9.21.2.[32]

The language proposed by the parties for the definition of Unbundled Network Element" (Section 4.0) differs insofar as Covad proposes to add "...to provide unbundled access," after the following: "for which unbundled access is required under Section 271 of the Act or applicable state law," and to delete the following final sentence proposed by Qwest:

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[27] *In the Matter of the Petition for Arbitration of Covad Communications Company With Qwest Corporation Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order,* Docket No. UT-040345, Order No. 06, Final Order Affirming, in part, Arbitrator's Report and Decision; Granting, in part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement, Service Date February 9, 2005, pp. 3-9. (WUTC Order.)

[28] *Id.*, pp. 6-7.

[29] *Id.*, pp. 7-10.

[30] Qwest Initial Brief, p. 11.

[31] "The FCC addressed the issue of an ILEC's right to copper retirement in three sections of the Triennial Review Order, not just sections relating to FTTH Loops. The FCC did not place conditions on an ILEC's retirement of copper facilities, and concerning FTTH loops, specifically rejected proposals to provide alternative facilities." WUTC Order, p. 9, ¶ 21. (Citations therein omitted.)

[32] *See* Oregon Updated Joint Disputed Issues List (Issues List), Docket No. ARB 584, Qwest/Covad Oregon Interconnection Agreement Negotiations, pp. 5-28, filed April 6, 2005.

"Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act."

The language proposed by the parties for Section 9.1.1 with respect to the inclusion of 271 elements into the ICA differs in several ways. Covad proposes to add the following language at the beginning of this section:

> Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including but not limited to Sections 251(b), (c), 252(a) and 271, FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations.

Covad also proposes to add "or Section 271" after "251(c)(3)" and "Section 251, Section 271 or state-mandated" after "Failure to list a." Finally, Qwest proposes, and Covad rejects, inclusion of the following language:

> UNEs shall only be obtained for the provision of Qualifying Services. It is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternate service arrangements.

The parties disagree on the language of Section 9.1.1.6. Qwest proposes that, once the ICA becomes effective, it is no longer obligated to provide Covad with the following: Ocn Loops; Feeder Subloops; DS3 Loops in excess of two DS3 Loops per Enduser Customer location; Enhanced Dedicated Unbundled Interoffice Transport (E-UDIT); unbundled Dark Fiber (E-UDF) from a Qwest wire center to a Covad wire center; Ocn UDIT; DS3 UDIT in excess of 12 DS3 circuits per route; Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P); Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN (except in conjunction with Unbundled Switching and UNE-P); Packet Switching; UDIT and UDF as a part of a Meet-Point arrangement/billed entrance facility; Remote Node/Remote Port; Line Sharing in accordance with the Grandfathering and Transition Plan described in Section 9.4.1.2; Fiber to the Home in accordance with Section 9.2.1.2; Operator Services and Directory Assistance (except in conjunction with Unbundled Switching and UNE-P) when Qwest does not provide customized routing or the equivalent; Unbundled Switching at a DS1 capacity pursuant to a transition process described in Section 9.11.2.0; Unbundled Local Tandem Switching provisioned at the DS1 level or above capacity; SONET add/drop multiplexing and noncopper distribution Subloop unless required to access Qwest-owned inside wire at an MTE. Covad proposes the following:

> On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

The parties disagree on the language of Section 9.1.1.7. The significant differences are that Covad proposes that the agreement specifically acknowledge independent unbundling obligations under applicable state law and that Qwest would be required to bill for UNEs, as well as services, "using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates as required by Section 271 or state law required UNEs." Covad would also delete the conflicting Qwest-offered language: "in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement."

The parties disagree on the language of Section 9.1.5. Covad proposes to add the following language after the first sentence: "CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271, et seq."

The parties disagree on the language of Section 9.2.1.3. Again, Covad seeks language asking that Qwest provide access to loops pursuant to Section 271 and applicable state law and limit the webpage listing to only those DS1, DS3 and Dark Fiber Loops for which the Commission has "found non-impairment under Section 251 of the Act." Qwest offers language to clarify that it refers to impairment at the end user "customer" premises. Covad also proposes to delete "other service" after "arrangements for" and insert "any records changes, or alternate services, as required by applicable state law, and requested by Qwest."

In its proposed Section 9.2.1.4, Covad seeks to limit Qwest's avoidance of responsibility to provide available DS3 Unbundled Loops only to times when not required "pursuant to Section 251 of the Act" and adds "Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7, above."

In Section 9.3.1.1, Covad again proposes to limit denial of access to certain UNEs only "pursuant to Section 251 of the Act" and similarly seeks language differing from that offered by Qwest, enlarging Qwest's obligations: "Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 and other Applicable Law."

Covad offers new Sections 9.3.1.2, 9.3.2.2, 9.3.2.2.1 and 9.6(g). In Sections 9.3.1.2(b) and 9.3.2.2.1, Covad proposes the availability of DS1 Capable Unbundled Feeder Loop UNEs and defines them. In Section 9.6 (g) Covad proposes that UDIT[33] be made available

[33] Unbundled Dedicated Interoffice Transport.

pursuant to Section 271 of the Act or applicable state law, notwithstanding a finding of no Section 251 impairment on a particular route. In Section 9.6.1.5, as with feeder subloops, Covad proposes that UDIT be supplied pursuant to Section 271 or applicable state law.

In Sections 9.6.1.5, 9.6.1.5.1, 9.6.1.6 and 9.6.1.6.1, Covad again seeks to have the subject UNEs provided, notwithstanding a finding of no Section 251 impairment, if the Commission finds that the UNE should be offered under Section 271 or state law and, further, seeks an additional 30 days beyond the Qwest-proposed 60 days, to make alternative arrangements when losing access to DS1 and DS3 UDIT.

In Section 9.21.2, Covad proposes that, notwithstanding any Commission ruling that CLECs are no longer entitled to submit orders for unbundled switching under Section 251, line splitting would still be available if Qwest was required to provide access to unbundled switching under Section 271 or applicable state law.[34]

Positions of the Parties. Qwest contends that the 47 U.S.C. §251(d)(2) "impairment" standard, as interpreted by the Courts, imposes important limitations on its unbundling obligations.[35] Furthermore, the Commission itself recently ruled that "To the extent the D.C. Circuit has concluded that the impairment analysis conducted by the FCC for certain network elements is flawed, there is no legal basis for this Commission to require continued unbundling of those network elements."[36] Qwest also cites decisions in other states, discussed *infra*, that have ruled that there is no legal authority in the Act, the *TRO* or in state law that would require the inclusion of Section 271 terms in the ICA, such as those proposed above by Covad, over Qwest's objections. Neither has Covad provided any evidence of impairment to support its demands for unbundling under state law.[37]

Covad asserts that the *TRO* supports its contention that Section 271 creates "an independent obligation on the part of Qwest to provide access to loops, switching, transport, and signaling regardless of any analysis under section 251." It further asserts that Qwest's 271 obligations should be memorialized in the ICA and that the Commission has clear authority to arbitrate disputes that arise with respect to those obligations. Furthermore, Covad argues, Qwest is still obligated under Oregon law to provide "building blocks," i.e., UNEs, pursuant to the Phase II order in Docket UT 138/UT 139.[38] Covad then cites a decision by the Maine Public Utilities Commission, which concluded that "state commissions have the authority to arbitrate section 271 pricing in the context of section 252 arbitrations."[39] Covad asserts that the state authority should be applied under a different legal standard than applies to price Section 251 UNEs, and that, while TELRIC pricing is not required, the FCC has not stated that the two different legal standards cannot result in the same rate-setting methodology.[40]

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[34] The parties have read an agreement on the subject of Covad's access to "line splitting" discussed at pages 32-35 of the Covad Initial Brief. *See* Qwest Corporation's Reply Brief on the Merits (Qwest Reply Brief), p. 8. This decision will therefore not include a discussion of that subissue.

[35] *Id.*, pp. 13-14, citing *Iowa Utilities Board, USTA I* and *USTA II*. (Full citations omitted.)

[36] *Id.*, p. 15, citing Ruling in Docket UM 1100, June 11, 2004, at pp. 6-7.

[37] *Id.*, p. 16.

[38] Covad Initial Brief, pp. 19-20, citing *Triennial Review Order*, ¶¶653, 655 and Oregon PUC Order No. 01-1106 entered December 26, 2001.

[39] *Id.*, pp. 20-21, citing Maine PUC Docket No. 2002-682, Order of September 3, 2004. (Full citation omitted.)

[40] *Id.*, p. 23, citing *TRO*, ¶¶656, 659.

Covad derides claims that the Commission is federally preempted and cites UT 138/UT 139 Order No. 00-316 charging Staff to identify "building blocks additional" to the federally identified UNEs. Although the cited order is five years old and precedes *USTA I* and *USTA II* decisions, Covad asserts that the *TRO* has not subsequently undermined the language of Order No. 00-316.[41] Under the *TRO*, there could well be circumstances where the FCC would decline to find that state rules conflicted with implementation of Section 251, and would therefore not preempt them.[42] In any event, Oregon should, in Covad's view, exercise its authority irrespective of preemption analysis, because constitutional issues and legislative intent are beyond the jurisdiction of administrative agencies.[43]

In reply, Qwest asserts that the Act's "impairment" standard limits the FCC's ability to impose unbundling obligations on ILECs and that the Courts have invalidated the FCC's unbundling rules three times. Covad's argument that the Commission can ignore acting consistently with Section 251 yet still comply with these opinions is legally flawed. Furthermore, Covad has offered no evidence of "impairment."[44] Qwest also reiterates that the Commission is being asked by Covad to require unbundling and set rates pursuant to Section 271, even though it has no authority under that section; it resides exclusively with the FCC to determine which network elements must be provided under Section 271.[45] Qwest further reiterates that the rate setting authority under Section 271 is examined by the FCC in the context of the BOC's application for 271 authority and that Sections 201 and 202, which govern rates, terms and conditions under 271 provide no role for state commissions.[46] Qwest also asserts that it is appropriate for the ICA to list UNEs that Qwest, under the *TRO*, is indisputably not required to provide under Section 251, as it is concerned that Covad will ask for these UNEs unless the ICA clearly states that they are unavailable.[47] Qwest also asks the Commission to approve language that indicates Qwest is not required to provide FCC delisted UNEs until the Commission approves an ICA amendment removing the UNEs from the ICA.[48]

In its reply, Covad states that Qwest "attempts to over-read" the *TRO* and that the FCC left undisturbed the requirement that Section 271 checklist UNEs must be available notwithstanding any finding of nonimpairment.[49] Furthermore, "if the additional unbundling requirements contained in the Competitive Checklist do not conflict with section 251, it is a logical impossibility that identical state access obligations could conflict with section 251."[50] Covad also asserts that the Commission indeed has the authority to impose additional unbundling obligations and that these "savings clauses" have been routinely confirmed.[51] Covad distinguishes the *Indiana Bell* case cited by Qwest and cites decisions of the Maine Public Utility Commission and Illinois Commerce Commission to support the proposition of continued state authority to require offering 271 checklist UNEs in the context of 252 arbitration

[41] *Id.*, p. 26.
[42] *Id.*, p. 30.
[43] *Id.*, p. 31-32.
[44] Qwest Reply Brief, p. 8.
[45] *Id.*, pp 8-14 and cases cited therein.
[46] *Id.*, p. 15.
[47] *Id.*, p. 20.
[48] *Id.*, pp. 20-21.
[49] Covad Communications Company's Reply Brief (Covad Reply Brief), p. 17.
[50] *Id.*, p. 18.
[51] *Id.*, pp. 20-21 and cases cited therein.

proceedings.[52] Covad also objects to Qwest's assertion that TELRIC pricing is *per se* illegal, because it is based on the FCC's brief on appeal in *USTA II*, rather than on an actual FCC decision and that continued compliance with Section 271 may include TELRIC pricing.[53] Finally, Covad asserts that commission decisions in the Qwest region do not provide consistent guidance with respect to this issue; they do not support Qwest's positions to the extent Qwest suggests. The Minnesota decision ordered the adoption of language reflecting that removal of any Section 251 elements from the ICA was premature; the Utah decision found Covad's language unreasonable, but not illegal; and the Washington decision, finding itself preempted by federal law, is, in Covad's view, legally flawed.[54] On July 19, 2005, subsequent to the conclusion of the briefing schedule, Covad provided a copy of a decision by the Missouri Public Service Commission[55] ordering the inclusion of §271 UNEs and setting interim rates, supporting its position that Oregon does have the authority to require their inclusion.

Discussion. Covad and Qwest have been in arbitration proceedings on this precise issue and with respect to virtually identical proposed language in Minnesota, Utah, Washington, South Dakota and Idaho.[56]

In Minnesota, the Commission adopted the Arbitrator's Report on this issue but "clarifies that it has not surrendered any of its jurisdiction to determine which topics are properly the subject of interconnection agreements, or to review those agreements."[57] The Arbitrator found that:

> [T]here is no legal authority in the Act, the *TRO*, or in state law that would require the inclusion of section 271 terms in the interconnection agreement over Qwest's objection....both the Act and the *TRO* make it clear that state commissions are charged with the arbitration of section 251 obligations, whereas the FCC has retained authority to determine the scope of access obligations pursuant to section 271....To the extent the *Verizon-Maine* decision stands for the proposition that a state commission has authority to arbitrate section 271 claims, the decision is distinguishable on its facts as it appears to be premised on enforcement of a specific commitment that Verizon made to

[52] *Id.*, pp. 23-25 and cases cited therein.
[53] *Id.*, pp. 25-26 and cases cited therein.
[54] *Id.*, pp. 26-28 and decisions cited therein.
[55] *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").* Case No. TO-2005-0336, issued July 11, 2005.
[56] The Idaho Decision, *In the Matter of the Petition of Dieca Communications, Inc. DBA Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. CVD-T-05-1, Order No. 29825, July 18, 2005 (Idaho Decision), occurred after the conclusion of briefing by the parties on this issue. By letter of July 18, 2005, Qwest advised the Commission that an oral ruling by the South Dakota Commission adopted Qwest's language on this issue.
[57] *In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b)*, Docket No. P-5692, 421/IC-04-549, Order Resolving Arbitration Issues and Required Filed Interconnection Agreement, issued March 14, 2005, Issue No. 2, pp. 5, 13.

> the Maine Commission during 271 proceedings to include certain elements in its state wholesale tariff.[58]

In the Utah Order, the Commission agreed with Covad's general proposition that:

> [S]tates are not preempted as a matter of law from regulating in the field of access to network elements.... While we see a continuing role for Commission regulation of access to UNEs under state law, we differ with Covad in its belief that we should therefore impose Section 271 and state law requirements in the context of a Section 252 arbitration. Section 252 was clearly intended to provide mechanisms for the parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or state law."[59]

The WUTC found that it had no authority under Section 251 or Section 271 to require Qwest to include Section 271 elements in an interconnection agreement and that any unbundling requirement based on state law would likely be preempted as inconsistent with federal law. It agreed with the Arbitrator's decision and adopted Qwest's language on the issue.[60]

The Idaho Commission concluded that it "does not have authority under Section 251 or Section 271 of the Act to order the Section 271 unbundling obligations as part of an interconnection agreement.... Having concluded the Commission has no legal authority to require Qwest to include its Section 271 unbundling obligations in an interconnection agreement, we approve the relevant language proposed by Qwest...." (Idaho Decision, pp. 4-5.)

The South Dakota Commission stated: "With respect to the section 271 issue, the Commission finds that it does not have the authority to enforce section 271 requirements within this section 252 arbitration.... The language in these sections clearly anticipates that Section 252

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[58] *In the Matter of the Petition of Dieca Communications, Inc. DBA Covad Communications Company for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Arbitrator's Report, OAH Docket No. 3-2500-15908-4, MPUC Docket No. P-5692, 421/IC-04-549, December 15, 2004 (Minnesota Arbitrator's Report), p. 15, ¶ 46.

[59] *In the Matter of the Petition of DIECA Communications, Inc. D/B/A Covad Communications Company for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Docket No. 04-2277-02, Arbitration Report and Order, issued February 8, 2005 (Utah Order), pp. 20-21.

[60] *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No. UT-043045; Order No. 06, Final Order Affirming, in Part, Arbitrator's Report and Decision; Granting, in Part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement, February 9, 2005, pp. 15-16, ¶ 37.

arbitrations will concern section 251 requirements, not section 271 requirements.... The Commission finds Covad's argument regarding this issue to be less than persuasive."[61]

Every state within the Qwest operating region that has examined this issue has done so in a thoughtful, thorough and well-reasoned manner. In each case, the agency with the authority to review the Covad/Qwest ICA dispute has found that there is no legal authority requiring the inclusion of Section 271 UNEs in an interconnection agreement subject to arbitration under Section 251 of the Act, and I adopt the legal conclusions that they all hold in common and, specifically, the findings and conclusions of the Minnesota Arbitrator recited above.

Covad's assertion that, under UT 138/UT 139, "Qwest continues to be obligated under Oregon law to provide access to unbundled network elements or 'building blocks,' which, by Commission order, specifically include most, if not all, of the elements to which Covad seeks continued access in this arbitration" mischaracterizes the law in that docket. There is no such obligation. Specifically, in Order No. 00-316, at page 5, the Commission stated the following:

> Although §251(d)(2) of the Act permits State commissions to require incumbent LECs to provide UNEs in addition to those on the national list, the states must first conduct a 'necessary' and 'impair' analysis for each UNE added to the national list. *See* FCC Rule 317(d).... Thus, until such time as the statutory standard is met, incumbent LECs shall not be required to provide UNEs in addition to those listed in Rule 319.

I also note that in the vast majority of decisions by other state commissions, Qwest's proffered language has been adopted without modification. I find the language proposed by Qwest to be that which is most reasonably reflective of the intent of the Act and of the *TRO*, and direct that it be included in the ICA.

Issue 3 – 4.0 Definition of 251(c)(3) UNE and Commingling with Network Elements Provided Under Section 271 (Section 9.1.1.1).

Covad proposes a new definition: "251(c)(3)UNE" to identify those UNEs that it wishes to use in conjunction with ("commingling") wholesale services or facilities obtained from Qwest. It then proposes "commingling" language, which would allow for combining those UNEs with switched and special access services offered pursuant to tariff and resale (as opposed to merely unbundling the 251(c)(3) UNEs and requiring Qwest to perform the necessary functions to effectuate a commingling request.[62]

Positions of the Parties. Qwest asserts that Covad's intent is to include network elements Qwest provides pursuant to Section 271. The *TRO* expressly excludes elements provided under Section 271, and the obligations to unbundle in Section 271 are

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[61] *In the Matter of the Petition of DIECA Communications, Inc. D/B/A Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Arbitration Order TC05-056, dated July 26, 2005, p. 6.

[62] Issues List, pp. 28-31.

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of September 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY by U.S. mail and electronic mail to the following:

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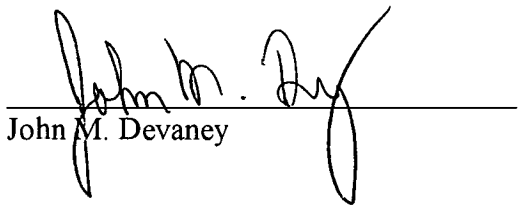
gdiamond@covad.com



John M. Devaney

Scott, Sandi L.

From: Binek, William W.
Sent: Thursday, August 18, 2005 2:54 PM
To: Scott, Sandi L.
Cc: Binek, William W.
Subject: FW: Oral arguments

From: Binek, William W.
Sent: Wednesday, August 10, 2005 11:43 AM
To: 'Thompson, Melissa'; Binek, William W.
Cc: Diamond, Gregory; Patrick W. Durick; Fahn, Patrick J.
Subject: RE: Oral arguments

The Commission has scheduled oral arguments for October 18th at 1:30 p.m.

From: Thompson, Melissa [mailto:melissa.thompson@qwest.com]
Sent: Wednesday, August 10, 2005 10:10 AM
To: Binek, William W.
Cc: Diamond, Gregory; Patrick W. Durick; Fahn, Patrick J.
Subject: RE: Oral arguments

Bill,
The weeks of Oct. 10-14 and 17-21 work for me. Thanks.

Melissa K. Thompson
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From: Binek, William W. [mailto:wbinek@state.nd.us]
Sent: Wednesday, August 10, 2005 7:28 AM
To: Thompson, Melissa; Binek, William W.
Cc: Devaney, John; Diamond, Gregory; 'Patrick W. Durick'; Fahn, Patrick J.
Subject: RE: Oral arguments

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Notification of Oral Arguments set for 10/18/05
@ 1:30 pm e-mailed to parties
by Public Service Commission
08/10/2005 CC: Comm Legal Illona, Pat, Annette . .

I would like to have the parties provide to me as soon as possible dates that will work in October. Please provide as many alternative dates as possible because scheduling is getting difficult. Thank you

-----Original Message-----
From: Thompson, Melissa [mailto:melissa.thompson@qwest.com]
Sent: Friday, July 29, 2005 10:52 AM
To: Binek, William W.
Cc: Devaney, John; Diamond, Gregory
Subject: Oral arguments

Bill,
Good morning. I am sending you this email in response to your message to John Devaney concerning the Commission's desire to schedule oral arguments in the Covad/Qwest arbitration. The Sept. dates work for Qwest, but Covad's attorney, Gred Diamond, has a conflict the week of Sept. 21st - 23rd because he will be in Washington for the Verizon/MCI merger proceedings. Are there other dates that the Commission would consider?

Thanks.

Melissa

Melissa K. Thompson
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AUG - 2 2005
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

In Qwest Corporation's ("Qwest") Notice of Supplemental Authority filed on July 21, 2005, Qwest described an oral ruling from the South Dakota Public Service Commission that resolved the same arbitration issue and related sub-issues presented in this arbitration. At the time of that filing, the South Dakota Commission had not issued a written order. With this Second Notice of Supplemental Authority, Qwest is providing the Commission with a copy of the South Dakota Commission's written order issued July 26, 2005 that sets forth and explains that commission's reasons for adopting Qwest's positions and proposed interconnection agreement language and rejecting those of Covad. A copy of the South Dakota order is attached.

As in this arbitration, Covad's arbitration petition required the South Dakota Commission to address (1) whether it has authority to impose on Qwest unbundling obligations pursuant to Section 271 of the 1996 Telecommunications Act ("Act") when arbitrating an interconnection agreement pursuant to Section 252 of the Act; and (2) whether it has authority to impose these unbundling obligations under state law. In its July 26 order, the commission ruled against Covad and for Qwest on each of these issues.[1]

[1] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, TC056, Arbitration Order (S.D.

23 PU-05-165 Pages: 4
Qwest's Second Notice of Supplemental Authority
by Qwest Corporation
08/02/2005 CC: Comm Legal Illona, Pat, Annette . .

First, the commission ruled that it is without authority in the context of an arbitration conducted under Section 252 to impose obligations under Section 271: "the Commission finds that it does not have the authority to enforce section 271 requirements within this section 252 arbitration."[2] The commission explained further that the language in Sections 252(a) and 252(c)(1) "clearly anticipates that section 252 arbitrations will concern section 251 requirements, not section 271 requirements."[3]

Second, the commission rejected Covad's argument that state commissions have authority to require network unbundling under Section 271, finding that "the language of section 271 places enforcement authority of that section with the FCC."[4] Relatedly, the commission ruled that the authority of state commissions to conduct arbitrations under Section 252 does not give rise to any authority to impose Section 271 obligations.[5]

Third, the South Dakota Commission rejected Covad's claim that the network unbundling it is seeking is permissible under state law. The commission stated that the only unbundling permissible under state law is that which is "consistent with section 251."[6] Further, the commission emphasized that unbundling requirements under state law can only be imposed "based on an evidentiary record," not in a docket such as this one "in which both parties requested that

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Commission July 26, 2005).

[2] *Id.* at 6.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 6-7.

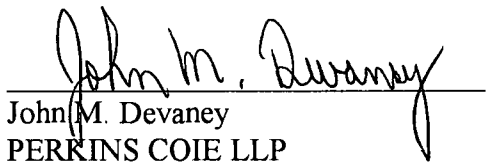
[6] *Id.* at 7.

no [evidentiary] hearing be held."[7] Explaining the requirement for an evidentiary record, the Commission stated that "[a] party cannot request that the Commission approve access to unbundled network elements under state law without making a factual showing as to the need for such access."[8]

Based on these rulings, the South Dakota Commission ordered Qwest and Covad to adopt all of Qwest's proposed language for their interconnection agreement. Every commission that has addressed this issue in the Qwest/Covad arbitrations – the commissions in Idaho, Iowa, Minnesota, South Dakota, Utah, and Washington -- has now ruled in favor of Qwest.

DATED: August 2, 2005

Respectfully submitted,



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Attorneys for Qwest Corporation

[7] *Id.*

[8] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of August 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY by U.S. mail and electronic mail to the following:

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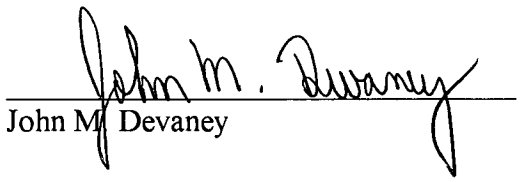

John M. Devaney

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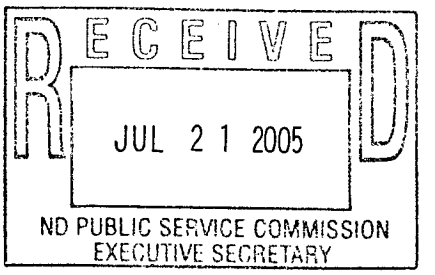

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www.perkinscoie.com

July 21, 2005

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

Re: ***In the Matter of the Petition of DIECA Communications,Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. PU-05-165**

Dear Ms. Jeffcoat-Sacco:

Enclosed please find an original and two copies of Qwest Corporation's Notice of Supplemental Authority.

Thank you for your assistance.

Very truly yours,

John M. Devaney

Enclosures

/jmd

[13141-0674/DA052020.031]

22 **PU-05-165** Pages: 2

Cover letter re Qwest's Notice of Supplemental Authority
by Qwest Corporation
07/21/2005 CC: Comm Legal Illona, Pat, Annette . .

cc: Gina Buchholtz
Gregory Diamond
Patrick W. Durick
Melissa K. Thompson

RECEIVED
JUL 21 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165

QWEST CORPORATION'S NOTICE OF SUPPLEMENTAL AUTHORITY

Qwest Corporation ("Qwest") hereby provides notice of two recent decisions issued by the Idaho Public Utilities Commission and the South Dakota Public Service Commission in arbitrations between Qwest and Covad Communications Company ("Covad"). Both decisions address the same issue presented in this arbitration relating to the network unbundling obligations that should be included in the interconnection agreement between Qwest and Covad.

In both cases, the commissions considered whether they have authority to impose on Qwest unbundling obligations pursuant to Section 271 of the 1996 Telecommunications Act ("Act") when arbitrating an interconnection agreement pursuant to Section 252 of the Act. The commissions also considered whether they have authority to impose these unbundling obligations under state law. After reviewing the parties' positions and briefs and hearing oral argument, both commissions rejected Covad's position and adopted Qwest's proposed language for the parties' interconnection agreement.

In an order issued July 18, 2005 (attached hereto), the Idaho Commission determined that it does not have authority to order parties to include unbundling obligations imposed by Section 271 in an interconnection agreement: "We conclude that the Commission does not have authority under Section 251 or Section 271 of the Act to order Section 271 unbundling obligations as part

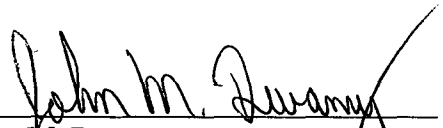
of an interconnection agreement."[1] The Commission also ruled that it does not have authority under Idaho law to require the network unbundling that Covad is seeking.[2] Based on these rulings, the Idaho Commission ordered Qwest and Covad to adopt Qwest's proposed language, or similar language, for their interconnection agreement.

In an oral ruling announced July 12, 2005, the South Dakota Public Service Commission similarly ruled that it would adopt Qwest's language for each of the provisions of the interconnection agreement in dispute relating to this arbitration issue.[3] A written order from the South Dakota Commission is forthcoming, and Qwest will provide it to the Commission when it is issued.

Every commission that has addressed this issue in the Qwest/Covad arbitrations has now ruled for Qwest. Specifically, the commissions in Idaho, Iowa, Minnesota, South Dakota, Utah, and Washington have each issued orders on this issue favorable to Qwest.

DATED: July 21, 2005

Respectfully submitted,



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[1] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. CVD-T-05-1, Order No. 29825 at 4 (Idaho Commission July 18, 2005).

[2] *Id.* at 4-5.

[3] *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. TC05-056.

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Attorneys for Qwest Corporation

Office of the Secretary
Service Date
July 18, 2005

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. DBA COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	)	**CASE NO. CVD-T-05-1**
	)	**ORDER NO. 29825**

On February 28, 2005, Dieca Communications, Inc. dba Covad Communications Company (Covad) filed a Petition asking the Commission to arbitrate terms of its interconnection agreement with Qwest Corporation. Covad's Petition states that the parties worked in good faith "to resolve the vast majority of issues raised during the negotiations." Covad and Qwest were unable, however, to agree on terms "relating to Qwest's continuing obligations to provide unbundled access to certain elements pursuant to Section 271 of the [1996 Telecommunications] Act and Idaho law." Covad Petition, p. 4. The parties notified the Commission that the remaining unresolved issues could be processed by written briefs followed by oral argument. Accordingly, on April 1, 2005, the Commission issued a Procedural Order adopting the parties' briefing schedule, and on June 13, 2005, issued a Notice of Hearing for Oral Argument, set for July 12, 2005.

Covad's Petition for Arbitration was filed pursuant to Section 252 of the 1996 federal Telecommunications Act (Act), codified in Title 47 of the United States Code as an amendment to the Communications Act of 1934. A petition for arbitration of an interconnection agreement must state the unresolved issues, the position of each of the parties with respect to those issues, and any other issue discussed and resolved by the parties. 47 U.S.C. § 242(b)(2). The State Commission is required to limit its consideration to the issues set forth in the petition and in the response, if any. 47 U.S.C.§252(b)(4)(A). In resolving the issues submitted for arbitration, a State Commission is required to "ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251, establish any rates for interconnection, services or network elements according to Subsection (d), and provide a schedule for implementation of the terms and conditions by the parties to the agreement." 47 U.S.C. §252(c).

Covad's Petition made clear that the difference between the parties involves an overarching legal issue for the Commission's determination. The Petition states that the parties "disagree with respect to Qwest's continuing obligations to provide certain network elements, including certain unbundled loops . . . and dedicated transport." Covad Petition p. 5. Covad maintains that an order issued by the Federal Communications Commission, in which the FCC reduced the number of network elements an incumbent carrier must make available in interconnection agreements, does not affect a state commission's ability to order that additional elements be provided pursuant to a separate section of the Act. Specifically, Covad argues the FCC intended network elements required from a Bell operating company (BOC) under Section 271 of the Act can be ordered as part of an interconnection agreement arbitrated by a state commission pursuant to Section 251 and 252. Covad also states its belief that Qwest has an obligation under Idaho law to provide unbundled access to network elements pursuant to *Idaho Code* §§ 61-503, 61-513, 61-514 and 62-602. Covad asserts that the Commission "can, and should, use its authority to enforce the unbundling requirements of Section 271 of the Act." Qwest filed a response to Covad's Petition on March 24, 2005, making clear that the legal issue identified by Covad is the sole determination for the Commission.

Covad's argument concerning Qwest's obligation to provide access to certain unbundled network elements arises from two different sections of the Act, each containing unbundling obligations for an incumbent local exchange carrier (ILEC). Section 251(c)(3) requires an ILEC to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251 (c)(3). The FCC created a lengthy and detailed list of unbundled network elements an ILEC must make available to a carrier requesting interconnection under Section 251.

The second unbundling requirement is contained in Section 271 of the Act. Section 271 provides the means for an ILEC that is also a bell operating company to obtain authority to enter the interLATA services market. A BOC, which includes Qwest, could begin providing interLATA services only when approved by the FCC, upon determination that the BOC met the specific requirements of Section 271. Section 271(c)(B) contains a competitive checklist the FCC must determine a BOC is satisfying, which includes network unbundling requirements. For example, checklist item number four requires a BOC to provide "local loop transmission from

the central office to the customer's premises, unbundled from local switching or other services." 47 U.S.C. § 242(c)(2)(B)(iv). State commissions provide a consulting role in determining whether a BOC meets the Section 271 requirements, but the determination is solely for the FCC.

Until recently, the FCC had interpreted the unbundling requirements in Sections 251 and 271 to be identical. When the FCC issued its *Triennial Review Order (TRO)*,[1] and later its *Triennial Review Remand Order (TRRO)*,[2] it removed some key network elements from the list required for unbundling under Section 251. Because the unbundling requirements of Section 271 have not changed, Covad asks the Commission to require Qwest to provide the Section 271 UNEs in the interconnection agreement submitted for arbitration.

Covad relies primarily on a decision from the Maine Public Utilities Commission to support its position. The Maine PUC docket, however, was related to Verizon's Section 271 application for interLATA services authority. The Maine Commission had explicitly conditioned support of Verizon's 271 application on Verizon's agreement to fulfill a number of additional requirements, including the filing of a wholesale tariff, and "Verizon committed to meeting the Commission's conditions." The Maine docket to produce the wholesale tariff, including a list and prices for UNEs, was underway when the FCC issued the *TRO*. The Maine Commission noted that, "at the time we conditioned our support of Verizon's 271 Application on Verizon filing a wholesale tariff, Verizon's unbundling obligations under sections 251/252 of the TelAct were synonymous with its section 271 unbundling obligations," but since the *TRO* was issued, "an ILEC's 251/252 obligations are narrower (in most respects) than its 271 obligations." *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*; Maine Public Utilities Commission, Docket No. 2082-682, Order – Part II (September 3, 2004), p. 4. Verizon argued that the FCC "has exclusive jurisdiction over matters relating to its 271 obligations and that [the Maine] Commission has no authority to require Verizon to amend its wholesale tariff to include

[1] 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; 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, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*"), *vacated in part, remanded in part, U.S. Telecom Assn' v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[2] Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, WC Docket No. 04-313 (FCC rel. Feb. 4, 2005) ("*Triennial Review Remand Order*").

its 271 obligations." *Id.* The Maine Commission concluded that "a reasonable interpretation of the condition we placed upon Verizon during our 271 proceeding, and the condition it committed to fulfill, requires Verizon to include both its section 251 and 271 unbundling obligations in its wholesale tariff filed in Maine." *Id.*, p. 12. Thus, the Maine decision is based on Verizon's commitment to file a wholesale tariff, not on a conclusion that Section 271 unbundling requirements can be made part of an arbitrated interconnection agreement under Section 251 and 252.

The Act is clear that a state commission arbitrating an interconnection agreement is required to ensure the ILEC is providing the network elements identified by the FCC under Section 251, not the elements identified in Section 271. When a state commission arbitrates an interconnection agreement between an ILEC and a competitor, the state commission must "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251." 47 U.S.C. § 252(c)(1). At the same time, enforcement authority for Section 271 obligations is granted exclusively to the FCC. Section 271(d)(6) states "if at any time after the approval of an application under paragraph (3), the [FCC] determines that a bell operating company has ceased to meet any of the conditions required for such approval, the [FCC] may, after notice and opportunity for a hearing – (i) issue an order to such company to correct the deficiency; (ii) impose a penalty on such company pursuant to Title V; or (iii) suspend or revoke such approval." 47 U.S.C. § 271(d)(6)(A). Paragraph B of the section requires the FCC to establish procedures for reviewing complaints concerning failures by a BOC to meet the conditions of Section 271.

Covad quotes from the *TRO* where the FCC made clear "that the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under Section 251." Covad Petition, p. 6, quoting paragraph 653 of the *TRO.* The FCC did not say, however, that the independent unbundling requirements of Section 271 must be made part of an interconnection agreement. Qwest asserted in this case, and Covad did not contest, that Qwest continues to make the Section 271 network elements available to Covad apart from any interconnection agreement.

We conclude that the Commission does not have authority under Section 251 or Section 271 of the Act to order the Section 271 unbundling obligations as part of an interconnection agreement. Covad also argues the Commission has authority under state law to

expand the FCC's Section 251 unbundling requirements, but the statutes identified by Covad do not authorize what it requests. Section 61-503 authorizes the Commission to set retail rates for utilities regulated under Title 61. Section 61-513 authorizes the Commission to order physical connection of two regulated telephone companies so as to form a continuous line of communication. Section 61-514 enables the Commission to require a utility to share its conduits, subways, tracks, wires, poles, pipes or other equipment with other utility companies. Section 62-602 states the Legislature's intent in promulgating the Idaho Telecommunications Act of 1988, including a desire to encourage the development of competition, but that is not enough to empower the Commission to expand Qwest's Section 251 unbundling requirements. Section 62-614 gives the Commission authority to resolve telephone company disputes, and Section 62-615 authorizes the Commission to implement the 1996 Act. In short, none of the statutes identified by Covad provide the specific grant of authority necessary to support a Commission Order for Qwest to provide specific UNEs, apart from what the FCC has directed, in an arbitration agreement.

Having concluded the Commission has no legal authority to require Qwest to include its Section 271 unbundling obligations in an interconnection agreement, we approve the relevant language proposed by Qwest, or similar language, for the parties' interconnection agreement. The parties should complete their negotiations and submit their interconnection agreement for approval as soon as practicable.

ORDER

IT IS HEREBY ORDERED that Qwest is not obligated to include its Section 271 unbundling obligations in an interconnection agreement with Covad. The parties should conclude their negotiations for an interconnection agreement consistent with this Order and submit it for approval as soon as practicable.

THIS IS A FINAL ORDER ON ARBITRATION. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th day of July 2005.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

bls/O:CVDT0501_ws2

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of July 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S NOTICE OF SUPPLEMENTAL AUTHORITY by U.S. mail and electronic mail to the following:

Patrick W. Durick
PEARCE & DURICK, PLLP
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502
Telephone: (701) 223-2890
Facsimile: (701) 223-7865
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Gregory Diamond
COVAD COMMUNICATIONS CO.
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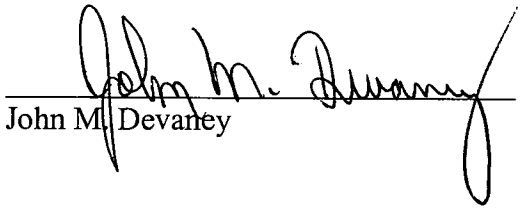
gdiamond@covad.com



John M. Devaney

John M. Devaney
PHONE: 202.434.1624
FAX: 202.654.9124
EMAIL: jdevaney@perkinscoie.com

RECEIVED
JUL 21 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Perkins Coie

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE: 202.628.6600
FAX: 202.434.1690
www.perkinscoie.com

July 21, 2005

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

Re: ***In the Matter of the Petition of DIECA Communications,Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation*, Case No. PU-05-165**

Dear Ms. Jeffcoat-Sacco:

As counsel for Qwest Corporation in the matter listed above, I am writing on behalf of Qwest and Covad Communications Company to confirm that both parties have agreed to waive the deadline set forth in Section 252(b)(4)(C) for the Commission to issue a decision in this arbitration. Covad has authorized me to make this representation on its behalf.

Thank you for your assistance.

Very truly yours,

John M. Devaney

/jmd

20 PU-05-165 Pages: 2
Letter to confirm parties agreement to waive deadline
by DIECA Communications, Inc. by John M Devaney, At
07/21/2005 CC: Comm Legal Illona, Pat, Annette . .

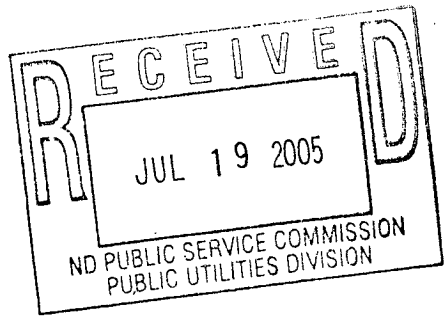
cc: Gina Buchholtz
Gregory Diamond
Patrick W. Durick
Melissa K. Thompson

COVAD

7901 Lowry Blvd. Denver, CO 80230
W > http://www.covad.com

T > 720.670.2018
F > 720.670.3350

July 19, 2005



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation; Case No. PU-05—165

Dear Mr. Mielke:

Enclosed for filing are the original and eight copies of Covad's Notice of Supplemental Authority in the above docket, along with a Certificate of Service.

Please feel free to call if you have any questions.

Very truly yours,

Lynn Hankins

Lynn Hankins

Enclosures
cc: Service list (w/enclosures)

19 **PU-05-165** Pages: 1

Cover letter re Notice of Supplemental Authority
by DIECA Communications, Inc. by
07/19/2005 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
JUL 19 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad") provides this notice of supplement authority:

1. On July 11, 2005, the Missouri Public Service Commission entered an arbitration order regarding the arbitration of an interconnection agreement for SBC pursuant to section 251 of the Telecommunications Act of 1996. *Southwestern Bell Telephone d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement*, Case No. TO-2005-0336, Arbitration Order, (July 11, 2005) (A copy of this order is attached as Exhibit 1).

2. In this order, the Missouri Commission held that Section 271 elements must be included within SBC's interconnection agreement. *Id*, p. 28 – 30. The Commission concluded that, "Unless an interim rate is established and CLECs can actually purchase § 271 UNEs out of their ICAs [interconnection agreements], SBC's obligation to offer § 271 UNEs under the M2A successor agreements [interconnection agreements] will be illusory." *Id.*, p. 30 (emphasis added). The Missouri Commission then in fact set interim rates for Section 271 elements. *Id.*

3. This decision is consistent with and supports Covad's argument in its petition for arbitration and supporting briefs that the North Dakota Public Service

Commission does have authority to require Qwest to include Section 271 elements within the parties' interconnection agreement in the context of a section 251 arbitration. Moreover, the decision also supports the Commission's authority to set rates for such elements.

RESPECTFULLY SUBMITTED,

Dated: July 18, 2005

Dieca Communications, Inc.

By:_____

Gregory Diamond
Senior Corporate Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 19, 2005, a true and correct copy of the foregoing Covad's Notice of Supplemental Authority was electronically served to the following:

Linda Miles
Qwest Corporation
1600 7th Ave
Room 3007
Seattle, Washington 98191

John Devaney
Mary Rose Hughes
Perkins Coie, LLP
607 Fourteenth Street, N.W., Suite 800
Washington, DC 20005-2011
(202) 434-1690 (Fax)

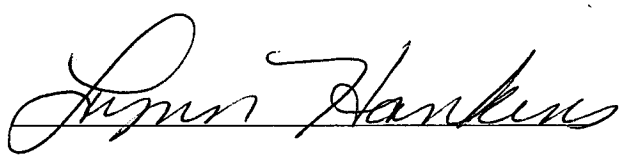


EXHIBIT 1

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").	))))	**Case No. TO-2005-0336**

ARBITRATION ORDER

Issue Date: **July 11, 1005**

Effective Date: **July 11, 2005**

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").	))))	**Case No. TO-2005-0336**

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APPEARANCES

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Missouri, Inc., Socket Telecom, LLC, XO Communications Services, Xspedius Management Company of Kansas City, LLC, Xspedius Management Company Switch Services, LLC, and Missouri Network Alliance, LLC.

CARRIE L. COX, Attorney at Law, Charter Communications, Inc., 12405 Powerscourt Drive, St. Louis, Missouri 63131, and

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PAUL G. LANE, LEO J. BUB, ROBERT J. GRYZMALA, and **MIMI B. MACDONALD,** Attorneys at Law, SBC Missouri, One SBC Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone, LP, doing business as SBC Missouri.

BRETT D. LEOPOLD, Attorney at Law, Sprint Communications Company, L.P., 6450 Sprint Parkway, Overland Park, Kansas 66251, for Sprint Communications Company, L.P.

PAUL S. DEFORD and **DAVID SCHORR,** Attorneys at Law, Lathrop & Gage, L.C., 2345 Grand Boulevard, Suite 2800, Kansas City, Missouri 64108, and

ADAM KUPETSKY, Regulatory Counsel, WilTel Local Network, L.L.C., One Technology Center TC-15H, Tulsa, Oklahoma 74103, for WilTel Local Network, L.L.C.

REGULATORY LAW JUDGE: **Kevin A. Thompson, Deputy Chief.**

Arbitration Advisory Staff:

Natelle Dietrich, Regulatory Economist III, Utility Operations Division, Missouri Public Service Commission.

Mick Johnson, Utility Operations Technical Specialist II, Utility Operations Division, Missouri Public Service Commission.

Adam McKinnie, Regulatory Economist II, Utility Operations Division, Missouri Public Service Commission.

Mike Scheperle, Regulatory Economist II, Utility Operations Division, Missouri Public Service Commission.

Nathan Williams, Senior Counsel, Office of the General Counsel, Missouri Public Service Commission.

ARBITRATION ORDER

Procedural History

Petition for Arbitration:

This arbitration commenced on March 30, 2005, when Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the M2A, Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC's petition asked the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements ("ICAs") between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the generally-available interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the

United States Federal Communications Commission ("FCC") that SBC be approved to provide in-region long distance service in Missouri pursuant to Section 271 of the Act.[1]

The procedural history of this case up to the filing of the Arbitrator's Final Report are set out in that report and need not be repeated here.

The Arbitrator's Final Report:

Due to the shortened schedule for this arbitration, the Arbitrator did not issue a Draft Report as called for by Rule 4 CSR 240-36.040(19). Instead, the Arbitrator filed his Final Arbitration Report of some 2,075 pages on June 21.[2] The report included the Decision Points ("DPs") formulated by the parties, grouped topically so far as possible, a discussion of pertinent points on each DP and a decision. The report also included both summary and detailed matrices showing the proposed contractual language selected for inclusion in each ICA.

The Parties' Comments:

The parties filed comments on the Final Arbitrator's Order on June 24. Rule 4 CSR 240-36.040(20) concerns the parties' comments on the draft arbitration report. In the present case, there was no draft arbitration report and the parties filed comments on the Final Arbitration Report instead. Rule 4 CSR 240-36.040(20) states:

> Each party and any member of the public may file comments on the arbitrator's draft report within ten (10) days after it is filed with the commission. Such comments shall not exceed twenty (20) pages, unless otherwise authorized by the arbitrator, and shall be directed to perceived

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[1] In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).

[2] The Arbitrator issued his Final Arbitration Report on the 26th day following the end of the hearing and on the 15th day after the parties filed their Briefs.

> factual, legal or technical errors made in the draft report. Commenters shall make specific references to the record to support each claim of error. Comments that merely reargue positions taken in briefs will be accorded no weight. Reply comments, if permitted by the arbitrator, shall be limited to identifying misrepresentations of law, fact or condition of the record contained in comments.

Generally speaking, the parties' comments fell into certain categories. First, parties asserted that the Arbitrator had overlooked certain Decision Points ("DPs"), either by failing to provide a decision where the issue remained open or by providing a decision where the issue had been settled. Second, parties complained that certain of the Arbitrator's decisions were inconsistent, either because the Arbitrator's decision on one DP appeared to contradict his decision on another DP elsewhere in his report or because the selected contractual language appeared to be inconsistent with the Arbitrator's stated decision. In some cases, such inconsistencies appear to reflect the fact that none of the offered language was appropriate or desirable. Third, parties objected to various of the Arbitrator's decisions as being contrary to law. Fourth, parties objected to various of the Arbitrator's decisions as being a bad policy choice.

With respect to those DPs that the parties contend the Arbitrator should not have decided because they were already settled, the Commission points out that it need take no action because the parties are free, under the Act, to substitute their negotiated resolution for any decision of the Arbitrator. Therefore, the parties should simply file their ICA containing the language on which they mutually agree.

Oral Arguments:

The Commission heard oral arguments on June 29 and 30. Each party was permitted to argue affirmatively in support of its comments and in opposition to the comments filed by other parties.

The Commission's Decision:

Rule 4 CSR 240-36.040(24), "Commission's Decision," provides:

> The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation.[3] The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

In modifying the Final Arbitration Report, the Commission may, as necessary, "[adopt] a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section."[4]

Like the Arbitrator, the Commission must be guided by Section 252(c) of the Act, which provides:

> In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall --
>
> (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

---

[3] The M2A provides that negotiations on successor ICAs must start by the 135th day prior to its expiration and, where negotiations are ongoing, that the M2A will remain in effect for 135 days following its expiration, making a total of 270 days.

[4] Rule 4 CSR 240-36.040(5)(E).

With respect to the public interest in the regulation of telecommunications, the Missouri General Assembly has provided an express statement of public policy to guide the Commission:[5]

> The provisions of this chapter shall be construed to:
>
> (1) Promote universally available and widely affordable telecommunications services;
>
> (2) Maintain and advance the efficiency and availability of telecommunications services;
>
> (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;
>
> (4) Ensure that customers pay only reasonable charges for telecommunications service;
>
> (5) Permit flexible regulation of competitive telecom-munications companies and competitive telecommunications services;
>
> (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest;
>
> (7) Promote parity of urban and rural telecommunications services;
>
> (8) Promote economic, educational, health care and cultural enhancements; and
>
> (9) Protect consumer privacy.

The Role of the Arbitrator in the Ongoing Proceedings:

At the Oral Argument on June 29, a member of the Commission raised a question concerning the propriety of the participation of the Arbitrator in the second step of the two-step arbitration proceeding contemplated by the Commission's rule.[6] In the first step, the Arbitrator independently conducted proceedings that culminated in the Final Arbitrator's

---

[5] Section 392.185, RSMo Supp. 2002.

[6] Tr. 1192.

Report. In the second step, the parties have addressed written comments and oral arguments to the Commission in an effort to modify portions of the Final Arbitrator's Report. Commissioner Gaw questioned whether it was appropriate for the Arbitrator to preside given the fact that it was his decision that was the subject of the parties' various objections.

The Arbitrator polled the parties on June 29, and none expressed any objection to his presiding at the Oral Argument.[7] However, SBC's counsel stated:

> MR. LANE: I certainly don't have any objection to your presiding. I think when the Commission goes to reach its decision, if it needs assistance from someone in the General Counsel's office, or more appropriately maybe in the Regulatory Law Judges' office, it would probably be better to at least have somebody else involved in that process. But I certainly don't have any objection to your presiding over this.
>
> * * *
>
> MR. LANE: And to clarify my remarks before we go on, I think our view of it is that the Commission's review here is de novo, and that's a critical factor, and that's where my comments go.[8]

The Commission's Arbitration Rule does not expressly address this point. However, it does provide that the Arbitrator shall merely produce a report to the Commission, as he has done here. This report is not a decision and will not become one, although it may be embodied by the Commission into its decision, in whole or in part. The Commission's proceedings on the Arbitrator's Report, consequently, are not in the nature of an appeal or review. It is, instead, an original proceeding.

For these reasons, the Commission concludes that there is no reason why the Arbitrator cannot participate in the Commission's proceedings.

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[7] *Id.*, at pp. 1192-1194.

[8] *Id.*, 1192-1193, 1194.

Further Proceedings:

The Procedural Schedule called for this Commission's Order to be issued by July 6, and provides for subsequent proceedings as follows:

Successor Interconnection Agreements All Parties	July 13, 2005 4:00 p.m.
Commission Approval of Successor Interconnection Agreements	July 19, 2005 4:00 p.m.

DECISION

The Missouri Public Service Commission hereby adopts the Final Arbitrator's Report as its decision on each unresolved issue, except as that Report is expressly modified below. The Final Arbitrator's Report is incorporated into this Order by reference.

DETAILED ANALYSIS OF COMMENTS

The Commission addresses only those comments here that, in its opinion, required some modification of the Arbitrator's Final Report. All other requested modifications have been considered and rejected.

A. AT&T's Comments:

1. Routine Network Modifications:

AT&T UNE Issue 6: Should SBC MISSOURI's obligation to provide UNEs, if they can be made available via routine network modification, be dependent upon SBC's determination of whether spare facilities exist?

AT&T UNE Issue 18: How should routine network modifications be described in the ICA? Is SBC entitled to charge AT&T for routine network modifications?

Discussion:

AT&T contends that the Arbitrator erred in adopting SBC's proposed language limiting its obligation to perform routine network modifications to spare facilities and by also

including language in the UNE Attachment regarding ICB prices for routine network modifications. The Arbitrator found as follows:

> SBC Missouri may not limit "routine network modifications" to the attachment of electronics to DS1 Loops. SBC Missouri may recover the costs of such routine network maintenance through either recurring or nonrecurring rates. To the extent that it has an unbundling obligation under §251(c)(3), it must provide the service at TELRIC rates; to the extent that the obligation remains under §271, then the service must be provided at just and reasonable rates.[9]

AT&T states that the purported inconsistencies are found in the Detailed Matrix attached to the UNE section of the Arbitrator's Final Report, which indicates that the Arbitrator adopted SBC's proposed language for section 2.5, including the spare facilities language, as well as SBC's proposed ICB language in sections 4.8.7, 8.5.7.6 and 15.12.6. AT&T states that the Commission should (1) delete the word "spare" from section 2.5 of the language selected by the Arbitrator and (2) delete SBC's proposed language at sections 4.8.7, 8.5.7.6, and 15.12.6 of the UNE attachment.

Decision:

The Commission agrees with AT&T. The language AT&T objects to is indeed inconsistent with other parts of the Arbitrator's Report as AT&T has pointed out. The Commission therefore modifies the Report by deleting the word "spare" from section 2.5 of the language selected by the Arbitrator and deleting SBC's proposed language at sections 4.8.7, 8.5.7.6, and 15.12.6 of the UNE attachment.

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[9] Arbitrator's Report, Section III at p. 59.

2. Access to Digital Cross-connect System (DCS):

UNE Issue 20: Should SBC be required to provide access to DCS, and, if so, under what terms and conditions?

Discussion:

AT&T states that the Arbitrator erred by adopting SBC's language limiting access to DCS to that provided under SBC's federal tariff. The Arbitrator's Final Report on this issue simply stated that it had been discussed above. The attached Detailed Matrix adopted SBC's proposed language. AT&T asserts that the Arbitrator thereby erred because, to the extent that SBC still has an obligation to provide access to dedicated transport an on unbundled basis, SBC is also obligated to provide access to DCS as a UNE pursuant to § 251 of the Act. AT&T thus alleges an error of law.

AT&T contends that the continued availability of Dedicated Transport at cost-based rates is essential to competition in the local phone market. AT&T explains that DCS is a device that enables a CLEC to access and manage the digital signals of loop and transport facilities and may also provide multiplexing functions and test access capabilities. AT&T points to testimony showing that the DCS confers upon a carrier the significant abilities to groom facilities and optimize trunk and facility utilization.[10] AT&T argues that SBC should be obligated to provide access to DCS as a functionality that is part of the unbundled Dedicated Transport UNE.

SBC's position with respect to DCS is that there is no requirement that SBC Missouri provide access to DCS as a UNE since the FCC has found that DCS is required only with an entrance facility and both the *TRO* and *TRRO* clearly state that entrance facilities are not UNEs. According to SBC, the FCC requires only that DCS be offered: "in the same

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[10] Rhinehart Direct Testimony at p. 61.

manner that the incumbent LEC provides such functionality to interexchange carriers."[11] Since services are not offered to IXCs as UNEs, there is no rationale for SBC Missouri being required to provide the DCS to CLECs as UNEs either.[12]

Decision:

AT&T points out that the Arbitrator determined, elsewhere in his Report, as follows:

> The Arbitrator notes that the *TRO* and *TRRO* limited dedicated transport to facilities between ILEC offices, so DCS need not be provided as part of that UNE but rather on a wholesale basis as SBC suggests.[13]

Similarly, at page 6 of the Pricing Section of the Report, the Arbitrator found the following with regards to cross connects to DCS 4-Wire:

> SBC does not propose to include these services in the contract as they are not Section 251(c)(3) elements. Under the FCC rules, DCS is not a UNE; instead it is a special access functionality which is available under the special access tariff to CLECs and IXCs on an equal basis as required by the FCC rules. Decision: The Arbitrator agrees with SBC for the reasons stated above."[14]

The Commission concludes that the Arbitrator did not err.

3. Should the Temporary Rider contain language regarding the manner in which SBC converts delisted elements?

AT&T Temporary Rider Issue 4b: Should the Rider contain language regarding the manner in which SBC converts delisted elements?

Discussion:

AT&T states that, with regards to UNE Rider Issue 4, the Arbitrator adopted SBC's language in places and adopted AT&T's language in other places. AT&T comments on two sections of its proposed language that the Arbitrator rejected, as well as three related

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[11] With the First Report & Order 47 C.F.R. §51.319(d)(2)(iv) and again with the UNE Remand Order §51.319(d)(2)(D).

[12] Silver Direct, pp. 122-125; Smith Direct, pp. 32-34; Smith Rebuttal, pp. 12-14..

[13] Final Arbitrator's Report, Section IV Pricing, p. 15.

[14] *Id.*, p. 6.

sections of SBC's proposed contract language that the Arbitrator adopted, that are "arguably" inconsistent with other determinations the Arbitrator made.

First, the Arbitrator rejected AT&T's proposed sections 2.3.4.1 and 2.3.4.2 in their entirety. The language in section 2.3.4.1 would ensure that conversions from transitional elements would take place "in a seamless manner without any customer disruption or adverse effects to service quality." The language further provides that the parties will work together to develop a mutually agreeable conversion process. The end of AT&T's proposed section 2.3.4.1 provides that if the parties cannot agree on a mutually agreeable conversion process, the deadline for conversions is extended and SBC will continue to bill the transitional rates. The language in section 2.3.4.2 rejected by the Arbitrator is a companion to this language at the end of section 2.3.4.1, and provides that SBC may true-up to collect the difference between the transitional rates and the rates for the applicable alternative arrangement between the end of the transition period and the date the conversion requests are completed. Thus, AT&T's proposed section 2.3.4.2 ensures that SBC will be able to bill the full amount for post-transition services and will not suffer any monetary shortfall by being required to provide elements at the transitional rates past the end of the transitional period.

AT&T states that the language in section 2.3.4.1 and 2.3.4.2 is necessary to ensure that its customers are not negatively impacted by the conversion process. AT&T contends that it is also consistent with the principles behind the *TRRO,* in which the FCC, recognizing that the order was removing significant unbundling obligations that had formerly been placed on SBC, stressed the need for an orderly transition for competitive carriers and their customers from UNEs to alternative facilities or arrangements.

AT&T asserts that the Arbitrator also erred in adopting SBC's proposed language at sections 3.3, 3.3.1 and 3.3.2. The language in sections 3.3 and 3.3.2 is identical, and provides as follows:

> CLEC shall be fully liable to SBC Missouri to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

Section 3.3.1 is related, and provides:

> Regardless of the execution or effective date of this Rider or the underlying agreement, CLEC will be liable to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005.

AT&T claims that the language adopted in these sections is potentially inconsistent with other language that the Arbitrator adopted, which provides:

> Regardless of the execution or effective date of this Rider or the underlying Agreement, CLEC agrees that the Transitional Pricing for all Affected Loop-Transport Element(s), shall apply beginning March 11, 2005, SBC Missouri will not bill AT&T for such rates, nor shall the difference in the Transitional Prices be due, prior to the execution of this rider.

In making this determination, the Arbitrator rejected SBC's proposed section 2.3.1, which is analogous to SBC's section 3.3.1, which the Arbitrator adopted.

AT&T states that the net effect of the Arbitrator's decision on sections 2.3.1, 3.3, 3.3.1 and 3.3.2 is that for Transitional Loop-Transport elements, although AT&T agrees to pay the transitional pricing for loop transport elements beginning March 11, 2005, SBC is not allowed to bill for the transitional rates until after the Rider has been executed. Because SBC cannot bill until after execution of the Rider, late charges and interest cannot apply until after that date. However, for transitional switching elements and UNE-P, AT&T is liable for the transitional rates beginning March 11, 2005, and SBC is entitled to impose late payment charges and interest beginning on that date. These conflicting results should

be reconciled by adoption of AT&T's sections 3.3 and 3.3.1 and rejection of SBC Missouri's sections 3.3, 3.3.1 and 3.3.2.

Decision:

First, with respect to AT&T's comments regarding sections 2.3.4.1 and 2.3.4.2, the Commission finds that AT&T's assertion of error is that the Arbitrator has made a bad policy choice. That assertion of error is not within the scope permitted by Rule 4 CSR 240-36.040(20) and will be disregarded.

Second, with respect to AT&T's argument that its sections 3.3 and 3.3.1 should be adopted in place of SBC Missouri's sections 3.3, 3.3.1 and 3.3.2 in order to avoid an "arguable" inconsistency, the Commission finds that the provisions in question are indeed inconsistent. The Commission will modify the Report to provide that, regardless of the date of execution of the Rider or the date when SBC may bill, AT&T shall be liable for the transitional rates beginning March 11, 2005, and SBC shall be entitled to impose late payment charges and interest beginning on that date. SBC's proposed section 3.3.1 is adopted in place of AT&T's proposed section 2.3.1.

4. DCS Pricing:

AT&T Pricing Issue 1: What are the appropriate cost-based rates for the elements in dispute between the Parties?

AT&T Pricing Issue 3: Should DCS rates be included in the ICA or should the ICA reference SBC's federal tariff for these rates?

Discussion:

AT&T states that the Arbitrator erred in determining that rates for DCS and DCS cross-connects need not be included in the ICA. AT&T explains that these issues are related to AT&T UNE Issue 20. AT&T states that, if the Commission reconsiders the

Arbitrator's determination on AT&T UNE Issue 20, then pricing for DCS and related cross-connects should be included in the Schedule of Prices.

Decision:

The Commission finds that the Arbitrator did not err in his decision with respect to AT&T UNE Issue 20. For this reason, pricing for DCS and related cross-connects need not be included in the Schedule of Prices.

5. Voice Grade Dedicated Transport Cross-Connects:

AT&T Pricing Issue 1: What are the appropriate cost-based rates for the elements in dispute between the Parties?

Discussion:

AT&T states that the Arbitrator erred in determining that rates for voice grade dedicated transport cross-connects need not be included in the ICA. The Arbitrator noted in Pricing Issue 1 that "SBC proposes no prices as the provision of these cross connects is not subject to Section 251(c)(3) as no finding of impairment has ever been made by the FCC on voice grade dedicated transport. Decision: The Arbitrator agrees with SBC for the reasons stated above." This finding, however, is inconsistent with the Arbitrator's finding on Pricing Issue 5, regarding whether rates for voice grade/DS0 dedicated transport should be included in the ICA. The Arbitrator, at page 17 of the Pricing Section of the Report, agreed with AT&T that rates for voice grade dedicated transport should be included. That finding is consistent with his ruling on a related UNE Issue. Given that the Arbitrator has determined that voice grade dedicated transport is a UNE, and that rates for it should remain in the ICA, AT&T argues that the Commission should reverse the inconsistent determination that voice grade dedicated transport cross-connects are not available under the ICA. Voice grade dedicated transport is of little utility without corresponding cross-connects.

Decision:

The Commission concurs with AT&T. Because the Arbitrator determined that voice grade dedicated transport is a UNE and that rates for it should remain in the ICA, it follows that the ICA must also include rates for voice grade dedicated transport cross-connects. The Final Arbitrator's Report is modified in this respect. The parties shall incorporate the language proposed by AT&T in their ICA.

6. SBC's Section 6.1:

AT&T NIA Issue 10: Should interconnection trunks carry all 251(b)(5) traffic, including ISP bound and transit traffic, as well as intraLATA exchange traffic?

Discussion:

AT&T states that the Arbitrator erred by adopting only a part of SBC's proposed language that was found to be consistent with the Report. For this particular issue, as it does for other Network issues, the Arbitrator's Report points to the Commission's recently adopted Enhanced Record Exchange rules in 4 CSR 240-29.10 *et seq*. AT&T asserts that those rules cannot be applied in circumstances where they conflict with the Act. The Detailed Decision Matrix indicates that all of AT&T's proposed language for this issue is consistent with the Arbitrator's Report. The Matrix, however, also indicates that SBC's proposed language for Attachment 11, Part C, § 6.0, is consistent with the Report, but goes on to state that SBC's proposed language for Attachment 11, Part C, § 6.1 is not consistent with the Report. It is unclear to AT&T why the Report considers § 6.1 to be inconsistent with the Report. AT&T states that it would be an error to include § 6.0 in the ICA without also including § 6.1.

AT&T states that §§ 6.0 and 6.1 are companion paragraphs that operate in a reciprocal fashion. Section 6.0 addresses AT&T's routing of traffic to SBC and § 6.1

addresses SBC's routing of traffic to AT&T and from AT&T's perspective they impose reciprocal obligations. AT&T does not object to the inclusion of SBC's language for § 6.0 as long as § 6.1 is also included, since it would be discriminatory against AT&T to only include § 6.0. Therefore, the Arbitrator's Report should be corrected to also find that § 6.1 should be included in the ICA. AT&T thus alleges an inconsistency.

Decision:

The Commission concurs with AT&T. The Arbitrator's Report is modified to provide that the parties' ICA shall also include SBC's § 6.1, as follows:

> SBC MISSOURI shall route Section 251(b)(5)/IntraLATA Toll Traffic destined for the AT&T Switch Center over a Local Interconnection Trunk Group from an SBC MISSOURI Local Tandem or when AT&T agrees to establish DEOTs over a direct end office Local Interconnection Trunk Group from an SBC MISSOURI End Office. SBC MISSOURI shall route Section 251(b)(5) Traffic and ISP–Bound Traffic destined for the AT&T Switch Center over a Local Only Trunk Group from an SBC MISSOURI Local Only Tandem Switch.

B. <u>Charter Fiberlink's Comments</u>:

1. At what point must a CLEC establish additional POIs with a LATA?

<u>Charter NIM Issue 1</u>: (c) When CLEC selects a single POI, should this appendix contain language detailing the need for CLEC to establish additional POIs when CLEC reaches the appropriate threshold of traffic?

Discussion:

Charter states that the underlying issue here is the establishment of physical points of interconnection ("POIs") where Charter and SBC will physically link up their networks in order to exchange traffic.[15] The Arbitrator held – correctly, in Charter's view -- that CLECs

[15] The parties' competing contract language on this point is set out in the Charter-SBC NIM DPL, Issue No. 1(c) at pp. 2-3.

may establish a single, LATA-wide POI to exchange all traffic with SBC.[16] He also noted that, under 47 U.S.C. § 251(c)(2), interconnection must be "technically feasible."[17] Charter states that it follows that SBC may reasonably require an additional POI if SBC can show that it is technically infeasible to keep using the POI or POIs already in place.

Charter states that, given the Arbitrator's decision, it follows that Charter's proposed contract language is to be preferred. However, the Detailed Matrix attached to Section V of the Arbitrator's Final Report states that it is SBC's language that is more consistent with the Arbitrator's substantive rulings. Charter urges the Commission to correct this inconsistency.

Decision:

The Commission concurs with Charter that the Detailed Matrix is inconsistent with the Arbitrator's stated decision. The Arbitrator's Final Report is modified to state that the parties shall adopt Charter's proposed language.

C. <u>The CLEC Coalition's Comments</u>:

1. Maintenance and repair of commingled arrangements:

<u>CLEC Coalition UNE Issue 68</u>: (1) Should references to Commingled Elements be included in this Attachment? (2) Should the Attachment include an express obligation for SBC to conform with any performance metrics the Missouri Commission may order during the term of the Agreement?

Discussion:

The Coalition states that the Arbitrator approved the Coalition's proposed language in Sections 1.1 and 3.1, but apparently rejected it in Section 2.1. The Coalition states that this appears to be an inadvertent error that should be corrected in the Commission's order

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[16] *See* Final Arbitrator's Report at § V (Interconnection) at pp. 6 & 8, Case No. TO-2005-0336 (rel. June 21, 2005) (hereinafter *Final Arbitrator's Report*). *See also* In the Matter of Developing a Unified Intercarrier Compensation Regime, *Notice of Proposed Rulemaking,* FCC 01-132 (released April 21, 2001) at ¶ 112 (footnote omitted) (an ILEC "must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.")

[17] *See Final Arbitrator's Report* at § V (Interconnection) at p. 3.

through a clarification of the Final Arbitrator's Report affirming that the CLECs' proposed language is approved for Section 2.1.

Decision:

The language proposed by the Coalition is as follows (the underlined portions are those objected to by SBC):

> 2.1 SBC MISSOURI will provide maintenance for all Unbundled Network Elements Combinations and Commingled Elements ordered under this Agreement at levels equal to the maintenance provided by SBC MISSOURI in serving its end user customers, consistent with Attachment 6 UNE, Section 2.4.1, and will meet the requirements set forth in this Attachment. Such maintenance requirements will include, without limitation, those applicable to testing and network management. The maintenance to support these services will be provided in a manner which meets the performance metrics provided for in Attachment 17 or any MISSOURI Commission-ordered performance measures.

The language proposed by SBC and selected by the Arbitrator is as follows (the language in bold is that objected to by the Coalition):

> 2.1 SBC MISSOURI will provide maintenance for all **Lawful** Unbundled Network Elements **and Lawful** Combinations ordered under this Agreement at levels equal to the maintenance provided by SBC MISSOURI in serving its end user customers, consistent with Attachment 6 UNE, Section 2.4.1, and will meet the requirements set forth in this Attachment. Such maintenance requirements will include, without limitation, those applicable to testing and network management. The maintenance to support these services will be provided in a manner which meets the performance metrics provided for in Attachment 17

Having considered the foregoing, the Commission concurs with the Coalition. Its proposed language is consistent with the other decisions made by the Arbitrator and his rejection of it here seems to be an error. The Final Arbitrator's Report is hereby modified and the parties are directed to include the Coalition's proposed version of Section 2.1 in their ICA.

2. Billing for unbundled switching where billing is based on usage.

CLEC Coalition UNE Issue 58: Given the TRRO, should CLEC be allowed to purchase UNE switching in this ICA?

Discussion:

The Coalition explains that the Arbitrator concluded that SBC must provide the 271 checklist items of local switching, local loops and local transport in the parties' ICA, and the decisions in his Report regarding access to databases, AIN and other services associated with unbundled local switching are consistent with that determination. That is, the terms and conditions governing the provision of all the associated services that make CLECs' access to 271 unbundled local switching meaningful will be part of this agreement.

However, the Coalition states, in what appears to be an inadvertent error, the Final Arbitrator's Report rejects the Coalition's language set forth in Section 2.3 of the Appendix Pricing to UNE Attachment 6 that states how SBC will bill CLECs for such unbundled switching when the rates are based on minutes-of-use ("MOU"). The Arbitrator, through his resolution of CLEC Coalition UNE Issue 1, determined Coalition UNE Issue 58 in its favor as well. For this reason, the Coalition states that the disputed language shown below should be retained in the Appendix in order to provide complete terms for the billing of unbundled local switching:

> Where rates will be based on minutes of use (MOU), usage will be accumulated at the end office and are rounded to the next higher minute per monthly billing cycle. In the long term usage will be measured beginning when the facilities are seized (excluding network failures) and ending when the facilities are released. SBC MISSOURI is currently unable to measure busy/don't answer (by/da), but SBC MISSOURI intends to develop such capability. SBC MISSOURI will provide CLEC not less than 30 days notice when SBC MISSOURI begins to measure by/da. No related true up will occur.

The Coalition urges the Commission to correct this apparent error as a clarification to the Final Arbitrator's Report.

Decision:

The Commission concurs with the Coalition. Its proposed language is consistent with the other decisions made by the Arbitrator and his rejection of it here is an error. The Final Arbitrator's Report is hereby modified and the parties are directed to include the Coalition's proposed version of Section 2.3 in their ICA.

3. Restrictions on equipment used by CLECs:

CLEC Coalition UNE Issue 37: Is a general statement referring to regulatory requirements helpful to understanding?

Discussion:

The Coalition states that a review of the detailed matrix accompanying the Arbitrator's Report revealed that one important issue was not decided. The Coalition requests clarification with respect to the following language proposed by SBC and rejected by the Coalition:

> 2.35 CLEC will connect equipment and facilities that are compatible with the SBC MISSOURI Unbundled Network Elements and will use Unbundled Network Elements in accordance with the applicable regulatory standards and requirements referenced in Section 2.20.

In its Brief, SBC states that the Commission should adopt its proposed language (set out above), which requires CLECs to connect equipment and facilities compatible with SBC Missouri's UNEs and to use UNEs in accordance with the applicable regulatory standards referenced in the ICA, because SBC Missouri's position is reasonable in that it can only support equipment that currently exists and is approved for use within SBC Missouri's network. SBC contends that it would be unreasonable to require SBC Missouri to be responsible for installing, provisioning, and maintaining equipment that is not established in

its network.[18] Moreover, although the Coalition objects to SBC Missouri's proposal, it provides no competing language.

The Coalition did address this issue in its Brief. However, in its Position Statement, the Coalition objected that SBC's proposed language is "vague" and "general" and "raises more questions than [it] answers." For example, the Coalition asks rhetorically, "What is meant by compatible? What is meant by use in this context?" The Coalition states that, if SBC means that CLEC's equipment will meet FCC rules or industry requirements set by testing organizations, then it agrees that that is what should be here. Otherwise, the Coalition asserts, SBC's language only creates confusion for the reader without adding anything concrete and potentially allows SBC to declare some equipment or facility that a CLEC has connected, or is using, to be violating the parties' agreement. The Coalition requests that the Commission rule on this disputed issue.

Decision:

The Commission concurs with SBC and thus modifies the Final Arbitrator's Report to direct the parties to include SBC's Section 2.35 in their ICA. The Commission does not find the provision to be either vague or confusing and is of the opinion that it is indeed reasonable as argued by SBC.

[18] Hatch Direct, p. 42.

4. Rates:

(A) Rate Increases for Rural UNE Loops:

CLEC Coalition Pricing Issue A 1: What are the appropriate cost-based rates for the elements in dispute between the Parties?

Discussion:

The Coalition states that the Arbitrator rejected the CLEC Coalition's proposal that the ICA maintain the UNE rates the parties have been operating under during the term of the M2A. The CLEC Coalition urges the Commission to reconsider this decision because it is contrary to Commission precedent and because approval of SBC's unsupported rate increases will have a very deleterious effect on competition in Missouri, particularly with regard to 2-wire analog (DS0)[19] voice-grade loops in Zones 2 and 3 in rural Missouri ("Rural UNE Loops").

The Coalition points out that, in this arbitration, SBC did not present cost studies justifying any rate changes, much less rate increases for Rural UNE Loops. SBC states that it will no longer offer current prices because they are the result of its M2A "voluntary" commitments. As the following chart taken from the Coalition's Comments demonstrates, the impact of SBC's proposals is particularly evident in the rural rates where prices will increase by 11% in Zone 2 and 69% in Zone 3.

[19] DS0 voice-grade loops were not declassified as UNEs under § 251 in any U.S. market by the FCC's *TRRO* rulings. DS0 loops remain a fundamental building block that CLECs using their own switches need to reach residential and small business customers. Therefore, under governing law, DS0 loops, whether in rural or urban zones, must be offered at TELRIC rates.

Retail Rate Group	UNE Rate Zone	# of access lines	Rates under Arb. Decision	Current M2A Rates	% [redacted]
D	1	> than 230,000	$12.71	$12.71	0%
B	2	5,000-59,999	$20.71	$18.64	11%
A	3	0-4,999	$33.29	$19.74	69%
C	4	60,000-229,000	$18.23	$16.41	11%

SBC claims that these much higher rates meet TELRIC standards because they were approved by the Commission in cost proceedings conducted just after the passage of the 1996 Act.

The Coalition states that, in a prior case, the Commission faced the question of whether to apply M2A UNE rates in the place of rates based on similarly-outdated SBC cost studies. In a 2001 AT&T arbitration that occurred after the M2A was in place, SBC urged that the Commission apply pre-M2A rates based on outdated cost studies that were of "1996 vintage."[20] The Commission contrasted the outdated rates proposed by SBC with the M2A rates, which were "the product of a lengthy proceeding and close scrutiny."[21] The Commission concluded that it was appropriate to apply M2A rates in the AT&T-SBC agreement, although they had not been litigated in the parties' arbitration proceeding. The Commission expressed confidence in the M2A rates as being "compliant with both the Act and the FCC's regulations," and noted that the Commission "has already determined that [the M2A] complies with all of the standards applicable to interconnection agreements,

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[20] *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455 (*Arbitration Order*, issued June 14, 2001) at 14.

[21] *Id.*

including the 14-point checklist in Section 271."[22] Given the absence of current cost studies filed by either SBC or AT&T, the Commission adopted the M2A rates.

Similarly, the Coalition points out, in this case SBC has not presented cost support for departing from the M2A rates. While SBC claims certain rates were "voluntary," SBC ignores the FCC's findings in the Missouri 271 proceeding. The FCC there held that rates such as the Rural UNE Loop rates had to be reduced in order for SBC to attain interLATA long distance entry. As this Commission noted in the AT&T-SBC arbitration order cited above, the FCC was troubled by the fact that "[r]ecurring charges in Missouri are two to six times those in Texas, Kansas, and Oklahoma."[23] When SBC sought long distance authority, it lowered the rates to the current levels. Now, SBC is seeking to raise the same rates back to the levels the FCC found unreasonable, without presenting updated cost support to show that the rates are compliant with TELRIC standards. The Coalition urges the Commission to follow its precedent and reject SBC's unsupported changes to the M2A rates.

The Coalition further states that, if the Commission is reluctant to maintain the *status quo*, the Coalition urges the Commission to reconsider the Arbitrator's ruling approving price increases specifically for the Rural UNE Loop rate. At the current M2A rural prices, Missouri CLECs like Big River Communications and Socket Telecom have been able to offer facilities-based alternatives to Missouri residential and small business customers. CLECs have installed their own switches, connected them to Rural UNE Loops to reach residential and business customers, and thereby made competitive alternatives available to rural customers who otherwise would not have choices for their telecommunications

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[22] *Id.*

[23] *Id.* at 11.

services. Without the availability of affordable voice-grade UNE loops, such service offerings simply are not financially viable.

The Coalition contends that SBC offered the M2A Rural UNE Loop rates as part of its effort to enter the Missouri interLATA long distance market, an effort that required SBC to demonstrate that the Missouri local exchange market was irreversibly open to competition. However, the Coalition points out, now that SBC is not only dominating the Missouri interLATA market, but is on the verge of absorbing its largest competitor -- AT&T, SBC is moving to raise the UNE rates that have made limited local competition possible for rural residents in Missouri. The Coalition argues that SBC should, at a minimum, be held to the commitment it made in the M2A, which has yielded tangible results for rural areas in Missouri.

Decision:

In its Brief, SBC stated that its proposed rates are generally those contained in prior arbitrations or the M2A, but modified (1) to eliminate "certain voluntary offerings made in the M2A that are not required under the Act," (2) to remove certain elements that have been declassified by the FCC in its *TRO* and *TRRO* decisions since the M2A was adopted, and (3) to add rates for certain services which were not part of the M2A but which were negotiated by the parties. Nowhere in this discussion did SBC candidly advise the Arbitrator of the size or effect of the rate changes it proposed. Indeed, the scale and impact of these rate changes has only become apparent with the filing of the Coalition's Comments containing the chart reproduced above.

The Commission will modify the Final Arbitrator's Report and direct the parties to use the M2A rates in their ICA. As the Coalition correctly argues, SBC has utterly failed to

support these rate increases with current cost studies. In the absence of such studies and an adequate opportunity to review them, this Commission will not approve rate increases.

(B) Interim Rates for Section 271 UNEs:

CLEC Coalition Pricing Issue A 2: Should those elements declassified by the FCC be contained in a 251 Pricing Schedule?

CLEC Coalition Pricing Issue A 3: Should the Pricing Schedule be limited to network elements classified as UNEs under Sections 251 and 252?

Discussion:

The Coalition states that the Final Arbitrator's Report correctly held that unbundled elements required by the § 271 competitive checklist ("§ 271 UNEs") must be included in the M2A successor interconnection agreements. The Coalition further states that the Arbitrator also properly held that the pricing standard for § 271 UNEs is a "just and reasonable" standard rather than a TELRIC standard. However, until the Commission determines what constitutes a "just and reasonable" rate for § 271 UNEs, the industry will need an interim rate for checklist items that are no longer available at TELRIC rates due to declassification under the *TRRO,* that is, switching, loop, and transport elements that have been declassified under § 251 but remain available under the new price standard under § 271.

The CLEC Coalition's proposed contract language contemplated that the interim rates be established at TELRIC levels until the Commission can set a permanent rate. The Arbitrator rejected this proposal, apparently finding it inconsistent with the recommendation that all § 271 UNEs be priced at "just and reasonable" rather than TELRIC rates.[24] The

[24] Final Arbitrator's Report, Attachment III.A, Part 1, Detailed Language Decision Matrix, CC UNE Issue 1, proposed Section 1.2.6 (Coalition) and 2.18.6.2 (SBC).

Arbitrator also rejected SBC's proposed language, which did not include any rate for § 271 UNEs.

The Coalition sponsored an interim rate compromise proposal in testimony that was not reflected in the Final Arbitrator's Report. In rebuttal testimony, Ms. Mulvany Henry of Birch Telecom testified on behalf of the Coalition:

> Specifically, we ask the Commission to clearly recognize that the only difference between § 271 and § 251 elements . . . is the applicable price. Although SBC is not required to charge TELRIC-based rates, it is also not permitted to charge rates that exceed just and reasonable levels. The arbiter of the appropriate price remains the Missouri Public Service Commission. **Because there is no information to establish such rates in this phase of the proceeding, we recommend that the Commission adopt the transitional rates adopted by the FCC as interim § 271 rates until it can arbitrate this issue in the next phase of the proceeding**. . . . Section 1.2.6 as proposed by the Coalition provides for these network elements to be priced at TELRIC rates until the Commission sets new "just and reasonable" rates. The Coalition concurs in my recommendation that the Commission adopt the transitional rates on an interim basis.[25]

The Coalition contends that this proposal recognizes that the rate for § 271 UNEs will be higher than current TELRIC rates. It adopts, strictly on an interim basis, the higher transitional UNE prices that the FCC adopted for declassified § 251 UNEs. If the transitional rates adopted by the FCC are adopted, it will provide the parties a rate at which § 271 UNEs may be purchased via the ICA while permanent just and reasonable rates are being determined.[26]

Rather than leave the parties no guidance on the appropriate interim § 271 UNE rate to be included in the M2A successor ICAs, the Coalition urges that the Commission adopt

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[25] Mulvaney Henry UNEs Rebuttal, at 21-22 and n.38 (emphasis supplied).

[26] The Coalition's interim rate proposal was also discussed in the Coalition's post-hearing brief: "[T]he CLEC Coalition interim rate proposal for switching, and all other network elements 'delisted' under the *TRRO* is the higher rate approved for the *TRRO* Transition Period by the FCC. If the Coalition proposal is accepted in its entirety, rates for § 271 checklist switching will increase and will stay at that level until the parties agree to a § 271 'just and reasonable' rate or the Commission approves an arbitrated § 271 rate." CLEC Coalition Post-Hearing Brief, at 37 (referencing Ms. Mulvany Henry's testimony).

the compromise proposal the Coalition offered in record testimony and in its post-hearing brief. Adoption of an interim rate will provide certainty and encourage SBC and the CLECs to expeditiously engage in negotiations toward establishing permanent rates for § 271 UNEs. Unless an interim rate is established and CLECs can actually purchase § 271 UNEs out of their ICAs, SBC's obligation to offer § 271 UNEs under the M2A successor agreements will be illusory. This is certainly not the outcome contemplated by the Final Arbitrator's Report.

Decision:

The Arbitrator's decision with respect to both CLEC Coalition Pricing Issues A-2 and A-3 was that "The Arbitrator agrees that the ICA must include prices for § 271 UNEs." However, the Arbitrator failed to specify what those rates would be. SBC offered no rates because its view is that these ICAs should not contain prices for § 271 UNEs. Likewise, the Coalition's original suggestion that TELRIC rates be continued is not appropriate given that the appropriate standard is now "just and reasonable." However, the Commission concurs that the Coalition's compromise position – rates patterned on the FCC's transition period rates for declassified UNEs – constitutes a suitable interim rate structure for § 271 UNEs. The Final Arbitrator's Report is so modified and the parties are directed to use such rates in their ICAs.

5. Types of Section 251(b)(5)/ IntraLATA Toll Traffic:

CLEC Coalition NIA Issue 5: (a) Should a non-251 (b) or (c) service such as Transit Service be negotiated separately? (b) If not, is it appropriate to include transit traffic in the definition of Section 251(b)(5)/IntraLATA Toll Traffic?

CLEC Coalition NIA Issue 6: Should terms and conditions relating to Section 251(a) Interconnection be addressed in a separate out-of-exchange appendix.?

Discussion:

The Coalition states that it proposed the following language, which the Arbitrator approved twice[27] and rejected once[28] in the Detailed Language Decision Matrix:

> "Section 251(b)(5)/IntraLATA Toll Traffic" shall mean for purposes of this Attachment, (i) Section 251(b)(5) Traffic, (ii) ISP-Bound Traffic, (iii) Optional EAS traffic, (iv) FX or virtual FX traffic (that may also fall under (i), (ii), or (iii)), (v) Transit Traffic, (vi) out of area traffic, (iii) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Section 251(b)(5) Traffic and intraLATA toll provider, and/or (iv) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from SBC-MISSOURI where SBC-MISSOURI is both the Section 251(b)(5) Traffic and intraLATA toll provider.

The Coalition explains that the single rejection of the Coalition's language in the OE-LEC Decision Matrix appears to reject the reference to out-of-area traffic in the same way that the Arbitrator rejects SBC's proposed OE-LEC Attachment. The Coalition supports the Arbitrator's decision that the separate OE-LEC attachment is not required, but the reference to out-of-area traffic should remain in the definition of Section 251(b)(5)/IntraLATA Toll Traffic. The fact that the Coalition members do not support SBC's OE-LEC document does not change the fact that out-of-area traffic will continue to be exchanged between the parties under the ICA and is properly included in the definition.

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[27] *See* Attachment Transit. A, CC NIA 5a and 5b and Attachment V.A. Part 2, CC NIA 5.

[28] *See* Section XIV.A, OE-LEC issues, CC NIA 6.

In its Brief, SBC Missouri asserted that its statutory obligations to offer most Sections 251/252 services is limited to those areas in which it is the incumbent LEC and that the ICA thus does not cover services offered when the parties wish to exchange traffic in the areas where SBC Missouri is not the incumbent LEC. SBC Missouri does not believe it is appropriate to address Out-Of-Exchange-LEC ("OE-LEC") traffic in the interconnection appendix because the interconnection appendix applies only to SBC Missouri's incumbent territory. It therefore offered CLECs the OE-LEC appendix to govern this type of Out of Exchange traffic.[29]

Decision:

The Arbitrator rejected SBC's argument that its interconnection obligation is limited to its incumbent territory and also rejected SBC's proposed OE-LEC Appendix. However, the Commission concurs with the Coalition here because the fact is that the parties will continue to exchange out-of-area traffic. Its definition is thus appropriately included in the ICA and the Final Arbitrator's Report is so modified.

6. The Metropolitan Calling Area:

CLEC Coalition NIA Issue 2: Is a "Metropolitan Calling Area" considered a "Local Calling Area?"

Discussion:

SBC states that "MCA Traffic" is traffic exchanged throughout the "Metropolitan Calling Area", a calling scope plan established by Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483. Calls within an MCA are rated as "local" to an end-user and the call is § 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Either party providing MCA service shall offer the full

[29] McPhee Direct, p. 65-66.

calling scope prescribed in Case No. TO-92-306 without regard to the identity of the called party's local service provider. For compensation purposes, MCA Traffic shall be exchanged on a bill-and-keep, intercompany compensation basis as provided in the Intercarrier Compensation Appendix.

SBC Missouri states that it does not object to the MCA as defined by the Commission, nor the rating of traffic to an end-user, nor the inter-company compensation due for traffic within the MCA. However, an "MCA" is *not* the same as a "Local Calling Area" for a very important reason. A "Local Calling Area", for purposes of this Agreement and Attachment, is limited to those areas in which SBC Missouri is the incumbent local exchange provider. Should a CLEC wish to operate outside SBC Missouri's incumbent territory — even when the territory is within the same MCA — the terms of such OE-LEC traffic must be established. Consequently, there is a very real difference between an MCA and a Local Calling Area and SBC Missouri proposes that the definition of Local Calling Area in the ICA should reflect this distinction.

The Coalition states that its proposed language only addresses those situations in which a CLEC is providing service in an MCA. SBC's proposed language has the effect of requiring a CLEC to establish a POI within SBC's network even if the CLEC only offers service in another incumbent LEC's territory within the LATA but competes with SBC in another LATA.

The Coalition states that, in previous cases concerning the MCA, the Commission defined MCA calls as local calls, ruled that inter-company compensation must be bill-and-keep between companies, and that the calling scope and dialing pattern did not vary based upon the identity of the called party's local service provider. It is simply a Local Calling

Area that involves multiple LECs. The present M2A agreement specifically states, "For purposes of interconnection and inter-company compensation, "Exchange Area" shall be defined consistent with SWBT's Missouri Retail Tariffs, except that the entirety of a Metropolitan Calling Area shall be considered a single Exchange Area." The M2A also includes provisions that prohibited Transit Charges from being applied to MCA traffic.

Decision:

The Arbitrator failed to address this issue. The Commission determines that the parties' ICA shall treat this issue in the same manner as did the M2A.

7. PSTN-IP-PSTN And IP-PSTN Issues:

CLEC Coalition ITR Issue 5a: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

CLEC Coalition IC Issue 15a: Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Services Traffic?

CLEC Coalition IC Issue 15b: What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?

Discussion:

The Coalition states that the "PSTN-IP-PSTN" and "IP-PSTN" issues relate to intercarrier compensation for traffic that traverses both the traditional "Public Switched Telephone Network" ("PSTN") as well as advanced networks based on "Internet Protocol" ("IP"). The Coalition urged that the Arbitrator not accept SBC's contract proposal on the Coalition issues listed above related to PSTN-IP-PSTN and IP-PSTN traffic, but the Arbitrator nonetheless did accept SBC's language. The Coalition requests clarification on one part of the Arbitrator's ruling on these issues, that dealing with IP-PSTN traffic compensation.

The Arbitrator ruled in favor of SBC's proposed contract language that would subject both PSTN-IP-PSTN traffic and IP-PSTN traffic to switched access charges in all circumstances. The Coalition understands that the Arbitrator based the decision regarding switched access compensation for PSTN-IP-PSTN traffic on the FCC's order in the AT&T "Phone to Phone" petition. The FCC addressed compensation for a specific form of interstate interexchange traffic in the AT&T "Phone-to-Phone" IP order.[30] The AT&T IP Order was specifically limited to the type of service offered by AT&T and the FCC stressed that it was not attempting to resolve compensation for IP-PSTN traffic in its ruling. As the Arbitrator recognized, several additional issues related to compensation for IP-enabled traffic are being addressed in the pending IP-enabled services rulemaking.[31]

In the ruling on the intercarrier compensation issue designated "MCIm RC 15," the Arbitrator also addressed compensation for IP-PSTN traffic.[32] On that issue, the Arbitrator ruled in favor of MCI's proposal. MCI argued that, unlike PSTN-IP-PSTN traffic, "IP-PSTN traffic, on the other hand falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates."[33]

The Coalition requests clarification because the ruling on the Coalition's issue involving IP-PSTN compensation approved SBC-proposed language that would apply switched access to IP-PSTN traffic. The ruling on the MCI issue, however, identifies

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[30] *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order (rel. April 21, 2004) ("*AT&T IP Order*").

[31] *See In the Matter of IP-Enabled Services*, WC Docket 04-36, Notice of Proposed Rulemaking (rel. March 10, 2004).

[32] Final Arbitrator's Report, Section VI, – pp 21-22.

[33] *Id.* at 22.

reciprocal compensation "instead of switched access" as the appropriate compensation mechanism for IP-PSTN traffic. If reciprocal compensation is to be applied to such traffic in the MCI-SBC ICA, it should be applied to the ICA approved for companies in the CLEC Coalition as well. While the Coalition would prefer, as discussed in our testimony and post-hearing brief, that the Commission defer a decision on IP-PSTN compensation until the FCC has definitively ruled, if the Commission chooses to address the issue here, it should addressed in a consistent manner.

Decision:

As asserted by the Coalition, the Arbitrator held with respect to MCI RC Issue 15 that "[t]he IP-PSTN traffic, on the other hand falls squarely within the 'net-protocol change' portion of the FCC's multi-part enhanced service definition and is therefore appropriately charged at reciprocal compensation rates instead of switched access rates." The Commission agrees that this traffic should be treated consistently and the Final Arbitrator's Report is thus modified to provide that the Coalition's ICA will also provide that IP-PSTN traffic be charged under the reciprocal compensation regime rather than be subject to access charges.

8. Should the terms, conditions and price of interconnection facilities be included in the ICA or should the ICA refer to SBC's access tariff?

CLEC Coalition E-911 Issue 3: The language in the ITR addresses only 911 trunk interconnections. There is no language specific to 911 in the NIM.

Discussion:

The Coalition states that the Arbitrator agreed with SBC that the "Coalition's proposed language incorrectly mixes the concepts of facilities and trunking. Section 2.3.2 of the E-911 Attachment merely states that SBC will provide the facilities required to establish the interconnection to the SBC 911 selective routers 'as specified in the State access

tariff.'" The Coalition contends that the Arbitrator erred on this issue by failing to determine that the interconnection facilities that enable the CLEC to provide 911 service to its customers are interconnection facilities as set forth in §§ 251(a) and (c) of the Act that must be made available at cost-based rates. Consequently, interconnection facilities upon which 911 trunks ride must be available at cost-based rates.

In its testimony and during the hearing, the Coalition states that SBC contended that 911 trunks are ancillary trunks and that 911 traffic is not the mutual exchange of telecommunications.[34] SBC opined that, because 911 is not actual interconnection of two carriers for the exchange of traffic, CLECs should purchase facilities from the access tariff rather than at cost-based prices. The Coalition asserts that SBC is wrong at both the state and federal levels because 911 services are part of local service and 911 facilities are used to interconnect the parties' networks. At the state level, Missouri statutes and rules include 911 service as part of basic local telecommunications service.[35] SBC also provides Universal Emergency Number Services (9-1-1) to 911 entities as a local service via its General Exchange Tariff, P.S.C. Mo. No. 35. 911 entities purchase these services for the ability to receive emergency calls from all telecommunications customers, regardless of which company provides telecommunications services to that customer. At the federal level, the FCC addressed 911 interconnection in a recent Order requiring VoIP providers to provide 911 service to their customers.

> We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section

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[34] Hamiter Direct, at 67 and Tr. at 429-30: "But for the purpose of whose end users are benefiting from this, you know, we see that your meet point trunk groups, your 911 trunk groups, et cetera are solely for the benefit of your customers, you know, they're really not going to interconnect with us over those trunk groups."

[35] Section 386.020(4)(c), RSMo Supp. 2004.

> 271(c)(2)(B)(vii) of the Act. We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order, including NENA's I2 or wireless E911-like solutions.[36]

Contrary to SBC's assertions, 911 facilities are interconnection facilities under both state and federal law and CLECs are therefore entitled to lease 911 facilities at cost-based rates.

The Coalition further states that an additional problem arises with the Arbitrator's approval of a *state* access tariff as the source for pricing of interconnection facilities. SBC's intrastate access tariffs are an insufficient source from which to purchase facilities for the provision of all 911 services in Missouri. For example, the selective router that provides service to more than thirty counties in Western and Central Missouri is located in Kansas City, Kansas. CLECs providing service to Missouri exchanges served by the Kansas router may not order from SBC's intrastate special access tariff to obtain facilities to the selective router located in Kansas. Unbundled network elements and interconnection facilities, however, may be purchased from SBC on an interstate basis, which would allow Missouri CLECs to obtain facilities to access the Kansas selective router to serve Missouri customers.

The Coalition points out that the Arbitrator seemed generally reluctant to make any change to the current M2A 911 process.[37] However, requiring that CLECs purchase 911 facilities from SBC's State access tariff is a change from the current M2A that CLECs believe will result in substantially higher costs and possible pass-through of costs to the PSAPs. Under the M2A, the current $85.00 per DS0 rate specified in Attachment E-911

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[36] WC Docket No. 04-36, WC Docket No. 05-196 *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking at ¶ 38 (footnote omitted).

[37] *See, e.g.*, Final Arbitrator's Report, Section IX at 3.

MO (M2A) includes both the trunk and the facility charge. Under the Arbitrator's ruling, CLECs must continue to pay this existing rate as a trunk charge plus purchase underlying facilities under the access tariff. This is therefore a major departure from the current process in the M2A.

Under the published rates in SBC's intrastate special access tariff, the rate for the transport facility will be minimum of $450 per month, even when the CLEC is located in the same central office as the selective router and needs nothing more than a cross-connect. Even worse, if the competitive classification provisions contained in pending state legislation that is expected to take effect in August are found to apply to special access, SBC will be free to set these rates at whatever level it chooses. Although no CLEC has tariffed charges for providing 911 service to PSAPs, the Coalition contends that the specter of unrestricted SBC prices and of no alternative providers for facilities to SBC's selective routers may cause CLECs to pass through increased 911 facility charges to the state's PSAPs.

Decision:

The Coalition did not bother to address this issue in its Brief or in testimony. The only assistance it offered the Arbitrator on this point was the following Position Statement: "The Interconnection Agreement itself is a better place for the parties to have reliable, consistent references for information. Tariff information is subject to change with little notice." Consequently, the Arbitrator was unable to foresee the significant adverse economic impact that would result from the position he adopted.

The Commission is of the opinion that the Arbitrator was right to be reluctant to depart from the M2A. The Commission considers that that is also the right answer to this

issue. The Final Arbitration Report is modified to require that the parties' ICA incorporate the language of the M2A on this point.

D. MCI's Comments:

1. Entrance facilities:

MCI NIM Issue 13: Should facilities used for 251(c)(2) interconnection be priced at TELRIC rates?

SBC's Statement of the Issue: Should a non-section 251/252 service such as Leased Facilities be arbitrated in this section 251/252 proceeding?

Discussion:

MCI states that the Final Arbitrator's Report is inconsistent in that the Arbitrator ruled that "entrance facilities are part of SBC Missouri's network. To the extent CLECs desire to obtain interconnection facilities described above, they may do so at cost-based (TELRIC) rates."[38] However, the attached Detailed Language Decision Matrix states that "MCI's language is not consistent with the Arbitrator's Report."[39] MCI states that the decision column of that matrix should reflect that MCI's proposed language is most consistent with the Arbitrator's Report.

Decision:

The Commission concurs with MCI. The Detailed Matrix does not accurately reflect the Arbitrator's decision. The Commission will therefore modify the Arbitrator's Final Report and direct the parties to adopt MCI's proposed language.

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[38] Final Arbitrator's Report, Section V, page 16.

[39] Attachment V, Part 1, Detailed Language Decision Matrix, page 57.

E. Navigator's Comments:

1. Who should bear any costs arising from assignments, mergers, name changes, and the like?

Navigator GTC Issue 6: Should CLEC be responsible for the cost associated with changing their records in SBC's systems when CLECs enter into an assignment, transfer, merger or any other corporate change?

Discussion:

Navigator contends that the Arbitrator overlooked its GTC Issue No. 6, set out above. The Arbitrator listed this DP under his GT&C Issue 3(b).

Navigator states that the Arbitrator noted that it raised the issue of charges imposed by SBC for changing OCN/ACNA information. As noted by the Arbitrator, Navigator does not object to compensating SBC for those functions, but does object to SBC's practice of imposing a separate charge for each resale line while imposing only a single charge for an entire block of UNE lines. The Arbitrator quoted Navigator witness LeDoux: "As a substantial number of our lines are resale, this practice could have a substantial impact on Navigator. We simply believe that SBC should impose the same block charges for both UNE and resale lines."[40]

The Arbitrator found that SBC may impose a reasonable charge for database corrections, but he did not address the issue raised by Navigator, that is, disparate charges for UNE and resale lines.[41] Navigator states that it does not seek a "free ride," that is, the right to demand that SBC impose no charge for performing these functions. Rather, Navigator asks the Commission to find that the charges be imposed in a nondiscriminatory fashion.

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[40] Report, Section 1(A), p. 22.

[41] Report, Section 1(A), p. 23.

Although SBC addressed, in its post-hearing brief, the issue of requiring CLECs to pay for costs incurred in changes of CLEC company identifiers, SBC did not address Navigator's discriminatory charges issue.[42] Navigator contends that SBC provided no testimony to justify this practice. For this reason, Navigator urges the Commission to find that its language, which would eliminate the practice, should be incorporated into the ICA.

SBC's position is that the CLECs must be responsible for the costs associated with any assignments, transfers, mergers, acquisitions, or other corporate changes.[43] ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each end user account and circuit. These codes are used in all ILECs' directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), and billing systems to identify inventory and appropriately bill the services provisioned on each service order. Any change to a company code requires service order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but also throughout the industry in such databases as the LERG, which allows the industry as a whole to properly bill routed calls. When a company code change is associated with a transfer of assets, it is no different than a CLEC-to-CLEC migration that requires a service order to be submitted by a winning Carrier.

Decision:

Navigator's proposed language states: "For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per

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[42] SBC's Brief, pp. 13-15.

[43] SBC's Statement of Position, Navigator's GT&C DPL, Issue 6.

Resale BAN,"[44] while SBC's proposed language states: "For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per **end user record**." The difference lies only in the final words of this sentence.

SBC's witness, Suzette Quate, testified: "To implement an OCN/ACNA change for a CLEC, SBC Missouri must, at the CLEC's direction, update the accounts of each of the CLEC's end users in the SBC Missouri databases to reflect the correct company name, OCN/ACNA, or other CLEC company identifier."[45] Navigator's witness, LeDoux, testified in turn: "SBC imposes a single charge for changing the Billing Accounts Number (BAN) for UNE lines billed in CABS, but imposes a per-line charge for resale lines. We believe that this is discriminatory, and there is no business reason to justify this practice."[46]

It appears from the testimony that every resale line end-user account must be modified in the event of an OCN/ACNA change, while the testimony is silent as to UNE lines. Navigator, however, does not challenge the treatment of UNE lines, it challenges the per-line charge levied on resale lines. The record shows that SBC incurs per-line costs for resale lines because each end-user record must be changed. For this reason, the Commission concludes that SBC's language is preferable. The parties are directed to incorporate SBC's proposed language in their ICA.

2. Escrow deposits:

Navigator GT&C Issue 10: Which party's language regarding grounds for termination for non-payment should be included in this agreement?

Navigator/SBC MO GT&C 11(b): Should the GT&Cs contain specific guidelines for the method of conducting business transactions pertaining to

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[44] "BAN" means Billing Account Number.

[45] Quate Direct, pp. 10-11.

[46] LeDoux Rebuttal, p. 4.

the rendering of bills, the remittance of payments and disputes arising thereunder? Is it appropriate to require Party's to escrow disputed amounts?

Discussion:

Navigator states that the Final Arbitration Report is inconsistent in that the Arbitrator sided with Navigator on its GT&C Issue 11, finding that CLECs need not escrow disputed amounts while pursuing the dispute resolution process, but agreed with SBC on Navigator's GT&C Issue 10, ruling that SBC could force Navigator to pay disputed amounts into escrow under pain of complete termination of all services. Navigator urges the Commission to resolve this inconsistency by finding that Navigator's proposal for GT&C Issue 10 should be adopted.

Decision:

The Commission agrees that the Final Arbitration Report is inconsistent as alleged by Navigator. However, none of the proposed language is appropriate in view of the Arbitrator's decision that disputed amounts need not be escrowed. SBC's proposed language, adopted by the Arbitrator, states:

> 14.2.4 if the nonpaying party is required to deposit Disputed Amounts into an interest bearing escrow account, it must provide written evidence that it has established an interest bearing escrow account that complies with all the terms set forth in Section 9.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. **Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 9.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.**

Navigator's proposed language states:

> 14.2.4 if the nonpaying party is required to deposit Disputed Amounts into an interest bearing escrow account, it must provide written evidence that it has established an interest bearing escrow account that complies with all the terms set forth in Section 9.4 and deposited a sum equal to the Disputed

Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account.

The Commission will modify the Final Arbitration Report to reflect that neither party's Section 14.2.4 shall be incorporated into their ICA.

F. Sprint's Comments:

1. Unresolved GT&C Issues Number 4, 5, 7 and 13:

Sprint GT&C Issue 4: Should Sprint be required to have an out of exchange appendix when CLEC is seeking Section 251(a) interconnection with SBC so that CLEC may serve exchanges which are not in SBC's incumbent exchange areas?

Sprint GT&C Issue 5: Should this appendix utilize the term LEC or Telecommunications Carrier?

Sprint GT&C Issue 7: Should the ICA contain a specific definition for Transit Traffic?

Sprint GT&C Issue 13: (a) Should SBC be allowed to require CLEC to use a specific form for submitting billing disputes? (b) Should SBC be obligated to review all CLEC billing disputes if the disputed amount is not placed in escrow?

Discussion:

Sprint states that these disputed issues were properly resolved by the Arbitrator in favor of Sprint. Therefore, Sprint states, the Commission should order that Sprint's position be adopted and that Sprint's proposed language pertaining to these issues be included in the ICA; SBC's proposed language that was disputed by Sprint should be rejected.

Decision:

Sprint's GT&C Issue 7 was listed and resolved in Sprint's favor in Section 1(C).1 of the Final Arbitrator's Report. Sprint's GT&C Issue 13 was listed and resolved in Sprint's favor in Section I(A).4(e) – Issue 13(a) – and Section I(A).4(d) –Issue 13(b). The parties shall incorporate Sprint's proposed language in their ICA and the Final Arbitrator's Report is modified to the extent that it is inconsistent.

Sprint's GT&C Issues 4 and 5 were omitted from the Final Arbitrator's Report. However, Sprint's ITR Issue 8 is identical to its GT&C Issue 4 and was decided in Sprint's favor at Section XV.1 of the Final Arbitrator's Report. The Report is modified to include Sprint's GT&C Issue 4 at Section XV.1 and the parties are directed to adopt Sprint's language in their ICA.

Sprint did not list its GT&C Issue 5 in its Brief as an issue still requiring a decision by the Arbitrator. This fact explains its absence from the Arbitrator's Report, but does not explain its presence in Sprint's Comments. Having advised the Arbitrator that the point was settled, it is odd that Sprint now requests relief from the Commission.

The disputed language concerns the definition of "routing point." SBC's proposed language states (the contested language appears in bold):

> 1.1.99 "Routing Point" is a location which a **LEC** has designated on its own network as the homing or routing point for traffic inbound to **Exchange** Service provided by the **LEC** which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.

Sprint's proposed language states:

> 1.1.99 "Routing Point" is a location which a **Telecommunications Carrier** has designated on its own network as the homing or routing point for traffic inbound to **Telecommunication** Service provided by the **Telecommunications Carrier** which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.

SBC stated in its Brief that the Commission should adopt SBC Missouri's proposed language, which utilizes the term "Local Exchange Carrier" ("LEC") as defined in the Act

because this term excludes persons who provide services other than telephone exchange or exchange access services, particularly, commercial mobile radio service ("CMRS").[47] SBC states that Sprint's proposal, to use the term "Telecommunications Carrier," is "an attempt to combine Sprint's non-251 wireless traffic into this ICA which is improper as this is a Section 251/252 ICA under which UNEs are offered and the provision of such UNEs is limited to LECs, to the exclusion of certain other services, including CMRS providers."[48]

Sprint's position is that the definition of "routing point" should not be not limited to LECs because LERG and industry standards allow for all telecommunications carriers to specify routing points for their numbers.

Having considered the foregoing, the Commission determines that SBC's proposed language should be adopted. In an agreement between two LECs, it is immaterial that other, uninvolved carriers also may have routing points. The Arbitrator's Report is so modified and the parties are directed to incorporate SBC's language in their ICA.

2. Should each party be financially responsible for the facilities on its side of the POI?

Sprint ITR Issue 6: Should each party be financially responsible for the facilities on its side of the POI?

Discussion:

Sprint states that, on pages 9-10 of the Final Arbitrator's Report pertaining to Interconnection, the Arbitrator erroneously suggests the adoption of SBC's proposed language on this issue. Sprint contends that the SBC language logically contradicts the Arbitrator's rulings on other interconnection issues in this arbitration and that the Sprint

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[47] McPhee Direct, pp. 27 (footnote 12) and 71-72.

[48] SBC's Brief, pp. 61-62; McPhee Direct, p. 72.

language should be adopted instead. In addition, Sprint has found additional authority from another jurisdiction supporting its position on this issue.

Sprint states that the Arbitrator's ruling on ITR Issue 6 on cost sharing for the interconnection facilities is not logically consistent with his rulings on other related interconnection issues. The first sentence of the rationale on page 10 of the Arbitrator's Report on Interconnection states that: "Each Party is financially responsible for facilities on its side of the POI." The Arbitrator also ruled on page 6 of the report that a CLEC must establish a POI within SBC's network, and indeed, Sprint agreed with SBC on this issue. If both of these rulings are adopted by the Commission as proposed by the Arbitrator, it seems Sprint would be forced to absorb 100% of the cost of the transport facility that physically joins Sprint's network with SBC's network since this interconnection facility resides on Sprint's side of the POI.

However, the conclusion above is undercut by the second sentence of the Arbitrator's rationale on page 10 of the Arbitrator's Report on Interconnection. There, the Arbitrator states: "A Party that agrees to carry traffic that originated on or transited its network to the terminating carrier's nearest tandem may require the other Party to reciprocate." This sentence clearly indicates that when Sprint carries its originating traffic to SBC's tandem, Sprint may require SBC to "reciprocate" and deliver SBC's originating traffic to Sprint's tandem or switch, resulting in both parties being financially responsible for the transport costs necessary to deliver its originated traffic to the terminating carrier's switch. This shared-cost concept can be implemented in a few ways. Both parties may establish one-way trunks to deliver the traffic onto the terminating party's network or the parties may establish shared, two-way facilities that carry traffic originated by both parties. If shared,

two-way facilities are established, Sprint contends that the law, logic and fairness dictate that the cost of this facility must be shared by both parties. It is not acceptable to require Sprint to absorb 100% of the cost of a transport facility that carries both parties' originating traffic. The Commission should reconcile this conflict by adopting the Sprint language proposed for ITR Issue 6 and ruling that the cost of a two-way interconnection facility should be shared.

The FCC rules require each party to assume the costs associated with its originating traffic. Specially, 47 C.F.R. 51.709(b) states "the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network." In addition, 47 C.F.R. 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." These two FCC rules make clear that the FCC's intent is not for Sprint to be burdened with 100% of transport costs relating to interconnection facilities used to carry both parties' originating traffic even though that facility is physically located on Sprint's side of the POI.

Sprint states that the Maryland Commission agreed with this Sprint position and decided this issue between AT&T and Verizon.[49] Specifically, the Maryland Commission stated that:

> Each Party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection facility itself is shared consistent with the rules set for by the FCC in paragraph 1062 of 1996 First Report and Order.

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[49] *See In the Matter of the Petition of AT&T Communications of Maryland, Inc. Pursuant to 47 U.S.C. 252(b) Concerning Interconnection Rates, Terms and Conditions* (Order No. 79250), Case No. 8882 (Public Serv. Comm. of Maryland, July 7, 2004).

> In sum, those rules require that the carriers share the cost of the interconnection facility based upon each carrier's percentage of the traffic passing over the facility.[50]

Furthermore, the Maryland Commission states that:

> Each carrier is responsible for the cost of transporting its traffic through its network. Both carriers then equitably share the cost of the interconnection facility which connects the two networks, based on each carrier's share of the traffic that passes over the interconnection facility.[51]

Finally, Sprint points out that SBC's position in this docket is notably inconsistent with the interconnection arrangements it has with other carriers, including the interconnection arrangement it has with Sprint PCS as well as the arrangement it has with its own affiliate, Cingular. SBC finds the FCC rules applicable in a wireless context and will acknowledge a responsibility to share interconnection facility costs with CMRS carriers, yet SBC claims without basis that those same FCC rules do no apply to interconnection arrangements with CLECs.

Sprint asks that the Commission find that SBC must share the cost of the interconnection facility that physically links the Sprint network with the SBC network and not allow SBC to burden Sprint with 100% of the cost. Sprint's proposed language requires that the cost be shared 50%/50% by both Parties assuming an equal balance of traffic. Sprint would also accept contract language that allows for cost sharing to be based on a proportionate use of the facility -- language which is acceptable to SBC when negotiating and interconnecting with CMRS carriers and its own affiliate.

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[50] *Id.*, pp. 9-10.

[51] *Id.*, p. 10.

Decision:

The Arbitrator ruled as follows:

> Each Party is financially responsible for facilities on its side of the POI. A Party that agrees to carry traffic that originated on or transited its network to the terminating carrier's nearest tandem may require the other Party to reciprocate. Any language pertaining to reciprocal compensation will be addressed in that portion of the agreement.

In its Brief, SBC stated that Section 252(c) and the FCC's implementing rules in the *TRO* and *TRRO* imply that each party should be solely responsible for its facilities on its side of the POI. Moreover, the Commission has previously approved interconnection agreements wherein the two parties have agreed that "CLEC will be responsible for engineering and maintaining its network on its side of the Physical POI. Sprint will be responsible for engineering and maintaining its side of the Physical POI."[52] No different result should follow here.[53]

Sprint states in its Brief that the FCC defines § 251 interconnection as "the physical linking of two networks for the mutual exchange of traffic."[54] The transmission facility that physically links the two networks is the interconnection facility and it is a shared-cost responsibility of the two interconnected networks. The FCC interconnection rules clearly establish that the cost of the transmission facility is a shared-cost responsibility of the two carriers whose networks are being interconnected. First, 47 C.F.R. 51.709(b) states

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[52] *See,* Case No. IK-2005-0152, *Order Approving Interconnection Agreement* (between Sprint and Intermedia Communications, Inc.), January 28, 2005 (Interconnection Agreement, Part F, at pp. 40-41); Case No. IK-2005-0151, *Order Approving Interconnection Agreement* (between Sprint and FamilyTel of Missouri, LLC), January 28, 2005 (Interconnection Agreement, Part F, at p. 55).

[53] Moreover, Charter's witness stated that "contrary to Mr. Land's testimony, in a fiber meet arrangement, wherever that fiber does meet becomes the POI, and I think it has to be given the responsibilities of each party on their side of the POI." Tr. 685.

[54] In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98. 95-185, First Report and Order, FCC 96-325, (August 8, 1996), ¶ 176 (Local Competition Order).

> [T]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

Second, 47 C.F.R. 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." Together, these rules dictate that both carriers bear a cost responsibility for the interconnection facility because each party is using the interconnection facility to deliver traffic to the other party.

The Commission concurs with the Arbitrator's finding that, in general, each party is solely responsible for the facilities on its side of the POI. Nonetheless, the Commission agrees with Sprint that each party must be financially responsible for its own outgoing traffic. Where the interconnection is via a two-way trunk, the cost of that facility must necessarily be shared. The Arbitrator's Report is modified accordingly and the parties are directed to adopt Sprint's proposed language.

3. Should non-251(b) or (c) services such as Transit Services be negotiated separately?

Sprint IC Issue 7: Should non 251(b) or (c) services such as Transit Services be negotiated separately?

Discussion and Decision:

Sprint's IC Issue 7 was listed at Section I(C).1 of the Final Arbitrator's Report, but the description of the issue given there was evidently incorrect. Nonetheless, the Arbitrator did determine AT&T Network A-C 11 Issue 4(c), CLEC Coalition IC Issue 1, ITR Issue 4, and NIA Issue 5(a), and MCI RC Issue 18 in that section, all of which are identical to Sprint's IC Issue 7. Sprint is thus correct. The Arbitrator's Report is modified accordingly and the parties are directed to adopt Sprint's proposed language set out below:

> 17.2.1 Transit service providers are rightly due compensation for the use of their tandem switching and common transport elements when

providing a transit service. This compensation is based on TELRIC pricing and appears in Appendix PRICING.- All Traffic.

4. Future declassifications:

SPRINT UNE 3: Should changes in SBC MISSOURI'S unbundling obligation due to lawful action be incorporated into the terms and conditions pursuant to the change in law provisions in the agreements General Terms and Conditions?

Discussion:

Sprint states that there are important technical errors in the Arbitrator's decision matrix regarding UNE Issue 3 that appear to have caused a substantive error as well. The Commission should correct the technical error and adopt all Sprint's proposed language for Issue 3 while rejecting all SBC's proposed language that is disputed by Sprint.

The technical error begins on page 124-6 of the Arbitrator's UNE decision matrix, Attachment III. A. Part 1, where the Arbitrator ruled on proposed contract section 8.4.2. The Sprint language that appears on page 125 next to SBC's section 8.4.3 should actually be added to the end of Sprint's proposed Section 8.4.2 that appears in the Arbitrator's decision matrix and also in the joint DPL filed by the parties. The effect of splitting Sprint's proposed language for section 8.4.2 into two pieces in the Sprint column of the decision matrix is to throw off the alignment of the Sprint proposed language in the remainder of the Arbitrator's decision matrix. For instance, Sprint's proposed section 8.4.3 should be lined up with SBC's proposed section 8.4.3. Sprint's proposed section 8.4.3.1 gets pushed down the matrix and is improperly lined up with SBC's proposed 8.4.4 instead of SBC's proposed 8.4.3.1. Again, this should be remedied by tacking the language on page 125, which begins "If Sprint does not dispute the declassification" to the end of Sprint's section 8.4.2, and then realigning the remaining contract sections.

This misalignment may have inadvertently thrown off the Arbitrator's analysis and created a substantive error as well that the Commission needs to correct. The error creeps in where the Arbitrator rules on section 13.5.2.1 on page 128 of the decision matrix. The Arbitrator states that Sprint's language is not consistent with the Arbitrator's report, but Sprint believes this is inaccurate and likely an inadvertent mistake by the Arbitrator because he was comparing Sprint's proposed language for 8.4.4 to SBC's 13.5.2.1. However, Sprint's terms for section 13.5.2.1 (DS1 Dedicated Transport) are essentially identical to Sprint's terms at 13.5.3.1 (DS3 Dedicated Transport) and 14.11.1 (Dark Fiber Dedicated Transport), which the Arbitrator found entirely consistent with his recommendation. Accordingly, Sprint believes that all of its proposed language is consistent with the law and also the Arbitrator's report and should be adopted by the Commission. The conclusion that Sprint's language should be adopted for 13.5.2.1 is further bolstered by the Arbitrator's ruling for Sprint language on almost every other UNE issue. Sprint urges the Commission to adopt Sprint's proposed language in its entirety for the reasons argued in its brief and supported in its testimony.

Decision:

The Commission concurs with Sprint that the Arbitrator's Report contains technical and substantive errors as Sprint describes. The Report is modified accordingly and the parties are directed to adopt Sprint's language for Section 13.5.2.1.

G. WilTel's Comments:

1. Indemnification and Limitation of Liability:

WilTel GT&C Issue 12: Is it reasonable for SBC to seek to limit its liability if it violates the law?

Discussion and Decision:

WilTel complains that, although the Arbitrator found for WilTel in his discussion and decision on this issue,[55] the Detailed Matrix states incorrectly that SBC's language is most consistent with the Report.[56] SBC's language states that ". . . each Party's liability . . . whether in contract, tort or otherwise, including alleged breaches of this Agreement **and** causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act . . . shall not exceed in total the amount . . . ." (emphasis added). WilTel's language, on the other hand, states that ". . . each Party's liability . . . whether in contract, tort or otherwise, including alleged breaches of this Agreement, **but excluding** causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act . . . shall not exceed in total the amount . . . ." (emphasis added). WilTel contends that its language is clearly most consistent with the Report and, therefore, the DLM incorrectly implements the Arbitrator's findings and conclusions in the Report. WilTel requests that the Commission correct the DLM and order that WilTel's proposed language be adopted.

Decision:

The Arbitrator ruled as follows (emphasis added):

> **[F]irst, that it is improper for this ICA to attempt to limit or alter damages available under a statute.** Second, the Arbitrator concludes that

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[55] *See* Report, Section 1(A), at 69.

[56] Attachment I.A., at 207.

it is contrary to public policy to cap liability for intentional, willful or grossly negligent conduct. Third, the Arbitrator concludes that liability and indemnity provisions should be reciprocal and symmetrical.

The Commission agrees with WilTel that its language more closely reflects the Arbitrator's decision. The parties are directed to adopt WilTel's language; to the extent that it is inconsistent, the Arbitrator's Report is modified accordingly.

2. Compliance audits:

WILTEL UNE Issue 18: Which party's auditing language for compliance with the FCC's eligibility is more reasonable and in compliance with FCC rules?

SBC's Statement of the Issue: What guidelines are appropriate for auditing of SBC's eligibility criteria?

Discussion:

WilTel's UNE Issue 18 deals with SBC's auditing rights and obligations pertaining to the eligibility criteria established by the FCC for access to enhanced extended links ("EELs"). WilTel complains that the Arbitrator's ruling on the audit issues stated only that "[t]o the extent that these issues relate to SBC Missouri's auditing functions concerning the eligibility criteria, SBC Missouri's proposed language is reasonable."[57] The Commission's rules require a "reasoned articulation of the basis for the decision on each issue, including how the decision meets the standards set in sections 251 and 252 of the Act."[58] WilTel evidently believes that the Arbitrator's Report does not meet that standard with respect to

[57] Report, Section III, at 39-40.

[58] Commission Rule 4 CSR 240-36.040(19).

this issue. Further, WilTel complains, many elements of SBC's proposed language are contrary to FCC rules as established in its *TRO*.[59]

The FCC addressed the rights and obligations pertaining to an ILEC's right to audit a CLEC's compliance with the FCC-mandated eligibility criteria set forth in FCC Rule 51.318(b).[60] Among other things, the FCC mandated that ILECs "should have a limited right" to audit compliance with the service eligibility criteria.[61] The language approved in the Report, however, provides SBC a virtually unlimited right to audit because of SBC's all-encompassing "in addition to any other rights" phrase.[62] Additionally, SBC's language in Section 2.18.7.4 of the Agreement (*see* DML Attachment III.B. Part 3, at 80) imposes a 100% compliance standard for the audit which is contrary to the FCC's rules which state clearly that "the concept of materiality governs this type of audit."[63] Finally, SBC's language would allow it to seek payment at wholesale rates even during any time period when WilTel was in fact in compliance with eligibility criteria, which is clearly contrary to the FCC's Rules and § 251 of the Act requiring SBC to provide access to UNEs at rates that are reasonable and nondiscriminatory.

SBC's proposed audit language goes beyond what is permitted by law in accordance with the FCC's rules and should not have been approved in the Report.

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[59] *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*, 18 FCC Rcd 16978, 17145, ¶ 278 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) (hereafter referred to as the "*TRO*").

[60] *See TRO* at ¶¶ 625-629.

[61] *TRO* at ¶ 625.

[62] *See* DML Attachment III.B. Part 3, at 79 (Section 2.18.7 of language).

[63] *TRO* at ¶ 626, and n. 1905.

WilTel's proposed language, on the other hand, is consistent with the FCC's rulings in the *TRO*. WilTel requests that the Commission approve its language over SBC's language on this UNE Issue 18.

Decision:

In its Brief on this issue, SBC stated that the Commission should adopt its proposed language, related to audits for compliance with the service eligibility criteria, because it: (1) more closely tracks the *TRO* on audits, including the costs thereof; and (2) provides increased certainty on how audits are to be conducted and what is to be done with the results.[64] The FCC permits annual audits of EELs and high-cap commingled arrangements. The Commission should reject WilTel's proposed language because it improperly limits SBC Missouri's right to be compensated for WilTel's failure to meet the eligibility criteria for the period beginning on the first date of non-compliance of the non-compliant circuit rather than the date that the non-compliant circuit was established. By including this language, SBC Missouri would not be compensated for WilTel's non-compliance in situations where WilTel disconnected service or converted to a wholesale service.

The Commission has reviewed the parties' arguments and cited authorities and concludes that the Arbitrator's decision was correct. The Commission declines to modify the Report on this point.

[64] Silver Direct, pp. 87-88.

H. SBC's Comments:

1. Changes in UNE offerings:

CLEC Coalition GT&C Issue 24: Should SBC MISSOURI be allowed to make changes in its UNE offerings that disrupt provisioning to CLEC without advance notice or written approval of CLEC?

Discussion:

SBC states that the Commission should reverse the Arbitrator's decision with respect to CLEC Coalition GT&C Issue 25 because the parties did not present an issue 25 to the Arbitrator for resolution. As such, SBC asserts, "the decision is arbitrary, capricious, and unlawful in that it is beyond the scope of his authority under the Act and 4 CSR 240-36.040." SBC further contends that, to the extent that the Arbitrator may have meant to refer to CC GT&C 24, the Commission should reverse the Arbitrator's decision as it is "arbitrary and capricious, against the weight of the competent and substantial evidence, and is unlawful for the reasons set forth in Section III [UNEs]."

Decision:

SBC contends that the Arbitrator's decision must be reversed because he referred to a DP by the wrong number. A review of the CLEC Coalition's GT&C DPL reveals what appears to be two issues 24 on successive pages. This is the second of those; perhaps the Arbitrator though the parties had misnumbered the DP. In any event, this scrivener's error does not require reversal or even correction – clearly, SBC is able to identify the DP in question.

SBC does not assert any substantive grounds for reversal except a general and unhelpful reference to " the reasons set forth in Section III." The Commission will not winnow through Section III of SBC's Comments in an effort to find support for its position. For these reasons, the Commission declines to modify the Arbitrator's Report.

2. Arbitrator's Section 15: Provision of Service to End-Users:

Navigator GT&C ISSUE 15: Whether to include language allowing end users to take services from SBC upon end user request?

Discussion:

SBC Missouri states that it seeks clarification with respect to this issue. Specifically, in the Final Arbitrator's Report, the Arbitrator states that he: "generally agrees with Navigator. Services offered by SBC to 'win back' Navigator's subscribers are subject to retail tariff rates, terms and conditions so far as applicable."[65] However, in the Arbitrator's Detailed Language Decision Matrix, the Arbitrator states that Navigator's language, which would require SBC Missouri to offer service to winback customers at the rates found in its retail tariff, is "most consistent with Arbitrator's Report." Since retail tariffs are not always applicable, Navigator's proposed language is inconsistent with the Final Arbitrator's Report. Thus, SBC Missouri seeks a modification, reflected in bold, to Navigator's proposed language as follows:

> CLEC acknowledges that SBC MISSOURI may, upon End User request, provide services directly to such End User similar to those offered to CLEC under this Agreement at the rates found it its retail tariff **to the extent that the service is offered pursued to a retail tariff.**

Decision:

The Commission agrees with SBC that the Detailed Matrix is inconsistent with the Arbitrator's decision. The Arbitrator's Report is modified accordingly and the parties are directed to adopt SBC's proposed language as set out above.

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[65] *See* Arbitrator's Final Report, Section 1(A), p. 77.

3. Arbitrator's Section 23: Accessible Letters:

Navigator GT&C Issue 12: Should the Interconnection Agreement incorporate the nondiscriminatory and commonly used Accessible Letter process as a form of communication between SBC Missouri and Navigator?

Discussion:

SBC Missouri states that it seeks clarification with respect to the above-referenced issue. While SBC Missouri agrees that it is simply incorrect that the Accessible Letter process is used to unilaterally change, revise, supersede, amend, modify or otherwise alter the provisions of the ICA, as the Arbitrator acknowledges with respect to Arbitrator's Section 2(b), Accessible Letters are also used to provide notice of tariff changes.[66] Thus, SBC Missouri contends that Navigator's proposed language should be modified by the language provided in bold:

> The parties acknowledge that the Accessible Letter Notification process in no way authorizes SBC Missouri to unilaterally change, revise, supersede, amend, modify or otherwise alter the provisions of this agreement **except provisions regarding services offered via tariff**.

Decision:

At Section I(A).2.(b) of his Report, the Arbitrator held:

> The Arbitrator agrees with SBC that any tariff provision or tariff rate incorporated into the ICA should automatically be updated as the referenced tariff is changed. As SBC points out, that is the reason that the ICA references certain tariffs. The Arbitrator further determines that the *quid pro quo* for such automatic incorporation is prior notice to the CLECs via the Accessible Letters process. The Arbitrator agrees with Charter, however, that SBC cannot use tariff modifications to alter the terms of the parties' ICA. The ICA always trumps contrary tariff provisions. Where a CLEC orders under a tariff rather than under the ICA, however, the CLEC is then stuck with the tariff.

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[66] Arbitrator's Final Report, Section 1(a), p. 14.

Thus, the modification sought here by SBC accords precisely with the Arbitrator's cited ruling and will be granted. The Arbitrator's Report is modified accordingly and the parties are directed to adopt SBC's proposed language as set out above.

4. GT&C Issues that It Appears The Arbitrator Failed to Address:

(a) What is the proper scope of SBC's obligations under the ICA? Should the ICA refer to "network elements" or "UNEs"?

CLEC Coalition GT&C Issue 2: (a) [Whereas clause and § 1.1 & 1.2] Should the reference to "network element" be maintained in the ICA, as distinguished from "unbundled network elements"?

SBC's Statement of the Issue: Should the Interconnection Agreement obligate SBC to provide UNEs, collocation and resale services outside SBC Missouri's incumbent local exchange area?

Discussion and Decision:

SBC contends that the Arbitrator neglected to determine these DPs. If so, the Arbitrator addressed DPs identical to SBC's above at Section I(A).1.(b) of his Report as well as in Section III thereof. The Arbitrator determined that SBC's obligation to interconnect is not bounded by its ILEC service area, while its obligation to provide access to UNEs is so limited. To the extent that SBC offers services outside of its ILEC service territory, its resale obligations also extend outside of its service territory.

Likewise, the Arbitrator addressed the terminology issue raised by the CLEC Coalition at Section III.A.1.a.i of his Report, although he did not specifically address CLEC Coalition GT&C Issue 2(a) there or elsewhere. The Commission concludes that the Coalition's proposed language best expresses the Arbitrator's decision and the parties are directed to incorporate that language. The Arbitrator's Report is hereby modified accordingly.

(b) Force Majeure language:

Navigator GT&C Issue 13: Should SBC's additional sentence be included in the Force Majeure language in this Agreement?

Discussion and Decision:

Although the parties have generally agreed upon Force Majeure language which should be included in this ICA, the parties were unable to resolve this issue in its entirety and the Arbitrator did not address it. The area of disagreement is whether timely payments of invoiced amounts should be required during a Force Majeure event. In an effort to settle this issue, SBC Missouri proposed the following language, which is also set forth in the SBC Missouri Preliminary Issue Column of the Navigator/SBC Missouri DPL:

> Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure conditions occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, whereupon such Party's obligation or performance shall be suspended to the extent that the Party is affected by such Force Majeure Event. The other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with. Upon cessation of such Force Majeure condition, the Party whose performance fails or is delayed because of such Force Majeure conditions will give like notice and commence performance hereunder as promptly as reasonable practicable.

The Commission will adopt this language because it strikes a balance between the parties' interests by providing that if one party's performance is excused by a force majeure event, the other party need not perform its contractual obligations with respect to the item that is not provided during the time of the force majeure event.

5. Arbitrator's Section III(4): EELs Eligibility.

CLEC Coalition UNE Issue 9: How should the parties incorporate the mandatory eligibility criteria applicable to certain combinations of hi-cap loops and transport (EELs)? (e) Does SBC's example assist the reader in understanding the restrictions on EELs contained in the TRO?

CLEC Coalition UNE Issue 15: How should EELs be defined in the ICA in light of the TRRO?

Discussion:

SBC states that the Arbitrator's Report does not specifically address the language in Sections 2.20.2.2.6 and 2.20.2.2.7 of the Coalition's proposed language. Nevertheless, the Detailed Language Decision Matrix states that the CLEC Coalition language is consistent with the Arbitrator's Report. SBC Missouri seeks clarification that this is in error and that the Arbitrator's Final Report governs here. SBC Missouri notes that its language was noted as consistent with the Final Report in most sections of this issue and the wording of the Detailed Decision Matrix appears to be in error. This conclusion is further buttressed by page 27 of the Detailed Language Decision Matrix which expressly notes that SBC Missouri's proposed language in 2.20.2.2.7 is consistent with the order. Accordingly, SBC Missouri requests clarification that its proposed language is to be used here.

If it is not intended that SBC Missouri's language be used here, then SBC Missouri requests the Commission to overturn the Arbitrator's decision on the basis that it is unlawful and not supported by substantial and competent evidence. The Coalition's use of "loop" in 2.20.2.2.6, and of "EEL loop" in 2.20.2.2.7 is confusing, not defined, and might be argued to limit the application of the FCC's 51.318(b) criteria applicable to high-capacity EELs and commingled arrangements. The FCC Rule implemented by 2.20.2.2.6 uses the phrase "24 DS1 enhanced extended links or other facilities" (51.318(b)(2)(vi)), but the CC's language says "24 DS1 EELs loop or the other facilities". SBC Missouri's proposed

language follows the FCC Rule exactly in referencing "24 DS1 EELs or other facilities" and should be adopted. Similarly, in 2.20.2.2.7, the FCC Rule says "Each circuit" (51.318(b)(2)(vii), SBC Missouri's proposed language properly states "Each circuit" but the CC language uses the phrase "Each EEL loop circuit". No explanation is given for the insertion of "loop" other than Coalition's language, but the insertion (i) is contrary to the FCC's Rule 51.318(b) and the TRO; (ii) can only create confusion and, particularly with respect to 2.20.2.2.7, possible erroneous claims that this criteria only applies to EELs when FCC 51.318(b) expressly applies to both high-cap EELs and commingled arrangements; and (iii) is arbitrary and capricious, and not supported by the record. Accordingly, the inclusion of "loop" should be stricken from 2.20.2.2.6 and "EEL loop" stricken from 2.20.2.2.7.

Decision:

The language proposed by the Coalition is as follows (portions objected to by SBC are underlined):

> 2.20.2.2.6 For each 24 DS1 EELs loop or the other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk for the exchange of local traffic. CLEC is not required to associate the individual EEL collocation termination point with a local interconnection trunk in the same wire center.
>
> 2.20.2.2.7 Switching: Each EEL loop circuit to be provided to each customer will be served by switching equipment that is a switch capable of switching local voice traffic.

The language proposed by SBC is as follows (portions objected to by the Coalition are in bold):

> 2.20.2.2.6 For each 24 DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one active DS1 local service interconnection trunk **that meets the requirements of Section 2.20.4 of this Attachment; and**

2.20.2.2.7 Each circuit to be provided to each **End User** will be served by a switch capable of **providing** local voice traffic.

By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, SBC MISSOURI shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not terminate to a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE. Section 2.18.2 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 2.18.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.

The Commission determines that SBC's language is most appropriate, except that the Commission finds the lengthy example at Section 2.20.2.2.7 to be unnecessary. The Report is modified accordingly and the parties are directed to adopt SBC's language as here modified.

6. Arbitrator's Section III(G)(8)(d): Navigator UNE 9:

Navigator UNE Issue 9: Which Party's language accurately describes the party in control of the inside wire on the End User's side of the NID?

Discussion and Decision:

The Commission agrees with SBC that clarification is necessary here. The Final Arbitrator's Report states that "SBC Missouri's language is accepted."[67] The Detailed

[67] Arbitrator's Final Report, p.69.

Language Decision Matrix, however, indicates that Navigator's language is "most consistent". The Commission modifies the Arbitrator's Report to consistently provide that SBC's language is to be adopted. The parties are directed to comply.

IT IS THEREFORE ORDERED:

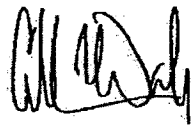
1. That the Final Arbitrator's Report, filed in this case on June 21, 2005, is incorporated into this Order by reference.

2. That the parties shall incorporate the Commission's resolution of each open issue as described in this Order into their interconnection agreements and shall file their interconnection agreements no later than 4:00 p.m. on Wednesday, July 13, 2005.

3. That the Staff of the Missouri Public Service Commission shall file a Memorandum and Recommendation advising the Commission that it has reviewed each such proposed interconnection agreement and determined that it complies with this Order and applicable statutes not later than 4:00 p.m. on Monday, July 18, 2005.

4. That this Order shall be effective on July 11, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Dated at Jefferson City, Missouri,
on this 11th day of July, 2005.

PU-05-165

■ 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:
Gregory Diamond SW Counsel
Covad Communications Company
7901 Lowry Blvd
Denver Co 80230

A. Signature
X Matthew Shedd ☐ Agent ☐ Addressee

B. Received by (Printed Name) Matthew Shedd | C. Date of Delivery 2/13/06

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) 7004 2510 0004 8815 2797

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-165

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■ 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:
Linda Miles
Qwest Corporation
1600 7th Ave Rm 3007
Seattle Wa 98191

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FEB 14 2006

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) 7004 2510 0004 8815 2780

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-165

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■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
John Devaney
Mary Rose Hughes
Perkins Coie LLP
607 14th St NW Ste 800
Washington DC 20005-2011

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) WIN Persina | C. Date of Delivery 2-13-06

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) 7004 2510 0004 8815 2803

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Perkins Coie

James F. Cobb, Jr.
PHONE: 202.434.1614
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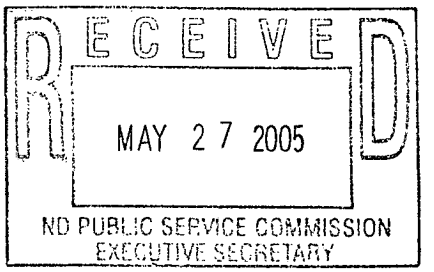
607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE: 202.628.6600
FAX: 202.434.1690
www.perkinscoie.com

May 27, 2005

VIA NEXT DAY AIR



Illona Jeffcoat-Sacco, Executive Secretary
N.D. Public Service Commission
600 E. Boulevard Avenue, 12th Floor
Bismarck, ND 58505
701/328-2400

Re: In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation
Case No. PU-05-165

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing, please find an original and seven copies of Qwest Corporation's Reply Brief.

Please feel free to contact me with any questions.

Very truly yours,

James F. Cobb, Jr.

JC:jas
Enclosure

17 **PU-05-165** Pages: 1

[13141-0674/DA051470.041]

Cover letter re filing

by Qwest Corporation
05/27/2005 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
MAY 27 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165 Qwest Corporation's Reply Brief

QWEST CORPORATION'S REPLY BRIEF

Qwest Corporation ("Qwest") submits this reply brief in support of its positions in this interconnection arbitration under the Telecommunications Act of 1996 (the "Act") between Qwest and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad").

INTRODUCTION

Qwest and Covad have been able to resolve most of their disputes through cooperative, good faith negotiations, leaving only one disputed issues that the North Dakota Public Service Commission ("Commission") must decide in this arbitration. As Qwest stated in its initial brief, the parties' inability to resolve this remaining issue is largely attributable to Covad's adherence to overly aggressive demands that are without legal support. Covad continues this approach in its opening brief.

The absence of legal support for Covad's arguments is demonstrated by Covad's willingness to voluntarily accept Qwest's language in the Colorado Covad/Qwest arbitration and

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Qwest Corporation's Reply Brief
by Qwest Corporation
05/27/2005 CC: Comm Legal Illona, Pat, Annette . .

the recent decisions in the Covad/Qwest arbitrations in Iowa, Minnesota, Washington, and Utah.[1] The commissions and administrative law judges in those states have uniformly ruled for Qwest on the single issue in this arbitration, finding that Covad's position lacks legal and evidentiary support. Thus, there is now a substantial body of determinations and recommendations by neutral decision-makers relating to the disputed issue that the Commission must decide in this proceeding. These decisions and recommendations demonstrate forcefully the significant flaws in Covad's proposal. In the discussion that follows, Qwest further demonstrates these flaws and explains why the Commission should adopt Qwest's proposal.

Before turning to the merits of Qwest's reply to Covad's opening brief, it is important to emphasize that Qwest provides competitive local exchange carriers ("CLECs"), including Covad, with access to network elements through means other than Section 251 interconnection agreements ("ICAs"). For example, under commercial agreements that Qwest and Covad have entered into throughout Qwest's region, Covad continues to have access to line sharing despite the FCC's ruling that "de-listed" line sharing as a Section 251 unbundled network element ("UNE"). Similarly, pursuant to multi-state commercial agreements between the parties

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[1] *See In re Arbitration of DIECA Communications, Inc. d/b/a Covad Communications Company v. Qwest Corporation*, Iowa Board Docket No. ARB-05-1, Arbitration Order at 7-9 (Iowa Utilities Board May 24, 2005) ("Iowa Arbitration Order"); *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Minnesota Commission Docket No. P-5692, 421/IC-04-549, Arbitrator's Report ¶¶ 46-50 (Minn. PUC Dec. 16, 2004) ("Minnesota ALJ Order") *aff'd in part In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection Agreement With Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Minnesota Commission Docket No. P-5692, 421/IC-04-549, Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement at 5 (Minn. PUC March 14, 2005) ("Minnesota Arbitration Order"); *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Washington Commission Docket No. UT-043045, Order No. 06, Final Order Affirming in Part, Arbitrator's Report and Decision; Granting, In Part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement ¶ 37 (Wash. UTC Feb. 9, 2005) ("Washington Arbitration Order"); *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Utah Commission Docket No. 04-2277-02, Arbitration Report and Order at 19-21 (Utah Commission Feb. 8, 2005) ("Utah Arbitration Order").

involving a product known as "Qwest Platform Plus," Covad still has access to switching and shared transport, neither of which incumbent local exchange carriers ("ILECs") are required to provide as UNEs under Section 251. Under these agreements, Qwest provides access to network elements and services based on commercially negotiated terms and rates, not based on the pricing and other terms that the Act mandates for UNEs.

In addition, Qwest provides CLECs with access to many of its network elements, including loops and dedicated transport, through Qwest's FCC1 Access Service Tariff. For example, Section 6 of Qwest's tariff provides CLECs with general Switched Access Service, which includes loops and is defined as "a two-point electrical communications path between a customer's premises and an end user's premises . . . ." Section 6.1.2.A specifically addresses switched transport and allows CLECs to obtain "transmission facilities between the customer's premises and the end office switch(es) where the customer's traffic is switched to originate or terminate its communications." Under switched transport, CLECs also may purchase direct trunk transport, which is a transmission path on circuits dedicated to the use of a single customer. FCC1 Access Service Tariff § 6.1.2.A.1(b). Thus, network elements Covad seeks are available through Qwest's tariffs in addition to commercial agreements.

Accordingly, a ruling by this Commission that the ICA between Qwest and Covad should only include access to UNEs that Qwest is required to provide under Section 251 – as the Iowa, Minnesota, Utah, and Washington commission have ruled – does not mean that Covad will be without access to any non-251 network elements and services. Consistent with the Act's

fundamental objective of, as described in the FCC's *Triennial Review Order* ("*TRO*"),[2] transitioning the telecommunications industry away from a regime of extensive regulation and toward a more market-driven, deregulatory structure Covad will still have access to multiple non-251 elements through commercially negotiated agreements and tariffs.

ARGUMENT

Issue 1: Section 4 Definition Of "Unbundled Network Element" and Sections 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.1.8, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6, 9.6.1.5.1 (and related 9.6.1.5), 9.6.1.6.1 (and related 9.6.1.6) and 9.21.2.

As Qwest demonstrated in its initial brief, the Act's "impairment" standard imposes important limitations on ILECs' unbundling obligations, as has been forcefully demonstrated by the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*[3] and the D.C. Circuit's decisions in *USTA I*[4] and *USTA II*[5] invalidating three of the FCC's attempts at establishing lawful unbundling rules. In this case, the unbundling obligations that Covad would have the Commission impose on Qwest ignore entirely these critical limitations and are based on the legally flawed assumption that a state commission may require unbundling under state law that the FCC has expressly rejected. As shown by its opening brief, Covad does not recognize the Act's important limits on state law authority – namely, that such authority must be exercised consistently with Section 251 and the federal unbundling regime established by the FCC. Moreover, Covad is asking this Commission to order broad unbundling of network elements without having provided any evidence that it will be impaired in the absence of access to those

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[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, ¶ 62, n.198 (2003) ("*Triennial Review Order*" or "*TRO*").

[3] 525 U.S. 366 (1998) ("*Iowa Utilities Board*").

[4] *U.S. Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*").

elements. Covad's broad unbundling requests cannot be permitted without evidence of impairment, and there is no such evidence before the Commission.

Covad also improperly asks this Commission to require unbundling and set rates under Section 271, ignoring that states have no decision-making authority under that section. As discussed below, the FCC has exclusive jurisdiction to determine the network elements that BOCs are required to provide under Section 271 and to determine the rates that apply to those elements. The FCC cannot – and has not – delegated that authority to state commissions. Covad offers several strained readings of the Act to support its claim that states have unbundling authority under Section 271, but its interpretations are wrong and certainly do not come close to establishing that Congress has expressly conferred Section 271 decision-making authority on state commissions.

The Washington Commission ruled correctly when it recently stated:

> [T]his Commission has no authority under Section 251 or Section 271 of the Act to require Qwest to include Section 271 elements in an interconnection agreement. . . . [and] any unbundling requirement based on state law would likely be preempted as inconsistent with federal law, regardless of the method the state used to require the element.[6]

The Commission should rule likewise and find that Covad's requests are improper and without legal support.

A. It Is Improper To Include Terms Relating To Network Elements Provided Under Section 271 In An Interconnection Agreement.

As Qwest discussed in its initial brief, there is no statutory or other legal basis for including terms and conditions relating to network elements provided under Section 271 in a

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[5] *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[6] Washington Arbitration Order ¶ 37.

Section 252 interconnection agreement.[7] Indeed, the FCC has defined the "interconnection agreements" that must be submitted to state commissions for approval as "only those agreements that contain an ongoing obligation relating to section 251(b) or (c) . . ."[8] Thus, the term "interconnection agreement" encompasses only terms and conditions relating to network elements and other services provided under Section 251 and does not include terms and conditions relating to elements provided under Section 271. As the Iowa Commission recently ruled:

> The arbitration process that is mandated by § 252 is concerned only with the implementation of an ILEC's obligations under § 252. In arbitrations, then, a state commission only has the authority to impose terms and conditions related to those § 252 obligations. . . . Clearly, the provisions that are at issue in this arbitration are unbundling obligations pursuant to § 271, rather than § 251 obligations. Therefore, the Board lacks jurisdiction or authority to require that Qwest include these elements in an interconnection agreement arbitration brought pursuant to § 252.[9]

Similarly, the Minnesota ALJ stated in a ruling recently upheld by the Minnesota Commission, "there is no legal authority in the Act, the *TRO*, or in state law that would require the inclusion of section 271 terms in the interconnection agreement, over Qwest's objection."[10]

Accordingly, for these reasons and those set forth in Qwest's initial brief, Covad's attempt to include Section 271 network elements in the ICA is improper and should be rejected. The terms and conditions relating to offerings under Section 271 are properly addressed in commercial agreements and tariffs, not ICAs. The Commission should reject Covad's proposals

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[7] Qwest Corporation's Initial Brief ("Qwest Br.") at 15-17.

[8] Memorandum Opinion and Order, *Qwest Communications Int'l 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)*, FCC 02-276, WC Docket No. 02-89 ¶ 8 n.26 (FCC Oct. 4, 2002) ("*Declaratory Order*").

[9] Iowa Arbitration Order at 7.

[10] Minnesota ALJ Order ¶ 46.

for the following ICA sections: Section 4.0 definition of "UNE," Sections 9.1.1; 9.1.5; 9.2.1.4; 9.3.1.1; 9.3.1.2; 9.3.2.2; 9.3.2.2.1; and 9.6. For each of these sections, the Commission should adopt Qwest's proposed language.

B. Covad Has Provided No Legal Support For Its Claim That State Commissions Have Decision-Making Authority Under Section 271 And Can Impose Unbundling Obligations Under That Provision Of The Act.

The Act does not give state commissions any substantive decision-making role in the administration and implementation of Section 271. Section 271(d)(3) expressly confers upon the FCC, not state commissions, the authority to determine if BOCs have complied with the substantive provisions of Section 271, including the Section 271 checklist provisions upon which Covad bases its arbitration demands for Section 271 unbundling. State commissions have only a non-substantive, consulting role in that determination. Accordingly, even if it were proper to address Section 271 issues in the context of a Section 252 arbitration, the Commission still would not have authority to impose affirmative obligations under that section.[11]

Significantly, in its discussion of this issue, Covad fails to cite any provision or language in the Act giving a state commission decision-making authority under Section 271. While Section 271 requires the FCC to "consult" with a state commission in reviewing a BOC's compliance with that section in connection with applications for authority to provide long distance service, there is an obvious difference between Congress's decision to give states *consulting authority* relating to BOCs' Section 271 applications and the complete absence of any Congressional delegation of *decision-making authority* under that provision.

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[11] *See* Qwest Corporations Initial Brief ("Qwest Br.") at 15-17.

As the D.C. Circuit made emphatically clear in *USTA II*, the only authority that state commissions have under the Act is that which Congress has clearly and expressly delegated to them.[12] Under the Act, Congress and the FCC took over the regulation of local telephone service, leaving the states only with authority that Congress expressly granted. The Seventh Circuit recently described this regulatory regime:

> In the Act, Congress entered what was primarily a state system of regulation of local telephone service and created a comprehensive federal scheme of telecommunications regulation administered by the Federal Communications Commission (FCC). While the state utility commissions were given a role in carrying out the Act, Congress "unquestionably" took "regulation of local telecommunications competition away from the State" on all "matters addressed by the 1996 Act;" it required that the participation of the state commissions in the new federal regime be guided by federal-agency regulations.[13]

Under this regime, states are not permitted to regulate local telecommunications competition "except by the express leave of Congress."[14] As described by the Third Circuit, "[b]ecause Congress validly terminated the states' role in regulating local telephone competition and, having done so, then permitted the states to resume a role in that process, the resumption of that role by a state is a congressionally bestowed gratuity."[15] Thus, the court explained, a "state commission's authority to regulate comes from Section 252(b) and (e), not from its own sovereign authority."[16] Here, there has been no delegation of 271 decision-making authority to state commissions, and this Commission therefore has no authority to impose the Section 271

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[12] *USTA II*, 359 F.3d at 565-68.

[13] *Indiana Bell Telephone Co., Inc. v. Indiana Utility Regulatory Comm'n*, 359 F.3d 493, 494 (7th Cir. 2004) (quoting *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999)).

[14] *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 510 (3rd Cir. 2001) (internal citations omitted).

[15] *Id.*

[16] *Id.*

unbundling obligations that Covad seeks to impose through its proposed ICA unbundling language.

As Qwest discussed in its initial brief, in *Indiana Bell Telephone Company v. Indiana Utility Regulatory Commission*,[17] a federal district court held that the consulting role given to states under Section 271 does not give a state commission substantive decision-making authority. *Indiana Bell* confirms the absence of a decision-making role for states under Section 271. The decision contrasts the substantive role that states have in administering Sections 251 and 252 with the "investigatory" and "consulting" role they have under Section 271.[18] In recognizing the different roles that Congress assigned states under these distinct provisions of the Act, the court noted that the Act does not include a "savings clause" that preserves the application of state law in the administration of Section 271.[19] By contrast, the court observed, Congress included a savings clause – Section 261(b) – that preserves the application of "consistent" state regulations in the administration of Sections 251 and 252.[20] As the court found, this contrast confirms further that Congress did not intend a substantive role for states in the administration of Section 271.[21]

Further, Covad's suggestion that a state legislature may grant to its agencies the authority to administer federal law that Congress has withheld is frivolous.[22] A state legislature may plainly confer authority to adopt and enforce state law if Congress has not preempted the law's

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[17] 2003 WL 1903363 (S.D. Ind. March 11, 2003).

[18] *Id.* at *11.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Covad's Opening Brief ("Covad Br.") at 10-11.

subject. It may also permit the state's administrative agencies to exercise any authority conferred upon them by Congress. However, state legislatures may not confer authority to administer federal law that has been withheld by Congress. Covad cites no decision from any court or agency, federal or state, holding otherwise.

In addition, the provisions of North Dakota law that Covad cites do not even remotely purport to give the Commission authority to engage in substantive decision-making under Section 271 or to require unbundling of network elements that the FCC has declined to require ILECs to unbundle.[23] Specifically, Covad cites North Dakota Century Code Sections 49-21-09 and 49-21-24 for the proposition that "Qwest must make loops and transport in North Dakota available to Covad on an unbundled basis."[24] These statutes, however, do not address or even mention Section 271 and, as discussed more fully below, cannot be implemented in manner that conflicts with the FCC's unbundling determinations.

The orders issued by the Maine and New Hampshire Commissions in tariff proceedings involving Verizon, which Covad relies upon in its brief,[25] are also plainly distinguishable and do not support Covad's unbundling demands under Section 271. As the Minnesota ALJ found in the Qwest/Covad arbitration in that state, the *Verizon-Maine* decision "is distinguishable on its facts as it appears to be premised on enforcement of a specific commitment that Verizon made to the Maine Commission during 271 proceedings to include certain elements in its state wholesale tariff."[26]

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[23] Covad Br. at 9-10.

[24] Covad Br. at 10.

[25] Covad Br. at 4-5. These order are attached to Covad's Opening Brief.

[26] Minnesota ALJ Order ¶ 46.

Indeed, *Verizon-Maine* did not involve an interconnection arbitration under Section 252 and thus did not present the issue presented here – whether a state commission serving as an arbitrator in a Section 252 arbitration has authority to impose Section 271 unbundling in an ICA. Instead, the issue in that proceeding was whether the Maine Commission could require Verizon to honor unbundling commitments it made during the Section 271 approval process by ordering it to amend a wholesale tariff to include network elements that the FCC had de-listed from Section 251 in the *TRO*. The Commission ruled that it had the authority to require Verizon to amend the tariff because, as a condition to receiving approval for entry into the Maine long distance market, Verizon had specifically agreed to include its unbundling obligations under both Section 251 and 271 in the tariff: "We find, upon consideration of each of these factors, that we do have authority to enforce Verizon's commitment to file a wholesale tariff with us that includes both its section 251 and 271 obligations."[27] Significantly, the Commission also recognized that it does not have authority independent of the FCC to determine the scope of Section 271 obligations: "This is not to suggest that the Commission has the independent authority to define the scope of [Section 271] obligations where the FCC has clearly spoken; merely that, in light of Verizon's commitment, the Commission has an independent role in determining whether those obligations have been met."[28]

The New Hampshire order also involved an amendment to a Verizon state tariff, not a Section 252 interconnection arbitration. As it did in connection with the Maine Section 271 approval process, Verizon had committed to the New Hampshire Commission during the Section

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[27] *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Service (PUC 21)*, Dkt. No. 2002-682, Order-Part II at 12 (Maine PUC Sept. 3, 2004).

271 proceeding that it would list all of its unbundling obligations in a wholesale state tariff. That commitment was integral to the New Hampshire Commission's approval of Verizon's Section 271 application. Accordingly, relying on the reasoning of the Maine Commission, the New Hampshire Commission found that it has "the authority to determine whether Verizon's wholesale tariff, including any changes proposed by Verizon, remains in compliance with the obligations Verizon voluntarily undertook in exchange for the right to offer interLATA service."[29] In so finding, the New Hampshire Commission emphasized that it was not claiming independent authority to determine Verizon's obligations under Section 271 but, instead, was "performing [its] duty as the initial arbiter of disputes over whether Verizon continues to meet the specific commitments previously made to this Commission as a condition for its recommendation that Verizon receive section 271 interLATA authority."[30]

Here, unlike in the Maine and New Hampshire proceedings, Covad is specifically asking this Commission to exercise independent unbundling authority under Section 271, not to enforce a commitment made during the Section 271 approval process. The Commission does not have that authority, and the Maine and New Hampshire orders do not suggest otherwise.

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[28] *Id.* at 14.

[29] *Verizon New Hampshire Segtel, Inc. Proposed Revisions to Tariff NHPUC No. 84 (Statement of Generally Available Terms and Conditions) Petition for Declaratory Order re Line Sharing*, DT 03-201 and ST 04-176, Order No. 24,442 at 42 (NH PUC March 11, 2005).

[30] *Id.* at 43.

C. The Commission Does Not Have Authority To Establish Prices For Section 271 Elements.

Covad asserts that the Act and the FCC's *TRO* establish the authority of state commissions to set prices for Section 271 elements.[31] For several reasons, this argument is seriously flawed, as Qwest discusses in its initial brief.[32]

First, the FCC was quite clear in the *TRO* that it has responsibility for setting prices for elements that BOCs provide under Section 271: "[w]hether a particular [Section 271] checklist element's rate satisfies the just and reasonable pricing standard is a fact specific inquiry that *the Commission* [*i.e.*, the FCC] will undertake in the context of a BOC's application for Section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6)."[33]

Second, Sections 201 and 202, which govern the rates, terms and conditions applicable to the unbundling requirements imposed by Section 271,[34] provide no role for state commissions. That authority has been conferred by Congress upon the FCC and federal courts.[35] The FCC has not delegated that authority, and Congress has not permitted it to do so.

Third, the pricing authority that state commissions have under Section 252(d)(1) does not empower states to set rates for Section 271 elements. The authority granted by that provision is expressly limited to determining "the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection [251(c)(2)] . . . [and] for network elements for

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[31] Covad Br. at 7-9.

[32] Qwest Br. at 17-19.

[33] *TRO* ¶ 664.

[34] *Id.* ¶¶ 656, 662.

[35] *See id.*; 47 U.S.C. §§ 201(b) (authorizing the FCC to prescribe rules and regulations to carry out the Act's provisions), 205 (authorizing FCC investigation of rates for services, etc. required by the Act), 207 (authorizing FCC and federal courts to adjudicate complaints seeking damages for violations of the Act), and 208(a) (authorizing FCC to adjudicate complaints alleging violations of the Act).

purposes of subsection [251(c)(3)]."[36] Thus, the only network elements over which states have pricing authority are those that an ILEC provides pursuant to Section 251(c)(3). Nothing in the Act extends that authority to Section 271 elements, as evidenced by Covad's inability to cite any statutory provision that even remotely suggests state commissions have such authority.

Significantly, as Qwest discussed in its initial brief, the FCC recently rejected substantially the same pricing argument in its opposition to the petitions for a *writ of certiorari* filed with the Supreme Court by NARUC, state commissions, and certain CLECs in connection with *USTA II*.[37] Addressing NARUC's contention that Section 252 gives state commissions exclusive authority to set rates for network elements, the FCC stated that the contention "rests on a flawed legal premise."[38] It explained that Section 252 limits the pricing authority of state commissions to network elements provided under section 251(c)(3).[39]

Fourth, Covad's claim that the Commission has authority to set TELRIC rates for Section 271 elements – which of course incorrectly assumes that state commissions have pricing authority over Section 271 elements – is directly refuted by the *TRO* and *USTA II*. In the *TRO*, the FCC ruled very clearly that any elements a BOC provides pursuant to Section 271 are to be priced based on the Section 201-02 standard that rates must not be unjust, unreasonable, or unreasonably discriminatory.[40] Consistent with its prior rulings in Section 271 orders, the FCC

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[36] 47 U.S.C. § 252(d)(1).

[37] Qwest Br. at 18-19.

[38] Brief for the Federal Respondents in Opposition to Petitions for Writ of Certiorari, *National Association of Regulatory Utility Commissioners v. United States Telecom Ass'n*, Supreme Court Nos. 04-12, 04-15, and 04-18 at 23 (filed Sept. 2004).

[39] *Id.*

[40] *TRO* ¶¶ 656-64.

confirmed that TELRIC pricing does not apply to these network elements.[41] In *USTA II*, the D.C. Circuit reached the same conclusion, rejecting the CLECs' claim that it was "unreasonable for the Commission to apply a different pricing standard under Section 271" and instead stating that "we see nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment."[42]

D. The Act Does Not Permit The Commission To Create Under State Law Unbundling Requirements That The FCC Rejected In The *TRO* Or That The D.C. Circuit Vacated In *USTA II*.

As Qwest demonstrated in its initial brief, under Section 251 of the Act, there is no unbundling obligation absent an FCC requirement to unbundle and a lawful FCC impairment finding. Section 251(c)(3) authorizes unbundling only "in accordance with . . . the requirements of this section [251]."[43] Section 251(d)(2), in turn, provides that unbundling may be required *only if the FCC determines* (A) that "access to such network elements as are proprietary in nature is necessary" and (B) that the failure to provide access to network elements "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[44]

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.[45] 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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[41] *Id.*

[42] *USTA II*, 359 F.3d at 589; *see generally id.* at 588-90.

[43] 47 U.S.C. § 251(c)(3).

[44] 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."[46] And *USTA II* establishes that Congress did not allow the FCC to have state commissions perform this work on its behalf.[47] Consistent with these rulings, as Qwest discussed in its initial brief, the FCC recently ruled in the *BellSouth Declaratory Order* that state commissions are generally without authority to require ILECs to unbundle network elements that the FCC has declined to require ILECs to unbundle.[48]

Covad responds to the legal framework established by these authorities and those described in Qwest's initial brief as if it were not there, arguing that the Act, the *TRO*, and *USTA II* do not impose any meaningful limits on the authority of state commissions to require unbundling under state law. Thus, Covad asserts that the Commission is free to require Qwest to provide network elements that the FCC declined to require ILECs unbundle based on specific findings that CLECs are not impaired without them.[49] Covad's argument fails to recognize that the Act's savings clauses preserve independent state authority only to the extent that authority is exercised in a manner consistent with the Act.[50] This point was forcefully confirmed in the

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[45] 47 U.S.C. § 251(d)(2).

[46] *Iowa Utilities Board*, 525 U.S. at 391-92.

[47] *See USTA II*, 359 F.3d at 568.

[48] Qwest Br. at 11-12.

[49] For example, Covad asserts that the Commission has authority to require access to "subloop elements" (Covad Br. at 2) even though the FCC expressly ruled in the *TRO* that CLECs are not impaired without access to feeder subloops and that ILECS are therefore not required to provide them. *TRO* ¶ 253.

[50] Qwest Br. at 12-13.

recent decision from the United States District Court for the District of Michigan discussed in Qwest's initial brief.[51]

The fundamental problem with Covad's position, as confirmed by its brief, is that it requires unbundling regardless of consistency with the Act. As Qwest described in its initial brief, the inevitable conflicts with federal law that would result from adoption of Covad's position are demonstrated by the application of Covad's proposed unbundling language to feeder subloops.[52] Covad fails to respond to this striking example of how the virtually limitless unbundling obligations that would result from its language directly conflict with federal law and the "federal regime" that the FCC alone has authority to implement. And this example would not be an isolated occurrence under Covad's unbundling language, as the language is broad enough for Covad to contend that Qwest is required to provide unbundled access to OCn loops, feeder subloops, DS3 loops (in excess of two per customer location), extended unbundled dedicated interoffice transport and extended unbundled dark fiber, and other elements despite the FCC's fact-based findings in the *TRO* that CLECs are not impaired without access to these elements.[53]

As the FCC stated quite clearly in the *TRO*, the type of state law unbundling regime that Covad is proposing – one that ignores altogether FCC findings of non-impairment with respect to individual elements – "overlook[s] the specific restraints on state action taken pursuant to state law embodied in section 251(d)(3), and the general restraints on state actions found in sections

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[51] Qwest Br. at 11.

[52] Qwest Br. at 14 and n.40.

[53] In the following paragraphs of the *TRO*, the FCC ruled that ILECs are not required to unbundled these and other elements under Section 251: ¶ 315 (OCn loops); ¶ 253 (feeder subloops); ¶ 324 (DS3 loops); ¶ 365 (extended dedicated interoffice transport and extended dark fiber); ¶¶ 388-89 (OCn and DS3 dedicated interoffice transport); ¶¶ 344-45 (signaling); ¶ 551 (call-related databases); ¶ 537 (packet switching); ¶ 273 (fiber to the home loops); ¶ 560 (operator service and directory assistance); and ¶ 451 (unbundled switching at a DS1 capacity).

261(b) and (c) of the Act."[54] This approach to state law unbundling "ignore[s] long-standing federal preemption principles that establish a federal agency's authority to preclude state action if the agency, in adopting its federal policy, determines that state actions would thwart that policy."[55] As the United States Court of Appeals for the Seventh Circuit stated, "we cannot now imagine" how a state could require unbundling of an element consistently with the Act where the FCC has not found the statutory impairment test to be satisfied.[56]

Equally significant, any unbundling obligations imposed under state law would have to be supported by an express finding that Covad would be impaired without access to specific network elements. A finding of impairment is essential under Section 251, and any unbundling requirement that does not rest on such a finding is plainly unlawful. Covad's failure to provide any evidence of impairment is thus fatal to its unbundling demands, as the Commission has no evidentiary record upon which to base findings of impairment or requirements to unbundle.

Relying on an inaccurate interpretation of a ruling by the Illinois Commerce Commission that is expressly based on Illinois law, Covad asserts that this Commission must apply North Dakota law relating to network unbundling without concern for whether the results conflict with the 1996 Act and FCC orders and rules implementing the Act.[57] This argument is meritless. The Illinois Commission ruled only that as a creation of the Illinois legislature, that Commission's powers are limited to those that the legislature expressly conferred.[58] Contrary to Covad's

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[54] *TRO* ¶ 192 (footnote omitted).

[55] *Id.*

[56] *Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 395 (7th Cir. 2004).

[57] Covad Br. at 10-13.

[58] *Illinois Bell Telephone Co.; Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act*, Docket No. 01-0614, Order on Remand (Phase I) at 61 (Ill. Commission Apr. 20, 2005).

incomplete description of the ruling, the Illinois Commission also concluded that it does have authority to construe and apply Illinois law relating to network unbundling to avoid inconsistency with the 1996 Act and FCC orders.[59] The 1996 Act establishes that any exercise of state authority must be consistent with the federal law, and any unbundling requirements imposed under state law that conflict with FCC rulings are, therefore, unlawful.[60]

Finally, Covad incorrectly implies that Qwest's position is that state commissions are entirely without authority to regulate unbundled network elements under the Act. However, Qwest is not arguing that state commissions are without authority to regulate under the Act. Instead, as described here and in Qwest's initial brief, states are permitted to regulate but only with respect to the specific areas identified by Congress in the Act and only to the extent their regulations are consistent with federal law, including FCC orders and rules. Here, Covad is asking the Commission to regulate in a manner that is inconsistent with federal law by requiring network unbundling that the FCC has specifically rejected. The Commission does not have that authority and, accordingly, Covad's request is unlawful.

E. The ICA Should List Specific Non-251 Network Elements That Qwest Is Not Required to Provide Under The Agreement.

In its proposed ICA, Qwest includes several provisions listing the network elements that the FCC has ruled ILECs are not required to provide under Section 251. Qwest's proposed Section 9.1.1.6 lists 18 different elements and services that pursuant to rulings in the *TRO*, ILECs are not required to unbundle under Section 251. There is no dispute that Qwest's listing of these elements and services accurately reflects the FCC's *TRO* rulings. However, Covad clearly

[59] *Id.* at 62 ("[W]e have some latitude to a make appropriate changes [to state law] to achieve consistency with federal law.").

believes that Qwest's unbundling obligations are unlimited and include even the network elements for which the FCC has made findings of non-impairment and declined to impose an unbundling requirement. Given Covad's overreaching position, Qwest is very concerned that Covad will demand unbundling of these de-listed elements if the ICA does not state clearly that the elements are unavailable. To protect against this distinct possibility and the dispute that would result, the ICA should include the list of de-listed UNEs in Qwest's section 9.1.1.6, which all parties agree is accurate.

The Commission should also approve Qwest's language and not require Qwest to continue providing network elements that the FCC has de-listed as UNEs until the Commission approves an ICA amendment removing the UNEs from the ICA. The use of the amendment process for de-listed UNEs is improper because it would require Qwest to continue providing network elements at TELRIC rates potentially long after the FCC has ruled that ILECs are not required to provide the elements under Section 251. Accordingly, the Commission should adopt Qwest's proposed sections that would eliminate unbundling obligations upon non-impairment findings by the FCC.

CONCLUSION

For the reasons stated here and in its initial brief, Qwest respectfully requests that the Commission adopt Qwest's proposed language for each of the ICA provisions in dispute.

DATED: May 27, 2005

Respectfully submitted,

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[60] *See* Qwest Br. at 12-13.

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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this the 27th day of May 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S REPLY BRIEF by U.S. mail and electronic mail to the following:

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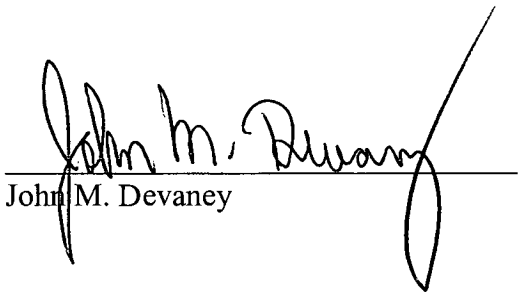

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May 27, 2005

HAND-DELIVERED

Attention: Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol, Ninth Floor
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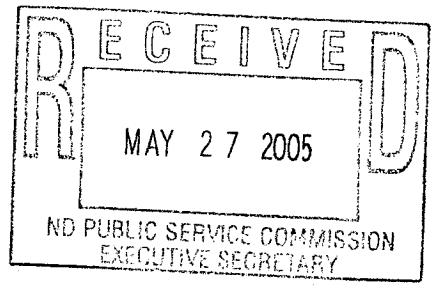
Bismarck, ND 58505



RE: Case No. PU-05-0165
IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed is the original signature page to Covad's Response Brief and the original signed Certificate of Service in the above docket. Please attach these pages to the original brief filed with the Commission today.

Thank you for your attention to this matter. Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/jf
Enclosure.

• ALSO LICENSED IN MINNESOTA • ALSO LICENSED IN

15 PU-05-165 Pages: 3

Original signatur page to Covad's Response Brief & Certificate of Service by DIECA Communications, Inc by

05/27/2005 CC: Comm Legal Illona, Pat, Annette . .

CONCLUSION

For the reasons set forth above, in its initial brief and petition, Covad respectfully requests that the Commission adopt Covad's proposed language to resolve the issues set forth above, and enter an order consistent with this resolution.

Dated this 27th day of May, 2005.

Respectfully submitted,

DIECA COMMUNICATIONS, INC.,
d/b/a Covad Communications Company

By_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2005, a true and correct copy of the foregoing Response Brief of Covad Communications Company was served by the method indicated below, and addressed to the following:

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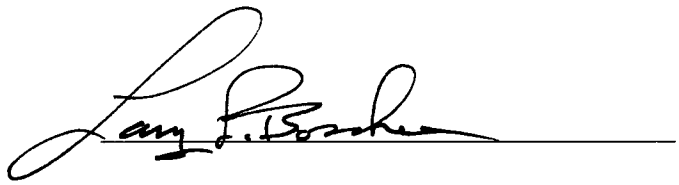

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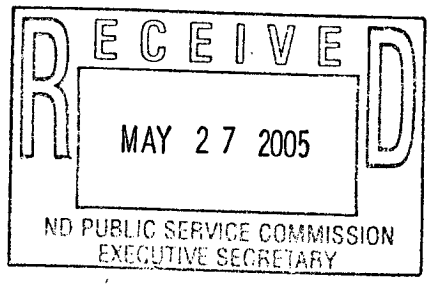

Jon H. Mielke, Executive Director
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Re: In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation; Case No. PU-05—165

Dear Mr. Mielke:

Enclosed for filing are the original and eight copies of Covad's Response Brief in the above docket, along with a Certificate of Service. The original signature pages will be filed under separate cover. Please date stamp the additional copy of Covad's Response Brief and return it to me in the enclosed, self addressed, stamped envelope.

Please feel free to call if you have any questions.

Very truly yours,

Lynn Hankins

Lynn Hankins

Enclosures
cc: Service list (w/enclosures)

14 PU-05-165 Pages: 1

Cover letter re Covad's Response Brief

by DIECA Communications, Inc. by
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RECEIVED
MAY 27 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S RESPONSE BRIEF**

DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"), through its undersigned counsel, presents this response brief in support of its petition for arbitration:

INTRODUCTION

Qwest's initial brief understates and distorts the authority retained by the Commission under both state and federal law to promote competition and the efficient investment in advanced telecommunications, notwithstanding the Federal

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Covad's Response Brief
by DIECA Communications, Inc. by
05/27/2005 CC: Comm Legal Illona, Pat, Annette . .

Communications Commission's ("FCC's") recent decisions to constrict federal unbundling requirements under only section 251 of the Telecommunications Act of 1996 (the "Act").[1] Contrary to established precedent, Qwest would have the Commission conclude, erroneously, that, as a matter of established black letter law, it has absolutely no authority whatsoever to require Qwest to unbundle any network elements. This simply attempts to draw the line far more narrowly than is actually allowed under state and federal law.

Rather, Covad asserts the FCC intended to draw clear distinctions between elements unbundled pursuant to section 252(c)(3) of the Act on the one hand, and elements that must be made available by Regional Bell Operating Companies ("RBOCs") pursuant to section 271 of the Act and state law on the other. In contrast, Qwest proposes placing 271 elements in a category separate not only for elements available pursuant to section 251, but also separate from, and inferior to, all other wholesale services. In addition to being unsupported by the *Triennial Review Order*, Qwest's reading would render it difficult, if not impossible, to make use of the remaining unbundling obligations set forth in section 271 of the Act, as well as other requirements clearly provided by North Dakota law.

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[1] *See generally, In the Matter of 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,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98, and 98-147, (rel. September 17, 2003) ("*Triennial Review Order*"); and *In the Matters of Petition for Forbearance of Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c),* WC Docket Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order (rel. October 27, 2004) ("*271 Forbearance Order*"). WC Docket No. 04-313; CC Docket No. 01-338, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order on Remand (Rel. February 4, 2005) ("*TRO Remand Order*").

ARGUMENT

Qwest opposes the inclusion of terms in the Agreement describing its unbundling obligations under both section 271 of the Act and North Dakota law. In its initial brief, Qwest makes four overarching arguments against Covad's proposals for the unbundling of network elements: (1) Section 251 of the Act, as now interpreted by the FCC and *USTA II*,[2] describes the "real upper bound" (Qwest Initial Brief, p. 9) of Qwest's unbundling obligations, and this Commission has no authority to question these impairment determinations; (2) The Act's state savings clauses do not preserve state utility commission authority to order further unbundling; (3) The Commission lacks the authority to enforce section 271 of the Act by enforcing the competitive checklist; and (4) Any access that is afforded to non-251 elements cannot lawfully be priced at forward-looking TELRIC rates. All four of these arguments are without merit. They have been considered and rejected by the FCC and/or federal courts, as detailed below.

Qwest also cites the decisions of other state commissions made in parallel arbitrations between the parties. Qwest improperly characterizes those decisions in an effort to convince the Commission that there has been unanimity in state commission review with respect to this issue. As detailed below, this is hardly the case. Very recent state commission decisions support Covad's position, and none of the other state commissions was able to apply the unique provisions of North Dakota state law.

It is also important to note at the outset one additional glaring error in Qwest's initial brief. Qwest would have the Commission believe that Covad's proposals for unbundling would "require Qwest to provide almost unlimited unbundled access to the

[2] *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

elements in Qwest's North Dakota telecommunications network." Qwest Initial Brief, p. 1 (emphasis added). This assertion is blatantly false. As detailed in Covad's petition and initial brief, Covad has carefully defined "network element" to fall clearly within the limits of applicable law, including section 271, not "unlimited access" to all elements in Qwest's network. See section 4 of the draft Interconnection Agreement. Covad has also proposed additional provisions for inclusion in the interconnection agreement (as fully detailed in Covad's initial brief and the petition) that place a clear limitation on the scope of network elements available to Covad. See sections 9.1.1, 9.1.1.6 and 9.1.1.7 of the draft Agreement.

Finally, Qwest's heavy reliance upon the Federal Communication Commission's ("FCC") recent decision in the *BellSouth Declaratory Order* is grossly misplaced.[3] Qwest simply reads the very narrow holding of the FCC decision in that docket far too broadly. When read properly, the decision has no application to this docket.

A. Access Obligations Consistent with the Section 271 Competitive Checklist Cannot, as a Logical Matter, Conflict with the Act

Qwest over-states the breadth of the *Triennial Review Order* and claims it stands for the proposition that any unbundling requirement not meeting the FCC's impairment standard is necessarily in conflict with the FCC's impairment determinations and the Act itself. This position ignores, however, the statements made by the FCC, and left undisturbed by the D.C. Circuit in its *USTA II* decision, that network elements contained in the section 271 Competitive Checklist[4] must be available notwithstanding any finding

[3] Memorandum Opinion and Order of Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling,* WC Docket No. 03-251, FCC 05-78 (FCC rel. March 25, 2005) ("*BellSouth Declaratory Order*").

[4] *See* 47 U.S.C. § 271(c)(2)(B) ("Competitive Checklist").

of non-impairment. The FCC specifically rejected the very same analysis proposed by Qwest in this proceeding:

> Verizon asserts that an interpretation of the Act that recognizes the independence of sections 271 and 251(d)(2) places these sections in conflict with each other. We disagree. Verizon's reading of section 271 would provide no reason for Congress to have enacted items 4, 5, 6, and 10 [loop, transport, switching and signaling] of the checklist because item 2 [compliance with section 251] would have sufficed.

Triennial Review Order, ¶ 654.

If the additional unbundling requirements contained in the Competitive Checklist do not conflict with section 251, it follows logically that identical state access obligations would not conflict with section 251. Therefore, any access obligation limited by the scope of the Competitive Checklist (such as those proposed by Covad), whether grounded in section 271 or North Dakota law, cannot conflict with the Act and cannot be preempted.

B. The Act Grants this Commission Clear Authority to Order Unbundling in Addition to the Minimum Requirements of Section 251

Qwest makes three separate arguments regarding the lack of Commission authority to order unbundling beyond the FCC's current interpretation of section 251 of the Act: First, the Commission lacks any authority to perform the impairment analysis required by section 251; Second, that the Act does not preserve state commission authority to impose additional unbundling obligations; and Third, that the Commission lacks any authority to require unbundling consistent with section 271 of the Act.

Qwest's first argument, regarding the ability of the Commission to make impairment determinations, is wrong. First of all, Covad has not proposed that this Commission perform an impairment analysis under section 251. Instead, Covad has

asked the Commission to recognize its authority under section 271 of the Act, North Dakota law, or both, to order unbundling consistent with the Competitive Checklist and the statutory prerogatives of the Commission. Notwithstanding its view that the Commission has no authority to make impairment determinations, Qwest argues that Covad has offered no evidence of impairment in any event. This argument misses the point. Neither section 271 nor North Dakota law imposes or defines impairment as a standard under which to make an unbundling determination.

Qwest's second argument, that the Commission lacks the authority to impose additional unbundling obligations, has been repudiated not only by the FCC in the *Local Competition First Report and Order*,[5] but also by every federal court passing judgment on the meaning of section 252(e)(3) of the Act.[6] Contrary to Qwest's assertions that the Act's savings clauses designed to preserve state authority are ineffective in providing authority for state unbundling rules, these federal courts have routinely confirmed that these savings clauses, especially 47 U.S.C. § 252(e)(3), provide state commissions with the requisite authority to enforce their own access obligations.

Nonetheless, Qwest appears to argue implicitly (and would have the Commission conclude) that because of the unbundling limitations the FCC has made pursuant to section 251(c)(3) of the Act, the Commission is preempted from ordering unbundling.

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[5] *See Local Competition First Report and Order,* ¶ 244, as well as the discussion of Issue 1, subsection B, above.

[6] *See Southwestern Bell Telephone Co. v. Public Util. Comm'n of Texas,* 208 F.3d 475, 481 (5th Cir. 2000) ("The Act obviously allows a state commission to consider requirements of state law when approving or rejecting interconnection agreements."); *AT&T Communications v. BellSouth Telecommunications Inc.,* 238 F.3d 636, 642 (5th Cir. 2001) ("Subject to § 253, the state commission may also establish or enforce other requirements of state law in its review of an agreement." [citing § 252(e)(3)]); *Bell Atlantic Maryland, Inc. v. MCI Worldcom, Inc.,* 240 F.3d 279, 301-302 (4th Cir. 2001) ("Determinations made [by state commissions] pursuant to authority other than that conferred by § 252 are, by operation of § 601(c) of the 1996 Act, left for review by State courts. [citing 47 U.S.C. § 152 note]...Section 252(e) also permits State commissions to impose State-law requirements in its review of interconnection agreements.")

This is clearly not the case. As Covad argues in copious detail in its initial brief, the Commission is not preempted under any theory from making its own unbundling determinations under section 271 of the Act or North Dakota's unbundling law. In order for state requirements to be preempted, they must actually conflict with federal law, or federal law must thoroughly occupy the legislative field. *Cippillone v. Liggett Group, Inc.,* 505 U.S. 504, 516, 120 L. Ed. 2d 407, 112 S. Ct. 2608 (1992). Congress effectively eliminated any argument supporting implied preemption by including the following language in the Act:

> (c) Federal, State, and Local Law.--
>
> (1) **No implied effect**.--This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

Pub. L. 104-104, title VI, Sec. 601(c), Feb. 8, 1996, 110 Stat. 143. (emphasis added). As discussed above, the FCC has, as recently as the *Triennial Review Order*, rejected the premise that access obligations exceeding those required by section 251's "impair" standard *directly* conflict with section 251,[7] and the Act itself prohibits implicit preemption determinations. As a result, Qwest's veiled attempt at a preemption argument is without merit.

Qwest's reliance upon the *BellSouth Declaratory Order* on this same point is misplaced. In that decision, the FCC was confronted with, in its words, the "discreet

[7] *Triennial Review Order*, ¶ 654. It should also be noted that the FCC exercised its forbearance authority in the *271 Forbearance Order* to refrain from requiring the unbundling of certain fiber facilities under section 271 of the Act. Inherent in this determination was the realization that notwithstanding their recent determination that competitors are not impaired without access to the broadband capabilities of FTTH and FTTC loops, section 271 required the unbundling of *all* loops. Only by electing to forbear from enforcement of section 271 unbundling requirements could they relieve RBOCs of their obligation to unbundle these elements. Most notably, the FCC did not elect to forbear from enforcement of the unbundling obligations proposed by Covad in this arbitration, such as access to Feeder subloops, DS3 Loops, and DS3 Transport elements.

issue" of whether requiring an ILEC to provide digital subscriber line service on the high frequency portion of the loop constitutes impermissible unbundling of the low frequency portion of the loop ("LFPL") when another carrier provides voice grade service on the LFPL.[8] The FCC concluded that because it had already ruled in prior orders that an ILEC was not required to unbundle the LFPL that several state commissions holdings to the contrary were "inconsistent with federal law" under section 251(d)(3) of the Act.

Notwithstanding the narrow scope of this decision, Qwest reads the *BellSouth Declaratory Order* for the proposition that the FCC has ruled "that state commissions are generally without authority to require ILECs to unbundle network elements that the FCC has declined to require ILECs to unbundle." (Qwest Initial Brief, p. 10). This is an overly broad reading of the FCC's decision. The FCC specifically notes in the same order that it had previously rejected the argument that "states are preempted from [issuing unbundling requirements] as a matter of law".[9] Nonetheless, Qwest would have this Commission believe that in all instances and as matter of law that state commissions have no authority to add to the national list of unbundled network elements. They clearly do as articulated here and in Covad's initial brief and petition.

Moreover, when properly understood, the *BellSouth Declaratory Order* is not applicable to this docket. In this docket, Covad does not seek the unbundling of any network element that the FCC has specifically concluded an ILEC is not required to unbundle. More specifically, Covad does not even seek in this proceeding the unbundling of the LFPL, the only network element at issue in the *BellSouth Declaratory Order*. In addition, the FCC did not consider, even in passing, whether an ILEC has separate and stand alone unbundling obligations under section 271 of the Act or state law. Here, Covad only seeks to require Qwest to unbundle those elements set forth in section 271 and any elements it is required to unbundle under state law. Hence, the only rule of

[8] *BellSouth Declaratory Order*, ¶37
[9] *BellSouth Declaratory Order*, ¶23, n. 71.

law that can be read from the *BellSouth Declaratory Order* cannot be properly applied in this matter.[10]

C. The Commission has Authority to Enforce Section 271 by Requiring Compliance with the Competitive Checklist

Qwest goes on to argue that even if section 271 can be read to create additional unbundling obligations, this Commission possesses no authority to enforce those obligations. For this premise, it cites *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (S.D. Ind. 2003). Qwest also claims that the role for state commissions envisioned by the Act with respect to section 271 is markedly different than that envisioned by sections 251 and 252, and that this Commission has no real power to enforce compliance with the Competitive Checklist.

Qwest's reliance on *Indiana Bell* misconstrues the court's holding in that case. The *Indiana Bell* court held that the Indiana Utility Regulatory Commission (IURC) did not have authority to order a specific performance and remedy plan as a condition of interLATA authority, because the FCC, not the IURC, had the ultimate authority to grant Indiana Bell's application. By ordering compliance with the remedy plan, the court ruled that the IURC "*imposes additional* obligations on Ameritech, beyond what is contemplated by Section 271 of the Act." (emphasis added) *Id.* at 6.

Notably, however, the court went to great lengths to explain that the IURC *did* have the authority to implement its performance and penalty plan *through the 252 interconnection process*. The court stated: "It is precisely because enforcement

[10] It should be noted that Qwest makes no effort in its initial brief to contest the Covad petition that state law also provides for the unbundling of network elements. In Covad's initial brief, it cites to specific North Dakota law granting authority to the Commission to compel unbundling of network elements. Qwest ignores this point altogether and thus appears to concede the argument to Covad.

mechanisms are contemplated by Section 252 that they cannot be developed through the 271 Application process alone." In other words, the IURC had no need to require certain access standards as a condition of 271 approval, because it was free to require the same terms in its review of 252 interconnection agreements. A proper reading of *Indiana Bell* affirms that this Commission may interpret and enforce the Competitive Checklist in its review of an interconnection agreement. In the current proceeding, Covad does not propose additional obligations and penalties under the aegis of section 271, making the court's holding in *Indiana Bell* inapplicable.

Recently, the Maine Public Utilities Commission issued an order requiring Verizon to continue to provide elements on the Competitive Checklist through tariffs approved by that commission.[11] The Maine PUC also specifically found it possessed the authority to require compliance with the Competitive Checklist in the context of section 252 arbitration proceedings. *Maine 271 Unbundling Order* at 19. Very recently, the Public Utilities Commission of New Hampshire forcefully echoed the FCC's determination that section 251 of the Act is not the limit of Qwest's unbundling obligation. Rather, section 271 continues to require Qwest to unbundle the listed network elements:

> We address first Verizon's general argument that the FCC's determination of an element as a section 251 obligation allows Verizon to remove that element from its wholesale tariff altogether. The FCC made clear in the TRO [*Triennial Review Order*] that the removal of a UNE from the list of section 251 obligations because of lack of impairment did not automatically resolve the question of whether an RBOC must still make that UNE available under section 271. S*ee TRO* at ¶¶652-655. The FCC's *TRO* has in fact rejected Verizon's argument that once the FCC

[11] *See* Maine PUC Docket No. 2002-682, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Order – Part II (September 3, 2004) ("*Maine 271 Unbundling Order*"). A copy of this order is attached as Attachment 1 to Covad's Initial Brief.

> determined that a UNE is not necessary under section 251, the corresponding 271 checklist item should be construed as being satisfied. In rejecting this position, the FCC made it clear in the TRO that "the BOCs have an independent obligation under section 271 (c)(2)(B) to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at reasonable rates." The FCC further concludes that RBOC obligations pursuant to section 271 are "not necessarily relieved based on any determination [by the FCC] under the section 251 unbundling analysis." *Id.* at ¶ 655.

Proposed Revisions to Tariff NHPUC No. 84, p. 39, Dckt. DT 03-201, 04-176, Order No. 24,222 (March 11, 2005). In disposing of the docket, the New Hampshire commission ordered Verizon, through its tariff, to continue to provide line sharing to several competing carriers, including Covad, on an unbundled basis.

Moreover, as recently as May 9, 2005, an administrative law judge for the Illinois Commerce Commission reaffirmed that commission's previous holding that "Section 271 of the Federal Act creates an unbundling obligation to which SBC must adhere, irrespective of its duties under Section 251 and the associated impairment analysis." *In Re: Cbeyond Communications, LLP et.al v. Illinois Bell Telephone Company*, Illinois Commerce Commission, Dockets 05-154, 050156 & 05-174, Administrative Law Judge Decision, p. 23 (May 9, 2005) citing *XO Illinois, Inc. Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone*, Docket 04-0371, Order, Sept. 9, 2004, at p. 47.

The foregoing is consistent with the clear direction provided by the FCC in approving RBOC 271 applications, which firmly support the enforcement authority of state utilities commissions with respect to the competitive checklist. In approving Qwest's 271 application for Arizona, the FCC stated:

> Working in concert with the Arizona Commission, we intend to closely monitor Qwest's post-approval compliance for Arizona...
>
> ...
>
> We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Qwest's entry into Arizona.

In the Matter of Application of Qwest Communications International, Inc., for Authorization To Provide In-Region, InterLATA Services in Arizona, WC Docket No. 03-194, Memorandum Opinion and Order, [18 FCC Rcd 25504] (rel. Dec. 3, 2003), ¶¶ 59 and 60.

Logically attendant to this enforcement authority is the authority to interpret the requirements of section 271. Doing so in the context of a section 252 arbitration proceeding is the most obvious, expedient, and legally defensible method available to this Commission. By incorporating its decisions in its order in this arbitration proceeding, the Commission would establish its own authority, separate from section 271, to enforce the requirements imposed. If Qwest were to refuse to comply with the Commission's order in this case, citing this Commission's lack of authority to interpret section 271, the Commission could enforce its order as it enforces any Commission order, as well as advise the FCC of Qwest's non-compliance with section 271 of the Act. Ultimately, only the FCC may judge whether non-compliance with the Competitive Checklist requires enforcement under section 271 of the Act, but this is clearly distinguishable from this Commission's authority to interpret and enforce interconnection agreements.

D. TELRIC is a Permissible Pricing Methodology to Determine Fair, Just and Reasonable Rates in Compliance with 47 U.S.C. §§ 201 and 202 and North Dakota Law

Qwest argues that any application of TELRIC to establish rates for elements available pursuant to section 271 of the Act is unlawful. For this proposition, it cites a brief prepared by the FCC in connection with the appeal of the *USTA II* decision, in which the counsel for the FCC argues that section 252(d)(1) of the Act does not establish a state role in setting the rates for 271 elements, but only elements governed by section 251(c)(3). These comments, however, are inconsistent with FCC orders. The FCC discussed the issue of pricing for 271 elements at length in the *Triennial Review Order*, and never once did it act to preempt state commission authority to set rates for elements that must be made available pursuant to section 271. To the contrary, the FCC noted that RBOCs that had already obtained section 271 approval would be required to continue to comply with any conditions of approval.[12] In the context of elements for which wholesale rates were established, and relied upon, by the FCC in granting Qwest's 271 application, the FCC has required continued access at current prices (TELRIC), absent a request made by Qwest to alter the conditions of its interLATA entry.[13] To the extent the Commission approves Covad's proposals for unbundling based upon its state law authority, it should apply TELRIC, which clearly results in the setting of fair, just and reasonable rates as required by federal law.[14]

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[12] *Triennial Review Order*, ¶ 665.
[13] *Id.*
[14] 47 U.S.C. sec. 201 & 202

E. Existing Decisions From Other Commissions Considering Unbundling Provide No Consistent Guidance

Qwest has grossly mischaracterized the conclusions reached by other state commissions in an effort to paint them as fully supportive of its position. A careful reading of those decisions contradicts Qwest's conclusions.

The Minnesota ALJ Decision cited by Qwest (and recently upheld by the Minnesota Commission) rejected *both* parties' language regarding this issue. In fact, the Commission ordered the parties to adopt language consistent with its determination that it is premature to remove any section 251 elements from the agreement. The practical effect of this decision is that the parties will be required to re-insert language into the agreement providing access to all of the elements Covad seeks, only pursuant to section 251 of the Act. While Qwest may seek changes to this language under the change in law provisions of the Agreement, the Commission has certainly not pre-determined any outcome on that issue.

The Decision in the Utah arbitration has likewise been mischaracterized by Qwest. Qwest selectively cites language from that decision for the proposition that section 271 and state law unbundling issues are inappropriate subjects of an interconnection agreement as a matter of law, when in fact the Utah decision states precisely the opposite. While the Commission ultimately declined to adopt Covad's language, it saw no legal impediment to doing so:

> We agree with Covad's general proposition that states are not preempted as a matter of law from regulating in the field of access to network elements...we reject Qwest's apparent view that we are totally preempted by the federal system from enforcing Utah law requiring unbundled access to certain network elements.

...

> The fact that under a careful reading of the law the Commission may under certain circumstances impose Section 271 or state law obligations in a Section 252 arbitration does not lead us to conclude it would be reasonable in this case to do so.

Utah PSC Docket No. 04-2277-02, *In the Matter of the Petition of DIECA Communications, Inc. D/B/A Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Arbitration Report and Order (February 8, 2005) at 19-21. (emphasis added).

The Washington Commission reached its decision on entirely different grounds than the Utah and Minnesota commissions. That commisison engaged in an unlawful self-preemption analysis, and determined that any effort to enforce state unbundling laws would be preempted by federal law. This decision comes closest to supporting Qwest's position, but is legally flawed for reasons Covad has stated previously: state access requirements consistent with section 271 of the Act cannot be preempted as a logical matter, and in any event, administrative agencies lack the authority to engage in preemption analysis, and should instead enforce existing state law and administrative rules. As Covad notes in its initial brief, only the FCC may engage in preemption analysis and has directed affected parties that the proper course of action is to seek declaratory relief from the FCC on the issue of preemption, not to oppose unbundling in state arbitration proceedings.

CONCLUSION

For the reasons set forth above, in its initial brief and petition, Covad respectfully requests that the Commission adopt Covad's proposed language to resolve the issues set forth above, and enter an order consistent with this resolution.

Dated this 27th day of May, 2005.

Respectfully submitted,

DIECA COMMUNICATIONS, INC.,
d/b/a Covad Communications Company

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By _____

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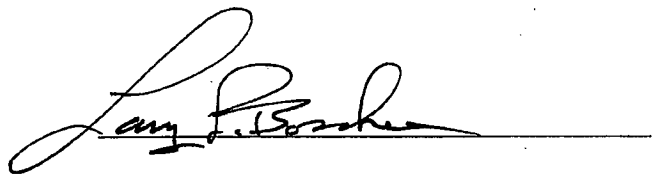
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2005, a true and correct copy of the foregoing Response Brief of Covad Communications Company was served by the method indicated below, and addressed to the following:

Linda Miles Qwest Corporation 1600 7th Ave Room 3007 Seattle, Washington 98191 (206) 345-0225 (Fax)	___✔___ U.S. Mail _____ Hand Delivered _____ Overnight Mail ___X___ Telecopy (Fax) _____ Email
John Devaney Mary Rose Hughes Perkins Coie, LLP 607 Fourteenth Street, N.W., Suite 800 Washington, DC 20005-2011 (202) 434-1690 (Fax)	___✔___ U.S. Mail _____ Hand Delivered _____ Overnight Mail ___X___ Telecopy (Fax) _____ Email



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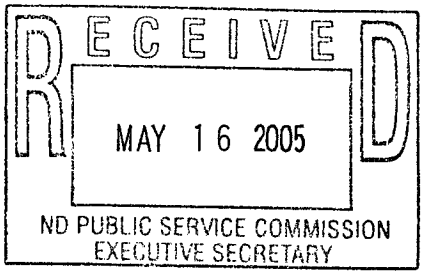
May 16, 2005

HAND-DELIVERED



Attention: Sandi Scott
North Dakota Public Service Commission
Capitol, Ninth Floor
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Case No. PU-05-0165
IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Sandi:

Enclosed is a disc containing COVAD'S OPENING BRIEF with Exhibits 1-5, which was filed with the PSC on Friday, May 13.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/jf
Enclosure.

• ALSO LICENSED IN MINNESOTA • ALSO LICENSE

12 **PU-05-165** Pages: 1

Electronic copy of Opening Brief filed (CD)

by DIECA Communications, Inc. by
05/16/2005 CC: Comm Legal Illona, Pat, Annette . .

HARD COPY OF CD of opening brief filed

DOCKET SEQUENCE NO. 12

EXHIBIT

CASE NO. PU-05-165

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051

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MAY 13 2005
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

May 13, 2005

Ms. Illana Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Ave., 12th Floor
Bismarck, ND 58505

Re: Case PU-05-165

Dear Ms. Jeffcoat-Sacco:

On behalf of Qwest Corporation, I am enclosing two copies of Qwest's Initial Brief in the proceeding referred to above. Qwest previously filed this brief with the Commission electronically.

Thank you for your assistance.

Very truly yours,

John M. Devaney

JMD:kcw

Enclosures

11 PU-05-165 Pages: 1

Cover letter re Initial Brief

by Qwest Corporation
05/13/2005 CC: Comm Legal Illona, Pat, Annette . .

[/DA051330.030]

RECEIVED
MAY 13 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165 Qwest Corporation's Initial Brief

QWEST CORPORATION'S INITIAL BRIEF

Qwest Corporation ("Qwest") respectfully submits this initial brief on the merits in this interconnection arbitration between Qwest and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") under the Telecommunications Act of 1996 ("Act").

INTRODUCTION

This interconnection agreement arbitration demonstrates that the negotiation/arbitration process set forth in Sections 251 and 252 can work fairly and efficiently. Through their good faith negotiations, Qwest and Covad were able to agree upon almost all of the contractual provisions in the multi-hundred page interconnection agreement ("ICA") that is the subject of this arbitration. As a result, the parties have submitted only one disputed issue to the North Dakota Public Service Commission ("Commission") for resolution.

While Qwest appreciates Covad's good faith conduct in the negotiations, the one unresolved issue is attributable to Covad's attempt to impose network unbundling obligations on Qwest that conflict with rulings by the FCC and that are inconsistent with the Act. Covad's proposed ICA language regarding the definition of unbundled network elements ("UNEs") would require Qwest to provide almost unlimited unbundled access to the elements in Qwest's North Dakota telecommunications network. This proposal ignores the FCC's findings in the *Triennial*

10 PU-05-165 Pages: 21
Qwest Corporation's Initial Brief
by Qwest Corporation
05/13/2005 CC: Comm Legal Illona, Pat, Annette . .

Review Order[1] ("*TRO*") and the *Triennial Review Remand Order*[2] ("*TRRO*") that CLECs are not impaired without access to many network elements and that ILECs are therefore not required to unbundle them. As the FCC described in the *TRRO*, the FCC's new, "more targeted" unbundling standard "imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition."[3] The almost limitless unbundling that Covad proposes ignores this standard entirely.

Covad's broad unbundling demands also violate the rulings of the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit in which those courts struck down FCC unbundling requirements while confirming in the most forceful terms that the Act imposes real and substantial limitations on ILEC unbundling obligations. In addition, Covad's proposed unbundling language assumes incorrectly that state commissions have authority to require Bell Operating Companies ("BOCs") to provide network elements pursuant to Section 271, to determine pricing for those elements, and to include them in Section 252 ICAs.

The flawed nature of Covad's proposal is confirmed by the recent decisions in the Covad/Qwest arbitrations in Minnesota, Utah, and Washington. Each of these commissions has

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[1] 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; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

[2] Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*Triennial Review Remand Order*").

[3] *Id.* ¶ 2.

rejected Covad's position and proposed ICA language.[4] The consistency among these decision-makers is not a coincidence – Covad's proposal is without legal support. The infirmities of Covad's arguments are further demonstrated by Covad's willingness to voluntarily accept Qwest's language in the Colorado Covad/Qwest arbitration. In that proceeding, Covad elected to not raise the unbundling issue it now disputes here.[5]

In contrast to Covad's demands, Qwest's ICA proposal is specifically based upon the FCC's rulings in the *TRO* and other governing law. To ensure that the ICA complies with governing law and the policies underlying the Act, the Commission should adopt Qwest's proposed ICA language for the disputed issue.

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[4] *See In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Minnesota Commission Docket No. P-5692, 421/IC-04-549, Arbitrator's Report (Minn. Commission Dec. 15, 2004) ("Minnesota ALJ Order") *aff'd in part In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No P-5692, 421/IC-04-549, Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement (Minn. Commission March 14, 2005) ("Minnesota Arbitration Order"); *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation*, Washington Commission Docket No. UT-043045, Order No. 06, Final Order Affirming in Part, Arbitrator's Report and Decision; Granting, In Part, Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement (Wash. Commission Feb. 9, 2005) ("Washington Arbitration Order"); *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Utah Commission Docket No. 04-2277-02, Arbitration Report and Order (Utah Commission Feb. 8, 2005) ("Utah Arbitration Order").

[5] *See In the Matter of the Petition of Qwest Corporation for Arbitration of an Interconnection Agreement with Covad Communications Co.*, Colorado Commission Docket No. 04B-160T, Decision No. C04-1037, Initial Commission Decision (Colo. Commission Aug. 19, 2004) ("Colorado Arbitration Order").

ARGUMENT

Issue 1: Section 4.0 Definition Of "Unbundled Network Element" and Sections 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.1.8, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6, 9.6.1.5, 9.6.1.5.1, 9.6.1.6, 9.6.1.6.1, and 9.21.2.[6]

The Act requires ILECs to provide UNEs to other telecommunications carriers and gives the FCC the authority to determine which elements the ILECs must provide. In making these network unbundling determinations, the FCC must consider whether the failure to provide access to an element "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[7] This "impairment" standard imposes important limitations on ILECs' unbundling obligations, as has been forcefully demonstrated by the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*[8] and the D.C. Circuit's decisions in *USTA I* and *USTA II* invalidating three of the FCC's attempts at establishing lawful unbundling rules.[9]

The disputed issue arises because of Covad's insistence upon ICA language that would require Qwest to provide almost unlimited access to network elements in violation of the unbundling limitations established by these decisions, the Act, the *TRO*, and the *TRRO*. Covad's clear objective is to obtain access to all elements of Qwest's network that Covad may desire at the lowest rates possible. Not surprisingly, the commissions in Minnesota, Utah, and Washington have rejected Covad's unbundling language, finding that it is plainly unlawful.[10]

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[6] By agreement of the parties, this issue is being submitted exclusively through briefs, not through any pre-filed testimony. The parties agree that these issues involve pure questions of law, not issues of fact.

[7] 47 U.S.C. § 251(d)(2).

[8] 525 U.S. 366 (1998) ("*Iowa Utilities Board*").

[9] *USTA II, supra*; *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427-28 (D.C. Cir. 2002) ("*USTA I*").

[10] Because Covad accepted Qwest's language relating to unbundled network elements in the Colorado arbitration, the Colorado Commission did not address Covad's proposed unbundling language.

Each of these commissions determined correctly that it would be improper to include in a Section 251/252 ICA terms and conditions relating to network elements that Qwest provides under Section 271. As the Washington Commission stated:

> [T]his Commission has no authority under Section 251 or Section 271 of the Act to require Qwest to include Section 271 elements in an interconnection agreement. . . [and] any unbundling requirement based on state law would likely be preempted as inconsistent with federal law, regardless of the method the state used to require the element.[11]

Likewise, the Utah Commission held:

> [W]e differ with Covad in its belief that we should therefore impose Section 271 and state law requirements in the context of a Section 252 arbitration. Section 252 was clearly intended to provide mechanisms for the parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or state law.[12]

Consistent with this statement, in a decision adopted by the Minnesota Commission, the Minnesota ALJ ruled that "there is no legal authority in the Act, the *TRO*, or in state law that would require the inclusion of section 271 terms in the interconnection agreement, over Qwest's objection."[13] She explained further that "both the Act and the *TRO* make it clear that state

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[11] Washington Arbitration Order ¶ 37.

[12] Utah Arbitration Order at 19-20.

[13] Minnesota ALJ Order ¶ 46; Minnesota Arbitration Order at 5.

commissions are charged with the arbitration of Section 251 obligations, whereas the FCC has retained authority to determine the scope of access obligations pursuant to Section 271."[14]

These rulings, which address the same Covad unbundling language at issue here, confirm the unlawfulness of Covad's proposals. As is discussed further below, neither the Act nor the *TRO* permits including Section 271 unbundling obligations in a Section 251/252 ICA. Further, just as it failed to do in the prior arbitrations, Covad is not providing any evidence of impairment in this case to support its demands for unbundling under state law. There is thus no factual foundation for the impairment analysis that is required under Section 251 and therefore no basis for imposing unbundling obligations under state law.

Accordingly, for the reasons articulated by the other commissions that have considered this same issue, the Commission should resolve this issue in Qwest's favor and reject Covad's unbundling language.

A. Summary of Qwest's And Covad's Conflicting Unbundling Proposals.

In contrast to Covad's unbundling demands, Qwest's ICA language ensures that Covad will have access to the network elements that ILECs must unbundle under Section 251 while also establishing that Qwest is not required to provide elements for which there is no Section 251 obligation. Thus, in Section 4.0 of the ICA, Qwest defines the UNEs available under the agreement as:

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[14] Minnesota ALJ Order ¶ 46. In an arbitration pending in another state, Covad recently asserted that Qwest has mischaracterized the Minnesota ALJ's decision, and that the Minnesota ALJ rejected both Covad's and Qwest's language relating to the issue of ICA language for network unbundling. However, it is Covad's description of the decision, not Qwest's, that is inaccurate. While the Minnesota ALJ specifically rejected all of Covad's proposed language relating to this issue, she accepted Qwest's definition of "UNE" and eight other unbundling provisions that Qwest proposed. Minnesota ALJ Order ¶ 47. Covad's statement that the ALJ rejected all of Qwest's language is thus entirely inaccurate.

> [A] Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

Qwest's language also incorporates the unbundling limitations established by the Act, the courts, and the FCC by listing specific network elements that, per court and FCC rulings, ILECs are not required to unbundled under Section 251. For example, Qwest's proposed Section 9.1.1.6 lists 18 network elements that the FCC specifically found in the *TRO* do not meet the "impairment" standard and do not have to be unbundled under Section 251.

While Qwest's ICA language properly recognizes the limitations on unbundling, its exclusion of certain network elements does not mean that those elements are unavailable to Covad and other CLECs. As the Commission is aware, Qwest is offering access to non-251 elements through commercial agreements and tariffs, including, for example, multi-state line sharing agreements with Covad.

Covad's sweeping unbundling proposals are built around its proposed definition of "Unbundled Network Element," which Covad defines as "a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, *for which unbundled access is required under section 271 of the Act or applicable state law* . . . ." (emphasis added). Consistent with this definition, Covad's language for Section 9.1.1 would require Qwest to provide "any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders . . . ."

Its proposal leaves no question that Covad is seeking to require Qwest to provide access to network elements for which the FCC has specifically refused to require unbundling and for

which unbundling is no longer required as a result of the D.C. Circuit vacatur of unbundling requirements in *USTA II*. In Section 9.1.1.6, for example, Covad proposes language that would render irrelevant the FCC's non-impairment findings in the *TRO* and the D.C. Circuit's vacatur of certain unbundling rules:

> On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

Under this proposal, Covad could contend, for example, that it can obtain unbundled access to OCn loops, feeder subloops, signaling and other elements despite the FCC's fact-based findings in the *TRO* that CLECs are not impaired without access to these elements.[15]

In addition to these demands, in its proposed Section 9.1.1.7, Covad is seeking TELRIC ("total element long run incremental cost") pricing for the network elements it claims Qwest must provide under Section 271.[16] While its proposed language suggests that Covad is seeking TELRIC pricing only on a temporary basis, Covad's filings in this proceeding and in other states

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[15] In the following paragraphs of the *TRO*, the FCC ruled that ILECs are not required to unbundle these and other elements under section 251: ¶ 315 (OCn loops); ¶ 253 (feeder subloops); ¶ 324 (DS3 loops); ¶ 365 (extended dedicated interoffice transport and extended dark fiber); ¶¶ 388-89 (OCn and DS3 dedicated interoffice transport); ¶¶ 344-45 (signaling); ¶ 551 (call-related databases); ¶ 537 (packet switching); ¶ 273 (fiber to the home loops); ¶ 560 (operator service and directory assistance), and ¶ 451 (unbundled switching at a DS1 capacity).

[16] In its Petition for Arbitration, Covad advocates the use of a "forward-looking, long-run incremental cost methodology" and argues that the FCC has not prohibited the use of TELRIC pricing for Section 271 elements. Covad's Petition for Arbitration at 8-9. Based upon these statements, it seems clear that Covad is advocating the use of TELRIC or another similar pricing methodology, such as TSLRIC.

reveal that Covad is actually requesting that the permanent prices to be set under Sections 201 and 202 for Section 271 elements be based on TELRIC.[17]

B. The Act Does Not Permit The Commission To Create Under State Law Unbundling Requirements That The FCC Rejected In The *TRO* And The *Triennial Review Remand Order* Or That The D.C. Circuit Vacated In *USTA II*.

Under Section 251, there is no unbundling obligation absent an FCC requirement to unbundle and a lawful FCC impairment finding. As the Supreme Court made clear in the *Iowa Utilities Board* case, the Act does not authorize "blanket access to incumbents' networks."[18] Rather, Section 251(c)(3) authorizes unbundling only "in accordance with . . . the requirements of this section [251]."[19] Section 251(d)(2), in turn, provides that unbundling may be required *only if the FCC determines* (A) that "access to such network elements as are proprietary in nature is necessary" and (B) that the failure to provide access to network elements "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[20] The Supreme Court and D.C. Circuit have held that the Section 251(d)(2) requirements reflect Congress's decision to place a real upper bound on the level of unbundling regulators may order.[21]

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[17] *See* Covad's Petition for Arbitration at 8-9 (advocating the use of "forward-looking, long-run incremental cost methodologies" for Section 271 elements and arguing that the FCC does not "forbid" TELRIC pricing for these elements).

[18] *Iowa Utilities Board*, 525 U.S. at 390.

[19] 47 U.S.C. § 251(c)(3).

[20] 47 U.S.C. § 251(d)(2).

[21] *See Iowa Utilities Board*, 525 U.S. at 390 ("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* I, 290 F.3d at 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).

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.[22] The Supreme Court confirmed that as a precondition to unbundling, Section 251(d)(2) "requires the [Federal Communications] Commission to determine on a 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."[23] And the D.C. Circuit confirmed in *USTA II* that Congress did not allow the FCC to have state commissions perform this work on its behalf.[24] *USTA II*'s clear holding is that the FCC, not state commissions, must make the impairment determination called for by Section 251(d)(3)(B) of the Act.

Iowa Utilities Board makes clear that the essential prerequisite for unbundling any given element under Section 251 is a formal finding by the FCC that the Section 251(d)(2) "impairment" test is satisfied for that element. Simply put, if there has been no such FCC finding, the Act does not permit any regulator, federal or state, to require unbundling under Section 251. In the *TRO*, the FCC reaffirmed this:

> Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 and do not "substantially prevent" the implementation of the federal regulatory regime.
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> If a decision pursuant to state law were to require unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits of section 251(d)(2))—or otherwise declined to require unbundling on a national basis, we believe it unlikely that such a decision would fail to conflict with and "substantially

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[22] 47 U.S.C. § 251(d)(2).

[23] *Iowa Utilities Board*, 525 U.S. at 391-92.

[24] *USTA II*, 359 F.3d at 568.

prevent" implementation of the federal regime, in violation of section 251(d)(3)(c).[25]

Federal courts interpreting the Act have reached the same conclusion.[26] Indeed, in a recent decision, the United States District Court of Michigan observed that in *USTA II*, the D.C. Circuit "rejected the argument that the 1996 Act does not give the FCC the exclusive authority to make unbundling determinations."[27] The court emphasized that while the Act permits states to adopt some "procompetition requirements," they cannot adopt any requirements that are inconsistent with the statute and FCC regulations. Specifically, the court held, a state commission "cannot act in a manner inconsistent with federal law and then claim its conduct is authorized under state law."[28]

Consistent with these rulings, the FCC recently ruled that state commissions are generally without authority to require ILECs to unbundle network elements that the FCC has declined to require ILECs to unbundle.[29] In its *BellSouth Declaratory Order*, the FCC addressed orders from four different state commissions that required BellSouth to provide DSL service over unbundled loops that CLECs were using to provide voice service.[30] This requirement, the FCC determined, effectively obligated BellSouth to unbundle the low frequency portion of the loop

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[25] *TRO* ¶¶ 193, 195.

[26] *See Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 395 (7th Cir. 2004) (citing the above-quoted discussion in the *TRO* and stating that "we cannot now imagine" how a state could require unbundling of an element consistently with the Act where the FCC has not found the statutory impairment test to be satisfied).

[27] *Michigan Bell Tel. Co. v. Lark*, Case no. 04-60128, slip op. at 13 (E.D. Mich. Jan. 6, 2005).

[28] *Id.*

[29] Memorandum Opinion and Order and Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, FCC 05-78 ¶¶ 25-30 (FCC rel. March 25, 2005) ("*BellSouth Declaratory Order*").

[30] *Id.* ¶¶ 9-15.

("LFPL") which the FCC had specifically refused to require ILECs to unbundle in the *Triennial Review Order*.[31]

In striking down the orders, the FCC emphasized the preeminence of its regulations under the Act over state laws and regulations: "except in limited cases, the [FCC's] prerogatives with regard to local competition supersede state jurisdiction over these matters."[32] State authority is preserved under the Act, the FCC stated, only to the extent state regulations are not inconsistent with the requirements of Section 251 and do not "substantially prevent implementation of the requirements of section 251 or the purposes of sections 251 through 261 of the Act."[33] Because it had refused to require ILECs to unbundle the LFPL in the *TRO*, the FCC held that the four state orders requiring such unbundling "directly conflict and are inconsistent with the Commission's Rules and Policies implementing section 251."[34] It explained further that "[s]tate requirements that impose on BellSouth a requirement to unbundle the LFPL do exactly what the Commission expressly determined was not required by the Act and thus exceed the reservation of authority under section 251(d)(3)(B)."[35]

Covad's broad proposals for unbundling under state law reflect its erroneous view that the Commission has plenary authority under state law to order whatever unbundling it chooses. What Covad ignores and what the FCC has reaffirmed in its *BellSouth Declaratory Order* is that the Act's savings clauses preserve independent state authority *only to the extent that the exercise of that authority is consistent with the Act*, including Section 251(d)(2)'s substantive limitations on

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[31] *Id.* ¶¶ 25-26.

[32] *Id.* ¶ 22.

[33] *Id.* ¶ 23.

[34] *Id.* ¶ 26.

the level of unbundling that may be authorized. Section 251(d)(3), for example, protects only those state enactments that are "consistent with the requirements of this section" — which a state law unbundling order ignoring the Act's limits would clearly not be. Likewise, Sections 261(b) and (c) both protect only those state regulations that "are not inconsistent with the provisions of this part" of the Act, which includes Section 251(d)(2). Nor does Section 252(e)(3) help Covad; that simply says that "nothing in this section" — that is, Section 252 — prohibits a state from enforcing its own law, but that section must be applied in accordance with the relevant limitations on the scope of permissible unbundling that are found in Section 251.[36]

Thus, these savings clauses do not preserve the authority of state commissions to adopt or enforce under state law unbundling requirements that have been rejected by the FCC or vacated in *USTA II*. Indeed, the Supreme Court has "decline[d] to give broad effect to savings clauses where doing so would upset the careful regulatory scheme established by federal law."[37] Congress has mandated the application of limiting principles in the determination of unbundling requirements that reflect a balance of "the competing values at stake."[38] That balance would plainly be upset if a state commission could impose under state law unbundling requirements that have been found by the FCC to be inconsistent with the Act.

The limitations on state unbundling authority were recently recognized by the Oregon Commission in response to substantially the same arguments that Covad is presenting here. As that commission correctly concluded, a state commission "may not lawfully enter a blanket order

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[35] *Id.* ¶ 27.

[36] *See* 47 U.S.C. § 251(d)(2).

[37] *United States v. Locke*, 120 S. Ct. 1135, 1147 (2000).

[38] *Id. See also Iowa Utils. Bd.*, 535 U.S. at 388.

requiring continuation of unbundling obligations that have been eliminated by the *TRO* or *USTA II*."[39] Yet, that is precisely what Covad is requesting this Commission to do through its proposed unbundling language. As the Oregon Commission concluded, any unbundling a state commission requires must be based upon a fact-specific impairment analysis required by Section 251(d). Here, Covad is requesting that the Commission require blanket unbundling without an impairment analysis and without providing any evidence that it would be impaired without the multitude of network elements it is seeking.[40]

In addition, with the limited exception noted above involving feeder subloops, Covad's proposed ICA language fails to identify the specific network elements that would be unbundled under state law. With no identification of these elements, it is of course impossible for this Commission to conduct the element-specific impairment analysis required under Section 251. In this sense, Covad's proposal lacks the "concrete meaning" that, in the words of the D.C. Circuit, is necessary to make an impairment standard "readily justiciable."

In sum, the relevant question is not, as Covad presumes, whether sweeping unbundling obligations can be cobbled together out of state law, but rather whether any such obligations would be consistent with *Congress's* substantive limitations on the permissible level of

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[39] *In the Matter of the Investigation to Determine Whether Impairment Exists in Particular Markets if Local Circuit Switching is no longer available*, Oregon Docket UM-1100, Order Denying CLEC Motion at 6 (Oregon P.U.C. June 11, 2004). The Oregon Commission adopted the order issued by an Oregon administrative law judge.

[40] The clash between Covad's state law unbundling demands and the federal unbundling scheme is demonstrated sharply by Covad's language in section 9.3.1.1 that would require Qwest to unbundle feeder subloops. In the *TRO*, the FCC refused to give CLECs unbundled access to this network element, finding that such access would undermine the objective of Section 706 of the Act "to spur deployment of advanced telecommunications capability . . . ." *TRO* ¶ 253. A state-imposed requirement to unbundle feeder subloops would plainly conflict with this FCC determination and would undermine the FCC's attempt to achieve a fundamental objective of the Act – promoting investment in advanced telecommunications facilities. This conflict would of

Footnote continued

unbundling, as authoritatively construed by the Supreme Court, the D.C. Circuit, and the FCC. Covad's proposals for broad unbundling under state law ignore these limitations and the permissible authority of state commissions to require unbundling.

C. The Commission Does Not Have Authority To Require Unbundling Under Section 271.

Covad's unbundling proposals also assume incorrectly that state commissions have authority to impose binding unbundling obligations under Section 271. Section 271(d)(3) expressly confers upon the FCC, not state commissions, the authority to determine whether BOCs have complied with the substantive provisions of Section 271, including the "checklist" provisions upon which Covad purports to base its requests.[41] State commissions have only a non-substantive, "consulting" role in that determination.[42] As one court has explained, a state commission has a fundamentally different role in implementing Section 271 than it does in implementing Sections 251 and 252:

> Sections 251 and 252 contemplate state commissions may take affirmative action towards the goals of those Sections, *while Section 271 does not contemplate substantive conduct on the part of state commissions.* Thus, a "savings clause" is not necessary for Section 271 because the state commissions' role is investigatory and consulting, not substantive, in nature.[43]

Sections 201 and 202, which govern the rates, terms and conditions applicable to the unbundling requirements imposed by Section 271,[44] likewise provide no role for state

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course not be limited to feeder subloops, since Covad contends that its unbundling language reaches other network elements for which the FCC specifically rejected CLEC unbundling requests.

[41] 47 U.S.C. 271(d)(3).

[42] 47 U.S.C. 271(d)(2)(B).

[43] *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (S.D. Ind. 2003) (state commission not authorized by Section 271 to impose binding obligations), *aff'd*, 359 F.3d 493 (7th Cir. 2004) (emphasis added).

[44] *TRO* ¶¶ 656, 662.

commissions. That authority has been conferred by Congress upon the FCC and federal courts.[45] The FCC has thus confirmed that "[w]hether a particular [section 271] checklist element's rate satisfies the just and reasonable pricing standard is a fact specific inquiry that *the Commission* [*i.e.*, the FCC] will undertake in the context of a BOC's application for Section 271 authority or in an enforcement proceeding brought pursuant to Section 271(d)(6)."[46]

The absence of any state commission decision-making authority under Section 271 also is confirmed by the fundamental principle that a state administrative agency has no role in the administration of federal law, absent express authorization by Congress. That is so even if the federal agency charged by Congress with the law's administration attempts to delegate its responsibility to the state agency.[47] *A fortiori*, where (as here) there has been no delegation by the federal agency, a state agency has no authority to issue binding orders pursuant to federal law.[48]

Additionally, the process mandated by Section 252, the provision pursuant to which Covad filed its petition for arbitration, is concerned with implementation of an ILEC's obligations under Section 251, not Section 271. In an arbitration conducted under Section 252, therefore, state commissions only have authority to impose terms and conditions relating to Section 251 obligations, as demonstrated by the following provisions of the Act.

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[45] *See id*; 47 U.S.C. 201(b) (authorizing the FCC to prescribe rules and regulations to carry out the Act's provisions); 205 (authorizing FCC investigation of rates for services, etc. required by the Act); 207 (authorizing FCC and federal courts to adjudicate complaints seeking damages for violations of the Act); 208(a) (authorizing FCC to adjudicate complaints alleging violations of the Act).

[46] *TRO* ¶ 664.

[47] *USTA II*, 359 F.3d at 565-68.

[48] *See Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (state commission not authorized by Section 271 to impose binding obligations). *See also TRO* ¶¶ 186-87 ("states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations").

(a) By its terms, the "duty" of an ILEC "to negotiate in good faith in accordance with Section 252 the particular terms and conditions of [interconnection] agreements" is limited to implementation of "the duties described in paragraphs (1) though (5) of [Section 251(b)] and [Section 251(c)]."[49]

(b) Section 252(a) likewise makes clear that the negotiations it requires are limited to "request[s] for interconnection, services or network elements *pursuant to section 251*."[50]

(c) Section 252(b), which provides for state commission arbitration of unresolved issues, incorporates those same limitations through its reference to the "negotiations under this section [252(a)]."[51]

(d) The grounds upon which a state commission may approve or reject an arbitrated interconnection agreement are limited to non-compliance with Section 251 and Section 252(d).[52]

(e) The final step of the Section 252 process, federal judicial review of decisions by state commissions approving or rejecting interconnection agreements (including the arbitration decisions they incorporate), is likewise limited to "whether the agreement . . . meets the requirements of section 251 and this section [252]."[53]

It is thus clear that state commission arbitration of disputes over the duties imposed by federal law is limited to those imposed by Section 251, and excludes the conditions imposed by Section 271.

D. Covad's Proposal To Use TELRIC Rates For Section 271 Elements Is Unlawful.

Under Covad's proposed Section 9.1.1.7 of the ICA, existing TELRIC rates would apply to network elements that Qwest provides pursuant to Section 271 until new rates are established

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[49] 47 U.S.C. 251(c)(1).

[50] 47 U.S.C. 252(a) (emphasis added).

[51] *See* 47 U.S.C. 252(b)(1).

[52] *See* 47 U.S.C. 252(e)(2)(b).

[53] 47 U.S.C. 252(e)(6).

in accordance with "Sections 201 and 202 of the Act or applicable state law." In addition, it is clear from Covad's arbitration petition and its filings in other states that Covad is ultimately seeking permanent TELRIC-based prices for Section 271 elements.[54]

The absence of state decision-making authority under Sections 201, 202, and 271 establishes that state commissions are without authority to determine the prices that apply to network elements provided under Section 271. Thus, as noted above, the FCC ruled in the *TRO* that it will determine the lawfulness of rates that BOCs charge for Section 271 elements in connection with applications and enforcement proceedings brought under that section.

Significantly, the FCC recently rejected the argument that the pricing authority granted to state commissions by Section 252(c)(2) to set rates for UNEs provided under Section 251 gives commissions authority to set rates for Section 271 elements. In its opposition to the petitions for a *writ of certiorari* filed with the Supreme Court in connection with *USTA II*, the FCC addressed the contention that Section 252 gives state commissions exclusive authority to set rates for network elements. It stated that the contention "rests on a flawed legal premise,"[55] explaining that Section 252 limits the pricing authority of state commissions to network elements provided under Section 251(c)(3):

> Section 252(c)(2) directs state commissions to "establish any rates for * * * network elements *according to subsection (d)*." 47 U.S.C. 252(c)(2) (emphasis added). Section 252(d) specifies that States set "the just and reasonable rate for network elements" *only* "for purposes of [47 U.S.C. 251(c)(3)]." 47 U.S.C. 252(d)(1).[56]

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[54] *See* Covad's Petition for Arbitration at 8-9.

[55] Brief for the Federal Respondents in Opposition to Petitions for a Writ of Certiorari, *National Association of Regulatory Utility Commissioners v. United States Telecom Association*, Supreme Court Nos. 04-12, 04-15, and 04-18, at 23 (filed September 2004).

[56] *Id.* (emphasis in original).

Accordingly, the FCC emphasized, "[t]he statute makes no mention of a state role in setting rates for facilities or services that are provided by Bell companies to comply with Section 271 and are *not* governed by Section 251(c)(3)."[57]

In requesting that the Commission adopt its rate proposal, Covad is therefore asking the Commission to exercise authority it does not have and that rests exclusively with the FCC. In addition, Covad's demand for even the temporary application of TELRIC pricing to Section 271 elements violates the FCC's ruling in the *TRO* that TELRIC pricing does not apply to these elements. The FCC ruled unequivocally that any elements an ILEC unbundles pursuant to Section 271 are to be priced based on the Section 201-02 standard that rates must not be unjust, unreasonable, or unreasonably discriminatory.[58] In so ruling, the FCC confirmed, consistent with its prior rulings in Section 271 orders, that TELRIC pricing does not apply to these network elements.[59] In *USTA II*, the D.C. Circuit reached the same conclusion, rejecting the CLECs' claim that it was "unreasonable for the Commission to apply a different pricing standard under Section 271" and instead stating that "we see nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment."[60]

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated above, Qwest urges the Commission to enter an order adopting Qwest's proposed language on the disputed issue for the interconnection agreement between Qwest and Covad.

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[57] *Id.* (emphasis in original). In the same brief, the FCC commented that the *TRO* does not express an opinion as to the precise role of states in connection with section 271 pricing. *Id.*

[58] *TRO* ¶¶ 656-64.

[59] *Id.*

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Respectfully submitted,

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[60] *USTA II*, 359 F.3d at 589; *see generally id.* at 588-90.

CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of May 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S INITIAL BRIEF by U.S. mail and electronic mail to the following:

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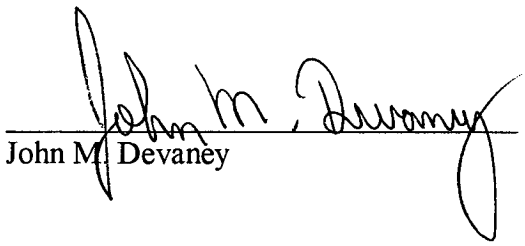

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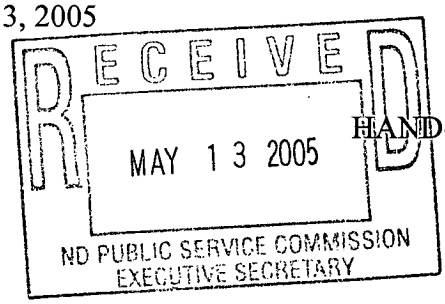
May 13, 2005



HAND-DELIVERED

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Case No. PU-05-0165
IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) COVAD'S OPENING BRIEF with Exhibits 1-5; and

2) Certificate of Service.

We will also forward the brief by email. Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Linda Miles, Qwest Corporation
John Devaney, Perkins, Coie, LLP
Mr. Gregory Diamond

9 PU-05-165 Pages: 1
Cover letter re Opening Brief
by DIECA Communications, Inc. by Patrick W. Durick, A
05/13/2005 CC: Comm Legal Illona, Pat, Annette . .

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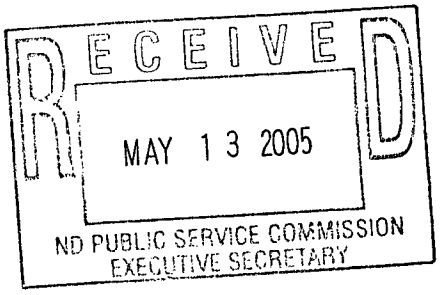

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	**Case No. PU-05--165** **COVAD'S OPENING BRIEF**

DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"), through its undersigned counsel, presents this opening brief in support of its petition for arbitration:

INTRODUCTION

This proceeding presents for the North Dakota Public Service Commission (the "Commission") resolution of two issues of law: (1) whether the Commission has authority pursuant to section 271 of the Telecommunications Act of 1996 (the "Act") to order Qwest Corporation ("Qwest") to unbundle certain network elements as part of the arbitration of an interconnection agreement; and (2) whether pursuant to North Dakota law the Commission can

by DIECA Communications, Inc. by Patrick W. Durick, A
05/13/2005 CC: Comm Legal Illona, Pat, Annette . .

order Qwest to unbundle certain network elements in this arbitration. The answer to both of these questions is unequivocally yes.

The Commission has jurisdiction pursuant to Qwest's ongoing obligations under section 271 of the Act to order the unbundling of section 271 checklist items. Specifically and of particular interest to Covad, the Commission has authority to order unbundling of checklist items #4 and #5 of the section 271 checklist:

> (iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
>
> (v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

47 U.S.C. sec. 271(c)(2)(B)(iv) & (v)

In addition, the Commission has the unfettered right in this proceeding to follow existing state law requirements to order Qwest to provide Covad with access to unbundled loops (including high capacity loops and subloop elements) and dedicated transport. Moreover, despite what this Commission may hear from Qwest, the Commission has no authority to conclude whether state law is preempted by the Act or any other federal law. Even if the Commission concludes it has such authority, as a matter of substantive law, the Act does not pre-empt North Dakota unbundling requirements applicable to Qwest.

For these reasons, the reasons set forth in its petition (which is incorporated herein by reference) and the reasons set forth below, Covad respectfully requests the Commission adopt its proposed interconnection agreement language regarding access to and the pricing of unbundled network elements.

ARGUMENT

A. THE COMMISSION HAS JURISDICTION IN THIS PROCEEDING TO ORDER QWEST TO PROVIDE UNBUNDLE ACCESS TO NETWORK ELEMENTS PURSUANT TO SECTION 271 OF THE ACT

1. Section 271 Unbundling.

This Commission may properly, and should, use its authority to enforce the unbundling requirements of section 271 of the Act. The Federal Communications Commission ("FCC") held in its seminal *Triennial Review Order*[1] that Section 271 creates independent access obligations for the Regional Bell Operating Companies ("RBOC" or "RBOCs"). Qwest is an RBOC. The FCC concluded:

> [W]e continue to believe that the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.

TRO, ¶ 653 (emphasis added).

> Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under Section 271 are not necessarily relieved based on any determination we make under the Section 251 unbundling analysis.

TRO, ¶ 655 (emphasis added).

These holdings were explicitly upheld on appellate review:

> The FCC reasonably concluded that checklist items four, five, six, and ten posed unbundling requirements for those elements independent of he unbundling requirements imposed by §§ 251-52. In other words, even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching and call-related databases in order to enter the interLATA market.

---

[1] *In the Matter of 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,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking *("TRO")*.

United States Telecom Association v. FCC, 359 F.3d 554, 588 (DC Cir. 2004)

Thus, there is no question that, regardless of the FCC's analysis of competitor impairment and corresponding unbundling obligations under Section 251 for incumbent local exchange carriers ("ILECs"), as an RBOC Qwest retains an independent statutory obligation under Section 271 of the Act to provide competitors with unbundled access to the network elements listed in the Section 271 checklist.[2] Moreover, there is no question that these obligations include the provision of unbundled access to loops and dedicated transport under checklist item #4:

> Checklist items 4, 5, 6, and 10 separately impose access requirements regarding loop, transport, switching, and signaling, without mentioning section 251.

TRO, ¶ 654 (emphasis added).

Qwest does not attack this premise directly, but instead argues that this Commission does not have the authority to order the adoption of terms in an interconnection agreement that address compliance with Section 271. This position ignores the requirements of Section 271, as well as common sense. Recently, the Maine Public Utilities Commission rejected this argument and found that:

> ...[S]tate commissions have the authority to arbitrate and approve interconnection agreements pursuant to section 252 of the TelAct. Section 271(c)(2)(A)(ii) requires that ILECs provide access and interconnection which meet the requirements of the 271 competitive checklist, i.e. includes the ILEC's 271 unbundling obligations. Thus, state commissions have the authority to arbitrate section 271 pricing in the context of section 252 arbitrations.

Maine PUC Docket No. 2002-682, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection* (PUC 20) *and Resold Services*

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[2] *See* 47 U.S.C. § 271(c)(2)(B).

(PUC 21), Order – Part II, p. 19 (September 3, 2004) ("*Maine Unbundling Order*") (emphasis added). A copy of this order is attached hereto as Attachment 1.

Very recently, the Public Utilities Commission of New Hampshire forcefully echoed the FCC's determination that section 251 of the Act is not the limit or "real upper bound" of Qwest's unbundling obligation. Rather, section 271 continues to require Qwest to unbundle listed network elements:

> We address first Verizon's general argument that the FCC's determination of an element as a section 251 obligation allows Verizon to remove that element from its wholesale tariff altogether. The FCC made clear in the TRO [*Triennial Review Order*] that the removal of a UNE from the list of section 251 obligations because of lack of impairment did not automatically resolve the question of whether an RBOC must still make that UNE available under section 271. S*ee TRO* at ¶¶652-655. The FCC's *TRO* has in fact rejected Verizon's argument that once the FCC determined that a UNE is not necessary under section 251, the corresponding 271 checklist item should be construed as being satisfied. In rejecting this position, the FCC made it clear in the TRO that "the BOCs have an independent obligation under section 271 (c)(2)(B) to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at reasonable rates." The FCC further concludes that RBOC obligations pursuant to section 271 are "not necessarily relieved based on any determination [by the FCC] under the section 251 unbundling analysis." *Id.* at ¶ 655.

Proposed Revisions to Tariff NHPUC No. 84, pp. 38-39, Dckt. DT 03-201, 04-176, Order No. 24,442 (March 11, 2005) A copy of this order is attached hereto as Attachment 3.

Moreover, as recently as May 9, 2005, an administrative law judge for the Illinois Commerce Commission reaffirmed that commission's previous holding that "Section 271 of the Federal Act creates an unbundling obligation to which SBC must adhere, irrespective of its duties under Section 251 and the associated impairment analysis." *In Re: Cbeyond Communications, LLP et.al v. Illinois Bell Telephone Company*, Illinois Commerce Commission, Dockets 05-154, 050156 & 05-174, Administrative Law Judge Decision, p. 23 (May 9, 2005) citing *XO Illinois, Inc. Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone*, Docket 04-0371, Order, Sept. 9, 2004, at p. 47. Copies of these two Illinois decisions are attached hereto as Attachments 4 and 5, respectively.

Furthermore, there can be no argument that the Commission's enforcement of Qwest's Section 271 checklist obligations would substantially prevent the implementation of any provision of the Act. Indeed, where state enforcement activities do not impair federal regulatory interests, concurrent state enforcement activity is clearly authorized. *Florida Avocado Growers v. Paul,* 373 U.S. 132, 142, 83 S. Ct. 1210, 1217, 10 L.Ed.2d 248 (1963). As described in greater detail in section D. of this brief, courts have long held that federal regulation of a particular field is not presumed to preempt state enforcement activity "in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *De Canas v. Bica,* 424 U.S. 351, 356, 96 S. Ct. 933, 936, 47 L.Ed.2d 43 (1976) (quoting *Florida Avocado Growers,* 373 U.S. at 142, 83 S. Ct. at 1217). The Act, however, hardly evinces an unmistakable indication of Congressional intent to preclude state enforcement of federal 271 obligations. Far from doing so, the Act expressly preserves a state role in the review of a RBOC's compliance with its Section 271 checklist obligations, and requires the FCC to consult with state commissions in reviewing a RBOC's Section 271 compliance.[3]

The FCC has confirmed state commissions' enforcement role with respect to Section 271:

> We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Qwest's entry into the long distance market in Arizona.

In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona, WC Docket No. 03-194, Memorandum Opinion and Order, FCC 03-309 (Rel. Dec. 3, 2003), ¶61.

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[3] *See* 47 U.S.C. § 271(d)(2)(B) (requiring the FCC to consult with state commissions in reviewing RBOC compliance with the 271 checklist).

A hearing examiner for the Maine Public Utilities Commission agreed:

> Indeed, it makes both procedural and substantive sense to allow state commissions, which are much more familiar with the individual parties, the wholesale offerings, and the issues of dispute between the parties, to monitor ILEC compliance with section 271 by applying the standards prescribed by the FCC, i.e. ensuring that Verizon meets its Checklist Items No. 4, 5, 6, and 9 obligations.

Maine PUC Docket No. 2002-682, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection* (PUC 20) *and Resold Services* (PUC 21), Examiner's Report (July 23, 2004),. *affirmed by the Maine Public Utilities Commission in the Maine 271 Unbundling Order.* A copy of this order is attached hereto as Attachment 2.

2. Section 271 pricing.

Thus, the Commission clearly has the authority to enforce Qwest's obligations to provide unbundled access to loops (including high capacity loops and subloop elements) and dedicated transport under Section 271 checklist item #4, including the right to set prices. Specifically, this Commission has clearly been granted the authority to arbitrate provisions of interconnection agreements addressing Section 271 obligations, as well as set prices that comply with federal pricing standards. On this point, the United States Supreme Court directly held:

> [Section] 252(c)(2) entrusts the task of establishing rates to the state commissions ... the FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in [section] 252(d) [of the Act]. It is the states that will apply those standards and implement that methodology, determining the concrete result in particular circumstances.

AT&T v. North Dakota Utils. Bd., 525 U.S. 366, 384, 142 L.Ed.2d 834, 876 (1999).

The FCC made it clear in the *TRO* that a different pricing standard should be applied to network elements required to be unbundled under Section 271 as opposed to network elements unbundled under Section 251 of the Act. Specifically, the FCC stated that "the appropriate inquiry for network elements required only under Section 271 is to assess whether they are

priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in sections 201 and 202." *TRO*, ¶ 656. In other words, according to the FCC, the *legal standard* under which pricing for Section 271 checklist items should be determined is a different *legal standard* than that applied to price Section 251 UNEs. Thus, "Section 271 requires RBOCs to provide unbundled access to elements not required to be unbundled under Section 251, but does not *require* TELRIC pricing." *Triennial Review Order*, ¶ 659 (emphasis added).

Notably, in the *TRO,* the FCC nowhere forbids the application of such pricing of network elements required to be unbundled under Section 271. Rather, the FCC merely states that unbundled access to Section 271 checklist items is not *required* to be priced pursuant to the particular forward-looking cost methodology specified in the FCC's rules implementing Section 252(d)(1) of the Act – namely, TELRIC. The FCC states that the appropriate legal standard to determine the correct price of Section 271 checklist items is found in Sections 201 and 202. However, nowhere does the FCC state these two different legal standards may not result in the same rate-setting methodology.

Furthermore, the FCC does not preclude the use of forward-looking, long-run incremental cost methodologies *other than TELRIC* to establish the prices for access to Section 271 checklist items. As the FCC made clear when it adopted the TELRIC pricing methodology in its *Local Competition Order*,[5] there are various methodologies for the determination of forward-looking, long-run incremental cost. *Local Competition Order,* ¶ 631. TELRIC describes only one variant, established by the FCC for setting UNE prices under Section 252(d)(1), derived from a family of cost methodologies consistent with forward-looking, long-run incremental cost principles. *See Local Competition Order,* ¶¶ 683-685 (defining "three general approaches" to setting forward-looking costs). Thus, the FCC's *TRO* does not preclude

[5] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (rel. August 8, 1996) ("*Local Competition Order*").

the use of a forward-looking, long-run incremental cost standard *other than TELRIC* in establishing prices consistent with Sections 201 and 202 of the Act.[6]

Given the intense scrutiny that has been applied by this Commission in establishing rates for elements that may eventually be subject only to Section 271 unbundling obligations, adopting those rates, at least for an interim period, makes far more sense than any other result. In resolving this issue the Maine Public Utilities Commission stated:

> Until such time as we approve new rates for section 271 UNEs, adopt FCC-approved rates, or CLECs agree to section 271 UNE rates, Verizon must continue to provide all section 271 UNEs at existing TELRIC rates. We find this requirement necessary to ensure a timely transition to the new unbundling scheme. We have no record basis to conclude that TELRIC rates do not qualify as "just and reasonable" rates; while we might ultimately approve higher rates, we cannot do so without the benefit of a record or the agreement of the parties. We note that the decision we reach today is consistent with the approach embodied in the FCC's Interim Rules, which require a six-month moratorium on raising wholesale rates.

Maine Unbundling Order, pp. 20-21

B. UNDER NORTH DAKOTA LAW THE COMMISSION HAS AUTHORITY TO COMPEL QWEST TO INTERCONNECT AND UNBUNDLE NETWORK ELEMENTS, INCLUDING LOOPS AND TRANSPORT.

On the question of unbundling under state law, the North Dakota Century Code is clear, specific and unequivocal:

> Whenever a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and

[6] For example, where the 271 checklist item for which rates are being established is not legacy loop plant but next-generation loop plant, incumbents might argue for the use of a forward-looking, long-run incremental cost methodology based on their *current network technologies* – in other words, a non-TELRIC but nonetheless forward-looking, long-run incremental cost methodology. *See, e.g., Local Competition Order,* ¶ 684.

that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.

North Dakota Century Code, sec. 49-21-09 (emphasis added).

1. A telecommunications company may not:

b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:

(1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
(2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
(3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
(4) The facility, feature, function, or capability will enable competition; or
c. Degrade the quality of access or service provided to another provider of telecommunications services.

North Dakota Century Code, sec. 49-21-241.b.

Under the foregoing state law, Qwest must make loops and transport in North Dakota available to Covad on an unbundled basis.

C. THE COMMISSION SHOULD ADOPT THE INTERCONNECTION AGREEMENT LANGUAGE COVAD HAS PROPOSED

The language Covad has proposed for inclusion in the interconnection agreement is set forth, in part, below. As the Commission can see, this language preserves Covad's right to continue to obtain unbundled network elements under section 271 of the Act and North Dakota

state law. This language applies on its face even if the FCC concludes now or at a later time that Qwest is not required to unbundle select elements under section 251 of the Act.

General provisions include:

> Section 9.1.1
>
> Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations.
>
> Section 9.1.1.6
>
> On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC
>
> Section 9.1.1.7 (imposes prices for elements at the TELRIC rate)
>
> If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a Interconnection Agreement, any of the Network above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, then Qwest shall bill for such UNEs and services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs .

The remaining provisions Covad proposes for inclusion in the interconnection agreement are of a similar nature as the sections quoted above but require Qwest to provide access to specific unbundled network elements – See, e.g., 9.1.5, 9.2.1.3 [access to loops], 9.2.1.4 [access to loops], 9.3.1.1 [feeder subloops], 9.3.1.2 [feeder loop], 9.3.2.2 [DS-1 feeder loops], 9.3.2.2.1 [feeder subloops], 9.6 [dedicated interoffice transport], 9.6.1.5.1 [DS-3 transport] [and related 9.6.1.5], 9.6.1.6.1 [DS-1 dedicated interoffice transport] and [and related Section 9.6.1.6].

D. FEDERAL LAW DOES NOT PREEMPT NORTH DAKOTA'S UNDBUNDLING LEGISLATION

As a very significant preliminary matter, this Commission, as a matter of law, has no authority under state law to declare that any portion of state law is preempted by the Act or any other federal law. This was the very recent conclusion of the Illinois Commerce Commission ("ICC") when confronted with the identical issue here: whether state network element unbundling obligations were pre-empted by federal law. The ICC concluded:

> Moreover, the Illinois Supreme Court has long instructed that an administrative agency can neither limit nor extend the scope of its enabling legislation. "An administrative agency lacks the authority to invalidate a statute on constitutional grounds or to question its validity." *Carpetland U.S.A. v. Ill. Dept. Employment Security*, 201 Ill. 2d 351, 397, 776 N.E.2d 166, 192 (Ill. 2002). The Commission must follow and implement the statute's plain language irrespective of its opinion regarding the desirability of the results surrounding the operation of the statute. *Citizens Util. Bd. v. Ill. Commerce Comm'n* , 275 Ill. App. 3d 329, 341-42, 655 N.E.2d 961, 969-70 (1st Dist., 1995). In other words, the Commission is not empowered to declare portions of Section 13-801 [unbundling statutue] preempted or unconstitutional.

In Re: Illinois Bell Telephone Company Filing to implement tariff provisions related to Section 13-801 of the Public Utilities Act, Order on Remand (Phase I), docket 01-0614, p. 61 (April 20, 2005) (emphasis added)[1]

The ICC conclusion is consistent with North Dakota law. See, *In the Matter of the Application of Nebraska Public Power District*, 330 N.W.2d 143 (ND 1983) (The PSC's authority to regulate is limited to that given it by the Legislature). Consequently, this Commission, like the ICC, has no authority to declare portions of North Dakota law pre-empted. Nonetheless, as detailed below, even if the Commission had such authority, the outcome is the same: no preemption.

[1] The ICC decision cited above is 140 pages long and therefore it is not attached to this brief. However, a complete copy of the decision will be provided to the Commission, Staff or Qwest upon request. Alternatively, a copy can be obtained at the ICC website by performing a search with the docket number at http://eweb.icc.state.il.us/e-docket/

Federal administrative agencies such as the FCC have the power to preempt inconsistent state regulations, so long as the federal agency is acting within the scope of its delegated authority. *City of New York v. FCC*, 486 U.S. 57, 63-64 (1988). "However, courts do not lightly attribute . . . to a federal agency the intent to preempt state or local laws." *Opthalmic Mut. Ins. Co. v. Musser*, 143 F.3d 1062, 1066 (7th Cir. 1998). Rather, there must be a "clear and manifest" expression of the federal agency's preemptive intent, because "agencies normally address problems in a detailed manner and can speak through a variety of means [and] we can expect that they will make their intentions clear if they intend for their regulations to be exclusive." *Hillsborough County v. Automated Med. Labs.*, 471 U.S. 707, 715-16, 18 (1985). As detailed below, neither the Act nor FCC orders that addressed the issue of unbundling have the effect of pre-empting North Dakota legislation.

1. The 1996 Act.

Well after North Dakota began taking steps to open local telephone markets, Congress passed the Act to "end[] the longstanding regime" under which local telephone service was provided by "state sanctioned monopolies." *AT&T Corp. v. North Dakota Utils. Bd.*, 525 U.S. 366, 371 (1999). Under the Act, Congress required incumbents like Qwest to provide competitors with access to network elements on an "unbundled" (*i.e.*, separately priced) basis. *Id.* § 251(c)(3). Incumbents have the federal duty under section 251 to provide unbundled access to network elements if "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." *Id.* § 251(d)(2). Several of the key unbundled network elements at issue here are loops and transport.

Under the Act, state utility commissions like the Commission play a primary role in the effort to create competition in local telephone markets. State commissions fulfill two distinct

functions under the Act. First, Congress has delegated certain federal authority to the states, and the state commissions thus act as "deputized federal regulators" in implementing the Act and the FCC's regulations. *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000) (internal quotation omitted). Specifically, in section 252 of the Act, Congress prescribed a process for implementing the incumbents' federal duties. The principal mechanism for implementing these duties are interconnection agreements between incumbents and competing carriers, and section 252 "specifically provides state commissions with an important role to play" in the formation of those agreements. *Illinois Bell*, 179 F.3d at 574.

Congress was explicit, however, that federally delegated authority is not the only source of state authority to regulate local competition. As the Seventh Circuit has explained, "the roles -- and the authority -- of the state commission and the FCC are distinct under the Act." *Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 393 (7th Cir. 2004). In passing the Act, Congress noted with approval ongoing state efforts to "open the local networks of telephone companies," S. Rep. No. 104-23 at 5 (1995), and it endeavored to build on them, not undermine them. This intent is clearly evinced by four explicit savings clauses that safeguard state authority. *See* 47 U.S.C. §§ 251(d)(3), 252(e)(3), 261(c); 1996 Act § 601(c)(1).

Congress first stated that "nothing in [section 252] shall prohibit a State commission from establishing or enforcing *other requirements of State law* in its review of an agreement." *Id.* § 252(e)(3). Similarly, section 251(d)(3), entitled "Preservation of State Regulations," bars the FCC from "prescribing" or "enforcing" regulations that "preclude the enforcement of any regulation, order, or policy of a State," so long as those state measures are "consistent with the requirements of [section 251]," and do "not substantially prevent implementation of the requirements of this section and the purposes of this part [of the Act]." 47 U.S.C. § 251(d)(3)(B) & (C). Section 261(c) further provides that "[n]othing in this part [of the Act] precludes a State

from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition . . . as long as the State's requirements are not inconsistent with this part or the [FCC's] regulations to implement this part." 47 U.S.C. § 261(c).

Finally, Congress directed courts to interpret the Act to preserve state authority. In section 601(c)(1), Congress specified that the "Act shall not be construed to modify, impair, or supersede . . . State[] or local law unless *expressly so provided.*" Act § 601(c)(1), 110 Stat. 56, 143 (1996) (uncodified note to 47 U.S.C. § 152). Congress included this clause to "prevent[] affected parties from asserting that the [Act] impliedly pre-empts other laws." Conf. Rep. at 201, *reprinted in* 1996 U.S.C.C.A.N. 124, 215. As the Seventh Circuit has noted, section 601(c) "precludes a reading that ousts the state legislature by implication." *AT&T Communications v. Illinois Bell Tel. Co.*, 349 F.3d 402, 410 (7th Cir. 2003).

2. The *Triennial Review Order* and the D.C. Circuit's Decision in *USTA II.*

Beginning in 1996, the FCC issued a series of orders in which it attempted to implement the Act's federal unbundling requirements in light of the federal "impairment" standard. The Supreme Court, and later the D.C. Circuit, rejected the FCC's initial interpretations of the federal impairment standard. Specifically, the D.C. Circuit rejected the FCC's attempts to "adopt a uniform national rule, mandating the [network] element's unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market." *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002) ("*USTA I*"); *see also AT&T Corp.*, 525 U.S. at 387-92 (rejecting FCC's initial definition of impairment). The D.C. Circuit held that the Act "require[s] a more nuanced concept of impairment than is reflected in findings such as the [FCC's] . . . ." *USTA I*, 290 F.3d at 426.

In August 2003, the FCC issued the *TRO*. ILECs asked the FCC to declare in the *TRO* that the states are preempted from requiring unbundling beyond the Act's minimum

requirements. The FCC rejected their arguments, holding that "[w]e do not agree with incumbent [carriers] that the states are preempted from regulating in this area [of unbundled network elements] as a matter of law." *TRO* ¶ 192 (emphasis added). The FCC observed that "[i]f Congress intended to preempt the field, Congress would not have included section 251(d)(3) [one of the savings clauses] in the 1996 Act." *Id.* The FCC noted that "[m]any states have exercised their authority under state law to add network elements to the national list." *Id.* ¶ 191. It noted that "'merely an inconsistency' between a state regulation and [an FCC] regulation was not sufficient for [FCC] preemption under section 251(d)(3)." *Id.* ¶ 192 n.611 (quoting *North Dakota Utils. Bd. v. FCC*, 120 F.3d 753, 806 (8th Cir. 1997)).

To be sure, the FCC expressed its "belie[f]" that "in some instances" state unbundling requirements likely would not be "consistent with our new framework and may frustrate its implementation." *TRO* ¶ 195. However, the FCC refused the incumbents' request that it issue a preemption ruling in the *TRO*. Instead, the FCC held that "[p]arties that believe that a particular state unbundling obligation is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling" on preemption from the FCC. *Id.* ¶¶ 192, 195.

In subsequent briefs before the D.C. Circuit, the FCC reiterated that the *TRO* "did *not* preempt states from adding to the unbundling requirements that the FCC adopted." (FCC *TRO* Br. at 91 (emphasis in original).) Rather, the FCC again stated "that parties could petition the FCC for a declaratory ruling that a particular state unbundling obligation exceeds the statutory limits on state authority." *Id.* Only such "future," "fact-intensive" proceedings, if any are initiated, would result in "actual preemption." *Id.*

On appeal from the *TRO*, the D.C. Circuit held that the FCC's scheme of delegating the FCC's *federal* impairment determinations under section 251(d)(2) of the Act to state commissions was unlawful. *United States Telecom Ass'n v FCC*, 359 F.3d 554 (D.C. Cir. 2004)

("*USTA II*"). The court "vacated, as an unlawful subdelegation of the [FCC's] § 251(d)(2) responsibilities, those portions of the [*TRO*] that delegate to state commissions the authority to determine whether [competing carriers] are impaired without access to network elements . . . ." *Id.* at 568. The D.C. Circuit specifically noted that the FCC could not "subdelegat[e]" its federal impairment analysis with respect to "mass market switching determinations." *Id.*

However, consistent with the FCC's position, the D.C. Circuit rejected the claim, raised by concerned state commissions, that the FCC had decided whether any particular state law unbundling requirements were preempted by the *TRO*. The D.C. Circuit found that the FCC "has not taken any view on any attempted state unbundling order," and that judicial consideration would be premature "until the FCC actually issues a ruling that a specific state unbundling requirement is preempted." *Id.* at 594.

3. The *Triennial Review Remand Order.*

On February 4, 2005, the FCC issued the *Triennial Review Remand Order* ("*TRO Remand Order*"), on remand from *USTA II*. *TRO Remand Order*, 2005 WL 289015 (rel. Feb. 4, 2005). In the *TRO Remand Order*, the FCC yet again refused incumbents' requests that it declare that states have been preempted from requiring any unbundling of network elements beyond what is provided under section 251 of the Act. For example, one RBOC (SBC) argued in its *TRO Remand Order* comments that "the [FCC] should now establish a rule that *all* . . . state attempts to impose unbundling requirements that the [FCC] has rejected are unlawful." (emphasis in original). But the FCC did not grant this request, leaving intact its prior directive from the *TRO* that parties believing that a state commission order is preempted should petition the FCC for such a ruling. *TRO* ¶ 195.

Applying the foregoing laws, neither the Act, the *TRO*, the *TRO Remand Order* nor any other law preempts North Dakota's unbundling regime. Put simply, the FCC did not preempt states from imposing unbundling obligations under state law and nothing in the *TRO* or *TRO*

Remand Order could be read to apply to the unbundling obligations under North Dakota law. On the contrary, the FCC has refused time and again to do so, despite repeated requests from incumbent carriers during the *TRO* or *TRO Remand Order* proceedings. The FCC itself made it clear in the *TRO* and the *TRO Remand Order* that its unbundling rulings did not preempt state unbundling laws. In both the *TRO* and the *TRO Remand Order*, the FCC rejected requests from incumbent carriers that the FCC declare that states are preempted from requiring unbundling beyond the Act's minimum requirements. In a portion of the *TRO* that was not disturbed on appeal, the FCC stated that "[w]e do not agree with incumbent [carriers] that the states are preempted from regulating in this area [of unbundled network elements] as a matter of law." *TRO* ¶ 192. The FCC noted that "[m]any states have exercised their authority under state law to add network elements to the national list." *Id.* ¶ 191.

As noted above, the only lawful mechanism available to determine whether a state law is preempted is to seek a declaratory ruling from the FCC. Qwest has, to the best of Covad's knowledge, never filed a petition for declaratory ruling contending that North Dakota's unbundling requirements are preempted. Accordingly, a finding of preemption in this proceeding would be both unlawful and premature.

CONCLUSION

For the foregoing reasons, Covad requests that the Commission adopt its proposed interconnection agreement language requiring unbundling pursuant to section 271 of the Act and the state law requirements detailed above.

Respectfully submitted, this 13th day of May 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of May, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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PATRICK W. DURICK

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)

September 3, 2004

ORDER – PART II

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we find that Verizon must include all of its wholesale offerings in its state wholesale tariff, including unbundled network elements (UNEs) provided pursuant to section 271 of the Telecommunications Act of 1996 (TelAct). In addition, Verizon must file prices for all offerings contained in the wholesale tariff for our review for compliance with federal pricing standards, i.e. "Total Element Long Run Incremental Cost (TELRIC)" for section 251 UNEs and "just and reasonable" rates pursuant to sections 201 and 202 of the Communications Act of 1934 for section 271 UNEs. We also find that we are not preempted from considering in this proceeding whether Verizon must continue to offer line sharing pursuant 35-A M.R.S.A. §§ 1306 and 7101.

II. BACKGROUND

In our Comments to the Federal Communications Commission (FCC) regarding Verizon's section 271 application for authority to enter the interLATA toll market (Verizon's 271 Application), we stated that the availability of a wholesale tariff or Statement of Generally Available Terms (SGAT) would greatly reduce the time required to effect a valid interconnection agreement and would also eliminate the perception shared by some CLECs that they were being "forced" to accept contract terms in their interconnection agreements that were unrelated to the terms that they were interested in negotiating.[1] Thus, in a March 1, 2002 letter from the Commission to Verizon (Commission's 271 Letter), we explicitly conditioned our support of Verizon's 271 Application on Verizon's agreement to fulfill a number of additional requirements, including the filing of a wholesale tariff. Verizon committed to meeting the Commission's conditions in a March 4, 2002 letter to the Commission (Dinan Letter),

[1] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the State of Maine,* CC Docket No. 02-61, Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of Telecommunications Act of 1996 (April 10, 2002) at 7.

and on November 1, 2002, Verizon submitted a schedule of terms, conditions and rates for Resold Services (P.U.C. No. 21) and the provision of Unbundled Network Elements and Interconnection Services (P.U.C. No. 20) along with cost studies for certain non-recurring charges and OSS-related issues.

In order to allow enough time to thoroughly examine the tariff, we suspended it on November 11, 2002. On November 13, 2002, the Hearing Examiner issued a Procedural Order requesting intervention and scheduling an initial case conference for December 10th. On December 4, 2002, prior to the case conference, the Hearing Examiner issued a second Procedural Order granting intervention to all parties that requested it[2] and proposing a schedule for processing this case. Between December 2002 and August 2003, the parties conducted some discovery and attempted to identify all the issues that need to be litigated.[3]

On August 11, 2003, the Hearing Examiner issued a Procedural Order setting a hearing date of October 2, 2003, and attaching a list of issues that the Advisors intended to explore at the hearing. Before a hearing could take place, however, on August 21, 2003, the FCC issued its *Triennial Review Order (TRO)*.[4] A case

[2] The parties at that time included: the Office of the Public Advocate (OPA), Association of Communications Enterprises (ASCENT), MCI/WorldCom (MCI), Mid-Maine Telecommunications (Mid-Maine), and Oxford Networks (Oxford). Mid-Maine and Oxford filed joint briefs as the CLEC Coalition.

[3] At the Case Conference on December 10th, the proposed schedule was discussed and on December 17th the Hearing Examiner issued a Procedural Order to grant three additional interventions (Biddeford Internet Corporations d/b/a Great Works Internet (GWI), Conversent Communications (Conversent), and Cornerstone Communications (Cornerstone) and to set a preliminary schedule. On January 15, 17, and 23, and February 3, 2003, the Hearing Examiner issued Procedural Orders adjusting the case schedule and outlining further instructions and an initial list of issues to be litigated in the proceeding. On January 22nd, the CLEC Coalition and Cornerstone Communications also filed a list of initial issues. On February 3, 7, and 14, 2003, Verizon submitted responses to Staff's and other parties' issues and questions. On February 18, 2003, both Staff and the CLEC Coalition filed a list of issues that Verizon should attempt to address in its testimony. On February 24, 2003, the Hearing Examiner issued a Procedural Order establishing a schedule for testimony and discovery. On March 3, 2003, the Commission suspended the Verizon tariff for a second time to allow additional time to review it. On March 24, 2003, Verizon witnesses filed panel testimony. Staff issued its first set of data requests on the Verizon testimony on April 1, 2003, to which Verizon responded on April 22nd and 23rd. On May 20, 2003, Verizon issued discovery requests to GWI, to which GWI responded on May 27th.

[4] Report and Order and Order on Remand and Further Notice of Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 96-98 *et al.*, FCC03-36, 18 FCC Rcd 16978 (rel. August 21, 2003)(*Triennial Review Order or TRO).*

conference was held on September 16, 2003, to discuss with the parties the potential impact of the *TRO* on the wholesale tariff. On September 18, 2003, the Examiner issued a Procedural Order summarizing the September 16th case conference and setting deadlines for Verizon to file new red-lined tariff schedules based on the changes required by the *TRO*.

On October 16, 2003, the CLEC Coalition filed a Motion for Issuance of Temporary Order. In its Motion, the CLEC Coalition objected to a letter sent by Verizon on October 2nd which stated that Verizon would be discontinuing the provisioning of certain UNEs in compliance with the *TRO*. On October 21, 2003, the Hearing Examiner issued a Procedural Order stating that Verizon had correctly identified those UNEs that the FCC eliminated from the TelAct's section 251 unbundling requirements and that while changes in terms and conditions caused by the *TRO* would be litigated in this proceeding, the Commission would not re-litigate the decision by the FCC to eliminate specific UNEs from section 251's requirements. Finally, the Examiner stated that the Commission had not anticipated the need to address Verizon's continuing obligations under section 271 in this proceeding and that the Advisors would further consider the issues and determine the next steps.

On December 16, 2003, a case conference was held. After discussion, the Hearing Examiner determined that before hearings on the substance of the Wholesale Tariff could be held, legal briefing was necessary on two issues: (1) whether the Commission had authority, under either state or federal law, to require Verizon to tariff its obligations to continue providing UNEs under section 271 of the TelAct and whether it could set the rates for those obligations; and (2) whether the Commission has the authority, under either state or federal law, to order Verizon to continue providing line-sharing at Commission-set TELRIC rates.

On January 16, 2004, Initial Briefs were filed by Verizon, the CLEC Coalition, and the Consolidated Intervenors (GWI, OPA and Cornerstone). The same parties filed Reply Briefs on January 30, 2004.

Before a decision could be reached by the Commission on the legal issues, the D.C. Circuit Court of Appeals issued its decision in *USTA II*,[5] the appeal of the *TRO*. Because *USTA II* was directly relevant to many of the legal issues raised in this Docket, the Hearing Examiner issued a Procedural Order on March 4, 2004, allowing all parties to supplement previously filed briefs to address the impact of the D.C. Circuit Court decision on their positions in this case. On March 26, the Consolidated Intervenors filed a supplemental brief, as did Verizon.

On July 23, 2004, the Hearing Examiner issued her Report recommending that we find that that Verizon must include all of its wholesale offerings, including UNEs

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[5] *U.S. Telecomm. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)(*USTA II*).

provided pursuant to section 271, in its state wholesale tariff. The Examiner also recommended that we find that Verizon must continue to offer line sharing pursuant to Checklist Item No. 4 of section 271. Finally, the Examiner recommended that we decline the opportunity to exercise any authority we might have to set rates for section 271 UNEs. In addition to serving her Report on the parties to this proceeding, the Examiner also served the Report on the parties to Docket No. 2004-135, Verizon's Request for Arbitration, pursuant to our June 11, 2004 decision in that case to consolidate the Arbitration proceeding with this Wholesale Tariff proceeding. All parties to both cases were given an opportunity to file exceptions.

On August 6, 2004, Verizon, Conversent, Comerstone, the Association for Local Telecommunications Services (ALTS), Covad Communications (Covad), the CLEC Coalition, United Systems Access Telecom, Inc. (USA Telephone), AT&T Communications of New England, Inc. (AT&T), and GWI filed Exceptions to the Examiner's Report. The arguments from all parties in the three rounds of briefs and exceptions are summarized below along with our analysis and decision.

III. COMMISSION AUTHORITY TO REQUIRE TARIFFING OF SECTION 271 OFFERINGS

A. Introduction

As will be explained in detail below, at the time we conditioned our support of Verizon's 271 Application on Verizon filing a wholesale tariff, Verizon's unbundling obligations under sections 251/252 of the TelAct were synonymous with its section 271 unbundling obligations. Thus, we made no distinction between the two potentially differing obligations; we simply required a wholesale tariff. Since that time, the *USTA I*[6] decision was released, the FCC issued its *TRO*, and, most recently, the *USTA II* decision was issued. The impact of these three decisions on the issue at hand can be summed up as follows: today an ILEC's 251/252 obligations are narrower (in most respects[7]) than its 271 obligations. The CLECs contend that Verizon must now amend its proposed wholesale tariff to include its section 271 unbundling obligations. Verizon argues that the FCC has exclusive jurisdiction over matters relating to its 271 obligations and that this Commission has no authority to require Verizon to amend its wholesale tariff to include its 271 obligations.

B. Applicable Law

[6] *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) *(USTA I)*.

[7] In a recent order in the *Skowhegan Online Proceeding*, we found that subloops were a requirement under Section 251 but not a requirement under Section 271. *Investigation of Showhegan Online's Proposal for UNE Loops*, Docket No. 2002-704, Order (April 20, 2004), and Order Denying Reconsideration (June 16, 2004).

1. Difference Between Section 251 and 271 UNEs

Section 271 of the TelAct sets forth the requirements an ILEC must meet before it will be allowed to enter the interLATA toll market. The so-called "competitive checklist" contains 14 measures which were intended to ensure that the ILEC had opened the local exchange market to competition. Checklist Item No. 2 requires "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252 (d)(1)." Section 251(c)(3) requires ILECs to provide access to their network, i.e. UNEs, while Section 252(d)(1) sets the pricing standard for those UNEs, i.e., TELRIC pricing. Section 251(c)(3) also requires compliance with section 251(d)(2) which limits access to UNEs at TELRIC pricing to only those which meet the "necessary and impair" standard.[8] Thus, Checklist Item No. 2 requires an ILEC to meet all of the 251 and 252 unbundling and pricing standards, which the FCC limited in the *TRO* to specific types of loops, subloops, and transport.[9]

Checklist Items Nos. 4, 5, 6, and 10 require ILECs to provide unbundled access to loops, transport, switching and signaling. The FCC has explicitly found that, despite elimination of a number of UNEs under section 251, ILECs must continue to provide access to those UNEs under section 271.[10] However, none of these other checklist items, unlike Checklist Item No. 2, cross reference sections 251(c)(3) and 252(d)(1). Thus, according to the FCC in the *TRO*, UNEs unbundled under Checklist Items Nos. 4, 5, 6 and 9 must only meet the "just and reasonable" standard of 47 U.S.C. §§ 201-202 and not the TELRIC standard required under section 251.[11]

2. State Commission Authority in 271 Enforcement Matters

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[8] In the *TRO*, the FCC retained its earlier definition of "necessary" ("...a proprietary network element is 'necessary' within the meaning of section 251(d)(2)(A) if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer.") and adopted a new definition of "impairment" ("A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic.") *TRO* at ¶¶ 170, 84.

[9] *USTA II* vacated the *TRO*'s findings regarding mass market switching, thereby effectively eliminating switching as a 251 UNE.

[10] *TRO* at ¶ 653.

[11] *TRO* at ¶ 656.

In the FCC's Order granting Verizon 271 authority in Maine,[12] the FCC stated:

> Working in concert with the Maine Commission, we intend to monitor closely Verizon's post-approval compliance for Maine to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval.[13]

The FCC referred readers of the *Maine 271 Order* to its *Kansas/Oklahoma 271 Order*, for a more complete description of the 271 enforcement process. The *Kansas/Oklahoma 271 Order* states:

> Furthermore, we are confident that *cooperative state and federal oversight and enforcement* can address any backsliding that may arise with respect to SWBT's entry into the Kansas and Oklahoma long distance markets.[14]

(emphasis added). Thus, the FCC recognized the important role that state commissions would play in enforcing the requirements of section 271. Of more importance, however, is the *Kansas/Oklahoma 271 Order*'s citation to the *New York 271 Order*,[15] which made several relevant findings. First, while noting that Congress had authorized the FCC to enforce section 271 to ensure continued compliance, the *New York 271 Order* specifically endorsed state commission authority to enforce commitments made by Verizon (then Bell Atlantic) to the New York Public Service Commission. The FCC stated that:

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[12] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization to Provide In-Region, InterLATA Services in the State of Maine*, CC Docket No. 02-61, Order, 17 FCC Rcd 11676 (June 19, 2002) (*Maine 271 Order*).

[13] *Maine 271 Order* at ¶ 65.

[14] *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Oklahoma/Kansas 271 Order*).

[15] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (*New York 271 Order*).

> Complaints involving a BOC's [Bell Operating Company] alleged noncompliance with specific commitments the BOC may have made to a state commission, or specific performance monitoring and enforcement mechanisms imposed by a state commission, *should be directed to that state commission rather than the FCC.*[16]

(emphasis added). Thus, the FCC explicitly recognized the authority of state commissions to enforce 271-related commitments including, but not limited to, performance assurance plans (PAPs). Indeed, the FCC noted "with approval" the fact that the New York PAP "will be enforceable as a New York Commission order."[17]

3. Verizon's 271 Commitments to the Commission

Turning to Verizon's commitments here in Maine, as stated above, Verizon committed to the following relevant conditions, contained in the March 1, 2002, letter from the Commission:

> 1. Verizon will file a wholesale tariff for Maine no later than October 1, 2002. In the interim, CLECs shall be allowed to amend their interconnection agreements with Verizon in such a manner that enables them to negotiate the inclusion of a single UNE (and any terms and conditions related to the single UNE) rather than be required to sign a multi-part or omnibus amendment which contains provisions unrelated to the single UNE.[18]

In our April 10, 2002 Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of the Telecommunications Act of 1996, we explicitly conditioned our support of Verizon's 271 application upon Verizon's compliance with the list of conditions contained in our March 1, 2002 letter to Verizon, including its commitment to file a wholesale tariff. Specifically, we stated:

> The MPUC finds, based upon the record before us, including the commitments made by Verizon in its March 4, 2002 letter

[16] *New York 271 Order* at ¶ 452.

[17] *New York 271 Order* at n. 1353.

[18] Commission's 271 Letter.

> to the MPUC, that Verizon meets the Section 271 Competitive Checklist.[19]

Verizon's commitment to file a wholesale tariff for Maine alleviated certain concerns we had regarding the ability of individual CLECs to negotiate interconnection agreements. Specifically, during the course of our 271 proceeding, we heard from a number of CLECs regarding the difficulties and delays they encountered with Verizon when trying to re-negotiate or amend their interconnection agreements. We found that requiring Verizon to submit a wholesale tariff would simplify the interconnection process for CLECs and provide a single forum for litigating disputes and thus we explained in our 271 Report to the FCC that:

> Unlike some other states, Verizon does not have a Statement of Generally Available Terms (SGAT) or wholesale tariff for the State of Maine. Availability of a wholesale tariff would greatly reduce the time required to effect a valid contract and would also eliminate the possibility of "tying" unrelated sections of an interconnection agreement together when trying to add new terms to an existing agreement. Thus, at our request, Verizon has agreed to file a wholesale tariff for our review by October 1, 2002. This will provide us an opportunity to review all of the terms and conditions that Verizon imposes on CLECs purchasing wholesale services.[20]

Thus, we found the filing of a wholesale tariff encompassing all of Verizon's wholesale obligations would benefit the CLECs, Verizon, and the Commission by consolidating our review of Verizon's wholesale terms and conditions.

C. Positions of the Parties

1. Verizon

Verizon's initial brief did not directly respond to the Hearing Examiner's question concerning Commission authority to require Verizon to tariff its 271 obligations. In its arguments concerning the availability of specific elements, Verizon

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[19]Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the State of Maine, CC Docket No. 02-61, Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of Telecommunications Act of 1996 (April 10, 2002) (271 Report to FCC) at p. 1.

[20]271 Report to FCC at p. 7.

admitted that in paragraph 653 of the *TRO*, the FCC recognized that former Bell Operating Companies (BOCs) have ongoing access obligations under section 271 of the TelAct but argued that nothing in the TelAct gives a state commission any power to interpret or enforce section 271 requirements. According to Verizon, only the FCC may issue regulations relating to 271 UNEs and only the FCC may set rates for these UNEs. Verizon maintained that the pricing standard set by the FCC for 271 network elements, "just and reasonable," is not the same as the TELRIC standard used for section 251 UNEs.

In its reply brief, Verizon acknowledged that the Commission may play a role in enforcing 271 obligations – for example, by administering the PAP and Carrier to Carrier Guidelines – but argued that this in no way suggests that the FCC has delegated, or could delegate, to state commissions the authority to determine, in the first instance, whether section 271 requires the unbundling of a particular network element, independent of section 251 requirements. Finally, although Verizon did not specifically address state authority under section 271 in its Supplemental Brief, Verizon stated that the "Commission plainly has no authority to order additional unbundling of network elements under the TelAct."

In its Exceptions, Verizon argued that, even if the FCC orders cited by the Examiner contained a delegation of section 271 enforcement authority to state commissions, after *USTA II* any such delegation would be illegal. Verizon claimed that Congress had expressly limited the states' role in section 271 matters to consultation with the FCC during its review of a 271 application and that any "cooperative enforcement" envisioned by the FCC was limited to a monitoring role.

Verizon also argued that requiring it to file a wholesale tariff at the Commission violated federal law. Specifically, Verizon argued that two federal appellate decisions, *Wisconsin Bell, Inc. v. Bie, et al.*, 340 F.3d 441 (7th Cir. 2003) and *Verizon North, Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002), had found that state commissions could not require an ILEC to tariff its TelAct unbundling and interconnection obligations with the state commissions. Verizon contended that the rationale motivating our desire for a state wholesale tariff, namely concerns with difficulties and delays associated with individual negotiations, had been struck down by both courts. Thus, according to Verizon, the two federal decisions "are cause for serious reservation" regarding whether the Commission should "continue to expend resources on state wholesale tariffing inquiries."

2. Consolidated Intervenors

In their initial brief, the Consolidated Intervenors stated that the FCC "took pains" to confirm that section 271 creates independent access obligations for BOCs and cited paragraphs 653 and 655 of the *TRO*. They also pointed to the fact that this Commission conditioned its support of Verizon's 271 Application to the FCC on Verizon's willingness to adhere to a number of requirements that it would not otherwise be required to meet under section 251.

In their reply brief, the Consolidated Intervenors urged the Commission to reject Verizon's argument that we do not have authority to enforce 271 obligations. They pointed to the history of this case, and the fact that Verizon filed the wholesale tariff in compliance with a condition set by the Commission during its 271 review, as evidence of the Commission's authority. They asserted that Verizon's argument that the Commission has no power to regulate its wholesale tariff "constitutes an outright repudiation of a fundamental premise of the agreement" in the 271 case.

In their Supplemental Brief, the Consolidated Intervenors stated that *USTA II* confirms that Verizon has section 271 obligations that are independent of its obligations under section 251. They also interpreted the *USTA II* decision to confirm that the *TRO* does not impact a state commission's ability to exercise its power under state and federal law to add to the FCC's list of UNEs.

The Consolidated Intervenors filed separate Exceptions, however, all three parties (GWI, OPA, and Cornerstone) concurred with the Examiner's analysis of the differing section 251 and section 271 unbundling obligations and her recommendation that Verizon be required to include its section 271 unbundling obligations in the wholesale tariff.

3. CLEC Coalition

In its brief, the CLEC Coalition stated that the authority for the Commission to require Verizon to tariff its UNE obligations under section 271 comes from the Congressional framework of section 271, Verizon's explicit agreement to the UNE tariffing obligations in Verizon's March 4, 2002 letter, and the plain and unambiguous declarations of the FCC in paragraphs 653-655 of the *TRO*. The CLEC Coalition also concluded that the FCC expressly found that it was the responsibility of both the FCC and state commissions to ensure compliance with section 271, including setting prices for UNEs established pursuant to section 271. Finally, the CLEC Coalition argued that the Commission must exercise its 271 authority over Verizon, because if the state does not, no one will; the FCC is simply without the resources. The absence of state action would have a drastic effect on the competitive landscape in Maine.

In their reply brief, the CLEC Coalition concurred with the Consolidated Intervenors and urged the Commission not to let Verizon break its agreement to meet the obligations it agreed to during the 271 approval process. The CLEC Coalition's exceptions generally supported the Examiner's Report and included specific comments on issues addressed in other sections of this order.

4. Other CLECs

ALTS, Covad, USA Telephone, AT&T, and Conversent, though they did not participate in the briefing phase of this proceeding, filed exceptions to the Report. ALTS and Covad filed joint exceptions which concurred with the Examiner's

conclusion that we have authority to "ensure Verizon's ongoing compliance with the competitive checklist of section 271" and that we can, and should, require Verizon to file a wholesale tariff including all of its unbundling obligations. ALTS and Covad dismissed Verizon's arguments regarding exclusive FCC jurisdiction as contrary to the existing and continued authority of state commissions to enforce PAPs. USA Telephone's exceptions focused on pricing issues, though they did appear to support the recommendations regarding Commission authority to require a wholesale tariff.

Conversent's exceptions supported the Examiner's conclusion that Verizon should include all of its wholesale offerings, including section 271 UNEs, in its Maine wholesale tariff. Conversent claimed that such a requirement will reduce the risk that Verizon will unilaterally cease providing high-capacity DS1 and DS3 loops and dark fiber. Conversent countered Verizon's arguments concerning the voluntary nature of its PAP commitments and pointed out that if those commitments were entirely voluntary, Verizon could stop making payments at any time – a result not contemplated by the FCC, state commissions or CLECs. Conversent urged us to enforce the 271 conditions and commitments made by Verizon and to specifically require Verizon to include DS1 and DS3 high-capacity loops in its wholesale tariff. Conversent argued that neither the *USTA II* decision nor the Court's mandate eliminated the 251 unbundling requirement for high capacity DS1 and DS3 loops – the decisions only vacated the sub-delegation to the states and not the national finding of impairment. Conversent argued that we are not preempted from requiring Verizon to include those UNEs in the state wholesale tariff because such a requirement does not substantially prevent the implementation of section 251 or the purposes of the Act.

AT&T concurred with the Examiner's recommendations concerning our jurisdiction over 271 unbundling requirements and the need for Verizon to include all of its unbundling obligations in its wholesale tariff.

D. Analysis

As stated above, at the time of Verizon's 271 proceeding, Verizon's unbundling obligations under 251/252 of the TelAct were the same as its 271 unbundling obligations and thus there was no need to distinguish between the two types of requirements. Now that they are different, we must determine both the scope of Verizon's commitment to file a wholesale tariff and, if that commitment includes Verizon's 271 unbundling obligations under Checklist Items 4, 5, 6, and 10, our authority to enforce such a commitment.

1. Scope of Verizon's commitment

Interpretation of Verizon's commitment to file a wholesale tariff requires an examination of the language of the letters exchanged with Verizon during our 271 proceeding and as well as a review of the underlying purposes of the condition. Neither the Commission's 271 Letter nor the Dinan Letter contain any language that would limit Verizon's commitment to file a wholesale tariff to its 251 obligations. Thus

we must turn to the underlying purposes of the condition for guidance. During our 271 proceeding, we heard numerous complaints from CLECs regarding the difficulties and delays associated with negotiating amendments to interconnection agreements with Verizon. Today, we continue to hear complaints from CLECs regarding difficulties with interconnection agreements. In the Verizon Arbitration proceeding,[21] CLECs complained that Verizon had not responded to requests from CLECs to negotiate amendments to their interconnection agreements.

We find that a reasonable interpretation of the condition we placed upon Verizon during our 271 proceeding, and the condition it committed to fulfill, requires Verizon to include both its section 251 and 271 unbundling obligations in its wholesale tariff filed in Maine. Indeed, the reasons underlying the condition apply even more today when the legal and regulatory landscape has become increasingly confusing and complex, making it difficult to completely address and negotiate all of the issues that may arise in an interconnection agreement negotiation.

2. Our authority to enforce Verizon's commitment

While Verizon is correct that section 271(d)(6) allows for continued enforcement of an ILEC's 271 obligations by the FCC, Verizon ignores the FCC's directives regarding enforcement of ILEC commitments to state commissions and fails to explain adequately why states have authority over some section 271 issues, such as PAPs, and not others. Verizon also does not address the requirement, pursuant to section 271(c)(2)(A)(ii), that its interconnection agreements, subject to state arbitration pursuant to section 252(b), include access and interconnection that meets the requirements of section 271(c)(2)(B) – the competitive checklist. We find, upon consideration of each of these factors, that we do have authority to enforce Verizon's commitment to file a wholesale tariff with us that includes both its section 251 and 271 obligations.

Under section 271, state commissions do not have authority to approve an ILEC's 271 application but are allowed to consult with the FCC concerning an ILEC's 271 application. In fulfilling that role, the FCC encouraged state commissions to conduct extensive fact-finding proceedings to ascertain whether the terms, conditions, and prices of an ILEC's wholesale operations met section 271's standards. While the FCC made the ultimate finding of compliance, it relied heavily upon the work of state commissions. Indeed, the FCC noted in its *Maine 271 Order*:

> 3. We wish to recognize the effort and dedication of the Maine Public Utilities Commission (Maine Commission). In smaller, more rural states, the section 271 process taxes the resources of the state commissions, even more heavily than

[21] *Investigation Regarding Verizon Maine's Request for Consolidated Arbitration*, Docket No. 2004-135, Order (June 4, 2002).

> in other states. Yet, by diligently and actively conducting proceedings beginning in 1997 to set TELRIC prices, to implement performance measures, to develop a Performance Assurance Plan (PAP), and to evaluate Verizon's compliance with section 271 of the Act, the Maine Commission laid the necessary foundation for our review and approval. We are confident that the Maine Commission's efforts, culminating in the grant of this application, will reward Maine consumers by making increased competition in all markets for telecommunications services possible in the state.
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> . . .
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> 5. We rely heavily in our examination of this application on the work completed by the Maine Commission. . . .

Thus, the FCC explicitly acknowledged the prominent role the Commission played in evaluation of Verizon's 271 Application and the depth of the Commission's understanding of the particular circumstances of the competitive market in Maine.

As indicated above, the FCC has clearly stated that states may enforce commitments made to them by ILECs during the 271 process. The FCC's statement regarding enforcement of state 271 commitments and our significant experience with the issues associated with the wholesale tariff, provide us with legal authority and substantive expertise to enforce Verizon's wholesale tariff commitment. We will exercise this authority by requiring Verizon to honor the commitment it made to us in the 271 process to file a wholesale tariff which includes all of its unbundling requirements and then evaluating that tariff for compliance with state and federal standards. If a party believes the Commission has not applied the correct standard, the party may file an action with the FCC pursuant to 47 U.S.C. §271(d)(6) and the FCC will have the benefit of the detailed factual record developed by us. Nothing about our review of Verizon's wholesale tariff preempts or invalidates the FCC's authority under section 271(d)(6). If the FCC disagrees with the position we take here, it can explain itself in any order issued on appeal. In the meantime, our decision will provide a single litigation proceeding to resolve the myriad of issues resulting from the *TRO* and *USTA II*.[22]

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[22]We do not find Verizon's reliance upon the Sixth Circuit's *Verizon North v. Strand* decision and the Seventh Circuit's *Bie v. Worldcom* decision persuasive. In both the *Strand* and *Bie* cases, the issue before the court was whether a state commission could order a complete by-pass of the TelAct interconnection requirements – a matter not at issue in this case. Specifically, we never envisioned that our wholesale tariff would replace the need for an interconnection agreement, only that it would simplify the process by providing a "floor" of standard terms and conditions, which is consistent with Verizon's own practice of offering an interconnection agreement template with standard offerings. Further, we note that section 252 of the TelAct specifically provides that a state commission may consolidate the litigation associated with multiple arbitration

Verizon's express agreement to file a wholesale tariff, in its letter confirming that it would abide by the Commission's conditions for recommending Section 271 approval, provide us with an independent basis for requiring Verizon to file such a tariff now. We assume Verizon did not lightly make its commitment, and that Verizon understood that the Commission, in accepting that commitment, would not condone or allow conduct inconsistent with the obligations thus undertaken. It follows, then, that Verizon by its acceptance of the condition (for which Verizon obtained Commission support for its Section 271 application) granted to the Commission the authority to ensure that Verizon fully complied with the wholesale tariff obligation defined by Section 271. This is not to suggest that the Commission has the independent authority to define the scope of those obligations where the FCC has clearly spoken; merely that, in light of Verizon's commitment, the Commission has an independent role in determining whether those obligations have been met.

IV. COMMISSION AUTHORITY TO SET PRICES FOR § 271 OFFERINGS

A. Introduction

Having determined that Verizon must tariff its 271 obligations, we consider the extent of our authority to set rates for those 271 offerings. Under state law, our authority is clear: 35-A M.R.S.A. § 301 requires that rates be just and reasonable and gives the Commission the authority to determine whether a utility's rates meet this standard. The Commission's authority under federal law is not as clear and requires a review of sections 251 and 252 of the TelAct, the *TRO*, and *USTA II*.

B. Applicable Law

Section 252 of the TelAct requires state commissions to apply the pricing standards found in section 252(d) to set the rate for interconnection pursuant to section 251(c)(2) and for UNEs unbundled pursuant to section 251(c)(3). Section 252(d) requires that the rate be based upon cost, and be nondiscriminatory, and further provides that it may include a reasonable profit. This standard has been interpreted by the FCC (and upheld by the Supreme Court[23]) to require forward-looking TELRIC pricing for all UNEs unbundled pursuant to section 251 of the TelAct.

Section 271 does not contain its own pricing standard. Section 271(c)(2)(B)(ii) (Checklist Item No. 2) requires that ILECs make UNEs available "in

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requests. Given that Verizon's pending *Arbitration* proceeding involves over 100 carriers and the same issues associated with the wholesale tariff, we believe that our approach of consolidating the two proceedings and developing a baseline wholesale tariff as a first step in the interconnection agreement process achieves the underlying goal of the TelAct, i.e., encouragement of interconnection between competitors and ILECs.

[23] *See AT&T v. Iowa Utilities Bd.*, 525 U.S. 355 (1999)(*Iowa II*).

accordance with the requirements of section 251(c)(3) and 252(d)(1)" while sections 271(c)(2)(B)(iv, v, vi, and x) (Checklist Items Nos. 4, 5, 6 and 10), which provide for access to loops, switching, trunk side transport, and databases, make no reference to a pricing standard.

In the *TRO*, the FCC interpreted the pricing provisions of the TelAct as requiring TELRIC pricing for section 251(c)(3) elements only and "just and reasonable" rates for 271(c)(2)(B)(iv, v, vi, and x) elements. The FCC found that TELRIC pricing for non-251 UNEs "is neither mandated by statute nor necessary to protect the public interest."[24] Relying upon the Supreme Court's holding in *Iowa II* that section 201(b) of the Communications Act empowered the Commission to adopt rules that implement the TelAct, the FCC found that it had authority to impose the just and reasonable and nondiscriminatory standard of sections 201 and 202 of the Communications Act. The FCC went even further and found that it would determine, based upon a fact-specific inquiry pursuant to a section 271 application or a 271 enforcement action, whether the price for a particular 271 element met the section 201/202 standard.[25] The FCC noted that prices similar to those currently charged in ILEC access tariffs would likely meet the standard, as would any prices negotiated through arms-length agreements.[26]

In its March 2004 decision in *UTSA II*, the D.C. Circuit affirmed the FCC's finding that the pricing standard for UNEs unbundled pursuant to § 271 is found in sections 201-202 of the TelAct and not section 251. Specifically, the court upheld the FCC's determination that TELRIC pricing was not required under section 271; all that was required was that the prices not be "unjust, unreasonable or discriminatory."[27] The Court did not address the FCC's assertion that it, rather than state commissions, should determine whether the price for a 271 element meets the just and reasonable standard. The Court did find, in the context of state unbundling authority, that claims relating to the preemptive scope of the *TRO* were not ripe, because no party had challenged a specific state decision.

Since the *USTA II* decision was released, several state commissions have directly addressed the issue of state authority to review pricing for 271 elements. The Massachusetts Department of Telecommunications and Electricity recently found that it could approve or deny, on the basis of market-based pricing, the prices included in Verizon's wholesale tariff for its §271 obligations because those services are

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[24] *TRO* at ¶ 656.

[25] *TRO* at ¶ 664.

[26] *Id.*

[27] *USTA II* at 53.

jurisdictionally intrastate.[28] On June 21, 2004, the Tennessee Regulatory Authority (TRA) issued an order which sets a 271 switching rate in the context of a section 252 arbitration proceeding.[29] Bellsouth has appealed that decision to the FCC and asked for an emergency declaratory ruling by the FCC that the action taken by the TRA violates the TelAct, FCC Orders, and federal precedent. The FCC has asked for comment on Bellsouth's petition.

C. Position of the Parties

1. Verizon

In its briefs, Verizon argued that the *TRO* makes clear that the FCC has exclusive jurisdiction over the pricing of 271 UNEs and that the "just and reasonable" standard, rather than TELRIC, should be applied to the rates for those elements. Verizon contended that even if TELRIC prices meet the "just and reasonable" standard, there is nothing that precludes Verizon from charging higher rates that also meet the "just and reasonable" standard. According to Verizon, the Commission would have no grounds for insisting on the lower TELRIC rate. Verizon also pointed out that while state commissions have authority to set rates for section 251 UNEs, there is no similar grant of authority for section 271 UNEs.

In its exceptions, Verizon urged us to clarify that all matters involving prices for section 271 elements are "deferred" to the FCC. Verizon argued that, because of its belief that we have no authority to define UNEs under section 271, we also would have no authority to set prices of any such UNEs. Verizon contested the grounds underlying the Examiner's finding that we have authority to set prices for section 271 UNEs, contending that the Examiner places too much significance on the Massachusetts DTE order cited above and that Verizon's petition for reconsideration of that order is still pending. Verizon also argued that Congress's silence on the issue of state enforcement of 271 obligations does not imply that states do, in fact, have any authority. Finally, Verizon alleged that *USTA II* "flatly rejected" any sub-delegation of FCC powers to state commissions.

Verizon also challenged the Examiner's recommendation that the Commission require Verizon to offer section 271 UNEs at TELRIC prices until Verizon obtained approval from the FCC of its 271 UNE rates. Verizon alleged that the FCC "ruled unequivocally" that TELRIC should not apply to section 271 UNEs and that the Examiner's recommendation was "based on a misunderstanding" of the process the

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[28] *Proceeding by the DTE on its own Motion to Implement the Requirements of the FCC's TRO Regarding Switching for Large Business Customers Serviced by High-Capacity Loops*, DTE 03-59-A (Jan. 23, 2004), fn. 9.

[29] *In the Matter of Bellsouth Emergency Petition for Declaratory Ruling and Preemption of State Action*, WC Docket No. 04-__ (July 1, 2004) at 1.

FCC intends to use for section 271 UNEs. Finally, Verizon urged the Commission to adopt the FCC's "safe harbor" pricing standards for section 271 UNEs, i.e. special access rates or commercially agreed upon prices.

2. CLECs

In its briefs, the CLEC Coalition argued that by agreeing to submit a wholesale tariff, Verizon agreed to file rate schedules for 271 UNEs which the Commission could review, accept, and/or reject. The Consolidated Intervenors did not directly address the Commission's authority to set prices for 271 UNEs because they believed, despite the specific questions posed in the Hearing Examiner's Procedural Order, that pricing issues would be addressed later.[30]

In their exceptions, a number of CLECs challenged the Examiner's analysis and recommendation that we refrain from exercising any section 271 pricing authority that we might have. The CLEC Coalition argued that the FCC's statements in paragraph 664 of the *TRO* should be viewed as a "limited statement" regarding the FCC's assertion of jurisdiction over section 271 pricing and that we should, in fact, exercise our 271 pricing authority. Specifically, the CLEC Coalition argued that paragraph 664's emphasis on pre-entry review by the FCC indicates a desire by the FCC not to "reach down to affect pricing in existing 271 approvals." The CLEC Coalition asserted that the FCC did not establish itself as the initial rate setting body in "a circumstance such as the one in Maine" but rather simply asserted its authority to review rates in the event of a disagreement between Verizon and the state commission. The CLEC Coalition urged us to exercise our authority to ensure that prices are conducive to competition and to provide reasonable transition for any rate changes. Finally, the CLEC Coalition endorsed the Examiner's recommendation that current TELRIC-based rates remain in place until we approve new 271 rates. The Coalition, however, urged us not to determine at this time that FCC-approved prices automatically be allowed to go into effect.

ALTS and Covad argued that the Supreme Court, in *Iowa II*, clearly held that while the FCC could establish the pricing methodology to be used for setting rates under section 252, it was the states that actually applied the methodology and set the rates. ALTS and Covad contended that we have an ongoing role in ensuring that the rates charged by Verizon under section 271 meet the appropriate standards. ALTS and Covad dispute the Examiner's "preemptive preemption" approach of finding preemption before finding an actual conflict with an FCC determination on the merits of an issue. They argued that the question is not whether a state pricing decision thwarts the policies of the *TRO* but, instead, whether it thwarts the requirements of section 251 and

[30]It is true that pricing issues were scheduled to be addressed later in the proceeding. However, parties should have reasonably expected that if a specific question relating to the legal underpinnings of the Commission's authority was posed for briefing, the question needed to be addressed.

271 of the TelAct. Finally, they argued that, contrary to Verizon's assertions, the FCC did not forbid the application of forward-looking pricing to section 271 UNES but rather only stated that TELRIC pricing was not required. Thus, a state commission could find that TELRIC pricing met the "just and reasonable" standard or that another forward-looking pricing methodology could be used.

USA Telephone also contended that we should exercise our authority to set prices for section 271 UNEs in order to protect the competitive environment in Maine and to meet the needs of Maine consumers. USA Telephone argued that we must be prepared to exercise our authority to encourage stability in the market. The current instability makes it very difficult for CLECs to secure the necessary capital to implement planned facility build-outs. While not suggesting a permanent status *quo*, USA Telephone did urge consideration of the competitive impacts during any transitions.

AT&T argued that the Examiner's recommendation that we refrain from exercising our pricing authority over section 271 UNEs was unwarranted because it was based upon the mistaken belief that the FCC had asserted exclusive jurisdiction in the *TRO*. AT&T pointed out that the Examiner's Report itself admitted that the FCC did not specifically preclude state commissions from evaluating compliance with the federal "just and reasonable" standard. AT&T urged us to preclude Verizon from raising its 271 UNE rates above TELRIC until it obtained specific approval for its new rates from the FCC.

D. Analysis

Determining the scope of the Commission's 271 pricing authority involves both interpretation of the *TRO* and a determination under both state and federal law of the Commission's authority to set rates for intrastate services and products. First, Verizon is correct that the FCC stated in the *TRO* that it would review rates for 271 UNEs in the context of 271 applications and enforcement proceedings. However, as described above, and as acknowledged by Verizon, the FCC has already delegated significant authority to state commissions to enforce 271-related requirements. While the FCC stated it would conduct the review, the FCC did not specifically preclude state commissions from also conducting such an evaluation. Thus, we find, for the reasons discussed below, that we have the authority to require Verizon to file prices for its section 271 UNEs in its wholesale tariff and that we may review those prices for compliance with the FCC's "just and reasonable" standard.[31]

There are a number of factors which generally support a state commission's authority to set prices for section 271 UNEs. First, the standard the FCC has announced for section 271 UNEs, "just and reasonable," is the same standard the Commission applies under 35-A M.R.S.A. § 301. Thus, the Commission has

[31] It is also possible that we may order Verizon to unbundle certain elements pursuant to state law, in which case we will use state law pricing standards to evaluate Verizon's proposed rates.

considerable experience in applying this standard to the rates of Verizon and many other public utilities. Further, state commissions, and not the FCC, are most familiar with the detailed company-specific data that will be used to support an ILEC's claim that particular rates are just and reasonable. In addition, as both CLECs and the National Association of Regulatory Utility Commissioners (NARUC) have argued in filings related to the appeal of the *TRO*, the Supreme Court's decision in *Iowa II* and the Eighth Circuit's decision in *Iowa III*[32] clearly establish that states, not the FCC, set rates for UNEs. Indeed, the Supreme Court stated that:

> [Section] 252(c)(2) entrusts the task of establishing rates to the state commissions .... The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in 252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances.[33]

Finally, state commissions have authority to arbitrate and approve interconnection agreements pursuant to section 252 of the TelAct. Section 271(c)(2)(A)(ii) requires that ILECs provide access and interconnection which meet the requirements of the 271 competitive checklist, i.e. includes the ILEC's 271 unbundling obligations. Thus, state commissions have the authority to arbitrate section 271 pricing in the context of section 252 arbitrations.

In addition to all of the supporting factors, we find that Verizon's commitment to file a wholesale tariff included a commitment to file prices for the elements included in the tariff. Indeed, if we do not require Verizon to file prices, its commitment to file a wholesale tariff becomes a hollow promise, given the complexities of the wholesale marketplace at this time. In addition, practical concerns, such as timely access to section 271 UNEs, require that we enforce Verizon's commitment by requiring it to file proposed rates for each of the section 271 UNEs. We do not foreclose the possibility that Verizon may also seek approval of such rates from the FCC. If it does obtain such approval, it may file those same rates with us and we will give the FCC's determination substantial weight during our review.

Until such time as we approve new rates for section 271 UNEs, adopt FCC-approved rates, or CLECs agree to section 271 UNE rates, Verizon must continue to provide all section 271 UNEs at existing TELRIC rates. We find this requirement necessary to ensure a timely transition to the new unbundling scheme. We have no record basis to conclude that TELRIC rates do not qualify as "just and reasonable" rates; while we might ultimately approve higher rates, we cannot do so without the benefit of a record or the agreement of the parties. We note that the decision we reach

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[32] *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[33] *Iowa II*, 525 U.S. at 384.

today is consistent with the approach embodied in the FCC's Interim Rules, which require a six-month moratorium on raising wholesale rates.[34]

V. COMMISSION AUTHORITY TO ORDER LINE SHARING PURSUANT TO STATE LAW

A. Legal Authority

1. Line Sharing

In the *TRO*, the FCC overturned its earlier decision in the *UNE Remand Order*[35] and found that CLECs are not impaired without access to the high frequency portion of the loop (HFPL), i.e. access to line sharing. Specifically, the FCC shifted its focus from the revenues derived from a single service deployed using the HFPL to the potential revenues derived from all services that could be provided over the full functionality of the loop. Thus, the FCC concluded that the increased operational and economic costs of acquiring a stand-alone loop are offset by the increased revenue opportunities afforded by use of the whole loop for services such as voice, voice over xDSL, data and video services.[36] While the FCC declined to explicitly find that any decision by a state commission to require line sharing under state law was automatically preempted, in paragraph 264 it invited any party aggrieved by such a decision to seek a declaratory ruling from the FCC.

In *USTA II*, the D.C. Circuit upheld the FCC's line sharing decision, finding that:

> [E]ven 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.[37]

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[34] Order and Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket 01-338, FCC 03-313, (rel. August 20, 2004)(Interim Rules Order).

[35] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order And Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, rel. November 5, 1999 (*UNE Remand Order*).

[36] *TRO at* ¶ 258.

[37] *USTA II at 45.*

Thus, under federal law, section 251 line sharing will only be available on a grandfathered basis for the next three years, with the price increasing each year until it reaches the full price of the loop, at which time unbundling will no longer be required.[38]

2. State authority to order unbundling

Recently, in the *Skowhegan OnLine* proceeding[39], we found that we have authority, pursuant to 35-A M.R.S.A. §§ 1306 and 7101, to order the unbundling of network elements not required by federal law when doing so meets a demonstrated need by CLECs and is consistent with both state and federal policies concerning broadband deployment. We predicated our decision in *Skowhegan Online* on an earlier decision in the *Mid-Maine Arbitration Case,*[40] in which we found that we had authority to order access to additional UNEs under section 252(d)(3) of the TelAct[41] and that 35-A M.R.S.A. § 1306[42] provided us with authority to designate additional UNEs so long as our actions did not conflict with federal law. We found in *Skowhegan Online* that section 1306 continued to provide us with independent authority under state law and that 35-A M.R.S.A. § 7101 provided additional authority to order unbundling where doing so will allow for further deployment of broadband, especially in rural areas. Thus, we found that unbundling pursuant to state law requires a showing that the lack of unbundling constitutes an unreasonable act or is insufficient when consideration is given to state law, public policy, and the potential impact of the unbundling on the availability of

[38]Neither the *TRO* or *USTA II* directly addressed whether an ILEC's continuing unbundling obligations under section 271 include continued access to line sharing with the ILECs and we will not reach that issue in this Order.

[39]*Investigation of Skowhegan Online, Inc.'s Proposal for UNE Loops*, Docket No. 2002-704, Order (April 20, 2004) and Order on Reconsideration (June 15, 2004).

[40]*Mid-Maine Telplus, Re: Request for Arbitration of an Interconnection Agreement with Bell Atlantic*, Order Addressing Subloop and Extended Link Issues (E3 and E7) – Part 2, Docket No. 98-593 (April 9, 1999) (*Mid-Maine*).

[41]Our holding was based upon the fact that there was nothing in the TelAct that provided the FCC with exclusive authority to designate UNEs. *Mid-Maine* at 3. Indeed, the FCC's *Local Competition Order* specifically provided that states had authority to order additional UNEs pursuant to state law and the FCC's Rules at that time specifically provided for state commission designation of additional UNEs during arbitration proceedings. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996). The *TRO* has since vacated both of those rules/findings.

[42]Section 1306 provides that, if the Commission determines that a term, condition, practice or act is unjust, unreasonable, insufficient, or unjustly discriminatory, the Commission may "establish or change terms, conditions, measurement, practice, service or acts, as it finds just and reasonable."

telecommunications services to Maine consumers. In addition, any decision to unbundle pursuant to state law must not conflict with federal law.

In our Order on Reconsideration in *Skowhegan Online*, we re-affirmed our earlier findings and pointed to other provisions of state law that supported our unbundling authority. Specifically, we found that the standards in 35-A M.R.S.A. § 301, requiring all utilities to provide "safe, reasonable and adequate facilities and service," as well as those set forth in 35-A M.R.S.A. § 711, granting us authority to order the joint use of wires and prescribe reasonable compensation and reasonable terms and conditions, supported unbundling. We emphasized section 7101's clear expression of the Legislature's policy objective of supporting broadband deployment throughout the state. Finally, we pointed out that the Law Court had already found that the Commission has all the implied and inherent powers necessary to implement the objective set forth in section 7101. *New England Telephone v. PUC*, 1997 ME 222. Thus, we found that the clear policy objectives contained in section 7101, when combined with our broad mandate to ensure that utility practices and rates are reasonable pursuant to section 1306, provided us with the necessary authority to require Verizon to unbundle its legacy copper network.

3. Federal Preemption

a. Definition of Preemption

The Supreme Court has held that "preemption will not lie unless it is 'the clear and manifest purpose of Congress.'"[43] If a federal statute contains an express preemption clause, the court will first focus on the plain wording of the clause, "which necessarily contains the best evidence of Congress' preemptive intent."[44] Similarly, savings clauses, which specifically reserve state authority, are "the best evidence of Congress' preemptive intent."[45] Generally speaking, preemption will be found when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[46] What constitutes a sufficient obstacle, however, is a matter of judgment, informed by examining the statute as a whole and identifying its purpose and intended effects.[47]

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[43] *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) *citing Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[44] *Id.*

[45] *Id.*

[46] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-373 (2000).

[47] *Id.*

b. Language of the TelAct

Section 251(d)(3) of the TelAct states that the FCC may not preclude enforcement of any state commission decision establishing local exchange interconnection and access requirements which is consistent with section 251 and which "does not substantially prevent implementation of the requirements of this section." In the *TRO,* the FCC asserted that its interpretation of the requirements of section 251, i.e., its Rules, was intended by Congress to be included under the "requirements of this section" language of section 251(d)(3).[48] Thus, according to the FCC, any state decision that is inconsistent with the FCC's Orders or Rules (the so-called "federal regime") violates section 251(d)(3) and is preempted.

However, the FCC's assertion that its Rules are included in "the requirements of this section" language of section 251 was specifically rejected by the Eighth Circuit Court of Appeals in a decision concerning the FCC's *Local Competition Order,* which implemented the TelAct.[49] The Eighth Circuit held that section 251(d)(3) does not require state commission orders to be consistent with all of the FCC's regulations promulgated under section 251.[50] It stated that "[t]he FCC's conflation of the requirements of section 251 with its own regulations is unwarranted and illogical."[51] While portions of the Eighth Circuit's decision were ultimately reversed by the Supreme Court, the FCC did not challenge, nor did the Supreme Court reverse, the Eight Circuit's holding on section 251(d)(3).[52] Indeed, the FCC admits in footnote 611 of the *TRO* that the Eighth Circuit's interpretation of section 251(d)(3) is the law of the land and that mere inconsistency with the FCC's rules is not enough to trigger federal preemption. Thus, contrary to the assertions of both the FCC and Verizon, the mere fact that a state requires an additional unbundled element does not mean it automatically will be preempted. Instead, consideration must be given to whether the requirement is consistent with section 251 and whether it prevents its implementation.

In analyzing the legislative intent behind a statutory requirement that two mandates be consistent, courts have defined the word by its common usage, as found in the dictionary. *See e.g. Cross v. Warden, N.H. State Prison*, 644 A.2d 542, 543 (N.H. 1994)(the meaning of "consistent" is synonymous with "consonant" or "compatible."); *Ryan v. Roach Drug Co.*, 239 P. 912, 914 (Okla.1925)

[48] *TRO* at 191.

[49] *See Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd sub nom. on other grounds, AT&T v. Iowa Utilities Bd.*, 525 U.S. 366 (1999)(*Iowa I*).

[50] *Id.* at 806.

[51] *Id.*

[52] *See TRO* at ¶ 192, fn. 611.

("'Consistent' means not contradictory, compliable, accordant."). Courts have also concluded that two designs may be consistent even if one contains additional elements. *Lake City Corp. v. City of Mequon*, 558 N.W.2d 100, 104 (Wis.1997) ("so long as any issues addressed in both a master plan and an official map are not contradictory, the master plan is consistent with the official map").

The Supreme Court of Vermont addressed the meaning of section 251's "consistency" requirement in a challenge to an order of the Vermont Public Service Board requiring Verizon to make certain facilities or services available to CLECs pursuant to state law.[53] Verizon argued that the Board's order was inconsistent with federal law and not supported by independent state authority.[54] In holding that there was ample state authority to support the order and that the order did not contradict federal law, the Vermont court described how Congress intended the Act to work in conjunction with state regulatory commissions:

> The Telecommunications Act of 1996 fundamentally amends the Communications Act of 1934, the principal legislation that regulates telecommunications and established the FCC. . . . The use of a federal statute by a state board is consistent with the federal government's approach to telecommunications regulation, in which states are considered partners in regulation. In both the 1934 Act and the 1996 Act, Congress has taken pains to preserve the overlapping jurisdiction of the states and the federal government over the telecommunications industry. . . . Congress did not intend to occupy the field of telecommunications regulation, it took explicit steps to maintain the authority of state regulatory bodies to enforce and work within the Act.[55]

The court further explained that the "federal scheme does not outline any limitations on state authority to regulate above and beyond the minimum requirements of the Act . . . federal law sets only a floor, the requirements of which may be exceeded by state law."[56] Furthermore, the Vermont court emphasized that when

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[53] *In re Petition of Verizon New England Inc. d/b/a Verizon Vermont*, 795 A.2d 1196 (Vt. 2002).

[54] *Id.* at 1198.

[55] *Id.* at 1201.

[56] *Id.* at 1204.

compliance with a state commission's order does not interfere with a carrier's ability to comply with federal law, there is no conflict between the state and federal regulations.[57]

B. Positions of the Parties

1. Verizon

Verizon argued that the FCC has determined that CLECs are not impaired without unbundled access to line sharing. According to Verizon, where federal law sets forth the legal and regulatory framework for accomplishing a lawful objective through the balancing of competing interests, "the states may neither alter that framework nor depart from the federal judgment regarding the proper balance of competing regulatory concerns." Citing section 251(d)(3) and "long-standing federal preemption principles," Verizon asserted that state commissions have no authority to override the FCC's determination that the unbundling of certain network elements is not required under the TelAct.

Verizon contended that the Commission has no independent authority under state law to impose additional unbundling requirements on Verizon, especially where the FCC has explicitly declared that the UNE is not required. Verizon further argued that the Commission does not have authority to order unbundling under section 271, but even if it did, Checklist Item No. 4 - the local loop - does not include separate access to the HFPL. Additionally, it argued that the pricing would not be TELRIC but would be "just and reasonable" which would require a "fact specific inquiry" conducted by the FCC.

In its Reply Brief, Verizon reiterated its position that "[t]he Commission is legally preempted from re-imposing unbundling obligations eliminated by the FCC's rulings in its *TRO*." In particular, Verizon disputed the CLECs' claim that the Commission has separate state authority to order line sharing and stated that, "where the FCC determines that an element should not be unbundled, a state may not lawfully override that determination." Verizon also refuted the CLECs' claim that the Commission can unbundle HFPL based on Maine specific facts.

In its Supplemental Brief, Verizon asserted that *USTA II* affirms the FCC's findings in the *TRO* on line sharing and unambiguously struck down the FCC's delegation of any unbundling authority to states.[58] Verizon also repeated its belief that the "Commission may not lawfully rely on state law to impose an unbundling obligation for line sharing, feeder subloops, OCN transport, entrance facilities or other UNEs expressly eliminated or curtailed by the FCC in the *TRO*." Referring to its previous statements concerning the absence of state law authorizing unbundling, Verizon argued that even if the state is authorized to order unbundling (which they insist, it is not), it

[57] *Id.* at 1205.

[58] *USTA II* at 12.

may not do so in the case of line sharing because *USTA II* affirmed the FCC's decision in the *TRO* not to order line sharing because it discourages investment.

In its exceptions, Verizon objected to the Examiner's recommendation that we find that line sharing is a continuing 271 obligation under Checklist Item No. 4 but did not directly address state unbundling authority.

2. CLECs[59]

In their Brief, the Consolidated Intervenors pointed to the Commission's reliance upon Verizon's performance in Maine on the number of line sharing arrangements when it found Verizon in compliance with Checklist Item No. 4 during Maine's 271 proceeding. They contended that allowing Verizon to discontinue line sharing now effectively repudiates one of the conditions for the Commission's support and is anti-competitive. The Consolidated Intervenors argued that the FCC took pains to make clear that 271 requirements remain unaffected by the *TRO* (citing to ¶¶ 653, 655). They also suggested that the Commission follow the Pennsylvania Public Utilities Commission's lead in insisting that Verizon honor its 271 obligations. Finally, they cited 35-A M.R.S. A. § 7101 and argued that Verizon's proposal contradicts state telecommunications policy of promoting broadband, especially in rural areas, and urged us to order line sharing because it has been instrumental in creating and fostering competition in rural Maine.

In their Reply Brief, the Consolidated Intervenors again described how Verizon and the Commission relied on the provisioning of line sharing to show that Verizon had opened up its network to competition during the 271 review. The Consolidated Intervenors also cited paragraph 650 of the *TRO* which states that "Section 271(c)(2)(B) establishes an independent obligation for BOCs to provide access to loops...." and implored the Commission to enforce Verizon's 271 obligations and require continued line sharing.

In their Supplemental Brief, the Consolidated Intervenors stated that *USTA II* confirmed the FCC's conclusion that section 271's unbundling requirements for BOCs are independent of a BOC's section 251 requirements. They also argued that "the Court essentially held that the *TRO* has no impact whatsoever, from a legal standpoint, on a state Commission's ability to exercise its power under state and federal law to add to the FCC's list of UNEs."

As stated earlier, the Consolidated Intervenors filed separate exceptions. GWI argued that the Commission is not preempted from ordering line sharing and that, absent a court finding of preemption, the Commission should rely upon state law and policy to require unbundled line sharing. GWI argued that that no

[59]The CLEC Coalition did not brief the line sharing issues but "supports the arguments and conclusions set forth in the briefs on Line Sharing issues submitted by GWI, Conversant and the Office of the Public Advocate."

court had supported the FCC's proposition that any unbundling not required by the FCC's rules promulgated under section 251 is preempted by the "requirements of this section" language. GWI also pointed to the FCC's own acknowledgement of the limitations of the preemptive effect of the TelAct.

GWI's exceptions also addressed both the state policy supporting broadband deployment and the impact on that policy if line sharing is eliminated. GWI pointed out that the price for line sharing will rise in October and that if GWI has to raise its rates to cover increased costs, rural areas will be the hardest hit. GWI also argued that the FCC's line sharing decision was based upon a vision of the competitive landscape that does not match what is occurring in Maine and which has changed since the issuance of the *TRO* itself. Specifically, *USTA II* overturned the FCC's findings regarding the unbundling of mass market switching, which will limit the development of residential voice competition and the revenues associated with it.

GWI argued that the consequences of the FCC's actions seriously impact the future of competition in Maine, particularly for broadband services. According to GWI, while cable broadband service is available in urban and suburban areas, it is generally not available in rural areas. While Verizon broadband is available in many Verizon exchanges, over 40% of the customers are impacted by distance limitations. GWI asserted that there are ways to overcome those problems but they require CLEC access to Verizon line sharing and Verizon's cooperation in deploying the solutions. Thus, GWI urged us to exercise our authority to order line sharing and to set a fair rate for line sharing because failure to do so will result in constant litigation over interconnection agreement terms.

The OPA's exceptions urged us to order Verizon to continue to provide unbundled line sharing at affordable rates. The OPA argued that the FCC's decision regarding line sharing transition rates should not be interpreted as an FCC decision as to a just and reasonable rate under section 271 and that we should exercise our authority to make a determination regarding pricing. Absent Commission action, Maine consumers will be harmed by substantial increases in prices for xDSL and the potential destruction of the nascent broadband market in Maine.

Cornerstone's exceptions also recommended that we exercise our authority to order the continued availability of line sharing at reasonable rates. Cornerstone alleged that if the FCC's transition rates are allowed to go into effect, Cornerstone would not be able to serve many of the rural exchanges it intends to serve because it could not cover the exchange-specific costs. Cornerstone pointed out that if it and other Maine CLECs cannot economically serve these rural areas, it is unlikely that larger firms would be willing to invest in areas where the margins are so slim. For some of these exchanges, where neither Verizon nor the cable provider have deployed xDSL, this means that citizens and businesses in these areas will continue to lag behind more urban areas.

ALTS and Covad urged us to exercise our own authority to order line sharing under state law. They argued that sections 251 and 252 of the TelAct preserve the authority of state commissions to order unbundling and that the Supreme Court has refused to diminish the role of state commissions in overseeing local competition matters. Further, and contrary to the assertions of the FCC, the FCC cannot preempt state commissions by its orders or rules – the language of the TelAct preserving state authority controls. ALTS and Covad also pointed out that in the *TRO* the FCC did not preempt any existing state law unbundling requirements nor any future state law unbundling requirements – it acknowledged that such unbundling requirements may be consistent with the federal framework.

ALTS and Covad argued that facts supporting the FCC's decision not to unbundle line sharing on a national basis do not exist in Maine. Specifically, the FCC relied upon a carrier's ability to line-split with other carriers. However, in Maine, Verizon has not made line splitting operationally available in the same manner as its own retail voice and data bundles, thereby limiting CLECs' ability to line split. In addition, there are customer-impacting time constraints on line splitting, and different policies for submission of orders, and Verizon will not line split on resold voice service. Thus, ALTS and Covad urged the Commission to order the continued availability of line sharing at TELRIC rates.

AT&T supported the Hearing Examiner's determination that line sharing should be provided under section 271 but disagreed with the recommendation that we not exercise our authority to set prices for section 271 UNEs. Specifically, AT&T contended that the FCC had not asserted exclusive jurisdiction over section 271 pricing and that we need not refrain from exercising our section 271 authority in deference to a claim of exclusive jurisdiction that the FCC did not make.

C. Decision

We find that the FCC has not preempted our further consideration of whether to unbundle line sharing under state law. First, we agree with GWI that the Hearing Examiner essentially recommended preemptive preemption, i.e. that we not take action on the grounds that the FCC might attempt to preempt our action. We reject this approach because, as several parties pointed out, the FCC specifically declined to make a finding of preemption of both existing and future state unbundling decisions. While the FCC made clear that it might find preemption if the state decision met federal preemption standards, such a determination would need to be made based upon the specific circumstances of each case. The D.C. Circuit reached the same conclusion in *USTA II*, i.e., that claims relating to preemption were not ripe because no specific state decision had been challenged.

While we recognize the federal policies enunciated by the FCC in the *TRO*, we find that further exploration of the specific circumstances in Maine and state law policies and mandates are necessary in order to determine whether we should, in fact, exercise our authority under 35-A M.R. S.A. §§ 301, 711, 1306 and 7101 to order

line sharing. As we stated in our *Skowhegan Online* decision, we take very seriously the Legislature's directive that all Maine citizens should have access to broadband services. The issues raised by GWI, Cornerstone, and the OPA concerning the viability of rural broadband deployment warrant a closer examination. It would be premature to find at this time, both on a factual and legal basis, that we have already been preempted by the FCC. In addition, there are several pending legal challenges at the FCC and in the courts which may provide further direction concerning the scope of any federal preemption relating to line sharing. Waiting for resolution of those proceedings, however, would mean delaying for an uncertain period a decision that might prevent a significant declaration in rural broadband deployment. Given our obligation to implement legislative directives. We think the more appropriate course is to proceed as expeditiously as possible to resolve the question of whether to order the unbundling of line sharing under state law.

If we decide to order line sharing pursuant to state law, we would also set the price for such sharing using state law standards, i.e., just and reasonable rates. We invite the parties to develop a record in this proceeding that would allow us to set rates at the conclusion of the proceeding.

VI. CONCLUSION

For the reasons discussed above, we order Verizon to include 271 UNEs and prices for those UNEs in its state wholesale tariff. We also determine that we have authority under state law to order the unbundling of line sharing and that we should proceed to investigate whether to exercise that authority.

Dated at Augusta, Maine, this 3rd day of September, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)

July 23, 2004

EXAMINER'S REPORT

NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may file responses or exceptions to this Report on or before **noon on August 6, 2004.** It is expected that the Commission will consider this report at a special deliberative session on **August 12, 2004.**

I. SUMMARY

In this Order, we find that Verizon must include all of its wholesale offerings, including unbundled network elements (UNEs) provided pursuant to section 271 of the Telecommunications Act of 1996 (TelAct), in its state wholesale tariff. We also find that Verizon must continue to offer line sharing pursuant to Checklist Item No. 4 of section 271. Finally, we decline the opportunity to exercise any authority we might have to set rates for section 271 UNEs.

II. BACKGROUND

In our Comments to the Federal Communications Commission (FCC) regarding Verizon's section 271 application for authority to enter the interLATA toll market (Verizon's 271 Application), we stated that the availability of a wholesale tariff or Statement of Generally Available Terms would greatly reduce the time required to effect a valid interconnection agreement and would also eliminate the perception shared by some CLECs that they were being "forced" to accept contract terms in their

interconnection agreements that were unrelated to the terms that they were interested in negotiating.[1] Thus, in a March 1, 2002 letter from the Commission to Verizon (Commission's 271 Letter), we explicitly conditioned our support of Verizon's 271 Application on Verizon's agreement to fulfill a number of additional requirements, including the filing of a wholesale tariff. Verizon committed to meeting the Commission's conditions in a March 4, 2002 letter to the Commission and on November 1, 2002, Verizon submitted a schedule of terms, conditions and rates for Resold Services (P.U.C. No. 21) and the provision of Unbundled Network Elements and Interconnection Services (P.U.C. No. 20) along with cost studies for certain non-recurring charges and OSS-related issues.

In order to allow enough time to thoroughly examine the tariff, we suspended it on November 11, 2002. On November 13, 2002, the Hearing Examiner issued a Procedural Order requesting intervention and scheduling an initial Case Conference for December 10th. On December 4, 2002, prior to the Case Conference, the Hearing Examiner issued a second Procedural Order granting intervention to all parties that requested it[2] and proposing a schedule for processing this case. Between December

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[1] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the State of Maine,* CC Docket No. 02-61, Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of Telecommunications Act of 1996 (April 10, 2002) at 7.

[2] The parties include: OPA, ASCENT, WorldCom, Mid-Maine Tele-communications, and Oxford Networks. Mid-Maine and Oxford filed joint briefs as the CLEC Coalition.

2002 and August 2003, the parties conducted some discovery and attempted to identify all the issues that need to be litigated.[3]

On August 11, 2003, the Hearing Examiner issued a Procedural Order setting a hearing date of October 2, 2003, and attaching a list of issues that the Advisors intended to explore at the hearing. Before a hearing could take place, however, on August 21, 2003, the FCC issued its *Triennial Review Order (TRO)*.[4] A case conference was held on September 16, 2003, to discuss with the parties the potential impact of the *TRO* on the wholesale tariff. On September 18, 2003, the Examiner issued a Procedural Order summarizing the September 16th case conference and setting deadlines for Verizon to file new red-lined tariff schedules based on the changes required by the *TRO*.

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[3]At the Case Conference on December 10th, the proposed schedule was discussed and on December 17th the Hearing Examiner issued a Procedural Order to grant three additional interventions (Great Works Internet, Conversent Communications, and Cornerstone Communications) and to set a preliminary schedule. On January 15, 17, and 23, and February 3, 2003, the Hearing Examiner issued Procedural Orders adjusting the case schedule and outlining further instructions and an initial list of issues to be litigated in the proceeding. On January 22nd, the CLEC Coalition and Cornerstone Communications also filed a list of initial issues. On February 3, 7, and 14, 2003, Verizon submitted responses to Staff's and other parties' issues and questions. On February 18, 2003, both Staff and the CLEC Coalition filed a list of issues that Verizon should attempt to address in its testimony. On February 24, 2003, the Hearing Examiner issued a Procedural Order establishing a schedule for testimony and discovery. On March 3, 2003, the Commission suspended the Verizon tariff for a second time to allow additional time to review it. On March 24, 2003, Verizon witnesses filed panel testimony. Staff issued its first set of data requests on the Verizon testimony on April 1, 2003, to which Verizon responded on April 22nd and 23rd. On May 20, 2003, Verizon issued discovery requests to GWI, to which GWI responded on May 27th.

[4]Report and Order and Order on Remand and Further Notice of Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 96-98 *et al.*, FCC03-36, 18 FCC Rcd 16978 (rel. August 21, 2003)(*Triennial Review Order or TRO).*

On October 16, 2003, the CLEC Coalition filed a Motion for Issuance of Temporary Order. In its Motion, the CLEC Coalition objected to a letter sent by Verizon on October 2nd which stated that Verizon would be discontinuing the provisioning of certain UNEs in compliance with the *TRO*. On October 21, 2003, the Hearing Examiner issued a Procedural Order stating that Verizon had correctly identified those UNEs that the FCC eliminated from the TelAct's section 251 unbundling requirements and that while changes in terms and conditions caused by the *TRO* would be litigated in this proceeding, the Commission would not re-litigate the decision by the FCC to eliminate specific UNEs from section 251's requirements. Finally, the Examiner stated that the Commission had not anticipated the need to address Verizon's continuing obligations under section 271 in this proceeding and that the Advisors would further consider the issues and determine the next steps.

On December 16, 2003, a case conference was held. After discussion, the Hearing Examiner determined that before hearings on the substance of the Wholesale Tariff could be held, legal briefing was necessary on two issues: (1) whether the Commission had authority, under either state or federal law, to require Verizon to tariff its obligations to continue providing unbundled network elements (UNEs) under section 271 of the TelAct and whether it could set the rates for those obligations; and (2) whether the Commission has the authority, under either state or federal law, to order Verizon to continue providing line-sharing at Commission-set TELRIC rates.

On January 16, 2004, Initial briefs were filed by Verizon-Maine (Verizon), the CLEC Coalition, and the Consolidated Intervenors (Biddeford Internet Company d/b/a Great Works Internet (GWI), the Office of the Public Advocate (OPA) and Cornerstone

Communications (CC)). The same parties filed reply briefs on January 30, 2004.

Before a decision could be reached by the Commission on the legal issues, the D.C. Circuit Court of Appeals issued its decision in *USTA II*,[5] the appeal of the *TRO*. Because *USTA II* was directly relevant to many of the legal issues raised in this Docket, the Hearing Examiner issued a Procedural Order on March 4, 2004, allowing all parties to supplement previously filed briefs to address the impact of the D.C. Circuit Court decision on their positions in this case. On March 26, the Consolidated Intervenors filed a supplemental brief, as did Verizon. The arguments from all parties in the three rounds of briefs are summarized below along with our analysis and decision.

III. COMMISSION AUTHORITY TO REQUIRE TARIFFING OF SECTION 271 OFFERINGS

A. Introduction

As will be explained in detail below, at the time we conditioned our support of Verizon's 271 Application on Verizon filing a wholesale tariff, Verizon's unbundling obligations under sections 251/252 of the TelAct were synonymous with its section 271 unbundling obligations. Thus, we made no distinction between the two potentially differing obligations; we simply required a wholesale tariff. Since that time, the *USTA I* decision was released, the FCC issued its *TRO*, and, most recently, the *USTA II* decision was issued. The impact of these three decisions on the issue at hand can be summed up as follows: today an ILEC's 251/252 obligations are narrower (in most

[5] *U.S. Telecomm. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)(*USTA II*).

respects[6]) than its 271 obligations. The CLECs contend that Verizon must now amend its proposed wholesale tariff to include its section 271 unbundling obligations. Verizon argues that the FCC has exclusive jurisdiction over matters relating to its 271 obligations and that this Commission has no authority to require Verizon to amend its wholesale tariff to include its 271 obligations.

B. **Applicable Law**

Section 271 of the TelAct sets forth the requirements an ILEC must meet before it will be allowed to enter the interLATA toll market. The so-called "competitive checklist" contains 14 measures which were intended to ensure that the ILEC had opened the local exchange market to competition. Checklist Item No. 2 requires "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252 (d)(1)." Section 251(c)(3) requires ILECs to provide access to their network, i.e. UNEs, while Section 252(d)(1) sets the pricing standard for those UNEs, i.e., TELRIC pricing. Section 251(c)(3) also requires compliance with section 251(d)(2) which limits access to UNEs at TELRIC pricing to only those which meet the "necessary and impair" standard.[7] Thus, Checklist Item No. 2 requires an ILEC to meet

[6]In a recent order in the *Skowhegan Online Proceeding*, we found that subloops were a requirement under Section 251 but not a requirement under Section 271. *Investigation of Showhegan Online's Proposal for UNE Loops*, Docket No. 2002-704, Order (April 20, 2004), and Order Denying Reconsideration (June 16, 2004).

[7]In the *TRO*, the FCC retained its earlier definition of "necessary" ("...a proprietary network element is 'necessary' within the meaning of section 251(d)(2)(A) if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer.") and adopted a new definition of "impairment" ("A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a

all of the 251 and 252 unbundling and pricing standards, which the FCC limited in the *TRO* to specific types of loops, subloops, and transport.[8]

Checklist Items Nos. 4, 5, 6, and 10 require ILECs to provide unbundled access to loops, transport, switching and signaling. The FCC has explicitly found that, despite elimination of a number of UNEs under section 251, ILECs must continue to provide access to those UNEs under section 271. However, none of these other checklist items, unlike Checklist Item No. 2, cross reference sections 251(c)(3) and 252(d)(1). Thus, according to the FCC in the *TRO*, UNEs unbundled under Checklist Items Nos. 4, 5, 6 and 9 must only meet the "just and reasonable" standard of 47 U.S.C. §§ 201-202 and not the TELRIC standard required under section 251.

In the FCC's Order granting Verizon 271 authority in Maine,[9] the FCC stated:

> *Working in concert with the Maine Commission*, we intend to monitor closely Verizon's post-approval compliance for Maine to ensure that Verizon does not "cease [] to meet any of the conditions required for [section 271] approval.[10]

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barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic.") *TRO* at ¶¶ 170, 84.

[8] *USTA II* vacated the *TRO*'s findings regarding mass market switching, thereby effectively eliminating switching as a 251 UNE.

[9] *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization to Provide In-Region, InterLATA Services in the State of Maine*, CC Docket No. 02-61, Order, 17 FCC Rcd 11676 (June 19, 2002) (Maine 271 Order).

[10] *Maine 271 Order* at ¶ 65.

(emphasis added). The FCC referred readers of the *Maine 271 Order* to its *Kansas/Oklahoma 271 Order*, for a more complete description of the 271 enforcement process. The *Kansas/Oklahoma 271 Order* states:

> Furthermore, we are confident that *cooperative state and federal oversight and enforcement* can address any backsliding that may arise with respect to SWBT's entry into the Kansas and Oklahoma long distance markets.[11]

(emphasis added). Thus, the FCC recognized the important role that state commissions would play in enforcing the requirements of section 271. Of more importance, however, is the *Kansas/Oklahoma 271 Order*'s citation to the *New York 271 Order*, which made several relevant findings. First, while noting that Congress had authorized the FCC to enforce section 271 to ensure continued compliance, the New York 271 Order specifically endorsed state commission authority to enforce commitments made by Verizon [then Bell Atlantic] to the New York Public Service Commission. The FCC stated that:

> Complaints involving a BOC's [Bell Operating Company] alleged noncompliance with specific commitments the BOC may have made to a state commission, or specific performance monitoring and enforcement mechanisms imposed by a state commission, should be directed to that state commission rather than the FCC.[12]

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[11] *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) (*Oklahoma/Kansas 271 Order*).

[12] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (*New York 271 Order*) at ¶ 452.

Thus, the FCC explicitly recognized the authority of state commissions to enforce 271-related commitments including, but not limited to, performance assurance plans (PAPs). Indeed, the FCC noted "with approval" the fact that the New York PAP "will be enforceable as a New York Commission order."[13]

Turning to Verizon's commitments here in Maine, as stated above, Verizon committed to the following relevant conditions, contained in the March 1, 2002, letter from the Commission:

> 1. Verizon will file a wholesale tariff for Maine no later than October 1, 2002. In the interim, CLECs shall be allowed to amend their interconnection agreements with Verizon in such a manner that enables them to negotiate the inclusion of a single UNE (and any terms and conditions related to the single UNE) rather than be required to sign a multi-part or omnibus amendment which contains provisions unrelated to the single UNE.[14]

In our April 10, 2002 Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of the Telecommunications Act of 1996, we explicitly conditioned our support of Verizon's 271 application upon Verizon's compliance with the list of conditions contained in our March 1, 2002 letter to Verizon, including its commitment to file a wholesale tariff. Specifically, we stated:

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[13] *New York 271 Order* at n. 1353.

[14] March 1, 2004 Letter from Commission to Edward Dinan, President, Verizon Maine.

> The MPUC finds, based upon the record before us, including the commitments made by Verizon in its March 4, 2002 letter to the MPUC, that Verizon meets the Section 271 Competitive Checklist.[15]

Verizon's commitment to file a wholesale tariff for Maine alleviated certain concerns we had regarding the ability of individual CLECs to negotiate interconnection agreements. Specifically, during the course of our 271 proceeding, we heard from a number of CLECs regarding the difficulties and delays they encountered with Verizon when trying to re-negotiate or amend their interconnection agreements. We found that requiring Verizon to submit a wholesale tariff would simplify the interconnection process for CLECs and provide a single forum for litigating disputes and thus we explained in our Report to the FCC that:

> Unlike some other states, Verizon does not have a Statement of Generally Available Terms (SGAT) or wholesale tariff for the State of Maine. Availability of a wholesale tariff would greatly reduce the time required to effect a valid contract and would also eliminate the possibility of "tying" unrelated sections of an interconnection agreement together when trying to add new terms to an existing agreement. Thus, at our request, Verizon has agreed to file a wholesale tariff for our review by October 1, 2002. This will provide us an opportunity to review all of the terms and conditions that Verizon imposes on CLECs purchasing wholesale services.[16]

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[15]Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Selective Services, Inc., for Authorization To Provide In-Region, InterLATA Services in the State of Maine, CC Docket No. 02-61, Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of Telecommunications Act of 1996 (April 10, 2002) (271 Report to FCC) at p. 1.

[16]271 Report to FCC at p. 7.

Thus, we found the filing of a wholesale tariff encompassing all of Verizon's wholesale obligations would benefit the CLECs, Verizon, and the Commission by consolidating our review of Verizon's wholesale terms and conditions.

C. Positions of the Parties

1. Verizon.

Verizon's initial brief did not directly respond to the Hearing Examiner's question concerning Commission authority to require Verizon to tariff its 271 obligations. In its arguments concerning the availability of specific elements, Verizon admits that in paragraph 653 of the *TRO*, the FCC recognized that former Bell Operating Companies (BOCs) have ongoing access obligations under section 271 of the TelAct but argues that nothing in the TelAct gives a state commission any power to interpret or enforce section 271 requirements. According to Verizon, only the FCC may issue regulations relating to 271 UNEs and only the FCC can set rates for these UNEs. Verizon maintains that the pricing standard set by the FCC for 271 network elements, "just and reasonable," is not the same as a total element long run incremental cost methodology (TELRIC) used for section 251 UNEs.

In its reply brief Verizon acknowledged that the Commission may play a role in enforcing 271 obligations – for example, by administering the Performance Assurance Plan (PAP) and Carrier to Carrier Guidelines – but argued that this in no way suggests that the FCC has delegated, or could delegate, to state commissions the authority to determine, in the first instance, whether section 271 requires the unbundling of a particular network element, independent of section 251 requirements. Finally, although Verizon does not specifically address state authority under section 271 in its

Supplemental Brief, Verizon states that the "Commission plainly has no authority to order additional unbundling of network elements under the TelAct."

2. Consolidated Intervenors.

In their initial brief, the Consolidated Intervenors state that the FCC "took pains" to confirm that section 271 creates independent access obligations for BOCs and cites paragraphs 653 and 655 of the *TRO*. They also point to the fact that this Commission conditioned its support of Verizon's 271 Application to the FCC on Verizon's willingness to adhere to a number of requirements that it would not otherwise be required to meet under section 251.

In their reply brief, the Consolidated Intervenors urged the Commission to reject Verizon's argument that we do not have authority to enforce 271 obligations. They point to the history of this case, and the fact that Verizon filed the wholesale tariff in compliance with a condition set by the Commission during its 271 review as evidence of the Commission's authority. They assert that Verizon's argument that the Commission has no power to regulate its wholesale tariff "constitutes an outright repudiation of a fundamental premise of the agreement" in the 271 case.

In their Supplemental Brief, the Consolidated Intervenors state that *USTA II* confirms that Verizon has section 271 obligations that are independent of its obligations under section 251. They also interpret the *USTA II* decision to confirm that the *TRO* does not impact a state commission's ability to exercise its power under state and federal law to add to the FCC's list of UNEs.

3. **CLEC Coalition.**

In its brief, the CLEC Coalition states that the authority for the Commission to require Verizon to tariff its UNE obligations under section 271 comes from the Congressional framework of section 271, Verizon's explicit agreement to the UNE tariffing obligations in Verizon's March 4, 2002 letter, and the plain and unambiguous declarations of the FCC in paragraphs 653-655 of the *TRO*. The CLEC Coalition also concludes that the FCC expressly found that it was the responsibility of both the FCC and state commissions to ensure compliance with section 271. Here, the state should secure compliance by setting prices for UNEs established pursuant to section 271. Finally, the CLEC Coalition argues that the Commission must exercise its 271 authority over Verizon, because if the state does not, no one will; the FCC is simply without the resources. The absence of state action would have a drastic effect on the competitive landscape in Maine. In their reply brief, the CLEC Coalition concurred with the Consolidated Intervenors and urged the Commission not to let Verizon break its agreement to meet the obligations it agreed to during the 271 approval process.

D. **Analysis**

As stated above, at the time of Verizon's 271 proceeding, Verizon's unbundling obligations under 251/252 of the TelAct were the same as its 271 unbundling obligations and thus there was no need to distinguish between the two types of requirements. Now that they are different, we must determine both the scope of Verizon's commitment to file a wholesale tariff and whether this Commission has authority to require Verizon to file a tariff in Maine reflecting its 271 unbundling obligations, i.e. its obligations under Checklist Items 4, 5, 6, and 9.

First, with regard to the scope of Verizon's commitment to file a wholesale tariff in Maine, we examine the underlying purposes of the condition and find that the same reasons for requiring a wholesale tariff encompassing Verizon's 251 obligations apply equally to Verizon's 271 obligations. Indeed, they apply even more today when the legal and regulatory landscape has become increasingly confusing and complex, making it difficult to completely address and negotiate all of the issues that may come up in an interconnection agreement negotiation. In the Verizon Arbitration proceeding,[17] CLECs complained that Verizon has not responded to requests from CLECs to negotiate amendments to their interconnection agreements. These are the same types of complaints we heard during the 271 process which led us to adopt the wholesale tariff condition in this first place. Finally, Verizon has not argued to us that it did not commit to tariff all of its wholesale obligations. Instead, it focuses on the jurisdictional issues without examining the motivations and intentions behind its 271 commitment. We find that a reasonable interpretation of the condition we placed upon Verizon, and the condition it committed to fulfill, requires Verizon to include both its 251 and 271 unbundling obligations in its wholesale tariff filed in Maine.

We turn now to our authority to enforce that commitment. While Verizon is correct that section 271(d)(6) allows for continued enforcement of an ILEC's 271 obligations by the FCC, Verizon fails to explain adequately why states have authority over some 271 issues, such as performance assurance plans, and not others. Previously, state commissions did not have authority to approve an ILEC's 271

[17] *Investigation Regarding Verizon Maine's Request for Consolidated Arbitration*, Docket No. 2004-135, Order (June 4, 2002).

application but were allowed, indeed encouraged, by the FCC to conduct extensive fact-finding proceedings to ascertain whether the terms, conditions, and prices of an ILEC's wholesale operations met 271 standards. While the FCC made the ultimate finding of compliance, it relied heavily upon the work of state commissions. Indeed, the FCC noted in its *Maine 271 Order*:

> 3. We wish to recognize the effort and dedication of the Maine Public Utilities Commission (Maine Commission). In smaller, more rural states, the section 271 process taxes the resources of the state commissions, even more heavily than in other states. Yet, by diligently and actively conducting proceedings beginning in 1997 to set TELRIC prices, to implement performance measures, to develop a Performance Assurance Plan (PAP), and to evaluate Verizon's compliance with section 271 of the Act, the Maine Commission laid the necessary foundation for our review and approval. We are confident that the Maine Commission's efforts, culminating in the grant of this application, will reward Maine consumers by making increased competition in all markets for telecommunications services possible in the state.
>
> . . .
>
> 5. We rely heavily in our examination of this application on the work completed by the Maine Commission. . . .

We find that states have a similar role with regard to enforcement of 271 obligations. Indeed, it makes both procedural and substantive sense to allow state commissions, which are much more familiar with the individual parties, the wholesale offerings, and the issues of dispute between the parties, to monitor ILEC compliance with section 271 by applying the standards prescribed by the FCC, i.e. ensuring that Verizon meets its Checklist Items No. 4, 5, 6, and 9 obligations.

As indicated above, the FCC has already clearly stated that states may enforce commitments made by ILECs during the 271 process. Here, where the commitment involves filing a wholesale tariff, we believe we also have authority to review that tariff for compliance with the applicable federal and state requirements. If a party believes the Commission has not applied the correct standard, the party may then file an action with the FCC pursuant to 47 U.S.C. §271(d)(6) and the FCC will have the benefit of the detailed factual record developed by us. Nothing about our review of Verizon's wholesale tariff preempts or invalidates the FCC's authority under section 271(d)(6). If the FCC disagrees with the position we take here, it can explain itself in any order issued on appeal. In the meantime, our decision will provide a single litigation proceeding to resolve the myriad of issues resulting from the *TRO* and *USTA II*.

In addition to the legal basis for our decision, our decision also addresses a significant practical consideration facing the Commission. Specifically, from a Commission resource perspective, it makes much more sense to litigate all of the issues associated with unbundling in one docket and develop a standard offer or Statement of Generally Available Terms (SGAT). A single litigated case ensures that we receive the benefit of briefing on an issue from all interested parties, rather than rely on individual litigants to brief issues that may, or may not, be important to them. Individual litigation diverts Commission resources from addressing matters that impact all carriers to issues that may only affect one or two carriers.

Finally, we note that 35-A M.R.S.A. § 304 requires that all utilities file schedules containing the rates, terms, and conditions for any service performed by it within the State. We have previously interpreted this provision to require filing of

wholesale rates with the Commission, i.e. services which are resold to other carriers or special contracts made with specific customers. For example, Verizon has on file with the Commission a state access tariff through which it offers many UNE-like services, such as high capacity transport. Thus, subject to the specific finding below, we require Verizon to file both its terms and conditions and rates for all of its 251 and 271 obligations in its Maine wholesale tariff.

IV. COMMISSION AUTHORITY TO SET PRICES FOR § 271 OFFERINGS

A. Introduction

Now that we have determined that Verizon must tariff its 271 obligations, we must consider the extent of our authority to set rates for those 271 offerings. Under state law, our authority is clear: 35-A M.R.S.A. § 301 requires that rates be just and reasonable and gives the Commission the authority to determine whether a utility's rates meet this standard. The Commission's authority under federal law is not as clear and requires a review of sections 251 and 252 of the TelAct, the *TRO*, and *USTA II*.

B. Applicable Law

Section 252 of the TelAct requires state commissions to apply the pricing standards found in section 252(d) to set the rate for interconnection pursuant to section 251(c)(2) and for UNEs unbundled pursuant to section 251(c)(3). Section 252(d) requires that the rate be based upon cost, be nondiscriminatory, and may include a reasonable profit. This standard has been interpreted by the FCC (and upheld by the

Supreme Court[18]) to require forward-looking TELRIC pricing for all UNEs unbundled pursuant to section 251 of the TelAct.

Section 271 does not contain its own pricing standard. Section 271(c)(2)(B)(ii) (Checklist Item No. 2) requires that ILECs make UNEs available "in accordance with the requirements of section 251(c)(3) and 252(d)(1)" while sections 271(c)(2)(B)(iv, v, vi, and x) (Checklist Items Nos. 4, 5, 6 and 10), which provide for access to loops, switching, trunk side transport, and databases, make no reference to a pricing standard.

In the *TRO*, the FCC interpreted the pricing provisions of the TelAct as requiring TELRIC pricing for section 251(c)(3) elements only and "just and reasonable" rates for 271(c)(2)(B)(iv, v, vi, and x) elements. The FCC found that TELRIC pricing for non-251 UNEs "is neither mandated by statute nor necessary to protect the public interest."[19] Relying upon the Supreme Court's holding in *Iowa II* that section 201(b) of the Communications Act empowered the Commission to adopt rules that implement the TelAct, the FCC found that it had authority to impose the just and reasonable and nondiscriminatory standard of sections 201 and 202 of the Communications Act. The FCC went even further and found that it would determine, based upon a fact-specific inquiry pursuant to a section 271 application or a 271 enforcement action, whether the price for a particular 271 element met the section 201/202 standard.[20] The FCC noted

[18] *See AT&T v. Iowa Utilities Bd.*, 525 U.S. 355 (1999)(*Iowa II*).

[19] *TRO* at ¶ 656.

[20] *TRO* at ¶ 664.

that prices similar to those currently charged in ILEC access tariffs would likely meet the standard, as would any prices negotiated through arms-length agreements.[21]

In its March 2004 decision in *UTSA II*, the D.C. Circuit affirmed the FCC's finding that the pricing standard for UNEs unbundled pursuant to § 271 is found in sections 201-202 of the TelAct and not section 251. Specifically, the court upheld the FCC's determination that TELRIC pricing was not required under section 271; all that was required was that the prices not be "unjust, unreasonable or discriminatory."[22] The Court did not address the FCC's assertion that it, rather than state commissions, should determine whether the price for a 271 element meets the just and reasonable standard. The Court did find, in the context of state unbundling authority, that claims relating to the preemptive scope of the *TRO* were not ripe, because no party had challenged a specific state decision.

Since the *USTA II* decision was released, several state commissions have directly addressed the issue of state authority to review pricing for 271 elements. The Massachusetts Department of Telecommunications and Electricity recently found that it could approve or deny, on the basis of market-based pricing, the prices included in Verizon's wholesale tariff for its §271 obligations because those services are jurisdictionally intrastate.[23] On June 21, 2004, the Tennessee Regulatory Authority (TRA) issued an order which sets a 271 switching rate in the context of a section 252

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[21] *Id.*

[22] *USTA II* at 53.

[23] *Proceeding by the DTE on its own Motion to Implement the Requirements of the FCC's TRO Regarding Switching for Large Business Customers Serviced by High-Capacity Loops*, DTE 03-59-A (Jan. 23, 2004), fn. 9.

arbitration proceeding.[24] Bellsouth has appealed that decision to the FCC and asked for an emergency declaratory ruling by the FCC that the action taken by the TRA violates the TelAct, FCC Orders, and federal precedent. The FCC has asked for comment on Bellsouth's petition.

C. **Position of the Parties**

1. **Verizon.**

Verizon argues that the *TRO* makes clear that the FCC has exclusive jurisdiction over the pricing of 271 UNEs and that the "just and reasonable" standard, rather than TELRIC, should be applied to the rates for those elements. Verizon contends that even if TELRIC prices meet the "just and reasonable" standard, there is nothing that precludes Verizon from charging higher rates that also meet the "just and reasonable" standard. Verizon argues that the Commission would have no grounds for insisting on the lower TELRIC rate. Verizon also points out that while state commissions have authority to set rates for section 251 UNEs, there is no similar grant of authority for section 271 UNEs.

2. **CLECs.**

The CLEC Coalition argues that by agreeing to submit a wholesale tariff, Verizon agreed to file rate schedules for 271 UNEs over which the Commission would have the authority to review, accept, and/or reject. The Consolidated Intervenors did not directly address the Commission's authority to set prices for 271 UNEs because

[24] *In the Matter of Bellsouth Emergency Petition for Declaratory Ruling and Preemption of State Action*, WC Docket No. 04-__ (July 1, 2004) at 1.

they believed, despite the specific questions posed in the Hearing Examiner's Procedural Order, that pricing issues would be addressed later.[25]

D. **Analysis**

Determination of the scope of the Commission's 271 pricing authority requires both interpretation of the *TRO* and a determination under both state and federal law of the Commission's authority to set rates for intrastate services and products. First, Verizon is correct that the FCC stated in the *TRO* that it would review rates for 271 UNEs in the context of 271 applications and enforcement proceedings. However, as described above and as acknowledged by Verizon, the FCC has already delegated significant authority to state commissions to enforce 271-related requirements. While the FCC stated it would conduct the review, the FCC did not specifically preclude state commissions from also conducting such an evaluation.

There are a number of factors which could support a state commission's authority to set prices for section 271 UNEs. First, the standard the FCC has announced for section 271 UNEs, "just and reasonable," is the same standard the Commission applies under 35-A M.R.S.A. § 301. Thus, the Commission has considerable experience in applying this standard to the rates of Verizon and many other public utilities. Further, state commissions, and not the FCC, are most familiar with the detailed company-specific data that will be used to support an ILEC's claim that particular rates are just and reasonable. Finally, both CLECs and the National

[25]It is true that pricing issues were scheduled to be addressed later in the proceeding. However, parties should have reasonably expected that if a specific question relating to the legal underpinnings of the Commission's authority was posed for briefing, that the question needed to be addressed.

Association of Regulatory Utility Commissioners (NARUC) have argued in filings related to the appeal of the *TRO*, that the Supreme Court's decision in *Iowa II* and the Eighth Circuit's decision in *Iowa III*[26] clearly establish that states, not the FCC, set rates for UNEs. Indeed, the Supreme Court stated that:

> [Section] 252(c)(2) entrusts the task of establishing rates to the state commissions .... The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory 'Pricing standards' set forth in 252(d). It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances.[27]

These same parties also point to a state commission's authority to arbitrate and approve interconnection agreements pursuant to section 252 of the TelAct as another source of authority to set rates for elements provided pursuant to section 271.

Notwithstanding these arguments in favor of Commission authority to set 271 UNE rates, we decline at this time to exercise that authority. While we do not necessarily agree with the FCC's assertion of exclusive jurisdiction over 271 UNE rates, it is, nonetheless, the current law of the land. Rather than add an additional layer of confusion to an already complex situation, we will allow time for the process envisioned by the FCC to work, i.e., for Verizon to file federal tariffs or for the parties to reach arms-length agreements. While we will not set the rates charged by Verizon, we will exercise our authority to require Verizon to file those rates with us in its wholesale tariff. Indeed, before Verizon may begin charging any CLEC 271 UNE rates which are higher than its current TELRIC rates, Verizon must first obtain the FCC's approval for the specific rates

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[26] *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[27] *Iowa II*, 525 U.S. at 384.

(in whatever form necessary) and then must file the rates here pursuant to our usual tariffing process. We will suspend any rates filed with us which have not been specifically approved by the FCC.

We leave open today the possibility that in the future, perhaps after the FCC has ruled on the BellSouth Emergency Petition or if the Supreme Court takes the *TRO* appeal and reverses the *USTA II* decision, we might revisit the issues decided today. We also leave open the possibility that we will step in and take action if the FCC abdicates its authority, either explicitly or by taking an undue amount of time to exercise its authority. We firmly believe that *all* parties would greatly benefit from increased certainty concerning wholesale pricing and if the FCC does not actively assert its jurisdiction, we will assert ours so as to ensure the continued viability of local competition in Maine.

V. COMMISSION AUTHORITY TO ORDER LINE SHARING PURSUANT TO STATE LAW

A. Legal Authority

In the *TRO*, the FCC overturned its earlier decision in the *UNE Remand Order*[28] and found that CLECs are not impaired without access to the high frequency portion of the loop (HFPL), i.e. access to line sharing. Specifically, the FCC shifted its focus from the revenues derived from a single service deployed using the HFPL to the potential revenues derived from all services that could be provided over the full functionality of the loop. Thus, the FCC concluded that the increased operational and

[28] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order And Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, rel. November 5, 1999 (*UNE Remand Order*).

economic costs of acquiring a stand-alone loop are offset by the increased revenue opportunities afforded by use of the whole loop for services such as voice, voice over xDSL, data and video services.[29] While the FCC declined to explicitly find that any decision by a state commission to require line sharing under state law was automatically preempted, in paragraph 264 it invited any party aggrieved by such a decision to seek a declaratory ruling from the FCC.

In *USTA II*, the D.C. Circuit upheld the FCC's line sharing decision, finding that:

> [E]ven 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.

USTA II at 45. Thus, under federal law, section 251 line sharing will only be available on a grandfathered basis for the next three years, with the price increasing each year until it reaches the full price of the loop, at which time unbundling will no longer be required.

Neither the *TRO* or *USTA II* directly addressed whether an ILEC's continuing unbundling obligations under section 271 include continued access to line sharing with the ILECs. In its *Line Sharing Order,*[30] the FCC discussed the necessity of unbundling the HFPL as part of an ILEC's 251 unbundling obligations. In its *Oklahoma/Kansas 271 Order*, the first 271 Order issued after the *Line Sharing Order*,

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[29] *TRO at* ¶ 258.

[30] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

the FCC included its discussion of compliance with the line sharing requirement under its discussion of compliance with Checklist Item No. 4, access to local loops.[31] In the *Massachusetts 271 Order*, the FCC explicitly stated that:

> On December 9, 1999 the Commission released the *Line Sharing Order* that, among other things, defined the high-frequency portion of local loops as a UNE that must be provided to requesting carriers on a nondiscriminatory basis pursuant to section 251(c)(3) of the Act and, thus, checklist items 2 and 4 of section 271.[32]

Thus, the FCC appears to consider line sharing a form of access to the local loop that must be provided pursuant to section 271, regardless of whether it must also be provided pursuant to section 251.

B. Positions of the Parties

1. Verizon.

Verizon argues that in the *TRO*, the FCC determined that CLECs are not impaired without unbundled access to line sharing. Verizon argues that where federal law sets forth the legal and regulatory framework for accomplishing a lawful objective through the balancing of competing interests, "the states may neither alter that framework nor depart from the federal judgment regarding the proper balance of competing regulatory concerns." Citing section 251(d)(3) and "long-standing federal preemption principles," Verizon asserts that state commissions have no authority to override the FCC's determination that the unbundling of certain network elements is not required under the TelAct.

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[31] *Oklahoma/Kansas 271 Order* at ¶ 214.

[32] *In the Matter of Application of Verizon New England, Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order (April 16, 2001) at ¶ 163 (*Verizon MA 271 Order*).

Verizon contends that the Commission has no independent authority under state law to impose additional unbundling requirements on Verizon. This is especially true where the FCC has explicitly declared that line sharing is not required. Verizon points out that the FCC authorized the state to perform "granular" review of specific elements only and that line sharing was not one of them.

Verizon further argues that the Commission does not have authority to order unbundling under section 271, but even if it did, Checklist Item No. 4 - the local loop - does not include separate access to the HFPL. Additionally, it argues that the pricing would not be TELRIC but would be "just and reasonable" which would require a "fact specific inquiry" conducted by the FCC.

In its Reply Brief, Verizon reiterated its position that "[t]he Commission is legally preempted from re-imposing unbundling obligations eliminated by the FCC's rulings in its *TRO*." In particular, Verizon disputes the CLECs' claim that the Commission has separate state authority to order line sharing and states that, "where the FCC determines that an element should not be unbundled, a state may not lawfully override that determination." Verizon also refutes the CLECs' claim that the Commission can unbundle HFPL based on Maine specific facts. Since the FCC has already found no impairment, they conclude, the Commission is not free to order line sharing.

In its Supplemental Brief, Verizon asserts that *USTA II* affirms the FCC's findings in the *TRO* on line sharing and unambiguously struck down the FCC's delegation of any unbundling authority to states.[33] Verizon also repeats its belief that

[33] *USTA II* at 12.

the "Commission may not lawfully rely on state law to impose an unbundling obligation for line sharing, feeder subloops, OCN transport, entrance facilities or other UNEs expressly eliminated or curtailed by the FCC in the *Triennial Review Order*." Referring to its previous statements concerning the absence of state law authorizing unbundling, Verizon argues that even if the state is authorized to order unbundling (which they insist, it is not), it may not do so in the case of line sharing because *USTA II* affirmed the FCC's decision in the *TRO* not to order line sharing because it discourages investment.

2. CLECs.[34]

In their Brief, the Consolidated Intervenors point to the Commission's reliance upon Verizon's performance in Maine on the number of line sharing arrangements when it found Verizon in compliance with Checklist Item No. 4 during Maine's 271 proceeding. They contend that allowing Verizon to discontinue line sharing now effectively repudiates one of the conditions for the Commission's support and is anti-competitive. The Consolidated Intervenors argue that the FCC took pains to make clear that 271 requirements remain unaffected by the *TRO* (citing to ¶¶ 653, 655). They suggest that the Commission follow the Pennsylvania Public Utilities Commission's lead in insisting that Verizon honor its 271 obligations. Finally, they cite 35-A M.R.S. A. § 7101 and argue that Verizon's proposal contradicts state telecommunications policy of promoting broadband, especially in rural areas. The Consolidated Intervenors argue that the Commission should order line sharing because it has been instrumental in creating and fostering competition in rural Maine.

[34]The CLEC Coalition did not brief the line sharing issues but "supports the arguments and conclusions set forth in the briefs on Line Sharing issues submitted by GWI, Conversant and the Office of the Public Advocate".

In their Reply Brief, the Consolidated Intervenors again describe how Verizon and the Commission relied on the provisioning of line sharing to show that Verizon had opened up its network to competition during the 271 review. The Consolidated Intervenors also cite to paragraph 650 of the *TRO* where the FCC states that "Section 271(c)(2)(B) establishes an independent obligation for BOCs to provide access to loops...." The Consolidated Intervenors implore the Commission to enforce Verizon's 271 obligations.

In their Supplemental Brief, the Consolidated Intervenors state that the decision in *USTA II* confirms the FCC's conclusion that section 271's unbundling requirements for BOCs are independent of a BOC's section 251 requirements. They also argue that "the Court essentially held that the *TRO* has no impact whatsoever, from a legal standpoint, on a state Commission's ability to exercise its power under state and federal law to add to the FCC's list of UNEs."

C. **Decision**

We find, based upon the language quoted above from the FCC's *Massachusetts 271 Order,* that Verizon must continue to provide CLECs with access to line sharing in order comply with Checklist Item No. 4 of section 271. As discussed above, however, we will not exercise any authority we might have to set rates for 271-based UNEs such as line sharing and will leave those issues to the FCC, which has already stated what it believes to be the fair rate, i.e. three years of transition rates leading to up to the full cost of the loop. While our decision today does not provide the CLECs with all of the relief they requested, it does provide them with the continued

opportunity to share lines with Verizon, which retains the majority of local service lines in Maine.

We decline the opportunity to exercise any authority we have under either federal or state law to order line sharing at TELRIC rates at this time. While we do not concede the point as argued by Verizon, the FCC clearly intended to preempt state authority to order line sharing pursuant to section 251 or state law. Section 251(d)(3) of the TelAct states that the FCC may not preclude enforcement of any state commission decision establishing local exchange interconnection and access requirements which is consistent with section 251 and which "does not substantially prevent implementation of the requirements of this section." In the *TRO*, the FCC asserts that its interpretation of the requirements of section 251, i.e., its rules, was intended by Congress to be included under the "requirements of this section" language of section 251(d)(3).[35] Thus, according to the FCC, any state decision that is inconsistent with the FCC's Orders or Rules (the so-called "federal regime") violates section 251(d)(3) and is preempted. Any party aggrieved by a state decision to require line sharing after the effective date of the *TRO* can seek a declaratory ruling from the FCC

The Supreme Court has held that "preemption will not lie unless it is 'the clear and manifest purpose of Congress.'"[36] If the statute contains an express preemption clause, the court will first focus on the plain wording of the clause, "which necessarily contains the best evidence of Congress' preemptive intent."[37] Savings

[35] *TRO* at ¶ 191.

[36] *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) *citing Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[37] *Id.*

clauses, which specifically reserve state authority, are "the best evidence of Congress' preemptive intent."[38] Generally speaking, preemption will be found when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[39]

The FCC's assertion that its rules are included in "the requirements of this section" language of section 251 was specifically rejected by the Eighth Circuit Court of Appeals in *Iowa I*.[40] The Eighth Circuit held that section 251(d)(3) does not require state commission orders to be consistent with all of the FCC's regulations promulgated under section 251.[41] It stated that "[t]he FCC's conflation of the requirements of section 251 with its own regulations is unwarranted and illogical."[42] While portions of the Eighth Circuit's decision were ultimately reversed by the Supreme Court, the FCC did not challenge, nor did the Supreme Court reverse, the Eight Circuit's holding on section 251(d)(3).[43] Thus, contrary to the assertions of both the FCC and Verizon, the mere fact that a state requires an additional unbundled element does not mean it

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[38] *Id.*

[39] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-373 (2000).

[40] *See Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd sub nom. on other grounds, AT&T v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

[41] *Id.* at 806.

[42] *Id.* It further held that section 261(c) of the TelAct (which requires state commission decisions to be consistent with the FCC's regulations) applies only to state requirements that are not promulgated pursuant to section 251. *Id.* at 807.

[43] *See TRO* at ¶ 192, fn. 611.

automatically will be preempted. Instead, consideration must be given to whether the requirement is consistent with section 251 and whether it prevents its implementation.

We find that, with respect to line sharing, there has been a clear policy decision at the federal level that line sharing should not be made available at TELRIC pricing. Any decision on our part, whether based upon federal or state law, to require line sharing at TELRIC prices would directly contradict federal policy and would, in fact, substantially prevent implementation of section 251 as interpreted by the FCC.[44] We do not reach the issue of whether the FCC's interpretation of 251 would limit state authority in every instance but instead find that here, with regard to line sharing, and where the federal policy has been so clearly enunciated and upheld by the D.C. Circuit, that the most appropriate action at this time requires denial of the CLECs' request for state-ordered unbundling at TELRIC rates. We leave open the possibility that if, at some future date the Supreme Court overturns the FCC's interpretation of its powers of preemption and/or overturns the FCC's decision concerning line sharing, we might revisit this issue and reach a different result. Until such time, the only line sharing that will be available in Maine will be pursuant to section 271 at "just and reasonable rates" as determined by the FCC.

[44] *But see, Investigation into Skowhegan Online's Request for UNE Loops*, Docket No. 2002-704, Orders (April 20, 2004 and June 16, 2004) where the Commission asserted its authority under 35-A M.R.S.A. §§ 301, 7101 and ordered Verizon to unbundle certain copper subloops not required under federal law.

VI. CONCLUSION

For the reasons discussed above, we order Verizon to include 271 UNEs in its state wholesale tariff and to continue to offer line sharing pursuant to Checklist Item No. 4 of section 271.

Respectfully submitted,

Trina M. Bragdon
Hearing Examiner

DT 03-201
DT 04-176

VERIZON NEW HAMPSHIRE
SEGTEL, INC.

Proposed Revisions to Tariff NHPUC No. 84
(Statement of Generally Available Terms and Conditions)
Petition for Declaratory Order re Line Sharing

Order Following Briefing

ORDER NO. 24,442

March 11, 2005

I. PROCEDURAL HISTORY

A. Docket No. DT 03-201

On October 17, 2003, Verizon New England d/b/a Verizon New Hampshire (Verizon) filed with the New Hampshire Public Utilities Commission (Commission) certain proposed revisions to the Company's Statement of Generally Available Terms and Conditions (SGAT), as reflected in Tariff NHPUC No. 84 (Tariff 84), which sets forth the terms of interconnection Verizon offers competitive local exchange carriers (CLECs) as well as the network elements Verizon makes available to CLECs on an unbundled (*i.e.*, individual) basis. These SGAT changes were occasioned by the issuance of the Federal Communications Commission's (FCC's) Triennial Review Order, *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 F.C.C.R. 16,978 (2003) (*TRO*) which evaluated and rewrote the FCC's rules regarding local exchange competition in compliance with the Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, and

subsequent amendments, codified as 47 U.S.C. § 151 *et seq.*

An Order of Notice was issued on October 31, 2003, scheduling a prehearing conference and establishing a deadline for intervention petitions. On November 11, 2003, Verizon provided a confidential list of customers with existing services affected by the proposed tariff revisions.

The prehearing conference took place as scheduled on December 2, 2003. Parties granted intervenor status were Biddeford Internet Corporation d/b/a Great Works Internet (GWI), Conversent Communications of New Hampshire (Conversent), Covad Communications Company (Covad), Freedom Ring Communications LLC d/b/a BayRing Communications (BayRing), New Hampshire Internet Service Providers Association (NHISPA), Otel Telekom Inc. d/b/a G4 Communications (G4), Revolution Networks (RevNets), segTEL Inc. (segTEL), and WorldCom Inc. (MCI). The Office of the Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers. A technical session followed the prehearing conference, at which the participants agreed on a briefing schedule and three questions that would be addressed by the briefs. The schedule was adopted by Secretarial Letter issued on December 19, 2003.

On December 12, 2003, Verizon filed a motion seeking relief from certain provisions in the Order of Notice entered by the Commission in DT 03-201. On the same date, Verizon filed a summary description of each of the terms and conditions Verizon believed would represent changes to its SGAT, the list of unbundled network elements (UNEs) that Verizon believed might be subject to future impairment proceedings in New Hampshire in accordance

with the *TRO*, and a copy of Verizon's proposed amendment to interconnection agreements eliminating provisions relating to line sharing pursuant to the *TRO*.[1] Objections to Verizon's Motion for Relief were filed on December 22, 2003, by BayRing, NHISPA, segTEL, and RevNets. GWI concurred with BayRing's objection. Briefs were timely filed by Covad, GWI, MCI, segTEL and Verizon. BayRing and the OCA concurred with segTEL's brief. Conversent filed a brief on December 30, 2003. Reply briefs were timely filed by Covad, GWI, segTEL, and Verizon. BayRing concurred with the reply briefs filed by segTEL and GWI.

On January 30, 2004, the Commission issued Order No. 24,268 on the pending Verizon motion, which concerned the determination in the Order of Notice that Verizon would be required to offer all UNEs contained in the SGAT, at then-current prices, pending review of the proposed tariff revisions. The Commission rejected Verizon's contention that section 3.3.2 of the SGAT required that the proposed revisions go into effect without Commission review. While the Commission denied Verizon's request without prejudice, pending a final ruling in DT 03-201, the Commission granted in part Verizon's request for alternative relief. Specifically, the Commission allowed Verizon to discontinue provisioning new orders for certain UNEs during the pendency of DT 03-201. These UNEs were (1) dark fiber feeder subloop, (2) interoffice transmission facilities (IOF) consisting of OCn (Optical Carrier number) and STS1 (Synchronous Transport Service) transport, and (3) transmission facilities that connect CLEC

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[1] "Impairment" refers to the standard, enumerated in section 252(d)(2) of the Telecommunications Act, with respect to when an Incumbent Local Exchange Carrier (ILEC) such as Verizon must make its network elements available on an unbundled basis pursuant to section 251 to Competitive Local Exchange Carriers (CLECs). Impairment exists when lack of unbundled access to the network element in question would impair a CLEC's ability to provide services to the public on a competitive basis.

central offices or switches to CLEC collocation sites in Verizon central offices (dark fiber channel terminations). The Commission reasoned that such a determination appeared to comport with the *TRO*, did not harm existing customers, and did not amount to a prejudgment of the outcome of DT 03-201. The Commission also directed Verizon to file revised SGAT pages to reflect the line sharing transition requirements of 47 C.F.R. §51.319(a)(1)(i),[2] emphasizing that no separate agreement should be necessary for parties to avail themselves of line sharing consistent with the FCC's rules.

In response, Verizon filed modified revisions to its SGAT on February 9, 2004, which were accepted as compliant by the Staff of the Commission (Staff) on March 25, 2004. On February 26, 2004, Covad requested that the Commission consider a recently-released decision of the Maine Public Utilities Commission (PUC) hearings examiner. Verizon responded on March 9, 2004.

In the meantime, the *TRO* was the subject of numerous appeals which were consolidated by the U.S. Court of Appeals for the District of Columbia Circuit. In its decision, *United States Telecom Association v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) (*USTA II),* the Court of Appeals vacated a number of the FCC *TRO* determinations, remanded some, and affirmed

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[2] In the *TRO*, the FCC determined that incumbent local exchange carriers (ILECs) were no longer required to offer line sharing to CLECs on an unbundled basis pursuant to section 251, given a lack of section 252 impairment. But the FCC recognized that some CLECs had relied on a previous FCC order reaching the opposite result in order to provide broadband services to consumers. Accordingly, the FCC mandated a three-year transition period with respect to new line sharing arrangements, with the price gradually approaching that of a full, stand-alone local loop, which remains a section 251 UNE. *See TRO* at ¶¶ 264-65.

others. In general, the appellate tribunal vacated decisions that maintained unbundling obligations of incumbent local exchange carriers (ILECs) such as Verizon and affirmed decisions that reduced ILEC unbundling obligations pursuant to section 251. In addition, the Circuit Court was silent on some parts of the *TRO*. On August 20, 2004, the FCC issued an order that required Verizon and other ILECs to continue providing, until February 20, 2005, unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under valid interconnection agreements as of June 15, 2004, and established transitional measures through August 20, 2006, in the absence of an FCC ruling on any particular UNE. *See In re Unbundled Access to Network Elements*, 19 F.C.C.R. 16,783. On October 12, 2004, the Supreme Court declined to hear the appeal of the Court of Appeals' *USTA II* decision, thus allowing it to stand. On February 5, 2005, the FCC issued its *In re Unbundled Access to Network Elements*, 2005 WL 289015 (*TRO Remand Order*). On February 22, 2005, Verizon filed revisions to Tariff 84 with the Commission in response to the FCC's *TRO Remand Order* which were docketed separately in Docket No. DT 05-034.

Supplemental briefs were filed on February 18, 2005, by Verizon and segTEL. Lightship Telecom (Lightship) filed a letter in support of segTEL's brief. The Association for Local Telecommunications Services, or ALTS, filed comments on February 18 as well.

B. Docket No. DT 04-176

On September 19, 2004, GWI and segTEL jointly filed a Petition seeking an order on an expedited basis that Verizon remains obligated to provide line sharing. On October 8, 2004, segTEL and Verizon jointly filed a pleading in which segTEL withdrew its request for

expedited relief and both parties asked the Commission to hold the underlying dispute in abeyance until November 15, 2004. On November 5, 2004, GWI and Verizon filed a similar notice and motion in regard to GWI.

On November 22, 2004, the Commission issued a secretarial letter asking the Parties in Docket No. DT 04-176 to advise the Commission of the status of their ongoing negotiations, and requesting that Verizon advise the Commission regarding its intentions with respect to filing the interim agreements it had reached with GWI and segTEL. Verizon filed comments in response to the secretarial letter on December 6, 2004. GWI and segTEL separately informed the Commission that no permanent agreement regarding line sharing had been reached.

On January 12, 2005, the Commission issued an Order of Notice scheduling a prehearing conference in Docket No. DT. 04-176 for January 26, 2005. The OCA entered an appearance on behalf of residential ratepayers and Lightship sought intervenor status. At the prehearing conference, GWI indicated that it had reached agreement with Verizon on line sharing but wished to remain a party to the docket. On January 28, 2005, Verizon filed changes to its Tariff 84, to comply with Commission Order No. 24,268 in Docket No. DT 03-201. That same day, segTEL filed a letter requesting the Commission suspend the effective date of Verizon's tariff filing. Verizon filed an objection to segTEL's request on January 31, 2005. Also on January 31, the Commission issued a Secretarial Letter consolidating DT 03-201 and DT 04-176, and setting out a briefing schedule, as described *supra*.

C. SGAT and Tariff 84

As noted, *supra*, the SGAT set out the general terms and conditions Verizon offers to competitors for interconnection and UNEs. The Commission, pursuant to 47 U.S.C. § 252(f), found Verizon's SGAT compliant with sections 251 and 252(d) of the Telecommunications Act on July 6, 2001. *See Bell Atlantic*, 86 NH PUC 419 (2001).

ILECS such as Verizon that were formerly entities of the regulated telephone monopoly broken up in 1984,[3] were precluded from offering so-called interLATA[4] long-distance service, *i.e.*, long distance service that crosses LATA boundaries. However, section 271 of the Telecommunications Act authorizes the FCC to grant an RBOC authority to offer interLATA long distance service upon satisfaction of certain conditions. In considering such a request from an RBOC, the FCC is obliged to "consult" with the relevant state utility commission concerning whether the RBOC meets the conditions, referred to in the statute as the "[c]ompetitive checklist."

On June 14, 2002, by letter from the Commission in Docket No. DT 01-151 (opened to consider Verizon's request for a favorable section 271 recommendation from the Commission to the FCC), the Commission set out ten conditions for a determination by the

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[3] These ILECs are generally referred to as RBOCs (regional Bell operating companies) or simply BOCs (Bell operating companies).

[4] LATA, or Local Access Transport Area, defines the service areas of the RBOCs. In New Hampshire, the LATA is approximately contiguous with the area designated by the 603 area code, making New Hampshire a single-LATA state. Therefore, in New Hampshire, interLATA and interstate long distance are interchangeable terms.

Commission that Verizon was in compliance with the requirements of section 271. Condition 1 stated:

> To avoid confusion, Verizon will explicitly convert the existing SGAT into a CLEC tariff from which competitors may directly order anything contained in the SGAT, without the need to negotiate an interconnection agreement or amend an interconnection agreement. The tariff may contain a standard form for competitors to complete which would provide Verizon with the information it needs about the competitor in order to interconnect, such as the location of the point of interconnection or identification for billing purposes. The tariff must reflect the SGAT rates, terms and conditions ordered by this Commission in Docket DE 97-171, except to the extent further reductions or changes are required below as a condition of Verizon's receipt of a favorable recommendation on its section 271 petition.

Accordingly, Verizon filed a revised Tariff 84 and a new Tariff NHPUC No. 86 (Tariff 86). These tariffs were approved by Commission Order No. 24,337 on June 18, 2004. Tariff 84 is now a wholesale tariff of UNEs, interconnection and collocation available to CLECs; Tariff 86 is a resale tariff of retail products available at discount to CLECs. Order No. 24,337 says, "Staff recommends adoption of the Tariffs, and states that any variations between the two documents are not intended to reflect a change in the terms and conditions as established in the SGAT." Verizon's January 28, 2005 filing to amend Tariff 84 brings Tariff 84 into agreement with the SGAT as it existed on June 18, 2004, the date the tariff was approved.

The *TRO* prompted Verizon to file revisions to its SGAT as reflected in Tariff 84. According to Verizon, its revisions affect three UNEs: (a) line sharing, (b) certain dark fiber, and (c) interoffice transmission facilities (IOF) consisting of OCn (Optical Carrier number) and STS1 (Synchronous Transport Service) transport. The *TRO*, however, discusses the UNEs in a manner that makes classification of the UNEs into four categories more useful. Therefore, this order will discuss the revisions in terms of four categories: (a) line sharing; (b) dark fiber feeder

subloop; (c) IOF at the OCn and STS1 level; and (d) dark fiber channel terminations.

According to Verizon, the tariff revisions are made pursuant to section A.1.4.3.B of Tariff 84[5] which authorizes Verizon to cease offering, with 30 days' written notice, any network elements that the FCC finds should be removed from the national list of UNEs required to be unbundled by ILECs. A number of CLECs objected to the proposed revisions as being inconsistent with the FCC's findings in the *TRO*.

II. BACKGROUND

A. Line Sharing

Line sharing is defined by the FCC as "the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop. The *TRO* provided that "the high frequency portion of a copper loop shall no longer be required to be provided as an unbundled network element," subject to a three year transition, and provided access to line sharing for an additional year for those CLECs currently utilizing line sharing. Availability of line sharing as a section 251 element expired by the terms of the *TRO* on October 2, 2004.

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[5] Previously section 3.3.2 of the SGAT, Tariff section A.1.4.3.B reads, "Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial, regulatory or other governmental authority with jurisdiction over the subject matter hereof, it is determined that the Telephone Company is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to the TC hereunder, then the Telephone Company may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to the TC."

B. Dark Fiber Feeder Subloop

A loop is a facility that connects from a customer's premises to a central office. Loops are composed of feeder, which extends out from the central office, and distribution, which branches out from the feeder to customer premises. Any portion of a loop can be called a subloop. The FCC defined subloops for the purposes of unbundling in its *Third Report and Order and Fourth Further Notice of Proposed Rulemaking in the Matter of Implementation of The Local Competition Provisions of the Telecommunications Act of 1996,* 15 F.C.C.R. 3696 (1999), which states that subloops are "portions of the loop that can be accessed at terminals in the incumbent's outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within." A hybrid loop consists of copper distribution plant plus fiber feeder facilities between the central office and locations at or near the serving area interface or remote terminal. Verizon's revisions propose eliminating the availability of the feeder portion of a subloop that consists of dark fiber.

C. IOF at the OCn and STS1 level

Unbundled interoffice facilities consist of dedicated transport. In the *TRO*, the FCC redefined the dedicated transport network element as those transmission facilities that connect incumbent LEC switches or wire centers, which we discuss further in section D, Dark Fiber Channel Terminations. The FCC determined that high-speed interoffice transmission facilities at OCn and STS speeds would no longer be section 251 elements. In its impairment analysis the FCC stated, "we find that dark fiber and multiple DS3 circuits provide reasonable

substitutes for OCn interface circuits at these capacities and find that requesting carriers are not impaired without OCn or SONET interface transport." *TRO* ¶389. Verizon's revisions propose eliminating the availability of interoffice transport (IOF) at OCn and STS levels.

D. Dark Fiber Channel Terminations

Verizon seeks to eliminate what it calls dark fiber channel terminations, which are also sometimes referred to as "entrance facilities." In response to the Commission's directive to identify the applicable cross references between each proposed tariff revision and the *TRO*, Verizon cited to *TRO* paragraphs 359, 365-369 and 381-385 as justification for eliminating dark fiber channel terminations. The cited paragraphs refer to dedicated transport and dark fiber transport. In paragraphs 359-369, the FCC explains that CLECs use dedicated interoffice transmission facilities to carry traffic from their end users' loops (in collocation arrangements) to the CLEC's switch (central office) or point of presence and named this type of circuit "entrance facilities." In the *TRO* the FCC found that the Telecommunications Act does not require ILECs to unbundle entrance facilities, and it excluded entrance facilities from the definition of dedicated transport. Dedicated transport, therefore, was limited only to those transmission facilities connecting ILEC switches and wire centers. Paragraphs 381-385 found, on a national basis, that CLECs were impaired without access to unbundled dark fiber; The paragraphs noted do not specifically reference dark fiber channel terminations.

USTA II, however, held that the FCC's exclusion of entrance facilities from the definition of dedicated transport was at odds with the definition of network element, which is "a facility or equipment used in the provision of a telecommunications service." *TRO Remand*

Order ¶ 136 and n. 380. In the *TRO Remand Order*, the FCC reinstated its original definition of dedicated transport, to the extent it included entrance facilities, and found that CLECs are not impaired without access to entrance facilities, *TRO Remand Order* ¶ 137.

Verizon's proposed revisions would eliminate the availability of dark fiber channel terminations between CLEC collocation arrangements and the CLEC's central office or point of presence.

III. POSITIONS OF THE PARTIES

A. Verizon

1. General Argument

Verizon contends that the *TRO* eliminated unbundling requirements for certain specified network elements, and that its proposed revisions reflect what it is authorized to do by the *TRO*. Verizon states that since its proposed modifications accurately reflect the FCC's rules and incorporate them by reference, the Commission should approve Verizon's filing as written. Verizon argues that there is no lawful basis for retaining these UNEs in its tariff, either permanently or on a transitional basis. According to Verizon the Commission lacks the authority to add to the list of UNEs established by the *TRO*, and is preempted from reimposing unbundling requirements on UNEs specifically eliminated by the FCC in the *TRO*. The *TRO* made specific findings of non-impairment and, in Verizon's view, the state has no lawful prerogative under the Supremacy Clause of the U.S. Constitution to frustrate or disregard the federal policy established by the FCC. Verizon makes reference to instances where the FCC has exercised its authority and preempted attempts by states to override its decision to remove certain network elements

from the national list of UNEs.

Verizon contends that the Commission has no independent authority under state law to ignore the FCC-ordered elimination of UNEs. According to Verizon, the FCC's decision may not be challenged collaterally by ignoring the *TRO* in favor of plenary authority conferred by state statute. Arguments that the Commission may conduct its own impairment analysis are also flawed, in Verizon's view, as the FCC did not authorize state commissions to conduct granular analysis where it has made national determinations. Further, Verizon argues, nothing in the Commission's rules or any state law sets forth any standard for unbundling beyond the sole applicable standard that unbundling obligations must comply with the Telecommunications Act.

Verizon characterizes claims that the Commission has separate authority under section 271 of the Telecommunications Act to determine UNEs, particularly line sharing, as seriously flawed. First, Verizon argues, the section 271 checklist item requiring unbundling of the local loop does not encompass separate access to the high frequency portion of the loop used to provide line sharing. Second, the terms of any required section 271 offerings, including "scope" and price, are governed by Federal law and will be determined by the FCC itself, according to Verizon. Verizon contends that the *TRO* reserves to the FCC the ability to determine whether a checklist element's rate satisfies the just and reasonable pricing standard of sections 201 and 202, through a fact-specific inquiry that the FCC would undertake in the context of an enforcement proceeding brought pursuant to section 271. Verizon expands on this in its reply brief, stating that the FCC sets the general pricing methodology for interconnection and unbundled access while the states are limited to applying that FCC-prescribed methodology

in setting rates. Verizon maintains that there is no basis for CLEC claims that the Commission has authority under section 271 to establish its own prices for line sharing. Further, Verizon contends that Covad's support for TELRIC (Total Element Long-Run Incremental Cost) pricing for section 271 elements is weak, stating that even if TELRIC pricing could be found to be just and reasonable under section 271 (and Verizon believes that it could not) that would not preclude Verizon from charging a higher rate that is also just and reasonable, giving the Commission no grounds to insist on a lower TELRIC rate.

Verizon contends that its proposed tariff revisions recognize the fact that, in some cases, Verizon may have a continuing obligation to provide certain UNEs pursuant to existing interconnection agreements. In that instance, Verizon says, it stands ready to negotiate individual agreements with CLECs for the continued availability of those elements. That process, according to Verizon, is independent of the obligations created by its tariff, and there is no reason for generic tariff provisions to be left in place in order to recognize or enforce what is a contractual obligation.

Verizon rejects segTEL's arguments against preemption, saying that mandatory unbundling in the absence of an impairment finding undermines the Telecommunications Act's principal goal of promoting facilities-based competition, such that when the FCC determines that an element should not be unbundled, a state may not lawfully override that determination.

In its supplemental brief, Verizon argues that the Telecommunications Act does not simply create federal rights and obligations that supplement state law requirements, but has unquestionably taken the regulation of local competition away from the states such that states

may take no action that is inconsistent with federal legislation and federal policy. Since the FCC eliminated these elements under section 251, Verizon says, the state may not reimpose unbundling obligations. The Commission cannot force Verizon to continue to make delisted UNEs available at TELRIC rates, says Verizon.

2. Line Sharing

Verizon argues that its tariff revisions regarding shared loops implement the FCC's rules governing grandfathered and new line sharing arrangements and should be approved as filed. According to Verizon, the FCC eliminated the requirement that ILECs must provide access to the high frequency portion of a loop and preempted the Commission from requiring the unbundling of shared loops. The FCC expressly declined to readopt its line sharing rules, Verizon says, and instead established a three-year transition period for new line sharing arrangements and grandfathered existing line sharing arrangements. Verizon describes the grandfathered line sharing arrangements as those arrangements over which the CLEC began providing DSL to a particular end user prior to the effective date of the *TRO*, and over which the CLEC has not ceased providing DSL service to that customer. Therefore, Verizon asserts, its tariff revisions properly reflect the FCC's intent that grandfathered line sharing arrangements extend not only to a particular end user customer, but to the exact loop (or subloop) serving that end user at a specific location. CLECs have a limited right to new line sharing arrangements, Verizon contends, for a limited transitional period, at rates which steadily increase toward the price of a standalone unbundled loop.

In its reply brief, Verizon takes issue with the claims of Covad, GWI and segTEL

that section 271 imposes additional unbundling requirements for line sharing. Section 271 does not require Verizon to offer the high frequency portion of the loop, says Verizon, as checklist item 4 applies to the local loop transmission from the central office to the customer's premise "*unbundled from local switching or other services*" (emphasis supplied by Verizon). According to Verizon the question is not whether a CLEC should be allowed access to line sharing, but whether the CLEC must take (and pay for) the entire loop when it orders the high frequency portion of that loop. With that in mind, Verizon avers, Congress's failure to require that the high frequency portion be unbundled from the rest of the loop, while expressly requiring that the loop itself be unbundled from switching is significant, and an indication that Verizon need not make the high frequency portion available separate from the low frequency portion. The CLECs have failed, in Verizon's view, to cite any decision by the FCC or any court interpreting section 271 as imposing an obligation on an RBOC – independent of any UNE requirement of section 251 – to unbundle the high frequency portion of the loop from the remainder of the loop.

Verizon continues this argument in its supplemental brief, updating the legal history of line sharing to show that the D.C. Circuit Court expressly upheld the FCC's determination that the high frequency portion of the loop was not subject to unbundling and that line sharing was therefore eliminated as a UNE. Since the Supreme Court denied *certiorari*, Verizon points out that the FCC's decision on this issue is binding as a final and unappealable determination. The Commission is preempted from ordering the continued provision of line sharing due to section 251(d)(3) and familiar principles of conflict preemption, according to Verizon. Verizon points out that both the Commission and the FCC share the common goal of

promoting broadband deployment and enhancing competition. The FCC has concluded, Verizon contends, that forced line sharing is not necessary to promote broadband deployment, and, in fact, will discourage competition and innovation, contrary to the express goals of the Telecommunications Act.

Verizon cites the Supremacy Clause as the source of the preemption on action by this Commission, saying that it is particularly clear in the area of line sharing since the FCC adopted transitional rules which have preemptive effect and displace inconsistent state law. A U.S. District Court in Wisconsin specifically rejected the notion that state commissions have residual authority under the Telecommunications Act to impose state line sharing requirements, alleges Verizon, citing *Wisconsin Bell v. AT&T*, 2004 WL 2059549 (W.D. Wis. June 30, 2004), which, according to Verizon, concludes that the Telecommunications Act preserves state authority only to the extent that state requirements are consistent with the FCC's regulations. Verizon goes on to summarize decisions in Massachusetts, Florida, Indiana and Virginia that reject petitions to retain unbundling obligations that the *USTA II* decision vacated.

Verizon also relies on certain language in the TRO pointing out that if section 251 impairment determinations applied only to ILECs that were neither RBOCs nor exempt from unbundling obligations as rural telephone companies, that would leave only 2.5 percent of access lines subject to the impairment determinations. This, according to Verizon, would trivialize the FCC's section 251 impairment determinations.

2. Dark Fiber Feeder Subloop

Verizon contends that its proposed revisions eliminate dark fiber feeder subloop

arrangements in compliance with the *TRO*. The FCC, according to Verizon, was specific in its determination that ILECs are not required to provide access to their fiber feeder loop plant on an unbundled basis as a subloop UNE.

3. IOF

Verizon contends that its tariff revisions are consistent with the FCC's finding that CLECs were not impaired without OCn or SONET transport facilities.[6] Verizon states that the FCC made a nationwide finding of impairment for dark fiber, DS1 and DS3, however, and requires the Commission to determine whether those findings apply to individual routes based on specific criteria.

4. Dark fiber channel terminations

Finally, Verizon states that its tariff revisions in regard to dark fiber channel terminations are appropriate because the FCC changed the definition of IOF to exclude transport elements that do not connect ILEC switches and ILEC wire centers within a LATA.

B. segTEL

1. General Argument

segTEL describes itself as a New Hampshire CLEC that provides broadband services to residential and business customers, using collocation to access line sharing in 25 Verizon central offices. segTEL argues that the Commission is not preempted from requiring unbundling. According to segTEL, the Commission derives its legal authority to regulate

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[6] Verizon refers to STS as SONET; for purposes of this order, the two terms are interchangeable.

telecommunications in New Hampshire from two sources: the police power of the State, as delegated to the Commission by the General Court pursuant to RSA 374, *et. seq.*, and the regulatory power delegated to the Commission by the federal government, through the Telecommunications Act and the rules the FCC has promulgated to implement the Act. It is the Commission's role, segTEL claims, to try to harmonize these two sources of power, utilizing both its state authority and its federally delegated authority in a way that does not substantially prevent the implementation of the purposes of the Telecommunications Act. Thus, segTEL concludes, preemption would only occur when Commission actions interfere with overriding Federal interests.

segTEL describes three types of Federal preemption: (a) express preemption, where Congress clearly states it is preempting state action; (b) conflict preemption, where terms of Federal and State laws are in conflict; and (c) occupation of the field preemption, where Congress enacts a scheme so pervasive that there is no room left for State action. Citing section 251(d)(3) of the Telecommunications Act, segTEL claims that there is no express preemption, nor does the federal regulatory scheme occupy the field. Therefore, segTEL argues, section 251(d)(3) incorporates the standard recitation of conflict preemption. Paragraph 195 of the *TRO* simply offers the FCC's guess, says segTEL, that a State using its power under State law to require unbundling would be unlikely to survive a preemption challenge. Such *dicta*, segTEL argues, does not absolve this Commission of its duty under state law to make its own determination regarding ILEC unbundling. According to segTEL, the Commission's duty under state law requires that the Commission determine whether requiring UNEs would conflict or

substantially interfere with the Federal regime.

segTEL further argues that the *TRO* is not a mandate to cease unbundling, but permission to do so. Verizon's proposed tariff revisions, then, segTEL claims, are not a compliance filing made necessary by the *TRO*, but a request by Verizon to change its tariff in order to take advantage of new rules that roll back unbundling mandates. In all cases, segTEL avers, Verizon must explain how its proposal is consistent with its ongoing obligations under section 271 of the Telecommunications Act. According to segTEL, as an RBOC Verizon retains an obligation to provide UNEs that is independent of its section 251 duties. Verizon must, says segTEL, show how it will continue to meet its section 271 obligations through its tariff and its interconnection agreements.

According to segTEL, Verizon is attempting to make far more out of the *TRO* than the law warrants in order to advance Verizon's own interests and to avoid state-level review. segTEL goes on to say that Verizon is forcing a piecemeal review of the *TRO*'s provisions which will sap the limited resources of its competitors. Accordingly, segTEL recommends a cumulative review to implement all the provisions of the *TRO*, ensuring that final changes to the tariff comport with Verizon's section 271 obligations and incorporating changes that CLECs may request as a result of the *TRO*.

In its reply brief, segTEL reiterates that there is no preemption of state authority by the FCC in the matter of review of rates, terms and conditions for unbundled elements, as section 252(f)(2) of the Telecommunications Act expressly states that "nothing in [section 252] shall prohibit a state commission from establishing or enforcing other requirements of state law in its review."

In its supplemental brief, segTEL again explains that the purpose of Tariff 84 and its successors is to ensure maximum participation of competitors by reducing costs of entry on an open basis at published and Commission-approved rates. Verizon is required to offer line sharing and other elements under section 271 of the Telecommunications Act, according to segTEL, because section 271 creates separate and distinct unbundling obligations for RBOCs such as Verizon. According to segTEL, the FCC reiterated the section 271 obligation to provide line sharing in paragraph 653 of the *TRO*, and in subsequent orders where it stated that a section 251 non-impairment finding was not a barrier to continued section 271 requirements to provide access.

This Commission, segTEL argues, recommended approval of Verizon's entry into the interstate long distance market in part on the basis that Verizon was offering line sharing to CLECs, and conditioned its approval on the conversion of the SGAT to a tariff. Therefore, segTEL claims, the items in the SGAT were section 271 elements. As the Maine Commission found in 2004, segTEL contends, Verizon's unbundling obligations under sections 251 and 252 are synonymous with its section 271 obligations at the time when Verizon sought section 271 approval. Today, segTEL claims, an RBOC's section 251 obligations are narrower in most

respects than its section 271 obligations.

Even though the competitive landscape has changed since Verizon's section 271 approval, segTEL continues, Verizon may not change the conditions on which the approval was based by failing to honor one of those underlying commitments.

According to segTEL, the Telecommunications Act makes a clear distinction between sections 251 and 271: section 251, in subsections (d)(1) and (2), requires the FCC to determine what elements should be unbundled and, absent a determination by the FCC that CLECs are impaired without access to those elements, the elements cannot be required to be unbundled. Section 251 preserved the authority of the Commission, segTEL contends, so long as the Commission does not substantially prevent implementation of the Telecommunications Act. Compare this to section 271, segTEL suggests, which sets forth the requirements of an RBOC to enter the interstate long distance market. Section 271, according to segTEL, is a contractual obligation with no section 251 impairment standard: it is a separate prerequisite and an ongoing commitment.

segTEL goes on to assert that state commissions retain a role in review of an RBOC's continued compliance with the section 271 checklist. According to segTEL, not only does the Telecommunications Act specifically require the FCC to consult with state commissions, *see* 47 U.S.C. § 271 (d)(2)(b), but the FCC views state commissions as having the authority to enforce compliance. segTEL quotes from paragraph 171 of the FCC order granting Verizon section 271 authority in New Hampshire, which refers to the "continuing oversight" of the Commission to reasonably assure "that the local market will remain open after 271 authority

is granted." *In re Application by Verizon New England Inc.* 17 F.C.C.R. 18,660 (2002) (*NH 271 Order)* at ¶ 171. segTEL reiterates that Verizon had to meet the section 271 checklist to obtain approval, and must continue to meet the checklist after approval in order to maintain its authority to be in the interstate long distance market.

2. Line Sharing

Verizon's proposed tariff revisions cite CFR section 51.319(a)(1)(i)(A)-(B) and *TRO* paragraphs 255-269 as justification for changes to its line sharing offering. segTEL takes issue with Verizon's reliance on these provisions, taking the position that (a) nothing in the *TRO* requires CLECs to execute a separate agreement for line sharing, and (b) Verizon has not established that the elimination of line sharing complies with the requirements of section 271 of the Telecommunications Act. Further, segTEL argues, the FCC's rules are unclear as to what constitutes a "new" line sharing application. segTEL argues that its installation of line sharing terminations and splitter shelves constitute an existing line sharing application that should enable segTEL to continue to serve additional customers at existing TELRIC rates.

While segTEL concedes that the Commission may be preempted from mandating continued line sharing outside of the grandfathering and transition provisions of the FCC's rules under section 251, segTEL claims that Verizon's obligation to provide line sharing under section 271 is clear, inasmuch as paragraph 105 of the *NH 271 Order* explicitly states that the FCC's "conclusion that Verizon complies with checklist item 4 [271(c)(2)(B)(iv)] is based on [the FCC's] review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL capable loops, digital loops, high capacity loops, as well as our

review of Verizon's processes for hot cuts, line sharing and line splitting." (emphasis added by segTEL.)

In its reply brief, segTEL takes issue with the language of Verizon's revisions, claiming that Verizon's new tariff language is incorrectly line specific when the *TRO* is clearly customer specific. segTEL supports language that would allow customers to take existing line sharing services with them when they relocate.

In its supplemental brief, segTEL argues that the absence of line sharing in Tariff 84 will force CLECs to negotiate interconnection agreements with Verizon to continue to provide line sharing, a process segTEL describes as burdensome. segTEL argues that the promotion of competition and the development of broadband access to the Internet are important public policy goals, consistent with both the federal regime and state law and policy. Allowing Verizon to eliminate line sharing would thwart these clear public policy goals, according to segTEL, and exacerbate the difference between DSL rates in urban and rural areas due to the disparity in the price of full loops in Tariff 84 ($11.97 in urban areas and $25.00 in rural areas).

3. Dark Fiber Feeder Subloop

In its reply brief, segTEL asserts that Verizon ignores the plain language of the *TRO* in attempting to carve out dark fiber feeder subloops from the list of required UNEs. According to segTEL, the local loop element is designed as the facility between a distribution frame in a central office and the loop demarcation point at a customer premise, and nothing in the applicable regulation supports Verizon's argument that a segment of this element is excluded from the access requirements.

4. IOF

Verizon's proposal to terminate, as soon as possible, all current and future service over OC3, OC12, or STS1 transmission facilities except as provided for under an effective interconnection agreement may be consistent with the *TRO*'s implementation of the Telecommunications Act, segTEL concedes, but it ignores Verizon's obligations under section 271 of the Telecommunications Act. Further, segTEL states that a state decision mandating continuation of OCn/STS transport UNEs could not conflict with the FCC's rules, since nothing in the rules addresses such transport. segTEL asserts that although the *TRO* allows Verizon to remove UNEs from the list of available elements, there is nothing in the Telecommunications Act that requires Verizon to do so. Moreover, according to segTEL, there is nothing in the *TRO* to indicate that continued provision of such services would frustrate or substantially prevent an FCC goal, so no preemption of state law can exist for IOF.

5. Dark Fiber Channel Terminations

segTEL makes no explicit argument regarding the elimination of dark fiber channel terminations UNEs.

C. MCI

1. General Argument

MCI contends that the *TRO* does not preempt states from establishing additional unbundling under state law, citing the statement by the FCC at paragraph 191 of the *TRO* that "[m]any states have exercised their authority under state law to add network elements to the national list." Indeed, avers MCI, the FCC rejected Verizon's argument that there is no

independent state role in unbundling determinations. The FCC deferred the issues of preemption to future proceedings, MCI notes, suggesting that a conflict between state and federal law would require a declaratory ruling from the FCC. MCI suggests that any reading of the *TRO* that does not give substantial leeway to the states would itself conflict with the Telecommunications Act, which explicitly recognizes the power of states to order greater unbundling than the FCC at section 251(d)(3) and section 252(e)(3). Withdrawal of the UNEs proposed by Verizon, in MCI's view, would conflict with the Commission's rulemaking authority in RSA 365:8, its power to reject rates that are not just reasonable and in the public interest as set forth in RSA 378:7 and Rule Puc 1311 authorizing the unbundling of ILEC facilities.

Verizon's proposal fails to include adequate transition procedures, MCI asserts, which must be in place in order to prevent disruptions in customer service. In fact, MCI says, Verizon proposed to unilaterally discontinue access to the UNEs at issue on December 6, 2003, without regard to possible service disruptions, an action that MCI contends would fly in the face of FCC policy and the Commission's interest in preventing harm to consumers. MCI urges the Commission to ensure that Verizon establishes an adequate transition framework before its tariff revisions take effect.

2. Line Sharing

MCI takes issue with Verizon's revisions as they apply to line sharing for three reasons. First, MCI argues that Verizon uses the ambiguous term "existing rates" as opposed to the *TRO* language that sets the price to that "charged prior to the effective date" of the *TRO*. Second, according to MCI, Verizon's tariff revisions restrict grandfathering to an "end user

customer over that Loop or Subloop at that location," overstating the *TRO*'s non-location-specific standard of a "particular end-user customer." Finally, MCI contends that the *TRO* specifically provides for the inclusion of a "successor or assign" to the CLEC, while Verizon is limiting grandfathering to "the TC."

3. Dark Fiber Feeder Subloop

MCI contends that dark fiber feeder subloops must be made available on an unbundled basis because they are components of dark fiber loops and the *TRO* did not alter this requirement. MCI states that Verizon's justification for the elimination of dark fiber feeder subloops rests on paragraph 253 of the *TRO* which, MCI says, address fiber feeder subloops generally. Since the FCC treated dark and lit fiber quite differently throughout the *TRO*, according to MCI, Verizon's lit fiber analogy does not support its argument that the *TRO* bars the unbundling of dark fiber subloops. MCI argues that a proper conflict preemption analysis pursuant to section 251(d)(3) would result in a finding that the unbundling rules challenged by Verizon would stand, particularly with respect to dark fiber feeder subloops.

4. IOF

MCI asserts that Verizon has identified no provision or purpose of the Telecommunications Act that would be undermined by the unbundling on state law grounds of the high capacity transport UNEs at issue in this docket, because the question is not whether the state requirements and the *TRO* are identical, but whether state requirements substantially prevent the requirements of the Telecommunications Act itself.

5. Dark Fiber Channel Terminations

MCI did not address dark fiber channel terminations specifically.

D. GWI

1. General Argument

GWI asserts that Verizon has grossly overstated the purported preemptive sweep of the *TRO*. Citing section 251 of the Telecommunications Act, GWI argues that a state may require UNEs not unbundled by the FCC so long as the state's action does not undercut the Federal scheme. According to GWI, section 251(d)(3) states that the FCC shall not preclude the enforcement of any regulation, order or policy of a State Commission that (a) established interconnection obligations of LECs, (b) is consistent with the requirements of section 252, and (c) does not prevent implementation of section 252 and the purposes of the Telecommunications Act. Indeed, says GWI, the FCC acknowledged at paragraph 192 of the *TRO* that Congress explicitly declined to preempt states in the field of telecommunications regulation, concluding that "[i]f Congress intended to preempt the field, Congress would not have included §251(d)(3) in the 1996 Act." Instead, GWI explains, the FCC established a procedure by which aggrieved parties may seek review of a state's decision by the FCC, and subsequently test that review in court, if necessary. Citing action by the Pennsylvania Public Utility Commission (Pennsylvania PUC), GWI argues that the state can differ from the *TRO* if the Commission does not have enough information to forecast the outcome of FCC and court review of whether its varying requirements substantially prevent the Federal scheme. GWI attached to its brief the Comments of National Association of Regulatory Utility Commissioners (NARUC) to the Court of Appeals

that decided *USTA II*. NARUC's brief addresses whether the FCC can remove the states' authority that was preserved in section 251(d)(3). NARUC contended that the FCC's finding was contrary to the reservation of state's rights to set prices that are subject to review by federal district courts under section 252(e)(6).

In its reply brief, GWI characterizes Verizon's argument that New Hampshire is powerless to enforce Verizon's section 271 obligations as disingenuous. GWI points out that the FCC reviewed the pricing procedures at great length during approval of Verizon's petition for section 271 authority in New Hampshire and, although the FCC took issue with some aspects of the Commission's rate setting, the FCC in no way suggested that the Commission's authority to review rates was limited. In fact, according to GWI, the FCC noted that elements germane to the section 271 review might be altered by this Commission in the future if the Commission were to initiate a new rate proceeding. GWI contends that Verizon supports its position by extracting a quotation from paragraph 664 of the *TRO* which says that the FCC would determine whether section 271 rates were just and reasonable in the course of a section 271 enforcement proceeding. GWI points out that the FCC stated this during a discussion concerning the interplay between sections 251 and 271, noting that (a) an RBOC such as Verizon may be required to make elements available under section 271 that it might not otherwise be required to make available under section 251, and (b) that pricing for such elements would be judged under a "just and reasonable" standard. In further support, GWI cites the *NH 271 Order*, in which the FCC explicitly rejected AT&T's argument that the FCC was required to evaluate the checklist by looking at more than 150 UNE rates on an element-by-element basis. Clearly, according to GWI,

the FCC would not now exclude the states from the rate-setting business in connection with section 271 UNEs; rather, the FCC will continue to review state-set rates for those elements required to be unbundled under section 271.

2. Line Sharing

Citing paragraphs 255 through 270 of the *TRO*, GWI contends that the FCC considered economic and operational reasons for reinstating line sharing. Although Verizon's revisions are consistent with the *TRO*, GWI argues, the Commission should independently consider whether line sharing should be offered on an ongoing basis in order to further state policies in support of access to the Internet. GWI encourages the Commission to make an independent assessment, arguing that rural loop rates of $25 would make it impossible to deliver DSL at competitive prices, in direct conflict with the best interests of the residents and businesses of New Hampshire.

3. Dark Fiber Feeder Subloop

GWI takes the position that Verizon's tariff revisions regarding dark fiber feeder subloop are not consistent with the *TRO*. GWI points out that there is a category of dark fiber subloop that is not covered by the FCC's description of UNEs. This category is an intermediate part of the loop: not distribution, which requires an end point at a user premise; and not feeder, which requires an end point at a central office. According to GWI, this intermediate portion of the loop runs from a hard termination point to another hard termination point. To the extent that such dark fiber was already offered in the SGAT, GWI asserts, Verizon must continue to provide it. The FCC was careful, GWI avers, to ensure that ILECs would eliminate only those UNEs

that enable the transmission of packetized information, while Verizon's tariff revisions fail to capture that distinction and deny access to all features, functions and capabilities of the subloop.

4. IOF and Dark Fiber Channel Terminations

GWI took no position on IOF or dark fiber channel terminations.

E. Covad

1. General Argument

Covad asserts that the Commission has the authority to enforce Verizon's continuing obligations under section 271 because the Act preserves a state role in the review of RBOC compliance with its section 271 checklist obligations. Citing the Pennsylvania PUC's decision to retain UNE-P[7] as an unbundled element, Covad argues that the checklist contains an undisputed continuing obligation to unbundle local switching. In similar manner, Covad contends, the FCC anticipates that a state Commission's active oversight and comprehensive review would ensure that competitive markets remain open.

Covad further contends that a state may establish its own unbundling, asserting that courts have long held that federal regulation of a particular field is not presumed to preempt state law unless the nature of the regulation permits no other conclusion or Congress has unmistakably ordained that the federal law have preemptive effect. Covad contends that the U.S. Supreme Court has refused to diminish the role of state commissions in overseeing local competition, noting that although the FCC may have plenary authority to implement the

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[7] UNE-P, or unbundled network element - platform, is the provision of local loop and switching UNEs in combination.

Telecommunications Act, the FCC would be precluded from eliminating state review altogether. Thus, Covad argues, the FCC's apparent intent to preclude states from exercising their section 251 and section 252 authority notwithstanding, this Commission should not be dissuaded from requiring Verizon to provide line sharing as a UNE.

Several states have independently required unbundling, says Covad, pointing to California and Minnesota as states that have unbundled line sharing, and to Illinois, Wisconsin, Indiana and Kansas as states that have unbundled hybrid loops. Further, Covad states that the FCC has acknowledged that the availability of UNEs may vary between geographic regions, thus, if state-specific circumstances exist, state rules requiring unbundling are permissible and would not substantially prevent the implementation of section 251.

Covad states that the Commission is authorized under section 271 to require that checklist UNEs be priced at cost-based, forward-looking rates. Even if an element is no longer a UNE pursuant to section 251, Covad explains, it must nonetheless be priced appropriately in accordance with sections 201, 202 and 271 of the Telecommunications Act. The FCC has neither ordered nor precluded the application of TELRIC prices that were developed under section 251 for these UNEs, says Covad. In fact, Covad claims, the principles of TELRIC must be applied in some form, as Congress has barred the use of traditional rate-base, rate of return methods of utility pricing since enactment of the Telecommunications Act.

The review of such rates is squarely within the jurisdiction of the Commission, Covad asserts, inasmuch as the U.S. Supreme Court has upheld TELRIC methodology on the condition that state commissions retain the authority to use and apply TELRIC in setting final

rates for their respective states. The Pennsylvania PUC determined that rates for UNE-P under section 271 would be existing, approved Pennsylvania UNE rates, according to Covad.

In its reply brief, Covad notes that the *TRO* is not self-executing. Rather, says Covad, the FCC's reiteration of the ILECs' obligations to comply with existing unbundling requirements demonstrates that the *TRO* rules are not immediately effective, but must be implemented in due course and in accordance with the authority granted by the Telecommunications Act. Thus, Covad asserts, this Commission is empowered to suspend, review and amend Verizon's proposed revisions to ensure compliance with federal and state law.

2. Line Sharing

Covad maintains that state-specific conditions exist that would allow the continued offering of line sharing in New Hampshire. The primary and deciding factor regarding the finding of non-impairment in the case of line sharing was the ability of competitors to obtain revenue from both the low and high frequency portions of the loop, including voice and data bundles using line splitting (which allows two CLECs to share the loop, with one providing voice service over the low-frequency portion and the other providing DSL over the high-frequency portion). Covad asserts that Verizon has not made line splitting operationally available in New Hampshire in a manner consistent with what Verizon provides to itself. In support of this claim, Covad contends that: (a) there are limitations on the timing of line splitting order which impact customers; (b) there are discriminatory "versioning" policies for submission of line splitting orders; (c) Verizon recently acted unilaterally to quash a change request that would allow line splitting migrations; and (d) Verizon refuses to provide line splitting with resold voice

services. Because of these operational and cost disadvantages, Covad argues, competitors face severe competitive disadvantages in obtaining all potential revenues from using the full functionality of the loop, making the FCC's impairment finding out of line with the facts as they exist in New Hampshire.

Covad asserts that the Commission has independent state law authority to order line sharing as a UNE pursuant to the Commission's independent authority to foster competition in the local telecommunications market. Covad further believes that the Commission should exercise its ratemaking authority under RSA 378 to require Verizon to provide line sharing at forward-looking, cost-based rates. Again citing to the Pennsylvania PUC, Covad believes that the Commission could set rates equivalent to those UNE rates that the Commission has already approved, as nothing in the Telecommunications Act or *TRO* would prohibit the Commission from determining that those rates remain just and reasonable. It is crucial, in Covad's view, that the Commission not cede its authority to set rates that are pro-competitive, pro-consumer, and which reflect Congress's goals for the Telecommunications Act.

In its reply brief, Covad asserts that the Commission is empowered under section 271 to require Verizon to provide access to line sharing at cost-based rates. Covad disagrees with Verizon, maintaining that line sharing falls squarely within the definition of a loop under checklist item 4, and, as such, must be priced at a rate not above costs that reflect a competitive forward-looking network. Covad claims that such rates are the bedrock of nondiscriminatory, just and reasonable pricing required by the Telecommunications Act and is unquestionably within the Commission's authority to regulate. Covad points to a Georgia Public Service

Commission (PSC) ruling that BellSouth must continue to provide line sharing pursuant to section 271. The Pennsylvania PUC, says Covad, also adopted the concept that section 271 imposes separate and independent obligations upon Verizon, irrespective of any impairment findings that may exist under section 251.

Covad rejects Verizon's argument that the only mechanism by which a competitor can obtain review of Verizon's pricing of line sharing is through an enforcement proceeding in front of the FCC. Such a process contravenes the dual-jurisdictional nature of regulation of telecommunications in the United States, according to Covad. Thus, in Covad's view, there is no cause to doubt the Commission's authority to enforce Verizon's section 271 obligations, including the provision of line sharing.

Finally, Covad takes issue with Verizon's proposed tariff language which denies continued line sharing to those customers whose loops require replacement or who change residences. The *TRO* makes clear, according to Covad, that a line-shared loop is grandfathered until a particular end user customer discontinues DSL service. Verizon has no right, Covad claims, to terminate line sharing due to a change in the physical loop that serves the customer, and Verizon's focus on "that loop or subloop" violates the FCC's grandfathering scheme. Similarly, Covad contends that if a customer moves from one location to another, Verizon's proposed language would allow it to terminate the grandfathering of that arrangement. That result is not permitted, says Covad, as the FCC rules state that grandfathering ends only when the ends user "cancels or otherwise discontinues its subscription." Covad also objects to Verizon's use of the ambiguous term "existing rates" instead of the *TRO* language setting the grandfathered

price to that "charged prior to the effective date" of the *TRO*.

3. Dark Fiber Feeder Subloop, IOF and Dark Fiber Channel Terminations

Covad made no argument regarding dark fiber feeder subloop, IOF or dark fiber channel terminations.

F. Conversent

1. General Argument

Conversent asserts that the Commission is not preempted from requiring the relevant UNEs, as the *TRO* contemplated a joint federal-state role in managing the transition to the new rules. Conversent maintains that, separate and apart from an ILEC's unbundling obligations under section 251, Verizon has an obligation under section 271 to offer access at just and reasonable rates. Conversent limited its argument to dark fiber transport, which was not one of the elements Verizon is seeking to remove from Tariff 84.

G. Lightship

Lightship concurs with and supports segTEL's arguments. Lightship contends that states may establish pricing and other terms of section 271 elements. In the *TRO*, according to Lightship, the FCC found that section 271 of the Telecommunications Act imposed separate unbundling obligations from those of section 251 at rates that are just, reasonable, and non-discriminatory. Lightship argues that, unlike sections 251(e) and 276(b) of the Telecommunications Act, section 271 does not unambiguously nor straightforwardly grant the FCC the authority to establish rates, terms and conditions for section 271 elements. Therefore, Lightship continues, it would be unlawful for the FCC to preempt this Commission from

exercising its section 152(b) authority to regulate section 271 rates, terms and conditions. In support, Lightship cites the U.S. Supreme Court decision in *AT&T vs. Iowa Utilities Board*, 525.U.S. 366 (1999), which upheld the determination that no preemption exists so long as state commissions apply the proper just and reasonable standard. Therefore, Lightship continues, the Supreme Court has endorsed state commissions' continuing role in the ratemaking process. Lightship wants the Commission to order Verizon to continue to comply with its section 271 obligations.

IV. COMMISSION ANALYSIS

The situation presented here is confronted in one form or another by all the states served by Verizon. It is, in point of fact, nearly identical to that confronted by the Maine PUC as described in its September 3, 2004 order in the agency's Docket No. 2002-682 (*Maine Order*). As we did, the Maine PUC proposed in connection with Verizon's request for section 271 authority that the Company's wholesale rates be filed with the state commission in the form of a tariff. As here, the FCC incorporated this commitment into the order granting section 271 authority. And, as with the approval of section 271 authority for Verizon in New Hampshire, the Maine PUC determination antedated the FCC's *TRO* and the *USTA II* decision of the U.S. Court

of Appeals for the District of Columbia Circuit.[8] Maine decided, *inter alia*, (1) that Verizon must include all wholesale offerings in its state wholesale tariff, including UNEs provided pursuant to section 271, and (2) the state commission had authority to approve "just and reasonable" rates for section 271 UNEs in accordance with the standard set forth in Sections 201 and 202 of the Telecommunications Act, 47 U.S.C. § 201-02. We agree for the most part with Maine's approach and reach generally the same conclusions, although we differ on certain specifics, making adjustments as appropriate to circumstances in New Hampshire.

In both Maine and New Hampshire, when Verizon obtained section 271 authority the RBOC's unbundling obligations under sections 251 and 271 were identical. *See Maine Order*, slip op. at 4. The intervening events – issuance of the *TRO* and the *USTA II* decision – changed this landscape, such that Verizon's section 251 obligations were narrowed because, as to some elements, CLEC ability to provide the corresponding services was not impaired without the ability to purchase section 251 UNEs from the RBOC. Among the obligations no longer within the section 251 ambit are the four UNEs at issue in this case which Verizon seeks to remove from its tariff, *i.e.*, line sharing, dark fiber feeder, interoffice transmission facilities (IOF) consisting of OCn (Optical Carrier number) and STS1 (Synchronous Transport Service) transport, and dark fiber channel terminations.

We address first Verizon's general argument that the FCC's elimination of an

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[8] There are also differences between the situations in the two states. Unlike this agency, the Maine PUC did not approve an SGAT prior to its appearance as a wholesale tariff in November 2002. Accordingly, as soon as Verizon filed a wholesale tariff the Maine PUC suspended the tariff. It remained suspended thereafter. Thus, before the Maine PUC when it issued the *Maine Order* was the entirety of the Verizon wholesale tariff, including provisions that are analogous to the tariff revisions that give rise to this proceeding. The legal issues, regarding the role of state commissions subsequent to RBOC receipt of section 271 authority, are identical.

element as a section 251 obligation allows Verizon to remove that element from its wholesale tariff altogether. The FCC made clear in the *TRO* that the removal of a UNE from the list of section 251 obligations because of a lack of impairment did not automatically resolve the question of whether an RBOC must still make that UNE available under section 271. *See TRO* at ¶¶ 652-655. The FCC's *TRO* has in fact rejected Verizon's arguments that once the FCC determined that a UNE is not necessary under section 251, the corresponding 271 checklist item should be construed as being satisfied. In rejecting this position, the FCC made it clear in the TRO that "the BOCs have an independent obligation under section 271 (c)(2)(B) to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at reasonable rates." The FCC further concludes that RBOC obligations pursuant to section 271 are "not necessarily relieved based on any determination [by the FCC] under the section 251 unbundling analysis." *Id.* at ¶ 655.[9] The FCC's conclusions were reaffirmed in *USTA II. See USTA II,* 359 F.3d at 589-90. Accordingly, determining whether the four elements at issue here remain as Verizon obligations under section 271 requires a case-by-case analysis. At the same time, it is clear as a general matter that, to the extent an obligation persists under section 271, the pricing standard changes. As a section 271 element, pricing will be based on a "just and reasonable" standard and not on TELRIC. *TRO* at ¶ 656.

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[9] In arguing to the contrary, Verizon invokes paragraph 660 of the *TRO*. In paragraph 660, the FCC noted that only 2.5 percent of ILEC switched access lines nationwide were served by LECs that are neither RBOCs nor rural telephone companies exempt from section 251 unbundling obligations. According to Verizon, in light of these facts it "trivializes" the FCC's decision to phase out line sharing as a section 251 obligation to determine, in effect, that the decision applies only to 2.5 percent of ILEC switched access lines. December 6, 2004 Comments of Verizon NH in Docket No. DT 04-176 at 15. Verizon reads too much into paragraph 660. The conclusion actually drawn by the FCC in paragraph 660 is that the agency's section 251 impairment determinations should not apply only to ILECs that are not RBOCs because that would tend to render section 251 "superfluous." Nothing in our decision today is intended to suggest that the FCC's impairment determinations should not apply to Verizon.

Before we undertake the case-by-case determinations, however, we examine the extent of our authority, under section 271 or otherwise, to determine whether Verizon must continue to offer delisted section 251 UNEs as section 271 elements. The first step in that examination focuses on Verizon's obligation to file a wholesale tariff.

As the FCC noted in the 271 Order, the Commission initially identified ten separate conditions as necessary for recommending that the FCC grant section 271 authority; Verizon agreed to comply with six of them. *See NH 271 Order* at ¶4 n. 10 and ¶5 n. 11. Among the conditions agreed to by Verizon was the requirement that Verizon "explicitly convert the existing statement of generally available terms and conditions (SGAT) into a competitive LEC tariff from which competitors may order anything contained in the SGAT without the need to negotiate or amend an interconnection agreement." *Id.* at ¶4 n. 10. Ultimately, the Commission recommended that the FCC grant section 271 authority subject to the conditions as set forth in a letter to Verizon dated June 14, 2002. *Id.* at 5. It is undisputed that these conditions, including the wholesale tariff obligation, form part of the basis for Verizon's receipt of section 271 authority.

The *NH 271 Order* notes that Verizon agreed to submit a wholesale tariff, and the order did not distinguish between section 251 and section 271 obligations. We find it reasonable and appropriate, as did the Maine PUC, to interpret Verizon's tariff filing obligation as embracing the unbundling obligations of both section 251 and section 271. Indeed, in the introduction to Verizon's SGAT Verizon notes that the SGAT is filed under sections 251, 252 and 271 of the Telecommunications Act. (SGAT p.1). Additionally, Verizon committed to

"promptly file modifications to its SGAT and tariff to reflect changes in the services and network elements required by the federal Telecommunications Act, as determined by the FCC or the courts" in its letter to the Commission filed in DT 01-151 on March 15, 2002. In other words, Verizon remains obligated to have a wholesale tariff on file with our agency and an FCC decision to remove a UNE as a section 251 requirement does not automatically eliminate it as an unbundled element that Verizon must offer in its wholesale tariff.

Having determined that Verizon is obliged to file a wholesale tariff, we next examine the implications of that obligation. In granting Verizon section 271 authority in New Hampshire, the FCC made explicit reference to an ongoing role for this agency under section 271 in paragraphs 172 through 174 of the *NH 271 Order.* After affirming that Verizon has continuing obligations under section 271 pursuant to subsection (d)(6), the FCC affirmed its own authority to exact compliance, *NH 271 Order* at ¶ 172. The FCC indicated its readiness to assert such authority while "[w]orking in concert" with this Commission. *Id.* at ¶ 173. The FCC also stated that it would not describe the post-approval enforcement framework because it had already done so in prior section 271 approvals, *i.e.*, those covering Kansas and Oklahoma, Texas and New York. *Id.* at ¶ 172.

The FCC's New York 271 approval order, *In re Bell Atlantic New York*, 15 F.C.C.R. 3953 (1999) (*NY 271 Order*), the earliest of those cited, offers the most complete description of the FCC's view of post-approval section 271 enforcement. The FCC noted that by enacting section 271 Congress intended to give RBOCs an incentive to take actions that would tend to accelerate competition in RBOC-dominated telecommunications markets, observing that

the incentive "may diminish" once an RBOC had received section 271 authority. *Id.* at ¶ 446. Therefore, reasoned the FCC, "[s]wift and effective post-approval enforcement of section 271's requirements . . . is essential to achieve Congress's goal of maintaining conditions conducive to achieving durable competition in local markets." *Id.*

After enumerating the various enforcement remedies in section 271, most particularly the ability to suspend an RBOC's section 271 authority, the FCC indicated that it intended to be active and vigilant in this regard. But the FCC went on to stress that

> [i]n addition to FCC-initiated enforcement actions (such as forfeitures, suspensions, and revocations), Congress provided for the expeditious review of complaints concerning failure by a BOC [*i.e.*, an RBOC] to meet the conditions required for section 271 approval. Such complaints may include requests for damages. The Commission will consider and resolve those complaints alleging violations of section 271 as well as the Commission's rules and orders implementing the statute. Complaints involving a BOC's alleged noncompliance with specific commitments the BOC may have made to a state commission, or specific performance monitoring and enforcement mechanisms imposed by a state commission, *should be directed to that state commission* rather than the FCC.

Id. at ¶ 452 (footnotes omitted, emphasis added).

Given these legal and factual circumstances, we share the view of the Maine PUC that as a state commission we have the authority to determine whether Verizon's wholesale tariff, including any changes proposed by Verizon, remains in compliance with the obligations Verizon voluntarily undertook in exchange for the right to offer interLATA service. Although, as Verizon notes, subsection (d)(6) of section 271 refers specifically to the FCC's role in post-approval section 271 enforcement, the FCC itself has repeatedly recognized that state commissions may receive and evaluate complaints of non-compliance with the conditions to which the RBOC and the state commission have agreed. In this case, like our Maine counterparts, we do not assert independent authority to define the scope of Verizon's section 271

obligations nor its compliance with those obligations under that section. We are performing our duty as the initial arbiter of disputes over whether Verizon continues to meet the specific commitments previously made to this Commission as a condition for its recommendation that Verizon receive section 271 interLATA authority. *See NY 271 Order* at ¶ 452.[10]

We now examine each of the four elements, line sharing, dark fiber feeder subloop, IOF and dark fiber channel terminations, in the context of the section 271 checklist, to determine whether Verizon remains obliged to offer them in its wholesale tariff. Subsection (c)(2)(B) of section 271 sets forth the "[c]ompetitive checklist" of items that RBOCs must offer CLECs in order to meet the "access and interconnection" requirements for interLATA long-distance authority. Two section 271 checklist items are relevant to determining whether Verizon remains obligated to provide the four elements noted above: checklist item 4, "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services;" and checklist item 5, "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services;" § 271(c)(2)(B)(iv) and

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[10] In arguing to the contrary – specifically, in the course of urging the Commission not to require Verizon to offer line sharing to CLECs as part of the wholesale tariff – Verizon relies on a statement in *SBC Communications v. FCC*, 138 F.3d 410 (D.C. Cir. 1998) that "Congress has clearly charged the FCC, not the state commissions," with making certain determinations under section 271. *Id.* at 416. At issue was whether the RBOC was entitled to section 271 authority, notwithstanding certain objections interposed by the relevant state commission, rather than whether the state commission had an enforcement role to play after the FCC allowed the RBOC to enter the interLATA market.

A similar point can be made about *Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission*, 359 F.3d 493 (4th Cir. 2004), also relied upon by Verizon. At issue in that proceeding was whether, during the long-distance application process, a state regulatory commission had the power to enter an order designed to ensure the RBOC would continue to meet its section 271 obligations. The U.S. Court of Appeals for the Fourth Circuit answered the question in the negative, deciding the case on preemption grounds. The Court held that the state regulatory commission could not "parlay its limited role in issuing a recommendation" to the FCC on whether to grant section 271 authority "into an opportunity to issue an order, ostensibly under state law, dictating conditions on the provision of local service." *Id.* at 497.

(v).

Of the four elements that Verizon seeks to remove from Tariff 84, it is line sharing, which uses the high frequency portion of the local loop, that has engendered the most controversy. We must determine whether checklist item 4, which requires the unbundling of local loops, includes a requirement for the continued provision of line sharing as a section 271 element. The FCC's regulations define line sharing as "the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop." 47 C.F.R. 319(a)(1)(i). According to the pleading submitted by ALTS on February 18, 2005, the widespread advent of line sharing in 2002 was largely responsible for creating broadband services that gave consumers high-speed access via DSL (digital subscriber lines) to the Internet, both because consumers could obtain this service from CLECs and because the competition induced ILECs themselves to offer DSL service at a more reasonable rate. Whether or not such an interpretation is a fair assessment, there is no question that the broader availability of line sharing, and therefore DSL, in New Hampshire, particularly in rural areas, is encouraged by this Commission and by state statute. *See* RSA 374:22-j, VI.

Checklist item 4 refers only to "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." If the phrase "local loop" can be understood as having been intended to include all the functionalities of a loop on an unbundled basis, then line sharing is required by checklist item 4. We conclude that it is, relying on, among other things, the Statutory Appendix to the *NH 271 Order*. In this appendix, the FCC specifically addressed how RBOCs can establish that they are in compliance with checklist item 4. *Inter alia*, the RBOC "must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested." *NH 271 Order*, Appendix F at ¶ 49. We understand the high frequency portion of the loop – or, more specifically, the use of that portion of the loop to provide DSL service – to be a "functionality of the loop." The D.C. Circuit has a similar understanding of what "functionality of the loop" means. *See USTA II*, 359 F.3d at 554 (referring, albeit in passing, to the "full functionality of the loop" as including "voice, data, video, and other services.") The discussion of line sharing in the FCC's *TRO Order* further buttresses the notion that line sharing is an individual "functionality of the loop." *See TRO Order* at ¶ 258 ("Whereas in the Line Sharing Order, the focus was only on the revenues derived from an individual service, our focus is on all the potential revenues derived from using the full

functionality of the loop.").[11] Additionally, the FCC specifically included line sharing in its analysis of Verizon's compliance with the competitive checklist, including line sharing as one of the elements it reviewed as part of Verizon's compliance with checklist item 4. See *NH 271 Order*. Also, Verizon itself listed line sharing as one of the items it offers to carriers in its checklist declaration to this Commission in Docket No. DT 01-151 filed on July 31, 2001. Accordingly, we determine that checklist item 4 includes a requirement to provide line sharing.

The next element we consider is dark fiber feeder subloop. Because a subloop is a distinct segment of a complete loop, we must determine whether checklist item 4 includes a requirement that subloops, in particular dark fiber feeder subloops, are required for section 271 compliance. We answer the question in the affirmative, noting that Verizon does not suggest to the contrary. The only argument Verizon makes about dark fiber feeder subloop is that the FCC determined in the *TRO* that ILECs were not required under section 251 to offer unbundled access to fiber feeder loop plant. TRO at ¶ 253 (determining that copper subloops were subject to section 251 unbundling). This is not dispositive of whether Verizon remains obliged to provide

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[11] We acknowledge that the FCC is not necessarily the final arbiter of what Congress meant when it used the phrase "local loop" in checklist item 4. However, we are aware of no federal court that has disagreed with the FCC's construction of this statutory language. A court faced with such a question would be required to grant deference to the FCC under the Supreme Court's *Chevron* doctrine. *See Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (concluding that, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute").

such access under checklist item 4.[12] It is clear, however, that the FCC anticipated the provision of dark fiber feeder subloop as a section 271 element, stating, "we expect that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to ensure that competitive LECs have access to copper subloops." *Id.* We therefore determine that checklist item 4 includes dark fiber feeder subloops.

MCI and segTEL argue that Verizon's proposal to remove dark fiber feeder subloop as a section 251 element is a misreading of the clear language of the *TRO*. While the *TRO* does not specify "dark" fiber in the discussion of dark fiber feeder subloop, this issue is rendered moot by the plain language of the *TRO Remand Order*, which removes all dark fiber loops, and therefore all dark fiber subloops, from Verizon's section 251 unbundling obligations. *See* 47 C.F.R. 51.319 (a)(6).

The third element we consider is IOF. IOF is transport between Verizon locations, and thus we must determine whether checklist item 5 includes IOF at OCn and STS levels. Since IOF was not a matter of any controversy in the New Hampshire 271 proceeding it is not discussed in the *NH 271 Order*. It is noteworthy that, in discussing IOF, Verizon relies exclusively on the contention that IOF is no longer a section 251 obligation. We agree that IOF at the OCn and STS level is no longer a section 251 obligation, but we disagree as to the

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[12] GWI makes an additional, related argument that the intermediate portion of the subloop, i.e., that portion of the subloop connecting a remote terminal to another remote terminal rather than customer premises, is still subject to section 251 unbundling. Because our decision today means that Verizon is still obliged to offer the intermediate portion of the subloop as a checklist item 4 element, the only question implicated by GWI's argument is whether TELRIC pricing still applies to this portion of the subloop. We defer that question until such time as Verizon seeks to deviate from the rates currently reflected in Tariff 84.

implications on Verizon's section 271 obligations and commitments to this Commission. We therefore determine that checklist item 5 includes OCn and STS transport.

Next we turn to dark fiber channel terminations which, if considered as transport, would require a determination as to whether such facilities are required by checklist item 5. As previously noted, there were a series of developments between the FCC and the Courts, after which the FCC declared that dedicated transport included "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." *TRO* ¶ 365 (footnote omitted). Applying this definition, which appears to include entrance facilities, the FCC found that CLECs are not impaired without access to entrance facilities, thereby eliminating the section 251 obligation. (*TRO Remand Order* ¶ 137).

Because the FCC has included entrance facilities within the elements that fall within the category of dedicated transport, and because dark fiber channel terminations are a form of entrance facilities, we must conclude that they remain elements addressed by checklist item 5. Therefore, consistent with our analysis above, Verizon must make dark fiber channel terminations available to satisfy its section 271 commitments.

Having said that, however, we must make two important observations. First, we are sympathetic to Verizon's arguments (and the FCC's original position on this issue) that these facilities may not truly be the type that must be offered on an unbundled basis. It would not be appropriate for this Commission, however, to countermand the language of the FCC and the

courts and simply declare dark fiber channel terminations are no longer required to be offered because we think it makes no sense, any more than it would be appropriate for Verizon to make such a unilateral determination. Until there is clearer guidance from the FCC or the courts on this issue, we find no basis to do other than to conclude that Verizon may not discontinue offering this element.

Second, we note that MCI and segTEL argued that Verizon is wrong to state that entrance facilities such as dark fiber channel terminations are no longer section 251 facilities. They argue that Verizon should continue to provide them not as just and reasonable rates under section 271 but at TELRIC rates under section 251. This issue has not been adequately developed and we decline to rule on the section 251 status of these entrance facilities in this docket. In the event Verizon proposes a tariff change we will evaluate the issue, including what role the Commission should play in the determination.

We have now reviewed Verizon's proposed tariff revisions and find that Verizon must continue to provide line sharing, dark fiber feeder subloop, dark fiber channel terminations and IOF as part of its wholesale tariff. By our actions today, we are not adding UNEs to those Verizon is currently obliged to offer. Neither are we reimposing section 251 unbundling requirements or making any determinations as to impairment. It is more accurate to say that we are continuing our oversight of Verizon's section 271 obligations.[13]

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[13] The parties make a variety of additional arguments, largely based on section 251 and/or state law. Because we decide the case based on legal principles arising out of section 271, we need not address these additional arguments.

Because our decision today has the effect of preventing Verizon from discontinuing the provision of certain network elements to CLECs, we must address pricing issues as to those elements. To the extent an element is eliminated by the FCC as a section 251 obligation and it persists as a section 271 obligation, the pricing standard changes from TELRIC to "just and reasonable." Our analysis of Verizon's obligation to file a tariff leads us inexorably to a conclusion analogous to that reached by the Maine PUC. Specifically, it would be a "hollow promise" if Verizon were to file a tariff with the expectation that the state commission has no role in reviewing the rates, terms and conditions contained in that tariff. As did the Maine PUC, we do not foreclose the possibility that Verizon may turn to the FCC regarding rates but we conclude that, unless or until the FCC acts, pricing is an area of concurrent jurisdiction and an example of cooperative federalism. Accordingly, as a state agency and being closest to the issues, if and when Verizon files changes to rates under its wholesale tariff, we will review such proposed changes in the normal course.

Until new rates are established for line sharing, dark fiber feeder subloop, dark fiber channel terminations and IOF, Verizon shall offer these section 271 elements at existing Tariff 84 rates. Accordingly, Order No. 24,268 (January 30, 2004) granting Verizon's request for relief from a determination in the Order of Notice that existing rates would remain effective pending review of proposed tariff changes is hereby vacated. The result of this determination is that Tariff 84 reverts to the form it took prior to our authorization in Order No. 24,268 of certain tariff revisions on a temporary basis pending the outcome of DT 03-201.

Our decision that line sharing must remain an unbundled network element offered by Verizon pursuant to Tariff 84 is also determinative with respect to the relief requested by

segTEL in DT 04-176. Accordingly, we grant the petition in DT 04-176. Our decision today is not intended to express any view as to the just and reasonable rate for any unbundled element offered by Verizon pursuant to Tariff 84 or, indeed, what tribunal would ultimately make such a determination. We simply conclude that Tariff 84 remains unchanged from the version that was applicable at the commencement of DT 03-201, and that the elements therein must be made available to CLECs.

Based upon the foregoing, it is hereby

ORDERED, that the proposed revisions to Tariff No. 84 submitted by Verizon New England in DT 03-201 are rejected, as described fully in the order herein; and it is

FURTHER ORDERED, that the petition of segTEL in DT 04-176 for a determination that Verizon New Hampshire remains obligated to provision line sharing pursuant to Tariff No. NHPUC 84 is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eleventh day of March, 2005.

Thomas B. Getz	Graham Morrison	Michael Harrington
Chairman	Commissioner	Commissioner

Attested by:

Debra Howland
Executive Director and Secretary

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLP, Global TelData II, LLC f/k/a Global TelData, Inc., Nuvox Communications of Illinois, Inc. and Talk America Inc.	:	**05-0154**
-vs-	:	
Illinois Bell Telephone Company	:	
XO Illinois, Inc. and Allegiance Telecom of Illinois, Inc.	:	
-vs-	:	**05-0156**
Illinois Bell Telephone Company	:	
Complaint pursuant to 220 ILCS 5/13-515.	:	
McLeodUSA Telecommunications Services, Inc.	:	
-vs-	:	**05-0174**
Illinois Bell Telephone Company	:	
Verified Complaint pursuant to 220 ILCS 5/13-515(e).	:	

ADMINISTRATIVE LAW JUDGE'S DECISION

I. PROCEDURAL HISTORY

On March 7, 2005, Cbeyond Communications, LLP ("Cbeyond"), Global TelData, Inc. ("Global"), Nuvox Communications of Illinois, Inc. ("Nuvox"), and Talk America, Inc. ("Talk"), (collectively, "Joint Complainants"), filed their joint verified Complaint (in Docket 05-0154) against Illinois Bell Telephone Company ("SBC"), alleging that SBC is violating each of the following: its interconnection agreements ("ICAs") with each of the Joint Complainants; its Illinois intrastate tariffs; Sections 13-514 and 13-801[1] of the Illinois Public Utilities Act ("PUA"); this Commission's Order in Docket 01-0614; the Federal Communications Commission's ("FCC's") SBC/Ameritech Merger Order[2] and Triennial

[1] Respectively, 220 ILCS 5/13-515 and 13-801.

[2] Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and

Review Order on Remand ("TRRO")[3]. Joint Complainants contend that SBC committed the foregoing alleged violations by issuing certain documents, known as Accessible Letters ("ALs"), in which SBC describes policies and procedures under which it will interact, as an incumbent local exchange carrier ("ILEC"), with competitive local exchange carriers ("CLECs"), including Joint Complainants. On March 14, 2005, SBC filed an Answer and Contingent Counterclaim in response to the Complaint, denying the essential allegations against SBC (and seeking certain affirmative relief).

Also on March 7, 2005, XO Illinois, Inc. ("XO Illinois"), and Allegiance Telecom of Illinois, Inc. ("Allegiance") (collectively, "XO"), filed a joint verified Complaint (in Docket 05-0156) against SBC, alleging that SBC is violating each of the following: its ICAs with XO; Section 252 of the Federal Telecommunications Act of 1996[4] ("Federal Act"); Article IX and Section 13-514 of the PUA; and 47 C.F.R § 51.809(a). XO contends that SBC committed the foregoing alleged violations by issuing the Accessible Letters about which Joint Complaints also complain. Like Joint Complainants, XO is a CLEC. On March 14, 2005, SBC filed an Answer and Contingent Counterclaim in response to Joint Complainants' Complaint, denying the essential allegations against SBC (and seeking certain affirmative relief).

On March 14, 2005, McLeodUSA Telecommunications Services, Inc. ("McLeod"), also a CLEC, filed its verified Complaint (in Docket 05-0174) against SBC, alleging that SBC is violating the following: its ICA with McLeod; this Commission's Order in Docket 02-0230; Section 13-514 PUA; Section 252 of the Federal Act; the TRRO; and 47 C.F.R § 51.809(a). McLeod contends that SBC committed the foregoing alleged violations by issuing the Accessible Letters about which Joint Complaints and XO also complain. On March 21, 2005, SBC filed an Answer in response to Joint Complainants' Complaint, denying the essential allegations against SBC.

In each of the foregoing three Complaints, the complaining parties requested emergency relief from implementation of SBC's Accessible Letters. On March 9, 2005, the Administrative Law Judge ("ALJ") handling Dockets 05-154 and 05-0156 granted the following interim emergency relief in each proceeding:

> SBC is ordered to continue to offer the same UNEs as required by the parties' current ICAs until those ICAs are amended pursuant to Section 252 or as directed by the Commission in its final order in this proceeding.

On March 16, 2005, another ALJ granted the following interim emergency in Docket 05-0174:

310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket 98-141, Memorandum Opinion and Order, FCC 99-279 (1999).

[3] In the Matter of Unbundled Access to Network Elements / Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, FCC No. 04-290, WC Docket No. 04-0313, CC Docket No. 01-338 (Dec. 15, 2004, rel. Feb. 4, 2005).

[4] 47 USC 252.

> SBC is ordered to continue to offer the same unbundled local switching service as required by the parties' current ICAs until those ICAs are amended pursuant to Section 252 or as directed by the Commission in its final order in this proceeding.

Pursuant to the terms of Section 13-515(e) of the Act[5], the foregoing ALJ decisions became Orders of the Commission because it did not enter superseding Orders of its own. SBC then sought rehearing of those Orders. On March 23, 2005, the Commission issued Amendatory Orders in all three dockets. The following directive was added to each:

> [P]ursuant to [Section] 252 of the Federal Telecommunications Act, SBC is not required to provide new UNE-P[6] to customers who are not, as of March 11, 2005, part of the CLECs' customer base.

Additionally, the Commission further amended ist Order in Docket 05-0174 by adding the specific interim emergency relief already awarded in Dockets 05-0154 and 05-0156 (quoted above). Consequently, the interim emergency relief in all three dockets is identical.

On March 17, 2005, the Commission Staff ("Staff") filed an Emergency Motion to Consolidate the three dockets. No party opposed that motion. On March 23, 2005, the Commission ordered that the three dockets be consolidated. With the agreement of all parties, the ALJ determined that the consolidated proceeding would be conducted on a schedule consistent with the statutory obligations associated with Docket 05-0174.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter was heard by an ALJ at the Commission's offices in Chicago, Illinois on March 18 and April 8, 2005. During the April 8 hearing, the ALJ concluded, upon recommendation by all parties, that no evidentiary hearing would be necessary in this case, provided that certain exhibits and stipulations were admitted to the record. Accordingly, the following written testimony was admitted without cross-examination or objection: (for Joint Complainants) Edward Cadieux of Nuvox, Julie Strow of Cbeyond, Francie McComb of Talk America and Mark Lieberman of Global TelData (for XO); Gladys G. Leeger; (for Mcleod) Julia A. Redman-Carter and Patrick J Herron; (for SBC) Carol Chapman. Additionally, motions for administrative notice by Joint Complainants and by McLeod were granted by the ALJ.

On April 25, 2005, the evidentiary record in the consolidated proceedings was marked "heard and taken."

[5] 220 ILCS 5/13-515(e).
[6] "UNE-P" is the acronym for "unbundled network element platform."

Joint CLECs, XO, McLeod, SBC and Staff have each filed an Initial Brief ("Init. Br.") and a Reply Brief ("Rep. Br.") addressing the issues here.

II. JURISDICTION

Joint Complainants, XO and McLeod each invoke the Commission's jurisdiction under Sections 13-514 and 13-515 of the PUA. XO and McLeod also invoke Section 13-516, and Joint Complainants also invoke 13-801 of the PUA and subsection 251(d)(3) of the Federal Act. SBC characterizes some of complainants' jurisdictional assertions as "legal conclusions" with which it "does not agree." However, it admits XO's assertions (which are also made by McLeod) "to the extent they are consistent with the statutes referenced therein."

The Commission finds that Section 13-515 of the PUA provides our jurisdiction to entertain complaints concerning purported violations of Section 13-514, and to impose the remedies set forth in Section 13-516. We also find that subsection 13-801(k) authorizes us to entertain complaints for violation of Section 13-801 through the procedures in Section 13-515. Subsection 251(d)(3) of the Federal Act does not, on its face, confer jurisdiction upon this Commission. Rather, it precludes federal preemption of state enforcement actions under the circumstances described in the subsection.

III. THE NATURE OF THE DISPUTE

This is a dispute among business adversaries in the context of regulated competition. One competitor, the ILEC, has been required by state and federal regulators (acting under legislative mandates) to provide the CLECs with access to (and use of) its own facilities and systems, which those competitors then use to serve customers obtained in competition with SBC and with each other. This arrangement has been predicated on the entwined rationales that competition would produce public benefit, that the ILEC's facilities and systems were already connected to customers, that such facilities and systems arose from (and were funded by) an historic and government-authorized monopoly, and that those facilities and systems were necessary inputs (whether financially or technologically) for the CLECs' competitive offerings. This has been a dynamic arrangement, as technology, market behavior and regulatory requirements have been in transformation since the inception of authorized competition.

The FCC's TRRO is the most recent transformative regulatory pronouncement. It alters existing requirements concerning three categories of the unbundled network elements ("UNEs") that CLECs obtain from ILECs in order to serve CLEC customers - "mass market" unbundled local switching ("ULS")[7], DS1 or DS3 local loops in ILEC wire centers meeting specified criteria (and all dark fiber loops), and unbundled, dedicated, DS1, DS3 and dark fiber interoffice transport on certain routes between ILEC wire

[7]"Mass Market" ULS serves end user customers using DS0 capacity loops.

centers. In each instance, the ILECs were relieved of obligations previously required by regulators and still included in their ICAs with CLECs. However, questions about the extent, timing and procedural prerequisites for such relief, and about the viability of state and other federal requirements, have occasioned a flurry of litigation.

Based on its view that the new TRRO requirements take immediate effect, prior to bilateral negotiations with CLECs, SBC initiated unilateral implementation by issuing the ALs mentioned above (AL-17 through AL-20[8]). The complaining CLECs lodged objection to the ALs; SBC rejected those objections, which led to the instant proceeding. In pertinent part, AL-17 addresses SBC's provision of ULS/UNE-P:

> Accordingly, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, CLECs are no longer authorized to place, nor will SBC accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P after March 11, 2005 will be rejected. The effect of the TRO Remand Order on New, Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative notwithstanding interconnection agreements or applicable tariffs.[9]

AL-18 also addresses SBC's provision of ULS/UNE-P and includes the following:

> As explained in [AL-17] as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after the effective date of the TRO Remand Order will be rejected.

AL-19 concerns SBC's loop and transport offerings, and includes the following:

> ...As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting

[8] CLECALL05-017 ("AL-17"), CLECALL05-018 ("AL-18"), CLECALL05-019 ("AL-19"), and CLECALL05-020 ("AL-20").
[9] "LSR" is the abbreviation for local service request.

> telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service requests (LSRs) for affected elements.

AL-20 also concerns SBC's loop and transport offerings, and includes the following:

> As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

After the ALJ granted emergency relief to XO and Joint Complainants, SBC issued AL-39[10], prescribing procedures by which CLECs must make the self-certification for obtaining high capacity loops and dedicated transport. In SBC's view, this AL implements the requirements of 234¶ of the TRRO.

SBC attached "TRO Remand Amendments" to AL-18 (ULS/UNE-P) and AL-20 (loops and transport) that SBC contends will, upon CLEC signature, immediately constitute the requisite revision to a complaining CLEC's ICA with SBC. SBC apparently views its proposed amendments as mechanisms for satisfying the FCC's requirement that ICAs be revised to reflect the TRRO, not as preconditions to implementation of the TRRO on March 11, 2005.

Accordingly, SBC's position is that its ALs, taken together, accurately characterize the regulatory changes announced in the TRRO, that unilateral implementation is permissible (indeed, expected) under the TRRO, that such implementation may take effect on March 11, 2005, whether or not SBC's ICAs with the CLECs have been revised, and that nothing else in federal or state law precludes such implementation on SBC's terms. (SBC acknowledges that ICA revision must occur, but that the provisions in the ALs can take effect before such revisions are completed.[11]) The position of the complaining CLECs is that SBC misconstrues what the TRRO requires substantively (particularly with respect to the definition of a CLEC's embedded customer base), that implementation of all of the TRRO's regulatory changes must

[10] CLECALL05-039.

[11] SBC also avers that some of the complaining CLECs' ICAs automatically incorporate regulatory changes, without negotiation.

occur through - and cannot occur until completion of - the change-of-law processes in the parties' ICAs, and that implementation cannot disregard the imperatives of state and federal laws and FCC orders.

IV. ANALYSIS AND CONCLUSIONS

A. ULS/UNE-P

In the TRRO, the FCC declared that it would "impose no section 251 unbundling requirement for mass market switching nationwide."[12] Because the FCC also found that CLECs utilize ULS "exclusively in combination with [ILEC] loops and shared transport in an arrangement known as...UNE-P,"[13] the TRRO rulings concerning ULS also determine the availability of UNE-P under Section 251[14].

Nonetheless, the FCC ordered the ILECs to continue providing ULS/UNE-P for the CLECs' embedded base of end-user customers during a 12-month transition period following the effective date of the TRRO[15]. There is no dispute that these directives were embodied in FCC Rule 51.319(d)(2), which became effective on March 11, 2005, as directed by the FCC in ¶235 of the TRRO. It is also undisputed that the TRRO itself took effect on that date.

SBC's essential stance in this proceeding is that, in view of the FCC's non-impairment determination under Section 251, the provision of ULS/UNE-P after the effective date of the TRRO (and its associated rules) would be unlawful. But if that position were correct, the FCC would lack the authority to establish a transition period at all[16]. SBC does not attack the transition period before this Commission, however. Instead, it seeks to implement its view of the transition, to preclude the CLECs from obtaining UNE-P for use beyond their embedded bases after March 11, 2005. Accordingly, the issue presented here does not concern whether the FCC can require an ILEC to continue providing UNEs after an FCC nonimpairment declaration. Rather, it concerns the FCC's intent regarding the timing of such provisioning[17] and the customers to whom the relevant UNEs can be dedicated.

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[12] TRRO ¶199.

[13] *Id.*, fn. 526.

[14] "To the extent that unbundling of shared transport...[was] contingent upon the unbundling of local circuit switching in the [TRO], the availability of [that] element[] on an unbundled basis continue[s] to rise or fall with the availability of [ULS]." *Id*, ¶200, fn. 529.

[15] *Id.*, ¶227.

[16] The FCC also established a post-nonimpairment transition period in the TRO. TRO, ¶532 ("By five months *after a finding of no impairment*, [CLECs] may no longer request access to [ULS]" (emphasis added).) The FCC expressly defended the legality of this post-nonimpairment mechanism. *Id.*, fn. 1630 ("We disagree with Chairman Powell's claim that permitting [CLECs] to transition their mass market customers off of unbundled switching over the course of a three-year period is either unreasonable or unlawful...Chairman Powell concedes that the Commission has the discretion to set forth reasonable transition periods....").

[17] "The only real dispute is one of timing, i.e., how soon may [an] ILEC stop providing new UNEs?" SBC Init. Br. at 3.

What, then, did the FCC intend for the transition period mandated by the TRRO? More specifically, did the FCC intend that the TRRO's substantive directives concerning ULS/UNE-P (and loops and transport) be implemented by the ILECs on March 11, 2005, prior to revision of the parties' ICAs? And if the FCC intended implementation before completion of the ICA amendment process, did it contemplate unilateral determination of the terms of implementation by an ILEC?

1. Must Bilateral ICA Amendment Precede TRRO Implementation?

In the TRRO, the FCC states that the transition period "shall apply only to the embedded customer base, and does not permit [CLECs] to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order."[18] Putting aside, for the moment, the exception clause in the quoted text (i.e., the final clause in the sentence), the FCC is plainly declaring that UNE-P is now unavailable outside of the CLECs' embedded customer bases. There is no transition for what might be called "non-customers."

The question therefore becomes whether there is anything "otherwise specified in this [TRRO]" that would permit CLECs to obtain ULS/UNE-P for customers beyond the embedded base after March 11. In the footnote to the exception clause, the FCC specifies that a requesting CLEC "shall continue to have access to shared transport, signaling, and the call-related data bases as provided in the [TRO] for those arrangements relying on [ULS] that have not yet been converted to alternative arrangements."[19] Do the "arrangements" that "have not yet been converted to alternative arrangements" include "arrangements" for all customers, or only for customers within the embedded base? This Decision concludes that what is "otherwise specified" in the TRRO is that *embedded* customers can be served by "new UNE-P arrangements" during the transition, until "alternative arrangements" have been made for *those* customers. There is nothing "otherwise specified" in the TRRO that authorizes "new UNE-P arrangements" for non-embedded customers.

Stating the CLECs' remaining entitlement during the transition period more affirmatively, the ILECs must provide, under the terms of a pre-transition ICA, ULS/UNE-P for the use of a customer served by the CLEC before the transition period began (i.e., the embedded base). However, customers properly identified as new customers are not included in this universe. They are not part of the embedded base for whom the transition period was designed by the FCC. Thus, there is no need for pre-implementation negotiation on this point. The FCC has already determined that embedded customers are entitled to ULS/UNE-P during transition, and non-customers are not.

Nevertheless, the fact that the embedded/non-embedded customer dichotomy is beyond negotiation does not mean that negotiation is unnecessary to the

[18] TRRO ¶227.
[19] *Id.*, fn. 627.

implementation of that dichotomy. Having mandated different post-impairment treatment for embedded and non-embedded customers, the FCC left open the practical task of distinguishing one group from the other. The embedded customer base is not self-defining. Indeed, SBC and the complaining CLECs do not even agree with respect to whether the embedded base pertains to customers or to the particular ULS/UNE-P arrangements used by those customers as of March 11.

Assuming here that the embedded base is defined by customers rather than lines (as this Decision concludes below), several practical implementation issues require consideration in order to effectuate the FCC's intention to treat new and embedded customers differently. Moreover, there are implementation issues affecting different stages of the transition period, because the carriers will need to identify *both* the customers that are in the embedded base on March 11 and the embedded customers who will be deemed to have subsequently lost their embedded status during the transition.

By way of example, and without purporting to be comprehensive this Decision identifies the following issues. Regarding the status of customers at the beginning of the transition, if SBC were processing an order for a new CLEC customer on or before March 11, 2005, would that customer be in the embedded base? Would it matter if the customer's order had been placed with the CLEC before that date, but not presented to SBC until afterward? If a timely order has been rejected by SBC, but resubmitted after March 11, must SBC process that order? Does it matter if the cause of rejection was an SBC error?

With respect to customers embedded on March 11, can the identity of a business customer be sufficiently altered to constitute a new customer? Would a business customer retain its embedded status if it subsequently moves to a nearby location, merges with another entity or is spun off? Would a residential customer remain in the embedded base after changing her/his residence? Would it matter if s/he retains her/his phone number? When a residential customer adds a new service line, is that part of embedded base? What is the status of an embedded customer who restores service after a cutoff during the transition? Importantly, these questions affect customer expectations – about which the TRRO expresses considerable concern[20] - as much as they do the revenues of the carriers here.

The FCC, in the TRRO, did not supply express criteria for answering the foregoing questions in particular, or for otherwise separating new and embedded customers. Consequently, the reasonable conclusion is that the FCC intended that the identification of new and embedded customers would be managed by the state Commissions as part of TRRO implementation at the state level. The FCC evinces a

[20] "In particular, eliminating unbundled access to [ILEC] switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors [footnote omitted]." TRRO ¶226.

clear preference in the TRRO for inter-carrier negotiations[21], with state Commission oversight, during which the ILEC will be assured of the increased prices established by the TRRO. Nothing in the TRRO suggests that SBC (or, for that matter, a CLEC) can unilaterally determine whether embedded base is comprised of customers or lines or, assuming it is comprised of customers, how to distinguish embedded from new customers[22]. Therefore, SBC and the complaining CLECs must negotiate the terms, conditions and processes by which embedded customers will be identified and by which their embedded status is forfeited.

Such negotiations should be confined to establishing the bases for distinguishing embedded and non-embedded customers. They should commence immediately and need not be conducted with, or on the same schedule as, the broader TRRO-mandated negotiations to amend the parties' ICAs. Instead, such negotiations must be completed within 28 days of the entry of this Decision[23]. This will carry out the FCC's two-pronged intention to promptly freeze ULS/UNE-P while assuring continuity of service to embedded customers as they make substitute telecommunications arrangements.

Once the guidelines and processes for separating embedded and non-embedded customers are in place, SBC will be free to deny ULS/UNE-P for service to properly identified non-embedded customers, irrespective of the status of other negotiations – that is, the negotiations conducted on a Section 252 track, consistent with TRRO directives, to remove SBC's Section 251 unbundling duties per the TRRO, to establish the terms governing ULS/UNE-P procurement and maintenance for embedded customers during the transition, and, where needed, to determine prices for UNEs provided under Section 271 of the Federal Act and Section 13-801 of the PUA.

It is certainly conceivable that, pending completion of the foregoing negotiations, some number of non-embedded customers will receive ULS/UNE-P to which they are not entitled under Section 251. However, SBC has already assumed that risk, having pledged to continue filling the CLECs UNE-P requests until certain state law issues (discussed below) have been resolved. And more to the point, this Decision does not authorize the CLECs to obtain ULS/UNE-P for non-embedded customers. To the contrary, it unambiguously declares that only embedded customers can be served via those UNEs during the transition. Accordingly, a CLEC is prohibited from requesting such UNEs to serve any customer it believes to be non-embedded (for example, a customer that had neither received no applied for that CLEC's services before March 11, 2005). There is nothing in the record suggesting that any party here will ignore this limitation. And if a non-embedded customer does temporarily obtain service through ULS/UNE-P, the involved CLEC will pay (when initially billed or through true-up) the increased ULS/UNE-P rates imposed by the TRRO.

[21] "Thus, the [ILEC] and [CLEC] must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rules changes [footnote omitted]." TRRO ¶233.

[22] Moreover, even if SBC were empowered to decide the customers-versus-lines issue unilaterally, its unilateral interpretation has been rejected by the overwhelming majority of commissions considering that question, as will be discussed in greater detail below.

[23] Insofar as the parties in this proceeding are also parties to Docket 04-0606, they can, but are not required to, use the collaborative sessions in the latter case to conduct their negotiations.

In sum, the complaining CLECs are prohibited from serving non-embedded customers through Section 251 ULS/UNE-P as of March 11, 2005. However, guidelines are needed to identify such customers, and to protect the transition entitlement of embedded customers. Such guidelines must be established through bilateral processes on the schedule imposed above. After those guidelines are established – but not before - SBC can deny any request for Section 251 ULS/UNE-P to serve a non-embedded customer. Each complaining CLEC is immediately prohibited from requesting Section 251 ULS/UNE-P for customers it believes to be non-embedded. SBC is prohibited from denying any CLEC drop, migrate or move request for an embedded ULS/UNE-P customer. Any ULS/UNE-P provided to a CLEC after March 11, 2005 is subject to the rate increase established in the TRRO. To the extent that SBC's ALs are inconsistent with these conclusions, they cannot be enforced.

2. Improper Unilateral Implementation of the TRRO

In the TRRO, the FCC plainly stated that its order should be implemented through bilateral negotiations.

> We expect that [ILECs] and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an [ILEC] or a [CLEC] to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the [ILEC] and [CLEC] *must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rule changes.*[24]

SBC has fallen short of the FCC's negotiation requirement in several instances.

First, the FCC contemplates a true-up for ULS/UNE-P provided during the transition period. "UNE-P arrangements no longer subject to unbundling shall be subject to true-up to the applicable transition rate *upon the amendment of the relevant interconnection agreements*, including any applicable change of law processes."[25] Thus, the FCC expects the ILECs to continue to provide some "arrangements" at something other than the transition rate *until ICAs are amended* (at which time the transition rate would be retroactively applied).

In AL-18, SBC explicitly contravenes the FCC's TRRO directive that true-ups follow - rather than precede - completion of the ICA revision process. AL-18 states that "to ensure accurate billing based on current lines in service each month, the most effective mechanism to facilitate the rate modification is to apply it beginning March 11, 2005, and *eliminate the need for manual true-ups at the end of the transition period.*"[26]

[24] TRRO ¶233 (footnotes omitted) (emphasis added).
[25] *Id.*, ¶228, fn. 630 (emphasis added).
[26] AL-18, p. 2 (emphasis added)[26].

The efficacy of SBC's proposal is beside the point. The course of events has been determined by the FCC, and even if that course can be altered, that must be done by mutual agreement of the parties. Consequently, billing for ULS/UNE-P must conform to existing ICA rates and terms, until the ICAs are amended.

As the FCC explained, during the transition period the TRRO-mandated UNE price increases "provide some protection of the interests of the [ILECs] in those situations where unbundling is not required."[27] Though that protection is applied to the entire 12-month transition, it is accomplished retroactively through true-up. That scheme constitutes the FCC's balancing of the carriers' interests and precludes additional self-help by the carriers, outside of "applicable change of law processes."[28]

Second, the TRRO prescribes a self-certification process by which a CLEC can obtain unbundled loops and transport[29] (UNEs that will be discussed more substantively later in this Decision). Nothing in SBC's February 11, 2005 ALs (ALs 17-20) acknowledged or implemented this requirement. After XO and Joint Complainants received emergency relief, however, SBC issued AL-39, to unilaterally implement CLEC self-certification. AL-39 included a request form[30] and directs the requesting CLEC to include "the factual or other basis for its belief" that impairment is extant at a wire center. The TRRO does not require such an explanation. Again, the efficacy of SBC's implementation mechanism is beside the point. What is germane here is that SBC initially ignored self-certification, then unilaterally imposed terms for its implementation.

Third, in AL-39, SBC announced that it had filed with the FCC a list of the wire centers that SBC believes satisfy the FCC's non-impairment criteria. SBC advised the CLECs that they could review certain underlying data by contacting a named SBC attorney[31]. McLeod contends that SBC has "listed certain wire centers and routes as not meeting the new impairment criteria which McLeodUSA's analysis, using data from a third-party data source, indicated do meet the TRRO impairment criteria."[32] Whether McLeod is correct is not important here. What matters is that SBC unilaterally

[27] TRRO ¶228.

[28] To be sure, SBC does state that it "will not require CLECs to pay the difference between the rates currently in the ICA and the new rates (or engage in collection activity on this difference) until the CLEC'S [ICA] has been amended." SBC Ex. 1.0 at 19. Nevertheless, this caveat does not appear in an AL, it is not legally binding upon SBC, it is contrary to the language of the TRRO and it was unilaterally imposed, without negotiation.

[29] "Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI above, the incumbent LEC must immediately process the request. To the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreements. In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority." TRRO ¶234.

[30] The FCC had suggested, but not required, a letter to the ILEC from the CLEC. *Id.*, fn. 658.

[31] The Joint CLECs allege that they have yet to be given access to SBC's data. Joint CLEC Rep. Br. at 18, fn. 9.

[32] McLeod Init. Br. at 19.

determined which wire centers were free of impairment, in derogation of the TRRO directive that the parties negotiate implementation of the FCC's rules changes.

Fourth, as already noted, SBC's opinion is that a CLEC's embedded base is comprised of the UNE arrangements serving those customers on March 11, 2005, rather than the customers served by those arrangements. The complaining CLECs disagree. That dispute has been addressed in several jurisdictions, by state commissions and courts (and is addressed in the next subsection of this Decision). Nevertheless, SBC unilaterally decides that dispute in ALs 17-20, in which it declares that it will not fulfill "New, Migration or Move" requests. SBC affronted the TRRO by disposing of that issue unilaterally.

To the extent that SBC's ALs purport to authorize any of the foregoing unilateral actions, they cannot be enforced.

3. Embedded Base: Lines or Customers?

The parties agree that a CLEC's "embedded customer base" is entitled to participation in the transition period during which ULS/UNE-P (and unbundled dedicated transport and high capacity loops) will be phased out. The parties dispute whether the TRRO's embedded customer base consists of CLEC customers, as of March 11, 2005, or the particular UNEs employed to serve those customers on that date. The key sentence in the TRRO does not, on its face, rule out either interpretation[33]. On the one hand, the FCC reference to the "customer" base supports the CLECs' construction. If the FCC had meant to limit the transition to extant UNEs, it could have said so. On the other hand, the prohibition against new UNE-P "arrangements" buttresses SBC's position, because it focuses on facilities, not customers.

The better resolution of this issue is derived from the essential purpose of the transition period – to avert substantial service disruption for "millions of mass market customers, as well as the business plans of [CLECs]."[34] The FCC surely understood that an embedded customer's circumstances could change long before the serving CLEC had completed its phase-out of ULS/UNE-P. That is, the customer's need to move, add or drop a facility or feature is independent of, and not on the same timetable as, the CLEC's transition arrangements. The former are determined by the customer's personal or business activities, while the latter are dependent upon the CLEC's progress with, *inter alia*, "deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversions."[35] If the serving CLEC cannot meet customers' changing needs during the transition, those customers will have to choose between doing without service modifications or changing

[33] "This transition period shall apply only to the embedded customer base, and does not permit [CLECs] to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order." TRRO ¶227.
[34] *Id.*, 226.
[35] *Id.*, 227. The FCC noted comments asserting that these processes could also require CLECs to generate needed capital, partner with other CLECs or exit particular markets. *Id.*, fn. 629.

carriers. The first choice would likely diminish service quality, while the second may be adverse to the customer, particularly if the choice was triggered by an emergency. Moreover, market dynamics would also be adversely affected. Precluding CLECs from answering the needs of their existing customers during the transition would hardly be competitive neutral.

The CLECs here correctly emphasize that a substantial majority of state commissions has adopted the CLEC position that the embedded base consists of customers rather than facilities.[36] The Indiana Utility Regulatory Commission stated:

> We think the TRRO is clear in its intent that a CLEC's embedded base (its UNE-P customer, and those customers for which UNE-P has been requested, as of March 1-, 2005) not be disrupted. We would expect an embedded base customer to be able to acquire or remove any feature associated with circuit switching during the transition period.[37]

The Michigan Public Service Commission also adopted this position:

> The distinction between the embedded base of *lines* versus the embedded base of end-user *customers* is critical and recognizes that the needs during the transition period of an existing CLEC customer may go well beyond the level of service provided as of March 11, 2005. By focusing on the needs of the embedded base of end-user customers rather than on lines, the FCC has ensured that the transition period will not serve as a means for an ILEC to frustrate a CLEC's end-user customers by denying the CLEC's efforts to keep its customers satisfied.[38]

Other state commissions reaching the same conclusion include Kansas and Texas[39]. However, as SBC accurately demonstrates, the California commission adopted a contrary position[40].

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[36] *E.g.*, XO Rep. Br. at 6 *et seq.*

[37] Complaint of Indiana Bell Tel. Co., Cause No. 42749, Order, Indiana URC., Mar. 9, 2005, at 8. The IURC reaffirmed this view in a subsequent Order in the same docket. Order, April 6, 2005, at 2 ("the TRRO is consistent in establishing transition periods running from the effective date of the TRRO so that the embedded customer base (*existing customers*) can be moved in an orderly fashion to alternative arrangements") (emphasis added). SBC's claim to the contrary, based on general language elsewhere in the IURC Order, is disingenuous.

[38] In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon, Case No. U-14447, MPSC, March 9, 2005, at 11 (citation omitted)(emphasis in original).

[39] In the matter of a General Investigation to Establish a Successor Standard Agreement, Docket No. 04-SWBT-763-GIT, Order Granting in Part and Denying in Part Formal Complaint and Motion for an Expedited Order, Kan. SSC, Mar. 10, 2005 at 6 ("...the Commission finds that it is the intent of the FCC in its TRRO to permit CLECs to consistently serve its customer base, which includes adding services, lines

To be sure, the FCC plainly intends to discontinue the availability of ULS/UNE-P under Section 251 of the Federal Act. The provision of additional ULS and related services to embedded CLEC customers during the transition can appear, superficially, to inhibit realization of that objective. However, it is just as plain that the FCC also intends to minimize customer disruption and promote competition. Both of those objectives are achieved by an orderly phase-out – which, in turn, necessitates enabling the CLECs to meet their current customers' needs until alternative arrangements are in place. Indeed, the FCC expressly elected to *lengthen* the phase-out[41], to assure that CLECs and CLEC customers could maintain such continuity. Moreover, upholding CLEC service quality during the transition will not harm SBC. The CLECs will pay an approved price for whatever they buy, informed CLEC embedded customers will not profligately add or move services that can be transitioned away in 12 months, and no existing SBC customers will be eligible to purchase any add-on services restricted to the CLECs' embedded base (and thus will not be lured away from SBC by such services).

The remaining task is the identification of embedded customers, who will be able to move, add and drop ULS-related services during the transition. That should be accomplished through the processes, and on the schedule, already discussed above.

To the extent that SBC's ALs are inconsistent with the foregoing conclusions respecting the composition of the CLECs' embedded customer bases, they cannot be enforced. Moreover, as already concluded in this Decision, SBC acted unreasonably in resolving the customers-versus-lines issue unilaterally, through its ALs.

B. DEDICATED TRANSPORT

In the TRRO, the FCC determined that CLECs are impaired without access to DS1 transport unless both ends of the pertinent route terminate at a Tier 1 wire center[42]. Thus, an ILEC must provide unbundled DS1 transport when either end terminates at a

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and servicing customers at new locations:)"; Arbitration of Non-Costing Issues, Docket No. 28821, Proposed Order on Clarification, Approved as Written, Tex. PUC, Mar. 9, 2005, at 1("...until a final disposition of this issue, SBC Texas shall have an obligation to provision new UNE-P lines to CLECs' embedded customer-base, including moves, changes and additions of UNE-P lines for such customer base at new physical locations").

[40] Petition of Verizon California Inc., App. No. 04-03-014, Assigned Commissioner's Ruling, Cal. PUC Mar. 11, 2005 ("we conclude that 'new arrangements' refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services. The TRRO clearly bars both"), confirmed by the CPUC on March 17, 2005.

[41] "We believe it is appropriate to adopt a longer, twelve-month, transition period than was proposed in the Interim Order and NPRM...the twelve-month period provides adequate time for both [CLECs] and [ILECs] to perform the tasks necessary to an orderly transition." TRRO ¶227.

[42] A Tier 1 wire center contains four or more fiber-based collocators or at least 38,000 business access lines. TRRO ¶112.

Tier 2 or Tier 3 wire center[43]. CLECs are impaired without access to DS3 or dark fiber transport when each end of a route terminates at a Tier 1 or Tier 2 wire center[44]. On routes without DS3 impairment (i.e., routes connecting Tier 2 wire centers), a CLEC is limited to obtaining 10 DS1 transport circuits from the ILEC[45]. Where there is DS3 impairment, the CLEC is limited to 12 DS3s per route[46].

Having established the foregoing quantitative criteria, the FCC instructed every CLEC to conduct a "reasonably diligent inquiry" and provide a self-certification that it is "entitled to the unbundled access to the particular network elements" it requests from an ILEC after March 11, 2005[47]. In turn, the ILEC "must immediately process the request" and "subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."[48]

The TRRO applies some of the same directives to dedicated transport that it applies to ULS/UNE-P. Among these are transition periods for phasing out unbundled dedicated transport when non-impairment is present. The FCC prescribed a 12-month transition for DS1 and DS3 transport, and an 18-month transition for dark fiber transport[49]. As with ULS/UNE-P, those transitions are limited to the CLEC's embedded customer base[50]. Also, "[d]edicated transport facilities no longer subject to unbundling shall be subject to true-up to the applicable transition rate[51] upon the amendment of the relevant interconnection agreements, including any applicable change of law processes."[52]

Accordingly, insofar as the TRRO provisions governing, respectively, ULS/UNE-P and dedicated transport are identical, much of the analysis in this Decision pertaining to the former also applies to the latter. There is a significant difference, however. The TRRO declares that there is no impairment associated with ULS/UNE-P anywhere and that, for that reason, no unbundling of either the network element or the platform is required anywhere (except during transition). In contrast to that across-the-board determination, non-impairment is the exception, not the rule, with regard to dedicated

[43] A Tier 2 wire center contains three or more fiber-based collocators or at least 24,000 business access lines. *Id.* ¶118. A Tier 3 wire center is any wire center not in Tiers 1 or 2, and is considered by the FCC to include the lowest degree of competitive activity. *Id.* ¶123.
[44] *Id.* ¶¶129 & 133.
[45] *Id.* ¶128.
[46] *Id.* ¶131.
[47] *Id.* ¶234.
[48] *Id.* After the instant complaints were filed in Dockets 05-0154 and 05-0156, SBC issued an AL (CLECALL05-039 ("AL-39")) that purports to implement this provision.
the time
[49] *Id.* ¶142.
[50] *Id.*
[51] The transition rates provide an increase over the price paid as of June 15, 2004 or a subsequent price, whichever is greater. *Id.* ¶145.
[52] *Id.* ¶145, fn. 408.

transport[53]. This is not only true in the TRRO's text, but in the actual circumstances of Illinois wire centers[54].

Consequently, implementation of the TRRO's transport provisions requires multiple stages: first, to determine whether impairment exists on a given route for circuits of the requested capacity (or for dark fiber); second, when there is no impairment, to determine whether the particular route serves the CLECs' embedded customer base (and therefore must be available to the CLEC during the applicable transition); third, when there is impairment, to determine whether the CLEC has reached the TRRO's numeric limits (10 DS1 circuit, 12 DS3s per route); and, fourth, to accommodate the TRRO's self-certification mechanism.

Moreover, since the self-certification mechanism, by its terms, applies only when a CLEC "submit[s] an order" for transport, it is not expressly applicable to unbundled transport already provided to the CLECs on or before March 11, 2005. Consequently, even though existing transport would presumably be eligible for transition, the CLECs and their affected customers will want to know whether an existing transport route is impaired, in order to make transition plans when necessary. The FCC expressly contemplates this and, importantly, mandates negotiations to adopt a process to address changes in impairment status[55].

Therefore, this Decision concludes that the FCC did not intend that its new unbundled transport rules would permit ILECs to deny requests for Section 251 transport before ICA revision is completed. The multi-stage analysis described in the preceding paragraph presents too many disputable issues - and, indeed, the parties in fact already dispute SBC's identification of impaired wire centers, its definition of the embedded base and its self-certification scheme. Nothing in the TRRO indicates that SBC has been authorized to resolve these issues unilaterally. On the other hand, the implementation provision in paragraph 233 of the TRRO and the negotiation directive in footnote 399 demonstrate that the FCC expects bilateral implementation.

As this Decision acknowledges regarding ULS/UNE-P, some quantum of non-embedded customers will obtain service through unbundled dedicated transport, without a Section 251 entitlement, while negotiations are completed. Again, however, this Decision does not permit the CLECs to procure unauthorized transport (i.e., transport

[53] "The determination that in certain situations a CLEC is impaired without unbundled access to high capacity loops and transport is, therefore, different from the nationwide determination that CLECs are not impaired without unbundled access to UNE-P." Complaint of Indiana Bell Tel. Co., Cause No. 42749, Order, Indiana URC., April 6, 2005, at 2.

[54] "[T]here are, in fact, relatively few wire centers and routes that meet the FCC's non-impairment criteria for high capacity loops and transport. Of the over 278 wire centers in Illinois, SBC Illinois has determined that only 5 meet the non-impairment criteria for DS1 loops and 11 meet the criteria for DS3 loops. SBC Ill. Ex. 1.0 (Chapman) at 32 ...The [TRRO] does *not* prevent carriers from obtaining high capacity loops and transport at all other wire centers and routes. SBC Init. Br. at 45 (emphasis in original).

[55] "We recognize that some dedicated transport facilities not currently subject to the non-impairment thresholds established in this Order may meet these thresholds in the future. We expect [ILECs] and requesting carriers to *negotiate appropriate transition mechanisms for such facilities through the section 252 process*." TRRO ¶142 fn. 399 (emphasis added).

for non-embedded customers when impairment is absent, or transport in excess of numeric limits on circuits and routes where impairment exists). To be clear: every CLEC is prohibited from requesting dedicated Section 251 transport to serve, through non-impaired wire centers, any customer it believes to be non-embedded.

Moreover, the FCC provides two safeguards protect SBC's interests as its Section 251 transport unbundling duty is phased out. First, the good-faith requirement in TRRO paragraph 234 is intended to constrain CLEC abuse of the self-certification process. Second, as with the other UNEs involved here, when CLECs erroneously use unbundled dedicated transport to temporarily serve customers, they will do so at the higher rates mandated by the TRRO (either initially or via true-up).

In sum, as of March 11, 2005, the complaining CLECS are prohibited from serving non-embedded customers through unbundled Section 251 transport unless there is impairment at the relevant wire centers, as defined by the TRRO. Additionally, the CLECs are prohibited from obtaining unbundled Section 251 transport in a quantity that exceeds TRRO limits. Any unbundled Section 251 dedicated transport provided to a CLEC after March 11, 2005 is subject to the rate increase established in the TRRO.

Also (insofar as they have not already done so), each complaining CLEC, and SBC, must immediately start negotiations to implement the multistage process described above for effectuating the new TRRO directives, and associated rules, concerning unbundled dedicated transport. Insofar as the TRRO (and the 01-0614 Remand Order), trigger ICA change of law provisions in a manner that affects contract rights derived from 271 of the Federal Act or Section 13-801 of the PUA, negotiations pertaining to unbundled dedicated transport under Section 271 (except negotiations with Cbeyond and Nuvox[56]) and under Section 13-801 (except negotiations with Talk, Nuvox and Global[57]) should also be conducted, consistent with the discussion of those statutes below.

Additionally, SBC must comply with the self-certification provisions of paragraph 234 of the TRRO (as it has stated it will do in AL-39), and is hereby prohibited from imposing on a CLEC any self-certification requirement that does not expressly appear in paragraph 234 or in an approved ICA with that CLEC. In the resolution of any dispute resulting from application of paragraph 234, the Commission will enforce - with respect to the composition of the CLEC's embedded customer base, the identification of non-impaired wire centers or the implementation of the TRRO's numeric thresholds for DS1 and DS3 transport where impairment exists - only those ICA provisions derived from bilateral (or, where permitted by the Commission, multilateral) negotiations and (where used) dispute resolution processes. Also, SBC is prohibited from: 1) denying new transport requests for service through impaired wire centers unless the TRRO numeric limits have been reached; 2) denying any drop, migrate or move request for dedicated transport service to a complaining CLEC's embedded customer; or 3) denying new, drop, migrate or move requests for a customer served through dedicated transport

[56] These CLECs and SBC are free to negotiate Section 271 issues voluntarily, however.
[57] These CLECs and SBC are free to negotiate Section 13-801 issues voluntarily, however.

because of CLEC self-certification (unless the Commission orders otherwise). To the extent that SBC's ALs are inconsistent with these conclusions, they cannot be enforced.

C. HIGH CAPACITY LOOPS

The TRRO provides that CLECs are impaired without access to DS3-capacity loops in any building served by a wire center with fewer than 38,000 business lines and four fiber-based collocators[58]. Even with impairment, a CLEC may obtain only one DS3 loop per building from the ILEC[59]. An ILEC must provide unbundled DS1 loops for CLEC use in buildings served by wire centers with fewer than 60,000 business lines and four fiber-based collocators[60]. A CLEC is limited to ten DS1 loops per impaired building[61]. CLECs are never considered impaired without access to dark fiber loops[62].

As with dedicated transport, the FCC directed each CLEC to conduct a "reasonably diligent inquiry" and provide a self-certification that it is "entitled to the unbundled access to the particular network elements" (here, loops) it requests from an ILEC[63]. And again, the ILEC "must immediately process the request" and "subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."[64]

The TRRO also established transition requirements for loops. When non-impairment is present, the transition for DS1 and DS3 high capacity loops is 12 months, and there is an 18-month transition for dark fiber loops[65]. As with ULS/UNE-P, those transitions are limited to the CLEC's embedded customer base[66]. Additionally, "[h]igh capacity loops no longer subject to unbundling shall be subject to true-up to the applicable transition rate[67] upon the amendment of the relevant interconnection agreements, including any applicable change of law processes."[68]

Much of the analysis in this Decision pertaining to transport and to ULS/UNE-P is equally applicable to loops. There are also important differences. As discussed above, the TRRO finds no impairment anywhere for ULS/UNE-P and, consequently, requires no unbundling of either the network element or the platform (except during transition). That is also the case with dark fiber loops (although with a longer transition). However,

[58] TRRO ¶174.
[59] *Id.* ¶177.
[60] *Id.* ¶178.
[61] *Id.* ¶181.
[62] *Id.* ¶182.
[63] *Id.* ¶234.
[64] *Id.* After the instant complaints were filed in Dockets 05-0154 and 05-0156, SBC issued AL-39, ostensibly to implement this provision.
the time
[65] *Id.* ¶195.
[66] *Id.*
[67] The transition rates provide an increase over the price paid as of June 15, 2004 or a subsequent price, whichever is greater. *Id.* ¶198.
[68] *Id.* ¶198, fn. 524.

as with transport, non-impairment is the exception, not the rule, respecting DS1/DS3 loops - both in the conclusions of the TRRO and in the actual circumstances of Illinois wire centers[69].

Consequently, implementation of the TRRO's high capacity loop provisions requires multiple stages, as was the case with transport: first, to determine whether impairment exists for loops of the requested capacity; second, when there is no impairment, to determine whether the particular loop serves the CLECs' embedded customer base (and therefore must be available to the CLEC during the applicable transition); third, when there is impairment, to determine whether the CLEC has reached the TRRO's numeric limits (10 DS1 loops or one DS3 loop per building); and, fourth, to accommodate the TRRO's self-certification mechanism.

Again, since the self-certification mechanism, by its terms, applies only when a CLEC "submit[s] an order" for loops, it is not expressly applicable to unbundled transport already provided to the CLECs on or before March 11, 2005. Consequently, even though existing loops would presumably be eligible for transition, the CLECs and their affected customers will want to know whether an existing loop is impaired, in order to make transition plans when necessary. The FCC expressly contemplates this and, importantly, mandates negotiations to adopt a process to address changes in impairment status[70].

Therefore, as it does regarding transport, this Decision concludes that the FCC did not intend that its new unbundled loop rules would permit ILECs to deny requests for Section 251 loops before ICA revision is completed. The multi-stage analysis described in the preceding paragraph presents too many disputable issues - and, indeed, the parties in fact already dispute SBC's identification of impaired wire centers, its definition of the embedded base and its self-certification scheme. Nothing in the TRRO indicates that SBC has been authorized to resolve these issues unilaterally. On the other hand, the implementation provision in paragraph 233 of the TRRO and the negotiation directive in footnote 519 demonstrate that the FCC expects bilateral implementation.

As with ULS/UNE-P and dedicated transport, some non-embedded customers will obtain service through unbundled loops, without a Section 251 entitlement, while negotiations are completed. To repeat, however, this Decision does not permit the CLECs to procure unauthorized loops (i.e., loops for non-embedded customers when impairment is absent, or loops in excess of numeric limits at locations where impairment exists). Each CLEC is prohibited from requesting dedicated Section 251 high capacity loops to serve, through non-impaired wire centers, any customer it believes to be non-embedded.

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[69] SBC Init. Br. at 45 (see quotation in **fn. XX, *supra***).

[70] "We recognize that some high capacity loops with respect to which we have found impairment may in the future meet our thresholds for non-impairment. For example, as competition grows, [CLECs] may construct new fiber-based collocations in a wire center that currently has 38,000 business lines but 3 or fewer collocations. In such cases, we expect [ILECs] and requesting carriers to *negotiate appropriate transition mechanisms for such facilities through the section 252 process.*" TRRO ¶196, fn. 519 (emphasis added).

Moreover, the FCC provides two safeguards, as it did with transport, to protect SBC's interests as its Section 251 loop unbundling obligations are phased out. First, the good-faith requirement in TRRO paragraph 234 is intended to constrain CLEC abuse of the self-certification process. Second, as with the other UNEs involved here, when CLECs erroneously use unbundled high capacity loops to temporarily serve customers, they will do so at the higher rates mandated by the TRRO (either initially or via true-up).

In sum, as of March 11, 2005, the complaining CLECS are prohibited from serving non-embedded customers through unbundled Section 251 high capacity loops unless there is impairment at the relevant wire centers, as defined by the TRRO. Additionally, the CLECs are prohibited from obtaining unbundled Section 251 loops in a quantity that exceeds TRRO limits. Any unbundled Section 251 loop provided to a CLEC after March 11, 2005 is subject to the rate increase established in the TRRO.

Also (insofar as they have not already done so), each complaining CLEC, and SBC, must immediately start negotiations to implement the multistage process described above for effectuating the new TRRO directives, and associated rules, concerning unbundled high capacity loops. Insofar as the TRRO (and the 01-0614 Remand Order), trigger ICA change of law provisions in a manner that affects contract rights derived from 271 of the Federal Act or Section 13-801 of the PUA, negotiations pertaining to unbundled high capacity loops under Section 271 (except negotiations with Cbeyond and Nuvox[71]) and under Section 13-801 (except negotiations with Talk, Nuvox and Global[72]) should also be conducted, consistent with the discussion of those statutes below.

Additionally, SBC must comply with the self-certification provisions of paragraph 234 of the TRRO (as it has stated it will do in AL-39), and is prohibited from imposing on a CLEC any self-certification requirement that does not expressly appear in paragraph 234 or in an approved ICA with that CLEC. In the resolution of any dispute resulting from application of paragraph 234, the Commission will enforce - with respect to the composition of the CLEC's embedded customer base, the identification of non-impaired wire centers or the implementation of the TRRO's numeric thresholds for DS1 and DS3 loops where impairment exists - only those ICA provisions derived from bilateral (or, where permitted by the Commission, multilateral) negotiations and (where used) dispute resolution processes. Also, SBC is prohibited from: 1) denying new loop requests for service through impaired wire centers unless the TRRO numeric limits have been reached; 2) denying any drop, migrate or move request for service to a complaining CLEC's embedded customer; or 3) denying new, drop, migrate or move requests for a customer served through high capacity loops because of CLEC self-certification (unless the Commission orders otherwise). To the extent that SBC's ALs are inconsistent with these conclusions, they cannot be enforced.

[71] These CLECs and SBC are free to negotiate Section 271 issues voluntarily, however.
[72] These CLECs and SBC are free to negotiate Section 13-801 issues voluntarily, however.

D. UNBUNDLING UNDER SECTION 271 OF THE FEDERAL ACT

In the TRO, the FCC stated that "we continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs[73] to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251."[74] This pronouncement was explicitly upheld on appellate review:

> The FCC reasonably concluded that checklist items four, five, six, and ten posed unbundling requirements for those elements independent of the unbundling requirements imposed by §§ 251-52. In other words, even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching and call-related databases in order to enter the interLATA market[75].

It is therefore settled that Sections 271 and 251 of the Federal Act provide independent sources of authority for access to switching, loops and transport. This Commission acknowledged that in the recent XO-SBC Arbitration Order, where it held that "Section 271 of the Federal Act creates an unbundling obligation to which SBC must adhere, irrespective of its duties under Section 251 and the associated impairment analysis."[76]

Accordingly, since the TRRO determines only the impairment standard of Section 251, and does not address the scope of Section 271, ILEC duties and SBC rights under the latter statute remain unchanged by the TRRO. The question, then, is whether the CLECs can assert rights derived from Section 271 in these proceedings.

SBC argues that Section 271 "makes clear that the FCC, and only the FCC, has authority under [S]ection 271 to enforce that provision."[77] It follows, in SBC's view, that once an ILEC's application to provide interLATA service has been approved by the FCC, Section 271 "provides authority only to the FCC to enforce continued BOC compliance with the conditions for approval."[78] SBC is right that the FCC has exclusive authority to enforce its order approving the ILEC's application. Only the FCC can impose the remedies set forth in subsection 271(d)(6) – i.e., a corrective order, a penalty or suspension or revocation of interLATA toll authority.

However, Staff maintains that the complaining CLECs are not seeking enforcement of the FCC's Section 271 for SBC, but enforcement of "the parties' respective ICAs."[79] Moreover, Staff asserts, the Commission "undoubtedly...does have

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[73] "BOCs" is the acronym for the former Bell Operating Companies, from which is SBC is a merged entity.
[74] TRO ¶653.
[75] United States Telecom Association v. FCC, 359 F.3d 554, 588 (DC Cir. 2004)("USTA II")
[76] XO Illinois, Inc., Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, Docket 04-0371, Order, Sept. 9, 2004, at 47).
[77] SBC Init. Br. at 41.
[78] *Id.*, at 41-42.
[79] Staff Rep. Br. at 24.

the authority to resolve disputes brought to it regarding ICAs, and no party disputes this authority.[80] Staff is correct on these points. In addition to fulfillment of its Section 251 compliance duties, SBC entered into ICAs in order to advance its discretionary request for interLATA authority. This included demonstrating, first to this Commission, and then to the FCC, that SBC was supplying contractual access to loops, transport and switching, under subsections 271(c)(2)(B)(iv), (v) & (vi), distinguished from the access to these unbundled elements required by Section 251, reinforced by subsections 271(c)(2)(B)(ii). Therefore, in any ICA in which SBC committed to furnishing those unbundled elements under Section 271 (in addition to Section 251), it took on a contractual obligation that can be asserted to this Commission. That does not entail enforcement of the FCC's 271 Order for SBC, but of the ICA provisions this Commission approved, which SBC *then used as evidence*, before the FCC, of fulfillment of the Section 271 checklist.

Which, if any, of the complaining CLECs has an ICA with SBC that contains an SBC obligation to provide loops, transport and switching in order to satisfy Section 271? Staff contends that McLeod, the XO complainants and one of the Joint CLECs (Global) have ICAs that incorporate rights derived from Section 271 that can asserted to the Commission[81]. Staff avers that the other Joint CLECs have not shown that they have ICA rights with SBC that are "afforded bye Section 271."[82]

Staff is certainly correct with regard to Global and XO Illinois. Both the Global/SBC ICA and the XO Illinois/SBC ICA state that: "*[t]his agreement is the exclusive arrangement under which the Parties may purchase from each other the products and services described in Sections 251 and 271 of the [Federal] Act* and, except as agreed upon in writing, neither Party shall be required to provide the other Party a product or service described in Sections 251 and 271 of the Act that is not specifically provided herein."[83] This provision not only cites Section 271 as a source for the ICA's unbundling requirements, but also makes the ICA the sole mechanism by which Section 271 UNEs can be obtained. Thus, Global and XO Illinois each have a clear contractual right to 271 UNEs (unaffected by the TRRO), have surrendered their ability to assert 271 rights outside the ICA, and have, accordingly, an irrefutable enforcement right under the contract.

The pertinent text in the Allegiance/SBC ICA is more general: "SBC Illinois shall have no obligation to provide access to [UNEs] under the terms of the Amended Agreement beyond those required by *the [Federal] Act*, including effective FCC rules and associated FCC and judicial orders, or other Applicable Law...."[84] This Decision adopts "Staff's view [that] the reference to the federal Act and FCC orders includes

[80] *Id.* The Commission's authority is derived from both the Federal Act and the PUA, including Section 13-514(8).
[81] *Id.*, 23-28.
[82] *Id.*, 27.
[83] Joint Complainants Ex. 4.3, sec. 29.20; XO Ex. 2.5, sub-ex. F, Sec. 29.20 (emphasis added).
[84] XO Ex. 2.5, sub-ex. J, para. 5 (emphasis added). This text appears in a TRO-related amendment that applies to both XO complainants.

SBC's Section 271 obligations."[85] Further, the ICA text links Allegiance's contract rights to whatever the Federal Act (including Section 271) provides, thereby emphasizing the enforcement of Allegiance's contract rights will mirror enforcement of its statutory rights.

The relevant language in the McLeod/SBC is similarly general: SBC's "provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including, *but not limited to*, Section 251(d)."[86] There is also an exclusivity provision in the ICA[87], which confines McLeod to obtaining Section 271 UNEs through their respective contract. Therefore, McLeod's right to Section 271 UNEs is grounded in, and can be enforced through, its ICA.

The Talk/SBC ICA contains language identical to the language in McLeod's agreement, quoted in the preceding paragraph (that is, the "not limited to" provision[88] and the exclusive source provision[89]). Both appear in the ICA's UNE Appendix. However, there is also text, under the heading "Unbundled Network Elements – Sections [sic] 251(c)(3)," that arguably limits Talk to 251 UNEs: "[SBC] will provide CLEC access to [UNEs] for the provision of telecommunications services as required by sections 251 and 252 of the [Federal] Act and appendices hereto."[90] To the extent that these provisions conflict, the UNE Appendix should prevail, because it is more specific to the provision of UNEs.

The Cbeyond/SBC ICA and Nuvox/SBC ICA do not demonstrate that either CLEC has a contractual right to Section 271 elements. Section 1.1.1 of the Cbeyond/SBC ICA's General Terms and Conditions says that the ICA's UNE provisions appear in Article 9 of the agreement. Article 9 is entitled "Access to Unbundled Network Elements – Section 251(c)(3)".[91] The Nuvox/SBC ICA also has an Article 9, entitled "Unbundled Access – Section 251(c)(3). Nothing in either Cbeyond's or Nuvox's Article 9, including their general provisions, suggests that Cbeyond's or Nuvox's rights under Section 271 are incorporated into their respective ICAs.

This does not mean, of course, that Cbeyond and Nuvox lack UNE rights under Section 271. It means that such rights were not incorporated into the CLECs' ICAs, which the Commission has the authority to enforce. However, the CLECs retain statutory rights that are enforceable *outside* of the ICAs. But that enforcement must be sought exclusively from the FCC, under subsection 271(d)(6) of the Federal Act, in the form of redress for violating the FCC Order granting interLATA authority to SBC.

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[85] Staff Rep. Br. at 26.
[86] McLeod Ex. 5, sec. 20.1 (emphasis added). There is also a direct reference to Section 271 in the McLeod/SBC ICA, but it specifically concerns the nondiscrimination provision in subsection 271(c)(2)(B)(ii). *Id.*, section 2.2.
[87] SBC "has no obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth in this Agreement" McLeod Ex. 5, sec. 1.5.
[88] Joint CLEC Ex. 3.4, sec. 18.1.
[89] *Id.*, sec. 1.5
[90] Joint CLEC Ex. 3.3, sec. 47.7.11.1.
[91] Joint CLEC Ex's. 1.2 (Nuvox) & 2.2 (Cbeyond).

(Alternatively, the CLECs can request negotiations to incorporate 271 rights in their ICAs.)

Therefore, SBC must continue providing Section 271 unbundled loops, transport and switching to XO, McLeod, Global and Talk (but not Cbeyond and Nuvox) under the terms of their respective ICAs, unless and until those ICAs are amended to terminate SBC's Section 271 obligations. Such Section 271 UNEs must be priced under "the just, reasonable, and nondiscriminatory rate standard of Sections 201 and 202 [of the Federal Act]," as the FCC has mandated[92]. Since the parties' ICAs all require Section 251 TELRIC pricing, they will need to be amended - to the extent SBC has been relieved of the Section 251 pricing obligation - to provide for Section 271 pricing (and, for that matter, Section 13-801 pricing). Until those amendments are approved, SBC should collect the TRRO-mandated transition rates for ULS/UNE-P and (where no impairment is present) for loops and transport. SBC does not have to provide combined UNEs under Section 271, but must continue to do so where Section 251 access is still required, where Section 13-801 allows CLECs to demand combinations, and where an ICA authorizes combinations.

E. STATE UNBUNDLING UNDER SECTION 13-801

Section 13-801 establishes state unbundling requirements for Illinois. That section permits, for any affected telecommunications carrier, unbundling obligations that are equivalent to the obligations under Section 251 of the Federal Act. However, for carriers subject to alternative regulation plans under the PUA - as SBC is - Section 13-801 allows "requirements or obligations...that exceed or are more stringent than those obligations imposed by Section 251...and regulations promulgated thereunder."[93] Accordingly, this Commission determined in a 2002 Order that, for alternatively regulated carriers, Section 13-801 unbundling need not predicated on Section 251-like finding of necessity and impairment[94]. Just weeks ago, on remand of that Order, the Commission confirmed its conclusion: "Among the specific differences between federal law and Section 13-801 is the absence of the federal 'necessary and impair' test as a precondition to access network elements."[95]

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[92] TRO ¶663.

[93] The full text of subsection 13-801(a) is as follows: "This Section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission. A telecommunications carrier not subject to regulation under an alternative regulation plan pursuant to Section 13-506.1 of this Act shall not be subject to the provisions of this Section, to the extent that this Section imposes requirements or obligations upon the telecommunications carrier that exceed or are more stringent than those obligations imposed by Section 251 of the federal Telecommunications Act of 1996 and regulations promulgated thereunder."

[94] Illinois Bell Telephone Co., Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act, Docket 01-0614, Order, June 11, 2002.

[95] Illinois Bell Telephone Co., Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act, Docket 01-0614, Order on Remand (Phase I), April 20, 2005 ("01-0614 Remand Order").

Therefore, so long as the Commission's Orders in Docket 01-0614 remain in effect, Illinois' unbundling requirements under Section 13-801 are unaffected by the FCC's findings in the TRRO concerning necessity and impairment. The Commission's orders have not been overturned by the judiciary, and neither their contents nor the Commission's power to issue them has been preempted by the FCC or a court. SBC can seek a preemption declaration from the FCC, as did another ILEC in a proceeding relied upon by SBC[96], but it has yet to do so. SBC has requested preemption in an action filed in the United States District Court[97], but such relief was denied on an interim basis. To be sure, the federal court did preliminarily conclude that the "likelihood of success on the preemption question favors SBC." However, unless and until a formal and final ruling issues from that court, the pertinent Orders of this Commission are in force.

Additionally, the parties here apparently concur that the proper forum for resolving the question of preemption is the federal judiciary[98]. That is entirely consistent with the Commission's position that "it is not empowered to declare portions of Section 13-801 preempted or unconstitutional." [99] Thus, for the time being, the text of Section 13-801 that authorizes unbundling for alternatively regulated carriers without regard to the federal necessary impair standard, and this Commission's interpretation and application of that authority in Docket 01-0614, must be taken as they are.

The next step, then, is to identify the substantive content of the Commission's application of Section 13-801 authority to ULS. "SBC Illinois acknowledges that the Commission's June 11, 2002 Order in Docket 01-0614 interpreted Section 13-801(d)(4) to require SBC Illinois to provide CLECs with access to 'network element platforms' without regard to the whether the FCC has unbundled all of the network elements (including switching) that comprise the platform."[100] SBC also recognizes that the 01-0614 Remand Order "expanded the scope of the June 2002 Order and reinterpreted 13-801 to require that SBC Illinois provide access to network elements without regard to the necessary and impair tests not only in the 'platform' context but also on a stand-alone basis and as part of combinations that do not constitute platforms."[101] Although the present case concerns mass market switching, while the 01-0614 Remand Order addressed switching for large-enterprise customers, the Commission declared that:

[96] In the Matter of BellSouth Telecommunications, Inc., Request for Declaratory Ruling; WC Dckt. No. 03-251, WL 704118, rel. March 25, 2005.
[97] Illinois Bell Telephone Co v. Hurley, et al., *supra*.
[98] *E.g.*, "These same [preemption] arguments are before the Northern District of Illinois, and that Court – not this Commission – is the appropriate forum in which those arguments should be considered," SBC Init. Br. at 37; "There seems to be agreement that SBC's federal preemption argument regarding the state law requirements should be resolved in the federal court litigation, not in this case," McLeod Rep. Br. at 26.
[99] 01-0614 Remand Order at 61. This limitation should be contrasted with the Commission's authority and duty to take into account, in its decision-making, a preemption finding by a superior sovereign.
[100] SBC Init. Br. at 31.
[101] SBC Rep. Br. at 25.

> The plain language of Section 13-801 makes it obvious that the General Assembly did not contemplate a distinction between providing service to business customers and residential customers in regard to SBC's obligation to provide network elements. We note that the General Assembly was aware of the distinction between business customers and residential customers because it declared services to business customers as competitive in the same piece of legislation. However, in Section 13-801, it did not make any attempts to differentiate between services provided to business customers and services provided to residential customers. Because the legislature did not create such an explicit distinction, we are reluctant to engraft one onto the statute.[102]

The foregoing analysis, which is specific to ULS, reflects the Commission's more general conclusion that the absence of "limiting language" in Section 13-801 impl[ies] that the General Assembly intended to grant unrestricted access to network elements from Alt-Reg companies."[103]

It follows that SBC is required by Section 13-801 to provide ULS/UNE-P and unbundled loops and transport to the complaining CLECs. Moreover, unlike the TRRO, state law does not limit the use of those UNEs to existing CLEC customers (that is, to the CLEC's "embedded base") and imposes no time limit on their availability (i.e., the termination of the TRRO-mandated transition period does not apply). Also, in the 01-0164 Remand Order, the Commission held that a CLEC, under Section 13-801, could exceed federal caps on the quantity of DS3 loops and transport obtainable from an ILEC, albeit at non-TELRIC prices.[104] Unless and until these principles are preempted, modified by the Commission, overturned by a court or altered by the state legislature, they must govern SBC's conduct now and must be reflected in the parties' ICAs[105] when those agreements are modified to incorporate the TRRO[106].

SBC contends, however, that none of the complaining CLECs have a present contractual right to obtain the relevant UNEs under state law. SBC's contention is based on its view that the CLECs' ICAs contemplate access to UNEs under federal law alone[107]. Staff apparently concurs, with respect to some of the CLECs[108].

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[102] *Id.* 01-0614 Remand Order at 69.
[103] *Id.*, at 61-62.
[104] *Id.*, at 61.
[105] The significance and purpose of Section 13-801 in specific ICAs is addressed elsewhere in this Decision.
[106] To whatever extent SBC may be correct that the 01-0614 Remand Order "expanded the scope" of the June 2002 Order in that docket, or "reinterpreted 13-801," it may also constitute a change of law under any or all of the parties' ICAs.
[107] SBC Rep. Br. at 26.
[108] Staff Init. Br. at 29.

Initially, it should be noted that even if SBC's argument prevailed on this point, its victory would likely be transitory. The 01-0614 Remand Order, which SBC perceives as an expansion of the unbundling power under Section 13-801, may well constitute a change of law under the parties' ICAs. As such, unbundling requirements under Section 13-801 would presumably be incorporated into the ICAs through the same processes that will reduce or excise the unbundling requirements of Section 251.

That said, SBC's characterization of the contents of the XO/SBC ICA is incorrect. The parties were directed to reflect 13-801 unbundling obligations in their amended contract[109]. Language subjecting SBC to the unbundling duties of "other Applicable Law" was thus included in the TRO Amendment approved by the Commission in Docket 04-0667. The other applicable law must be construed to include Section 13-801, both because the parties were instructed via arbitration to incorporate that statute in their ICA, and because, simply, it is the law in Illinois.

The McLeod/SBC ICA also incorporates the UNE rights and obligations included in Illinois law. SBC has the duty to furnish non-discriminatory access to UNEs "[o]nly to the extent it has been determined that these elements are required by the 'necessary and impair' standards of the [Federal] Act, Section 251(d)(2) *and/or in accordance with state law* within the state this [ICA] is approved."[110]

Concerning Cbeyond, the parties' ICA provides that the UNEs identified in that agreement are not necessarily exclusive, that "CLEC may identify and request that SBC...furnish additional or revised [UNEs] required by applicable federal and/or state laws...[and] [f]ailure to list a network element herein shall not constitute a waiver by CLEC to request a network element identified by the FCC and/or by the Illinois Commerce Commission or Illinois General Assembly."[111] With specific regard to UNE-P, the ICA states that "[a]s required by Section 13-801(d)(4) of the [PUA] and all Illinois Commerce Commission rules and orders interpreting Section 13-801(d)(4), CLEC may use a network elements platform consisting solely of combined Network Elements of SBC...."[112] This language is sufficient to establish a contractual right to UNEs under Illinois law, enforceable by this Commission.

In contrast, the Nuvox ICA is devoid of language that can be fairly construed as incorporating Illinois law. In Section 29.3 of the ICA, the parties "acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the [Federal] Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date."[113] The ICA also states that "[e]ach Party agrees that this Agreement is satisfactory to them as an agreement under Sections 251 and 252 of the [Federal] Act."[114]

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[109] CITE TO AMENDED ORDER 04-0371.
[110] McLeod Ex. 5, sec. 2.2.9 (emphasis added).
[111] Joint CLEC Ex. 2.2, Sec. 9.2.7.
[112] *Id.*, Sec. 9.3.1.
[113] Joint CLEC Ex. 1.2, Sec. 29.3.
[114] *Id.*, Sec. 29.1.

Talk's ICA also lacks language that would fairly support a finding that the agreement incorporates a CLEC's UNE rights under state law. Rather, the ICA states that "t]his Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act."[115] The UNE Appendix to the ICA provides that SBC's "provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including, but not limited to, Section 251(d)."[116]

Similarly, there is nothing in the in the Global ICA, in which the UNE provisions have been amended twice, that would fairly sustain the conclusion that the agreement invokes state law.

Therefore, irrespective of the impact of the TRRO on SBC's unbundling duties under Section 251 of the Federal Act, the independent, and presently viable, requirements of Illinois law remain effective wherever they are incorporated in an ICA. Thus, state unbundling requirements incorporated in the XO, McLeod and Cbeyond ICAs are properly enforceable in this proceeding.

As for pricing, since the Commission determined in the 01-0614 Remand Order that 13-801 UNEs should be provided and cost-based, but non-TELRIC rates, revisions will likely be necessary in the XO, McLeod and Cbeyond ICAs. Without suggesting a ruling on the issue here, it does appear that certain ICAs arguably contemplate immediate rate adjustments (as SBC contends with respect to Section 251-based revisions). In other instances, negotiation and (when needed) dispute resolution will have to occur[117]. A true-up will then be necessary, so that SBC can recover the difference between the TELRIC rates at which the relevant UNEs have been provided, and the non-TELRIC, cost-based rates associated with UNEs under Section 13-801.

It should be noted that SBC has "pledged that as long as that [UNE-P] access requirement remains in effect, SBC Illinois will nor reject UNE-P orders to the extent the requesting CLEC has a right to purchase such a 'state law' UNE-P under its existing [ICA] or tariff."[118] Since that pledge is non-binding (and since it places Illinois law in dismissive quotation marks), its substance should be made mandatory and unequivocal. Again, the PUA and Commission orders plainly obligate the alternatively regulated SBC to provide ULS and UNE-P, whether through ICA or tariff.

F. SBC'S MERGER AGREEMENT

[115] Joint CLEC Ex. 3.3, Sec. 43.1.
[116] Joint CLEC Ex. 3.4, sec. 18.1.
[117] Such processes would be triggered by, for example, Section 2.11.3 of the McLeod/SBC ICA. McLeod Ex. 3.
[118] SBC Rep. Br. at 24.

The complaining CLECs contend that the 1999 SBC/Ameritech Merger Order CITE requires SBC to continue providing the UNEs at issue here. The pertinent provision, which appears in Appendix C of the Merger Order, states:

> SBC/Ameritech shall continue to make available to telecommunications carriers, in the SBC/Ameritech Service Area within each of the SBC/Ameritech States, such UNEs or combinations of UNEs that were made available in the state under SBC's or Ameritech's local interconnection agreements as in effect on January 24, 1999, under the same terms and conditions that such UNEs or combinations of UNEs were made available on January 24, 1999, until the earlier of (i) the date the [FCC] issues a final order in its UNE remand proceeding in CC Docket No. 96-98 finding that the UNE or combination of UNEs is not required to be provided by SBC/Ameritech in the relevant geographic area, or (ii) the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by SBC/Ameritech in the relevant geographic area. This Paragraph shall become null and void and impose no further obligation on SBC/Ameritech after the effective date of a final and non-appealable [FCC] order in the UNE remand proceeding.[119]

In the body of the Merger Order, the FCC explained the purpose of the foregoing directive:

> Offering of UNEs. In order to reduce uncertainty to competing carriers from litigation that may arise in response to the Commission's order in its UNE Remand proceeding, from now until the date on which the Commission's order in that proceeding, and any subsequent proceedings, become final and non-appealable, SBC and Ameritech will continue to make available to telecommunications carriers each UNE that was available under SBC's and Ameritech's interconnection agreements as of January 24, 1999, even after the expiration of existing interconnection agreements, unless the [FCC] removes an element from the list in the UNE Remand proceeding or a final and non-appealable judicial decision that determines that SBC/Ameritech is not required to provide the UNE in all or a portion of its operating territory.

[119] Applications of Ameritech Corp. and SBC Communications Inc. For Consent to Transfer Control, 14 FCC Rcd 14712 (1999), App. C, ¶53.

SBC emphasizes that the Appendix provision contains the FCC's actual instructions, so that any conflict between the Appendix and the body of the Merger Order should be resolved in favor of the Appendix. SBC Rep. Br. at 33. There is no conflict, however. The body of the Merger Order provides the overarching rationale for the precise operative terms in the Appendix. The latter implements the former.

In any event, SBC's position is that the UNE access obligations imposed by the Appendix provision have been terminated by fulfillment of conditions in the text of that provision. The CLECs disagree, asserting that the "successor" to the UNE remand proceeding – the TRO – remains appealable through the TRRO (which, in fact, is under appeal) CITE. The CLECs' characterization of the TRO as the UNE remand successor undermines their argument. If the TRO *is* the UNE remand proceeding, then a final FCC order ending certain unbundling obligations - the TRRO - has been issued in that proceeding, thus satisfying the "earlier" of the express conditions in the Appendix provision (i.e., condition (i)).

More importantly, however, the preceding analysis misses the forest for the trees. The six-year old Merger Order was issued before the series of FCC and appellate decisions that determine the present context of UNE access. When it released the TRRO a few months ago, the FCC, which was inarguably familiar with its own Merger Order, rendered paragraph 53 of the Appendix obsolete. It would make little sense (even if this Decision adopted the CLEC view of the Merger Order's text, which it does not) to conclude that the FCC intended to simultaneously terminate (over 12 months) Section 251 ULS/UNE-P via the TRRO, yet also intended to preserve the Merger Order obligation to provide ULS/UNE-P under a distant predecessor to the TRRO[120].

G. SPECIFIC 13-514 PROVISIONS

Section 13-514 identifies certain actions as "per se impediments to the development of competition." Some or all of the complaining CLECs have asserted violations of subsections 13-514(1), (2), (4), (5), (6), (8) (10), (11) and (12). In this Decision, SBC's ALs have contravened UNE rights for certain CLECs under Section 271 of the Federal Act and Section 13-801 of the PUA. The ALs also initially failed to implement the TRRO's self-certification procedures for unbundled loops and transport. Additionally, the ALs denied additional services and service modifications to the CLECs' embedded base customers. The issue, then, is whether any of these SBC actions constitute some or all of the per se impediments in the subsections of Section 13-514, or constitute some other anticompetitive action within the meaning of that section.

[120] As the Indiana Commission put it, the Merger Order (and other authorities cited) do not "supersede the significant weight of authority carried by the TRRO." Indiana Bell Tel. Co., Cause No. 42749, Order, Indiana URC., April 6, 2005, at 4.

1. 13-514(1) ("unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier")

The CLECs have employed "shotgun" pleading, alleging violation of each subsection of Section 13-514 for which a plausible argument can be offered. Such pleading is standard operating procedure in litigation (indeed, the failure to raise a colorable claim could subject legal counsel to complaint) and no criticism of that practice is intended in this Decision. Nonetheless, there are disputes in which new statutory construction is inevitable (e.g., when there is no provision clearly applicable to the particulars of the case) and disputes in which certain provisions are plainly designed for the particulars of the case, rendering a construction of other statutory provisions superfluous. This proceeding presents the latter situation with respect to Subsection 13-514(1). There are other subsections of section 13-514 that squarely address the circumstances of this case. To decide, on the limited argument offered here, whether SBC's ALs constitute a refusal, delay or diminution of interconnection would be an unwise use of the Commission's authority. There is no need to create precedent (albeit nonbinding precedent) here, where the components and ramifications of such precedent have not been adequately briefed.

2. 13-514(2) ("unreasonably impairing the speed, quality or efficiency of services used by another telecommunications carrier")

SBC asserts that the pertinent UNEs here are not "services and that, for that reason, subsection 13-514(2) is inapplicable to this proceeding[121]. That assertion, even if true, would not preclude application of the subsection. The relevant question is whether a CLEC service has been impaired, not whether the ILEC behavior or instrumentality causing that impairment is a service. Put differently, an ILEC does not have to impair a service *with a service* in order to violate the subsection. Thus the essential principle articulated by the Commission, in the case on which SBC relies, was whether "the facilities eventually provided have otherwise adversely affected the services that [the CLEC] seeks to provide to end users."[122]

McLeod argues that if it needed to procure alternatives to the relevant UNEs, because of SBC's ALs, it would potentially face "costly and cumbersome workarounds, which could result in lower quality of service, and also use more costly, complex and time consuming processes (i.e., slower and less efficient) for placing orders and addressing maintenance issues."[123] McLeod further contends that "efficiency," within the meaning of the subsection, "carries an economic connotation," so that restriction on access to less costly UNEs constitutes an impairment of efficiency[124].

[121] SBC Init. Br. at 47.
[122] North Country Communications Corporation v. Verizon North, Inc., and Verizon South, Inc., Docket 02-0147, Order, Oct. 6, 2004, at 26.
[123] McLeod Rep. Br. at 41 (footnote omitted).
[124] *Id.*

These arguments are persuasive. This case is about competition for revenue and profit. When services provided directly to the public are made slower, less attractive or more expensive to the CLEC, revenue is lost or profit shrinks. It would ill-serve the pro-competitive intentions of Section 13-514 - and, indeed, it would be unconstructively naïve - to construe speed, quality and efficiency apart from this competitive context. Accordingly, SBC impaired the speed, quality and efficiency of CLEC services utilizing ULS and unbundled loops and transport, by issuing ALs that: disregarded unbundling duties under Section 271 of the Federal Act and Section 13-801 of the PUA; failed, initially, to implement the TRRO self-certification option; increased amounts billed rather than awaiting true-up; determined non-impaired wire centers without negotiation; and refused, without negotiation, to fulfill move, migration and add orders for embedded customers, Moreover, by acting unilaterally, when the TRRO explicitly mandated negotiation, and by ignoring substantive law provisions in Orders of the Commission and the FCC (as discussed in this Decision), SBC was unreasonable within the meaning of this subsection.

> 3. 13-514(4) ("unreasonably delaying access in connecting another telecommunications carrier to the local exchange network whose products or services requires novel or specialized requirements")

The discussion concerning subsection 13-514(1) is applicable here as well. Moreover, there is virtually nothing in the record to establish that "novel or specialized requirements" are involved for any CLEC.

> 4. 13-514(5) ("unreasonably refusing or delaying access by any person to another telecommunications carrier")

Again, the discussion concerning subsection 13-514(1) is also applicable to this subsection. Furthermore, assuming that a telecommunications carrier has standing to assert a violation of this provision, which was taken for granted in North Country Communications, the Commission found it decisive in that docket that no refusal or delay of access to a particular person was proven. Despite the text of SBC's February 11 ALs, the CLECs offer no evidence of such denial or delay here, and SBC maintains that it has actually fulfilled the CLECs' orders for the pertinent UNEs (whether because of SBC's "pledges" or due to emergency relief awarded in this case).

> 5. 13-514(6) ("unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers")

Concerning whether SBC's ALs had a substantial adverse effect on the ability of the complaining CLECs to provide services to their customers, much of the above analysis for subsection 13-514(2) also applies here. The ALs purported to unilaterally, prematurely and (in some respects, as discussed in this Decision), erroneously determine the availability of lower cost inputs for the CLECs' services. The substantiality of the cost differential between UNEs and other alternatives has driven

unceasing federal and state litigation among carriers for many years. Although SBC mounts a defense on this issue, the bases for its denial of substantial adverse impact are contrived and manifestly unpersuasive.

With regard to reasonableness, however, the results are mixed. As this Decision finds above, it was not unreasonable for SBC to conclude that it could stop providing ULS/UNE-P before comprehensive amendment of its ICAs was completed. It was, though, unreasonable to issue ALs withholding UNE-P from embedded customers without first determining, through bilateral or multilateral processes, how such customers would be distinguished from new customers. It was also unreasonable to issue ALs that: disregarded unbundling duties under Section 271 of the Federal Act and Section 13-801 of the PUA; failed, initially, to implement the TRRO self-certification option; increased billed amounts rather than awaiting true-up ; determined non-impaired wire centers without negotiation; and refused, without negotiation, to fulfill move, migration and add orders for embedded customers. Moreover, by acting unilaterally, when the TRRO explicitly mandated negotiation, and by ignoring substantive law provisions in Orders of the Commission and the FCC (as discussed in this Decision), SBC was unreasonable within the meaning of this subsection.

> 6. 13-514(8) ("violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the [Federal] Act...in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers")

This Decision holds, above, that XO, McLeod, Global and Talk each have the right of access, under the terms of their respective ICAs, to UNEs under Section 271 of the Federal Act. Similarly, this Decision finds, above, that XO, McLeod and Cbeyond have rights of access under the terms of their respective ICAs, to UNEs under Section 13-801 of the PUA. The ALs violated those terms by purporting to withhold the relevant UNEs generally, not merely pursuant to Section 251. Furthermore, to the extent that SBC acted unilaterally and without negotiation through the ALs, in contravention of each CLEC's present ICA rights to the relevant UNEs under Section 251 of the Federal Act, as discussed throughout this Decision, it has violated subsection 13-514(8).

Every breach of an ICA identified in the foregoing paragraph, if left unchecked by the emergency relief issued in these proceedings, or by SBC's nonbinding pledges, or by the requirements of this Decision, was likely to delay, increase the cost, or impede the availability of telecommunications services to consumers, for the reasons set forth in the analyses of subsections 13-514(2) and (6) above. Further, such adverse consequences were unreasonable, since SBC was aware of the contents of its own ICAs and lacked a reasonable basis for taking unilateral action, without negotiations, through the ALs.

> 7. 13-514(10) ("unreasonably failing to offer network elements that the Commission or the [FCC] has determined must be offered on an

> unbundled basis to another telecommunications carrier in a manner consistent with the Commission's or [FCC's] orders or rules requiring such offerings")

This Decision holds, above, that XO, McLeod, Global and Talk each have the right of access, under the terms of their respective ICAs, to UNEs under Section 271 of the Federal Act. The TRO makes this clear, and nothing in the TRRO changes those rights. And, as already established in this Decision, Section 13-801, as interpreted by the Commission, imposes unbundling obligations on SBC that are independent of SBC's unbundling duties under Section 251 of the Federal Act. The 2002 Order in Docket 01-0614 described those duties and the 01-0614 adjusted (according to SBC, expanded) them. XO, McLeod and Cbeyond have negotiated the right to obtain Section 13-801 UNEs through their ICAs. It was unreasonable of SBC, in its ALs, to ignore those Commission and FCC requirements

Also, although this Decision finds that SBC will be relieved of Section 251 ULS/UNE-P obligations after the brief negotiations described above, SBC retains Section 251 duties to embedded UNE-P, loop and transport customers, to customers served through loops and transport provided pursuant to CLEC self-certification, to loop and transport customers served through wire centers unilaterally deemed unimpaired by SBC, and to all customers subject to *post*-ICA amendment true-up under the TRRO. Those duties are determined by FCC orders or rules. SBC was aware of those orders and rules, and of the contents of its own ICAs, and lacked a reasonable basis for purporting to abandon those duties, without negotiations, through the ALs.

> 11. 13-514(11) (prohibits "violating the obligations of Section13-801")

As already established in this Decision, Section 13-801, as interpreted by the Commission, imposes unbundling obligations on SBC that are independent of SBC's unbundling duties under Section 251 of the Federal Act. XO, McLeod and Cbeyond have negotiated the right to obtain Section 13-801 UNEs through their ICAs. To the extent that SBC's ALs purport to deny such state law UNEs to those CLECs, they violate Section 13-801.

> 12. 13-514(12) ("violating an order of the Commission regarding matters between telecommunications carriers")

For reasons articulated elsewhere in this Decision, SBC's ALs violate the 2002 Order in Docket 01-0614. Insofar as SBC has not withdrawn those ALs since the Commission issued the 01-0614 Remand Order, SBC has violated the latter Order as well. The CLECs argue that SBC is also in violation of the Orders approving their respective ICAs with SBC. However, it is not clear that SBC's actions violate those Orders, as contrasted with the terms of the ICAs themselves. Nor is it clear that exploring that distinction would be constructive in light of the other findings and conclusions in this Decision. Consequently, for the reasons set out in connection with

subsection 13-514(1), no decision will be made regarding violation of the Orders approving ICAs.

H. REMEDIES

All of the complaining CLECS request an Order containing each of the following forms of relief: 1) a declaration that SBC is in violation of the Federal Act, the PUA, the parties' ICA provisions, and orders and rules of the FCC and the Commission; 2) a requirement that SBC cease the foregoing violations; and 3) recovery of CLEC costs and attorney's fees in this proceeding. Joint CLECs also request that SBC be held responsible for damages, penalties and reimbursement of all of the Commission's costs in conducting these dockets. SBC, in a counterclaim against XO and Joint CLECs, but not McLeod, also requests relief.

1. Declaration of Violation/Cease and Desist

Consistent with the analysis and conclusions above, this Decision reaches certain conclusions regarding the lawfulness of SBC's conduct and, as the consequence of those conclusions, requires cessation of completion of certain activities or policies.

First, SBC cannot lawfully deny a complaining CLEC's Section 251 request for ULS/UNE-P, unbundled dedicated transport or unbundled high capacity loops that will be used to serve an embedded CLEC customer. This includes a prohibition against denying any CLEC new, drop, migrate, move or functionally similar request pertaining to for an embedded customer. Accordingly, to prevent or minimize such denials regarding ULS/UNE-P, SBC and each complaining CLEC shall, during a period not to exceed 28 days from the date on which this Decision becomes final, negotiate and agree upon terms, conditions and processes by which embedded and new ULS/UNE-P customers will be distinguished[125]. Thereafter, SBC may deny any Section 251 request for ULS/UNE-P that will be used to serve a new customer[126].

Second, SBC cannot lawfully determine by any unilateral act or omission (including, but not limited to, its ALs) the terms, conditions or processes by which any complaining CLEC will obtain from SBC, under Section 251, unbundled dedicated transport, unbundled high capacity loops or ULS/UNE-P. This prohibition includes, but

[125] During the 28-day period, CLECs will continue to pay the ULS/UNE-P prices in their ICAs as of March 11, 2005, which will be subject to true-up for embedded customers, per the TRRO, after the ICAs are amended. However, for any customer served after March 11, 2005 that is identified as a new customer under the terms negotiated during the 28-day period, the true-up must enable SBC to recover the difference between the rates a CLEC actually paid to procure ULS/UNE-P for such customer(s) and the lowest-priced alternative for which such customer(s) would have been eligible during the post-March 11 period.

[126] If SBC and any CLEC are unable to reach agreement in 28 days, the parties may resort to the dispute resolution processes in their ICA. The true-up requirements in the preceding footnote will apply, however, both to the 28-day period and the dispute resolution period.

is not limited to, the identification of impaired or non-impaired wire centers, the implementation of the quantitative limits on loops and transport served through impaired wire centers, the self-certification process under ¶234 of the TRRO, and the implementation of true-ups required by the TRRO and this Decision.

Third, SBC retains unbundling obligations for unbundled dedicated transport, unbundled high capacity loops and ULS/UNE-P under Section 271 of the Federal Act and Section 13-801 of the PUA (and Commission Orders implementing that statute). Where these obligations are incorporated into a complaining CLEC's ICA (as determined by this Order), SBC is prohibited from denying access to unbundled dedicated transport, unbundled high capacity loops and ULS/UNE-P.

2. Attorney's Fees/Litigation Costs and the Commission's Costs

"[I]t is well established that fee-shifting statutes are to be strictly construed and that the amount of fees to be awarded lies within the Commission's 'broad discretionary powers.'"[127] Because the complaining CLECs have established that violations of Section 13-514 have occurred, they are entitled to an award of attorney's fees and costs under subsection 13-516(a)(3) of the PUA[128]. The question is how much. In Globalcom, Inc., v. Illinois Bell Telephone[129], the Commission tied the award of fees and costs under 13-516 to a party's litigation success. It did so to reflect the fact that Commission complaint proceedings often result, as does this one, in a "split decision" for the parties.

Here, each of the Complaining CLECs obtained emergency relief regarding loops and transport in this proceeding (but McLeod and Joint CLECs were denied such relief on ULS/UNE-P), then prevailed on several issues addressed in this Decision. On the other hand, Joint CLECs and McLeod asserted the unsupportable claim that SBC must provide ULS/UNE-P until amendments to their respective ICAs are approved. Those parties also pursued an unsuccessful claim based on the SBC/Ameritech Merger Order. Additionally, certain Joint CLECs asserted rights under Section 271 of the Federal Act or Section 13-801 of the PUA that they had not incorporated into their ICAs.

Because XO did not present ULS/UNE-P claims, it prevailed on most of its claims. However, XO asserted unsuccessful claims under subsections of Section 13-514, claims for which it offered scant support, but which caused SBC to mount a defense. It would not be fair for SBC to subsidize those claims. XO is awarded recovery of 90% of its attorney's fees and costs.

Having achieved a more mixed success, McLeod will be awarded 75% of its fees and costs. McLeod does emphasize that it "asked SBC if it would apply the Emergency

[127] Globalcom, Inc. v. Illinois Commerce Commission, 347 Ill.App.3d 592, 618 (1st Dist. 2004).
[128] 220 ILCS 5/13-516(a)(3) (the Commission "shall award" such fees and costs).
[129] Docket 02-0365, Order on Rehearing, Dec. 11, 2002. The Commission's treatment of fees and costs was upheld in Globalcom, Inc. v. Illinois Commerce Commission.

Relief Orders issued in Dockets 05-0154 and 05-0156 to McLeodUSA as well, but SBC refused...Because of SBC's refusal...it was necessary for McLeodUSA...to prepare and file its own Complaint and incur the costs of participating in this proceeding."[130] However, when McLeod requested relief from SBC, the emergency relief granted by the ALJ in the then-existing dockets included UNE-P. Since the Commission's Amendatory Orders subsequently deleted that portion of the emergency relief, SBC's refusal to satisfy McLeod's request was not, in hindsight, unreasonable.

Joint CLECs were not as successful as McLeod in this case, given their failed 271 and 13-801 claims regarding certain CLECs. On the other hand, unlike the other complaining CLECs, Joint CLECs did not press certain claims under subsections of 13-514 that had little likelihood of success and received little or no attention in the other CLECs' filings. Joint CLECs are awarded 70% of fees and costs. The Commission has no apparent authority to apportion such recovery among the Joint CLECs, so that matter is left to those parties.

All fees and costs presented to SBC by the Complaining CLECs should be reasonable and properly associated with this proceeding. In any dispute concerning such fees and costs, the CLEC shall bear the burden of demonstrating reasonableness and propriety. SBC shall pay the required portion of each CLEC's fees and costs within 60 days of the day on which this Decision becomes final and unappealable, or within 60 days of receipt of a billing for such fees and cost from the CLEC, whichever is later.

Concerning the Commission's own costs, which it is obligated to recover under subsection 13-515(g)[131], the Commission, in Globalcom, Inc., v. Illinois Bell Telephone, linked such costs to the apportionment of attorney's fees and costs. Although that was a two-party proceeding, the CLECs here have, for the most part, presented identical claims, thereby creating two "sides" in this case. Therefore, SBC shall be assessed for its half of the Commission's costs, plus 78% (i.e., the average CLEC award here for attorney's fees and costs) of the CLEC's half.

All of the foregoing awards are "approximate quantifications" of the CLECs' litigation success in this proceeding, as the Commission stated in Globalcom, Inc., v. Illinois Bell Telephone. "Absolute precision regarding this quantification is simply not practicable."[132]

3. Damages and Penalties

SBC maintains that it "did not refuse to provision a single UNE-P circuit, or a single high capacity loop or dedicated transport circuit, based on the Accessible Letters complained of here. Indeed, CLECs do not even assert that they were denied access to

[130] McLeod Rep. Br. at 47.
[131] 220 ILCS 5/13-515(g).
[132] Docket 02-0365, Order on Rehearing, Dec. 11, 2002, at 51.

any such UNEs."[133] SBC is correct that the CLECs have presented no basis for monetary damages. Despite the contents of SBC's ALs, the complaining CLECs have apparently not been denied access to the pertinent UNEs, even under Section 251, because of the combined effect of emergency relief and SBC's forbearance. Nor have they provided evidence of any damage directly or indirectly associated with the *potential* for denied access contained in the ALs.

As for penalties, subsection 13-516(a)(2) of the PUA provides, *inter alia*, that:

> for a second and any subsequent violation of Section 13-514 committed by a telecommunications carrier after the effective date of this amendatory Act...the Commission may impose penalties of up to $30,000 or 0.00825% of the telecommunications carrier's gross intrastate annual telecommunications revenue, whichever is greater...Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this section.

83 Ill.Adm.Code 766.400 *et seq.* sets out specific procedures governing the imposition of penalties. Under subsection 13-516(b), the Commission may waive penalties "if it makes a written finding as to its reasons for waiving the penalty."

Joint CLECs are the only proponents of penalties here, and they have offered, at best, minimal support for their proposition. Consequently, the record is devoid of meaningful argument on this subject. The Commission is thus given little reason to expend the time and resources (its own and the parties') necessary to comply with the procedures detailed in 83 Ill.Adm.Code 766[134]. Penalties will be waived in this proceeding.

4. SBC's Relief

SBC requests that the complaining CLECs be required to execute a TRRO-related amendment prepared by SBC for inclusion in their respective ICAs. In effect, SBC proposes unilateralism with Commission approval. As discussed in this Decision, the FCC, in the TRRO, expects bilateral negotiations to amend ICAs.

Alternatively, SBC asks the Commission impose a time limit (i.e., until June 11 2005) on the parties' ICA amendment negotiations (after which, absent agreement, SBC would return to unilateral implementation of the TRRO). In the TRRO, the FCC directed the parties to proceed promptly. It also reminded the parties of their duty to

[133] SBC Init. Br. at 55.

[134] For example, Ameritech would have a right to a hearing, in order to address the "factors to be considered by the Commission" under Section 766.415 when assessing penalties, as well as a right to a written order under Section 766.410.

negotiate in good faith. But the FCC imposed no deadlines, other than the duration of the transition periods, and the time limits under Section 252 of the Federal Act (assuming those limits establish the outer temporal boundaries of the parties' negotiations).

This Decision will not impose additional time limits. Regarding ULS/UNE-P, SBC's interest in expedition is addressed here through the 28-day negotiation mandated above. Moreover, SBC has pledged to continue to furnish UNE-P while state law obligations remain. With respect to loops and transport, nothing demonstrates a need to rush the negotiations concerning the interrelated unbundling requirements under Sections 251 and 271 of the Federal Act and Section 13-801 of the PUA, or the multistage processes required for Section 251 loops and transport. Also, given the date of the Instant Decision, June 11 is an utterly unrealistic deadline for approval of ICA amendments.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Joint Complainants, XO and McLeod are entities that own or control, for public use in Illinois, property or equipment for the provision of telecommunications services in Illinois and, as such, are telecommunications carriers within the meaning of §13-202 of the PUA

(2) SBC is an Illinois corporation that owns or controls, for public use in Illinois, property or equipment for the provision of telecommunications services in Illinois and, as such, is a telecommunications carrier within the meaning of §13-202 of the PUA;

(3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;

(4) the recitals of fact and conclusions and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;

(5) the remedies described in Section IV.H of this Decision should be adopted, and made mandatory, as specifically set forth above;

(6) the Amendatory Orders for Emergency Relief entered in each of these combined dockets should remain in effect;

(7) any objections, motions or petitions filed in this proceeding which remain undisposed of should be disposed of in a manner consistent with the ultimate conclusions herein contained.

IT IS THEREFORE ORDERED that pursuant to §13-514 of the PUA, the remedies described in Section IV.H of this Decision are adopted, and made mandatory, as specifically set forth in this Decision.

IT IS FURTHER ORDERED that the Amendatory Orders for Emergency Relief entered in each of these combined dockets shall remain in effect.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with the findings of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, and unless reviewed by the Commission under Section 13-515(d)(8) of the Public Utilities Act, this Decision is final; it is not subject to the Administrative Review Law.

DATED:	MAY 9, 2005
PETITIONS FOR REVIEW DUE:	MAY 16, 2005, BY 12 NOON
RESPONSES TO PETITIONS FOR REVIEW DUE:	MAY 18, 2005, BY 5PM

David Gilbert
Administrative Law Judge

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

XO Illinois, Inc.	:	
	:	
Petition for Arbitration of an Amendment	:	
to an Interconnection Agreement with	:	04-0371
Illinois Bell Telephone Company Pursuant	:	
o Section 252(b) of the Communications	:	
Act of 1934, as Amended.	:	

ARBITRATION DECISION

September 9, 2004

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

XO Illinois, Inc.	:	
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Petition for Arbitration of an Amendment	:	
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Act of 1934, as Amended.	:	

ARBITRATION DECISION

By the Commission:

I. PROCEDURAL BACKGROUND

This proceeding was initiated by a Petition for Arbitration ("Petition") filed with this Commission on May 3, 2004 by XO Illinois, Inc. ("XO"), pursuant to subsection 252(b) of the federal Telecommunications Act of 1996 ("Federal Act")[1] and 83 Ill.Adm.Code 761, to amend an interconnection agreement (the "ICA") with Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC"). SBC is an incumbent local exchange carrier ("ILEC") in certain geographic areas of Illinois. XO is a competitive local exchange carrier ("CLEC") providing telecommunications services in, *inter alia*, areas in which SBC also provides local services.

SBC filed its Response to XO's Petition on June 1, 2004. SBC also identified additional disputed issues for resolution, as it is permitted to do under subsection 252(b)(4) of the Federal Act[2]. XO filed its Response to SBC's issues on June 15, 2004. That filing included an Unresolved Issues Matrix, which contained, *inter alia*, the parties' disputed issues and their respective proposed amendatory texts for the ICA.

XO initially identified seven issues for arbitration. SBC filed a motion to dismiss on May 13, 2004, to which XO and Commission Staff ("Staff") filed responses on May 21, 2004. The Administrative Law Judge ("ALJ") issued a Ruling on the SBC motion on June 3, 2004, dismissing XO Issue 1 and postponing ruling on XO's other issues pending additional flings. On June 8, 20004, XO requested reinstatement of XO Issue 1 and voluntarily withdrew XO Issue 3. On June 24, 2004, the ALJ issued a Ruling reinstating XO Issue 1 and acknowledging withdrawal of XO Issue 3.

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[1] 47 U.S.C. § 252(b).
[2] 47 U.S.C. § 252(b)(4).

On June 9, 2004, XO filed a motion to dismiss certain SBC arbitration issues and to strike related language in SBC's proposed amendment to the ICA. On June 16, 2004, SBC and Staff filed their respective responses to XO's motion. On June 24, 2004, the ALJ issued a Ruling denying XO's motion (except with regard to certain forward-looking contract language proposed by SBC).

The ALJ conducted a pre-trial hearing on May 11, 2004 in Chicago, Illinois. The parties agreed that open issues would be addressed and contested through written briefings and waived evidentiary hearings. This was consistent with XO's Request for Waiver or Variance of Commission's Rules, filed in conjunction with the Petition, in which XO requested that no evidentiary hearings be conducted[3]. The case was marked "heard and taken" on June 29, 2004.

On June 28, 2004, XO filed a Motion to Withdraw Petition and Terminate Arbitration Proceedings. On June 29, Staff filed a Response recommending that XO's motion be granted. On July 6, 2004, SBC filed a Response opposing XO's motion. XO withdrew the motion on July 13, 2004.

An Initial Brief ("Init. Br.") and Reply Brief ("Reply Br.") were each filed by XO, SBC and Staff. An ALJ's Proposed Arbitration Decision was served on all parties. Briefs on exceptions ("BOEs") were filed by each participant on August 20, 2004.

Also on August 20, 2004, the Federal Communications Commission ("FCC") issued its "*Status Quo* Order,"[4] which significantly affects certain substantive issues in this proceeding. Accordingly, SBC and XO each filed a Supplemental Brief ("Supp. Br.") on August 31, 2004, and Staff filed its Supplemental Brief on September 1, 2004. Each party filed a Supplemental Reply Brief ("Supp. Rep. Br.") on September 3, 2004. Each such brief addressed the impact of the *Status Quo* Order on this case.

II. JURISDICTION

Subsection 252 of the Federal Act provides that within a specified time period "after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." Both XO's Petition and SBC's Response assert that there are open issues between the parties. There is no dispute that the Petition was timely filed. Consequently, the Commission has jurisdiction to arbitrate the issues presented.

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[3] On May 21, 2004, SBC filed its Response to XO's Motion for Waiver or Variance, in which it declared "no objection" to XO's motion insofar as it pertained to arbitration issues presented by XO.

[4] 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. 01-038, Order and Notice of Proposed Rulemaking (rel. Aug. 20, 2004). (Note: We use "*Status Quo* Order" to avoid confusion with the FCC decision colloquially known as the "Interim Order.")

Section 252 of the Federal Act proscribes certain procedures, standards and outcomes for arbitrations conducted under that section. In addition, the Commission has adopted rules and procedures for such arbitrations in 83 Ill.Adm.Code 761. The foregoing federal and state provisions apply to this proceeding.

In its dismissal motion of May 13, 2004, SBC argued that this proceeding could not be conducted under Section 252. As the ALJ ruled, this arbitration was compelled by paragraph 703 of the TRO, which mandates that carriers use Section 252 arbitration processes to incorporate TRO-related changes in their ICA, when that ICA is "silent" on legal change and transition timing. Since the change-of-law provision in the SBC-XO ICA contemplates negotiation, but has no dispute resolution mechanism to resolve an impasse (other than a reference to "applicable law"), the ALJ held that the ICA was "silent" and that the parties therefore defaulted to FCC-required arbitration.

III. DEFICIENT FRAMING OF OPEN ISSUES

In many instances in this arbitration, the parties have failed to conform to the letter or the spirit of Section 252 of the Federal Act. That statute contemplates a period of 135 days for voluntary negotiations between an ILEC and CLEC for the purpose of achieving an ICA. During the 25 days thereafter, either party can request state commission arbitration of "open issues." Arbitration is requested by a petition, accompanied by documents concerning "the unresolved issues" between the parties. The other carrier may respond within the subsequent 25 days. The Commission must then resolve each of the "unresolved issues" presented in the petition and response, within a period of between 85 and 100 days (depending upon when arbitration was requested). Both Section 252 and Section 251(c)(1) of the Federal Act impose an obligation to negotiate in good faith.

The Commission believes that the foregoing statutory framework requires diligent and persistent negotiation by the carriers, in support of the clear Congressional intention to foster interconnection. Thus, the initial 135-day negotiation period should be spent doing just what the statute says – negotiating. This inherently involves identifying both a party's own interests and its differences with its prospective interconnection partner, followed by a resolute effort to clarify and narrow those differences. By the 135th day, negotiations should have either produced a complete agreement or precisely framed the parties' remaining unresolved issues. Then, if either party perceives that negotiations are truly at an impasse, this Commission's processes can be enlisted for deciding "unresolved issues."

In the Petition here, XO asserts that "[o]ther than exchanging a few letters and proposed amendments, the parties have not engaged in direct negotiations with each other...XO repeatedly requested that SBC provide dates and times that it was available for negotiations. However, SBC did not do so." Petition at 6. SBC has never addressed these assertions; thus, it has never denied them.

Accordingly, XO complains that it was not "able to completely determine SBC's positions on each and every issue" that XO presented for arbitration. *Id.*, at 7. This may explain why XO frames certain issues that are either far too general (e.g., "[w]hat eligibility and certification requirements should apply for access to high-capacity EELs pursuant to FCC and ICC rules," XO Issue 6) and/or unconstructively self-evident (e.g., "[s]hould SBC's right to audit...be limited consistent with FCC rules," XO Issue 7). XO may have been attempting to keep these issues broad enough to accommodate whatever specific disputes SBC eventually raised under those general topics. (Alternatively, XO may have hoped to retain the flexibility to alter its own strategies as the case unfolded.)

In the Response, SBC re-frames several of XO's issues, as well as presenting its own. In many instances, however, those issues exceed the inappropriate generality of the XO issues quoted above. Repeatedly, SBC presents this question: "What terms and conditions should apply to...[a service or process]?" Such catch-all questions, along with those XO issues that are comparably over-broad, are not proper "open" or "unresolved" issues within the meaning of Section 252. Rather, they reflect the absence of negotiations between the parties. It is inconceivable to this Commission that after 135 days of the diligent negotiations contemplated by the Federal Act, carriers would need to ask us to decide *every* term and condition that should, and should not, apply to wholesale service conversions, high-capacity EELs, dark fiber, line conditioning, SS7, call-related data bases and other important services and provisioning processes.

Several serious adverse consequences flow from the failure to negotiate, to narrow differences, and to properly frame unresolved issues. First, the resources of this Commission and its Staff are squandered. The parties, who are, after all, commercial enterprises, should be expending *their own* resources to determine the terms of their interconnection, as the Federal Act contemplates. The Commission should be presented only with carefully framed disagreements after resolute discussions have led to impasse, not broad and open-ended topics that reflect the absence of discussions. A "let the Commission figure it out" approach is not what the Congress intended and it diverts us from other duties.

Second, the arbitrating carriers, our Staff and our ALJ are hampered in their preparation for, and conduct of, arbitration proceedings, when the parties frame their actual disputes and stake out their positions on an amorphous, rolling basis, as they have here. Thus, there is often considerable divergence between the "unresolved" issues initially presented by each carrier and the issues each actually addresses in its position summaries (required by the ALJ) and supporting arguments. Further, in several instances, the parties brief different points under the same vague issue or sub-issue. Worse, the carriers settled issues without informing Staff, with the result that Staff briefed resolved issues.

Such circumstances are especially deleterious within the compressed time frame allotted to arbitration under Section 252. Precious time is wasted as the real disputed issues gradually take shape (and sometimes change shape), and as the parties, Staff

and ALJ adjust on the fly to the changing landscape of the case. Moreover, the truncated arbitration time frame is itself indicative of Congress's expectation that precise, unambiguous and fully negotiated issues would be presented for resolution, not broad topics more appropriate for a rulemaking or industry-wide workshop.

Third (and related to the preceding two paragraphs), ambiguous issues tend to produce an under-developed or poorly targeted record. Thus, the parties here frequently accuse each other of failing to produce necessary evidence, and Staff declares that it cannot form an opinion on certain issues due to the absence of sufficient factual evidence. Those excessively broad issues initially framed by the parties apparently appeared to be, by their terms, amenable to resolution without evidentiary hearings. However, by the time the carriers framed some of their actual disputes - which should have been properly framed in the first place – the time to develop a suitable factual record had passed.

Fourth, the federal and state policies favoring interconnection and effective competition are frustrated. This Commission is obligated by the Federal Act to impose conditions and establish rates in the ICA that appropriately implement the substantive requirements of the law. The carriers, in turn, are required to present an ICA for approval that meets statutory requirements and FCC regulations. These outcomes are far more difficult when the parties have not earnestly negotiated or presented clear and concise issues for final resolution. Absent diligent negotiations, interconnection without arbitration is less likely. Absent carefully framed and properly narrowed issues for arbitration, a complete, unambiguous and approvable ICA is less likely.

It is not enough that XO and SBC each presented its own proposed contract terms. A densely worded schedule of contractual text is not an unresolved issue. It is a monologue. Furthermore, laying those texts side-by-side is not the same as presenting satisfactory open issues. Those texts are lengthy, detailed and highly technical and the movement or deletion of even a single word can dramatically alter the parties' rights and responsibilities. It is not up to the Commission or its Staff to cull those texts in an attempt to discern what elements present a meaningful dispute for which the parties want a specific resolution. That is the job of the parties.

Moreover, it is clear that SBC and XO each know how to frame a clear, concise and carefully tailored issue when they want to. XO Issues 2 and 5, and SBC Issues 3 and 6 (except subsection (d)) are particularly strong examples.

SBC takes exceptions to the foregoing assessment. It asserts that "[w]hile the parties included topic headings in the arbitration petitions and matrices, those headings were and are intended only as a short-hand description of the topic of an issue." SBC BOE at 28. "[T]he parties presented their competing contract language for arbitration, and briefed their particular disputes regarding that contract language." *Id.*, at 29

SBC's comments reflect a severe and disappointing misunderstanding of what the Federal Act requires and of the consequences of noncompliance. This Commission

"shall limit its consideration...to *the issues set forth in the petition and response*." 47 CFR 252(b)(4)(A) (emphasis added). The Federal Act clearly distinguishes *issues* from a party's supporting materials. "A party that petitions a State Commission...shall, at the same time as it submits the petition, provide...all relevant documents concerning (i) *the unresolved issues* [and] (ii) *the position of each party with respect to those issues*." 47 CFR 252((b)(4)(C) (emphasis added). Thus, the Federal Act regards issues as separate from "the position of [a] party with respect to those issues." While "topic headings," "short-hand descriptions" and "contract language" might constitute the latter, they are not the former. The Commission cannot resolve such non-issues under subsection 252(b)(4)(A). The Commission can only resolve issues - which, in the context of Section 252, are precisely delineated disputes on points of fact, law or policy.

Nevertheless, in addition to resolving the properly framed unresolved issues presented here, the Commission has endeavored in this Decision to offer specific guidance regarding several ill-formed issues as well. To do otherwise would only delay the process of incorporating the "TRO,"[5] as well as the impact of recent *Status Quo* Order[6], into the parties ICA, as the FCC requires. However, we have done no more than what can be supported by the record created by the parties.

IV. ISSUES FOR RESOLUTION

A. OPEN ISSUES PRESENTED BY XO

1. (a) Should SBC be required to make routine network modifications to unbundled network elements ("UNEs"), including loops and transport (including dark fiber), consistent with FCC rules and at the current nonrecurring rates approved by the Commission?

(b) Should unbundled network elements UNEs that require network modifications be subject to the standard performance measure provisioning intervals of all UNEs?

SBC re-characterizes this issue as follows:

(a) Must SBC make routine network modifications at "no additional cost" to XO?

(b) Should network modification projects be subject to the standard performance measurement provisioning intervals?

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[5] The FCC's Triennial Review Order, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, etc., CC Docket No's 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Notice of Proposed Rulemaking (rel. Aug. 21, 2003).

[6] The Status Quo Order creates an "Interim Period" and "Transition Period." The Interim Period starts on the date of publication of the order in the Federal Register and the Transition Period begins immediately after the Interim Period ends. The Commission expects publication of the order on or before September 9, 2004. Even if publication occurs after entry of this Arbitration Decision, however, we nonetheless believe that we are bound by the mandates in the *Status Quo* Order. That Order has already been released by the FCC, and publication will take place in accordance with federal procedures.

1. Parties' Positions and Proposals[7]

a.) XO

(XO-1a). FCC rules require SBC to make routine network modifications to UNEs, including loops, transport, and dark fiber. 47 C.F.R. § 51.319(a)(8) & (e)(5). The *TRO* requires ILECs to make the same routine modifications to these UNEs that they make for equivalent services provided to their own customers. *TRO* ¶ 639. The costs of these modifications are captured in SBC's current recurring or nonrecurring charges for these UNEs. Indeed, SBC normally performed these functions for CLECs until an internal SBC policy change halted such work. In addition, SBC regularly performs this work, without additional charge, on special access circuits. If SBC seeks to recover additional charges for routine network modifications, SBC has not produced any evidence to demonstrate the need for, or amount of, any such additional charges and should seek to do so through the proper UNE costing proceeding at the Commission and not through this arbitration.

(XO-1b). The *TRO* expressly stated that to the extent that routine network modifications to existing loop facilities affect loop provisioning intervals contained in performance metrics, "we expect that states will address the impact of these modifications as part of their recurring reviews of incumbent LEC performance." *TRO* at ¶ 639. Thus, the FCC assumes that these performance metrics apply to all UNEs, including those requiring routine network modifications. Indeed, the FCC observed that at least one ILEC "provides the routine modifications listed above with minimal delay, in most cases, to their own retail customers." *Id.*, fn.1940. SBC has provided no evidence to the contrary in this proceeding, and should present any such evidence as part of the Commission's review of SBC's performance, not this arbitration.

b.) SBC

Issue XO-1 involves several discrete disputes. *First*, the Federal Act, the FCC's rules, and the *TRO* are clear that SBC Illinois is entitled to recover its costs of performing routine network modifications. XO proposes to deny SBC cost recovery on the theory that SBC should (or already does) recover these costs in its recurring rates, but XO has proposed no mechanism to adjust SBC's recurring rates to account for such costs, nor has it even attempted to demonstrate that such costs are somehow already recovered in SBC's current UNE loop prices. The Commission should thus reject XO's proposal, and adopt SBC's proposal that pricing for such modifications should be determined on an individual case basis. (SBC proposed Section 3.16.1.) SBC acknowledges its duty to avoid double recovery of costs, but this can be dealt with through the ICB pricing process rather than attempting, in this proceeding, to determine

[7] Each party summarized its own positions and proposals, at the direction of the ALJ. Those summaries appear in this Order as drafted by the parties, without any substantive change by the Commission or the ALJ. Minor editorial revisions were made by the ALJ for the sole purpose of standardizing the legal citations, abbreviations and format used throughout this Order. Under no circumstance should anything in the "Parties' Positions and Proposals" sections of this Order be presented or construed as an assertion, finding or conclusion of the Commission.

whether and to what extent a large variety or work may or may not be included in current unbundled loop prices. This is consistent with the approach of the FCC's Wireline Competition Bureau in the Cavalier[8] arbitration.

Second, the Commission should reject XO's proposal in Section 3.16.1 to require SBC to construct new loops under the pretext of a "routine network modification." Constructing new facilities is not a "modification" of existing facilities at all. Moreover, in the *TRO* the FCC held *without qualification* that ILECs are not required to "build[] a loop from scratch by trenching or pulling cable," and are not "required to trench or place new cables for a requesting carrier." *TRO*, ¶¶ 636, 639. XO's proposed contract language runs afoul of these directives.

Third, the Commission should also reject XO's proposal in Section 3.16.2 to add several specific vague items, not listed by the FCC, as examples of routine network modifications. Those items do not appear in the *TRO*, and XO has provided no evidence that the listed activities in fact constitute routine network modifications under the FCC's rule. SBC'S proposed language, by contrast, accurately tracks the FCC's language and clear intent, and should be adopted.

Fourth, XO's proposal in Section 3.16.3 to require SBC to "provide light continuity and functional signal carriage across both ends of a dark fiber" is unsupported by the *TRO*. Dark fiber is just that – dark. The FCC concluded that CLECs must activate dark fiber themselves using "self-provided optronic equipment," and that "carriers that request dark fiber transport . . . must purchase and deploy necessary electronics." *TRO*, ¶¶ 381-82. XO cannot sneak in the back door, under the guise of a "routine network modification," precisely what the FCC prohibited. Moreover, the FCC's routine network modification rule provides that, with respect to dark fiber, such modifications include activities to "enable a requesting telecommunications carrier to light a dark fiber." 47 CFR 319(e)(5). In other words, again the FCC confirmed that it is the CLEC that must do the "lighting."

Fifth, the provisioning of network elements that require routine network modifications should not be made subject to the standard provisioning intervals used for UNEs that do not require such modifications. (XO Section 3.16.4.) There is no reason to alter SBC's existing performance measures that govern network element modification. Performing routine network modification activities manifestly increases the time reasonably necessary to provision a network element. It would be against all reason to subject routine network modifications to the same provisioning intervals that were created to measure the provisioning of network elements that do not require such modifications. Moreover, the FCC directed states to "address the impact of these modifications as part of their recurring reviews of incumbent LEC performance." *TRO*, ¶ 639. If XO believes that performance measures should be used to measure the provisioning of network elements that require routine network modifications, it can raise that issue at the appropriate time (for example, in the 6-month performance measure

[8] Petition of Cavalier Telephone LLC, FCC DA 03-3947 (Order, adopted & released Dec. 12, 2003).

and remedy plan review that the Commission has already established as part of the Section 271 Plan, in which all CLECs may participate).

c.) Staff

Staff notes that SBC is required to perform certain routine network modifications upon XO's request. SBC's opposition appears to the Staff to be to XO's assertion that it must perform these modifications without charge. SBC asserts that: "SBC ILLINOIS' UNE Loop rates do not take into consideration any additions or modifications to the existing UNE Loop. The existing UNE Loop is already established to capacity. Any modifications to increase capacity, pursuant to the TRO rules, have not been cared for [sic] in the existing UNE Loop rates."

It appears to the Staff that a great many, if not all, of the costs associated with routine network modifications (i.e., with those modifications that SBC performs for its own customers) *may* be costs that SBC recovers in its UNE rates. Specifically, the Staff understands that certain of these costs are recovered in the Annual Charge Factor, which is an adder to UNE rates. The Commission addressed this question in its recent *Loop TELRIC Order*. *See* Loop TELRIC Order at 262, 265.

In the Staff's view, this may include such activities as: rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card, and suchlike other tasks. However, neither party has identified with any degree of specificity what it considers "routine network modifications" to consist of.

This presents a problem, inasmuch as the record before the Commission in this proceeding is simply not adequate to make a determination of this issue. The Commission may determine this issue based upon which party is determined to have the burden of proof. *However, the Staff recommends that both parties frame their positions with greater particularity in their reply briefs.*

2. Analysis and Conclusions

XO Issue 1-a. There is no dispute that FCC rules require SBC to make routine network modifications to UNEs. It is also settled that the TRO, along with the FCC's pre-existing rules, assure SBC "an opportunity to recover the cost of the routine network modifications" required in the TRO. TRO, ¶ 640. XO acknowledges this. XO Init. Br. at 3. Thus, SBC's reframed version of XO Issue 1-a (SBC/XO 1-a) is readily answered - SBC is not required to make routine network modifications at no additional cost to XO, unless SBC's opportunity to recover such modification costs lies elsewhere. "The issue, then, is whether the recurring or non-recurring UNE rates that the Commission has authorized SBC to charge include such costs, and if they do not, what are those costs, and what type of cost recovery mechanism should be used."[9] XO Init. Br. at 3.

[9] This is one of many examples of a party presenting an open issue for resolution, then substantially reframing the issue for argument purposes. The "real" issue should have been presented in the first place

The parties agree that SBC does recover some network modification costs in its TELRIC-based UNE rates. The parties disagree as to whether *all* of the costs of routine modifications are so recovered. Using the example of "a doubler or repeater to enhance voice transmission," SBC Init. Br. at 3, SBC claims that some routine modifications are not accounted for in SBC's existing rates. *Id.* "Some" other network modifications, SBC avers, "might or might not be included [in TELRIC-based prices] depending on the nature of the work presented." *Id.* XO counters that SBC is "fully compensate[d]" through UNE rates for the costs of modifications, principally because SBC "already undertakes [those modifications] for its end user and tariff customers" and includes the associated costs in reports used to develop UNE rates. XO Init. Br. at 4.

Staff's position is that "a great many, if not all, of the costs associated with routine network modifications (i.e., with those modifications that SBC performs for its own customer[10]) may be costs that SBC recovers in its UNE rates. Specifically, the Staff understands that certain of these costs are recovered in the Annual Charge Factor, which is an adder to UNE rates." Staff Init. Br. at 31. (In Staff's tentative view, the costs associated with adding a doubler or repeater are among those recovered in existing UNE rates.[11] *Id.*, at 32.)

The identification of the modification costs recovered through SBC's existing UNE rates is not in the record. XO and SBC accuse each other of failing to establish such identification. XO Init. Br. at 4; SBC Init. Br. at 3. Both are correct. Neither side offered an identification in their filings[12]. Therefore, as Staff suggests, the Commission has no adequate foundation for a conclusion on this issue. Staff Init. Br. at 31.

That said, XO argues that the Commission should address SBC's recovery of any presently un-recovered modification costs in a generic costing proceeding, not in an arbitration. XO Init. Br. at 4. SBC's preferred alternative is that "pricing for routine network modifications be addressed on an individual case basis ('ICB')," using pricing provisions SBC would incorporate in the parties' ICA. SBC Init. Br. at 3. SBC supports this proposal with the assertion that "ICB pricing will allow it to determine whether the costs associated with any particular XO request are or are not already included in the UNE loop price." *Id.* This is a curious assertion, since it implicitly concedes that SBC already knows which network modification costs are presently recovered through UNE rates. Had it provided that information for the record, we would have been able to offer more specific resolution to the parties' disputes regarding network modifications.

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in the Petition or Response. Furthermore, the issue XO discusses in its brief is really a compilation of several issues, each of which should have been expressly presented as separate issues or sub-issues in XO's Petition or issues matrix.

[10] "By 'routine network modifications' we mean that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers." TRO ¶ 632.

[11] The FCC states that the addition of a doubler or repeater is a routine modification. TRO ¶ 634. The FCC's regulations reflect that determination. *E.g.*, 47 CFR 51.319 (e)(5).

[12] Indeed, neither party framed an open issue concerning the identity of the modification costs encompassed in such rates.

Given the state of the record, however, the Commission can only provide principles that the parties will have to apply in order to amend their ICA in accordance with this Decision. First, SBC is prohibited from imposing a charge for any cost already recovered through its existing UNE rates or any other rate. Second, SBC may impose a charge, on an ICB basis, for any routine network modification cost that is not recovered through existing UNE rates (or any other rate) and for any network modification cost that is not "routine" (see below).

We reject XO's recommendation to address SBC's recovery of any presently un-recovered modification costs in a generic costing docket. As noted, the TRO establishes that SBC is entitled to an opportunity to recover such costs, and we will not delay that opportunity until the close of a docket that does not now exist.

The question of how to distinguish routine network modifications from any other service SBC might provide to XO is not expressly presented in either parties' version of XO Issue 1. Consequently, we will provide only those conclusions and requirements respecting network modifications that we deem essential to completing an ICA.

First, we note that the TRO (as stated above) defines routine network modifications as those an LEC regularly undertakes for its own customers. The FCC specifically applies this principle to an ILEC's provision of high capacity loop facilities to competitors. TRO ¶ 633. The FCC also gives this principle broad application to transmission, excepting only the construction of "an altogether new loop" from its general requirement that an ILEC "modify an existing transmission facility in the same manner it does for its own customers." *Id.*, ¶ 639. On the other hand, the FCC concluded that an ILEC is not required "to trench or place new cables[13] for a requesting carrier, whether [to serve] a new customer or along an existing route." *Id.*, ¶ 636. We hold that the parties' amended ICA must strictly incorporate the foregoing FCC principles.

Second, specifically regarding unbundled DS1 circuits and loops, the FCC concluded that routine modifications to local loops shall include the addition of the "types of electronics that [ILECs] ordinarily attach to a loop for a customer requiring a DS1 loop, even if such electronics are not attached to a particular loop." TRO ¶ 398. The Commission holds that this FCC requirement must be fully reflected in the XO/SBC amended ICA. We flatly reject SBC's claim that the term "electronics" is vague and in flux. SBC Init. Br. at 5. As the FCC, which found the term sufficiently clear, explains, the key variable is not what electronics are at any moment in time, but whether there is equivalence between what the CLEC and the ILEC's own customers are receiving. TRO ¶ 634.

We similarly disregard SBC's objection that "tasks listed by XO regarding cross-connects and terminating a DS1 loop to the appropriate NID do not appear anywhere in the *TRO*'s discussion of ordinary network modifications." SBC Init. Br. at 5. Again, the

[13] New cable includes installation of new aerial or buried cable. TRO ¶ 632.

distinguishing characteristic of a routine network modification is whether the ILEC performs it for its own customers, not whether it is expressly mentioned in the TRO. TRO ¶ 634.

Third, with specific respect to dark fiber – which XO includes in the text of XO Issue 1 – certain FCC principles discussed above are applicable. SBC is no more required to install new dark fiber than it is to install a new cable. Nor is SBC obliged to perform modifications for CLEC dark fiber that are not routinely provide to other ILEC customers.

Additionally, the CLEC has the duty to furnish its own optronics to activate dark fiber. TRO ¶¶ 311, 381-82. However, as SBC recognizes, an ILEC must perform the "activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility." 47 CFR 51.319 (e)(5), cited in SBC Init. Br. at 7. Whether this includes the activities described by XO in its proposed section 3.16.3 (activities to "enable CLECs to have light continuity and functional signal carriage across both ends of a dark fiber transport or loop facility") cannot be discerned from the record, which is silent on the subject. Nonetheless, if such activities are among the routine modifications SBC provides its customers, or if they are "needed to enable a requesting telecommunications carrier to light a dark fiber transport facility," they are routine modifications that SBC must supply to XO in connection with unbundled dark fiber.

On exceptions, XO stresses that only SBC knows - and XO has no way to verify - whether SBC provides a network modification for its own customers, whether SBC already covers the cost of a routine modification through another charge or rate, or whether costs are accurately reflected in SBC's proposed modification charge to XO. XO BOE at 2. Therefore, XO asks that we require SBC to provide "information sufficient to verify" SBC's position on the foregoing matters whenever SBC either refuses to perform a modification for XO or imposes a modification charge. *Id*. XO's concerns are commercially reasonable, but its remedial proposal goes too far. The question of what information is "sufficient" is likely to embroil the parties, and this Commission, in frequent dispute, as are SBC objections that XO wants confidential or competitively sensitive data. Accordingly, to address XO's legitimate concerns in this competitive context, without inviting disputes or jeopardizing confidentiality, we will require SBC to expressly certify (when it refuses to perform a modification) that it does not perform such modification for its own customers or (when it imposes a modification charge) that no cost recovered by such charge is recovered by any other rate or charge. We will not oblige SBC to certify that its charges are cost-based, since that obligation is already associated with UNEs generally and no additional requirements are needed for network modifications specifically.

XO Issue 1-b. The FCC states that "to the extent that certain routine network modifications to existing loop facilities affect loop provisioning intervals contained in, for example, section 271 performance metrics, we expect that states will address the impact of these modifications as part of their recurring reviews of incumbent LEC performance." *TRO* at ¶ 639. XO is therefore correct that the FCC directs us to

incorporate routine modifications in our measurement of UNE provisioning performance. XO Init. Br. at 4. The question is how.

SBC maintains that it "*already has performance measures* that separately measure the performance of the facilities modification process for orders that are worked through that process." SBC Init. Br. at 8 (emphasis in original). However, a "facilities modification process" is not, by its terms, the same as a loop and transport provisioning process, and neither party explains the extent to which the former captures the latter. Moreover, insofar as existing performance measures address loop and transport provisioning, the record does not reveal whether routine modifications are already considered.

In any event, SBC argues that the "recurring review" of SBC performance (as contemplated by the FCC, above) was built into the "Section 271 Plan" developed in our Docket 01-0662. That plan includes a semi-annual process for altering the performance measures addressed by the plan. However, Section 6.4 of the Section 271 Performance Plan, on which SBC relies, SBC Init. Br. at 8, simply refers the parties back to the Commission for dispute resolution when they cannot agree upon revisions. The parties certainly disagree here with respect to the reasonableness of measuring modified and un-modified provisioning together. Moreover, although the FCC directs us to account for routine network modifications in our "recurring reviews" of ILEC performance, it does not prohibit us from (or even advise against) addressing this subject in arbitration proceedings. For that matter, it is not clear that we can refrain from resolving an open arbitration issue on the subject (although requiring the parties to use the Section 271 Performance Plan procedures is arguably a permissible resolution of that open issue).

Accordingly, so that the parties can proceed toward a completed ICA, we will articulate certain conclusions respecting routine modifications and performances measures, with the proviso that the procedures in the Section 271 Performance Plan should not be disturbed in the process. First, it necessarily follows that XO's proposed text (XO 3.16.4) dramatically overreaches, by declaring that SBC's performance with respect to network modifications would be factored into the calculation of remedies *outside the parties' ICA*. The tail would thus wag the dog, as the calculation of Section 271 Performance Plan remedies (to the extent that they do or will address loop and transport provisioning) would be subordinated to the terms of this arbitrated agreement.

Second, the Commission perceives no benefit in creating a discrepancy between the treatment of routine modifications in the Section 271 Performance Plan and in the instant ICA. To the contrary, we would be creating administrative burdens without policy justification. Therefore, the treatment here should mirror the Section 271 Performance Plan – if that plan presently addresses SBC' loop and transport provisioning performance and if it already accounts for routine modifications (whether by *express* inclusion or exclusion of such modifications). If the plan does not address

routine modifications for loop and transport provisioning, then the principles adopted in the next paragraph should be incorporated in the parties' ICA[14].

Third (and only if the Section 271 Performance Plan is silent on the subject), we conclude that routine network modifications should be included in any standard loop and transport provisioning intervals and performance measurement calculations contained in the parties' ICA. Provisioning tasks do not have to be identical in all instances to be fairly included in the same aggregated analysis. Modifications that are, in common practice, "routine" – that occur frequently and are accomplished through customary procedures – are reasonably regarded as part of provisioning itself. Since SBC did not inform the record that routinely modified provisioning typically requires substantially more time and materials than un-modified provisioning, so as to constitute an apples-to-oranges comparison, the Commission has no basis for declaring it so[15]. Indeed, it could be that routine modifications are part of most provisioning[16] (but, again, the parties created no record on the subject). It obviously follows that non-routine network modifications (that is, modifications outside the definition of routine modifications used above) should not be included in standard intervals or performance calculations.

2. (a) Must SBC permit XO to commingle unbundled network elements, combination of unbundled network elements, and wholesale services, consistent with FCC rules?

(b) Should XO be required to submit a bona fide request ("BFR") and go through the BFR process in order to commingle?

(c) Should SBC be permitted to charge XO on a time and material basis for commingling?

SBC re-characterizes this issue as follows:

May XO commingle UNEs with a non-UNE that is offered by SBC-Illinois pursuant to Section 271 or commingled UNES that are no longer lawful UNEs?

1. Parties' Positions and Proposals

a.) XO

(XO-2a). SBC is required under the FCC's rules to permit commingling of UNEs, combinations of UNEs, and wholesale services. As explained in XO's motion to dismiss

[14] However, even if the Section 271 Performance Plan does not presently address routine modifications to loop and transport provisioning, the parties' ICA should contain a provision to incorporate any future Section 271 Plan provisions on the subject, using the ICA's change-of-law provision.

[15] Moreover, a properly weighted performance measure need not prejudice anyone. Logically, both simple and complex tasks can be reasonably measured together, so long as the resulting factor accurately reflects both. Rationale comparisons of annual performance can then be made.

[16] The FCC states that "Verizon provides the routine modifications listed above [in the TRO], with minimal delay, in most cases, to their own retail customers." TRO ¶639, fn. 1940.

certain SBC issues, XO objects to SBC's attempt to include only what it defines as "Lawful UNEs" in the language SBC has proposed for the Amendment. SBC is improperly attempting to modify or alter the change-in-law provisions of the Agreement so that any change of law with regard to UNEs would be self-effectuating or automatic. Nothing in the *TRO* provides ILECs this right, and the FCC expressly rejected the proposals of SBC and other ILECs to make such automatic changes to agreements.

SBC's contract language also states that SBC shall not have an obligation to perform the functions necessary to commingle unless certain conditions are met. The FCC, however, explicitly requires an ILEC "upon request," to "perform the functions necessary to commingle a UNE or a UNE combination with one or more facilities or services." *TRO* at ¶ 579. SBC's contract language inserts a number of other grounds upon which SBC may refuse to perform the functions to commingle, which are not found in the FCC's rules or the *TRO*. SBC incorporates this language from the U.S. Supreme Court Case in Verizon Communications, Inc. v. FCC, 535 U.S. 467, which is a case that did not address commingling. The FCC was fully aware of that decision and did not include any of the restrictions that SBC has somehow derived from that case. SBC's proposed contract language, therefore, unlawfully seeks to have this Commission impose restrictions that the FCC refused to authorize.

XO has included network elements pursuant to Section 271(c) because of the current state of uncertainty. While the FCC declined to require commingling of Section 271 network elements with wholesale services, the FCC did not preclude commingling of Section 271 network elements and UNEs. In addition, the ultimate fate of UNEs and Section 271 network elements has yet to be decided. Accordingly, XO has proposed to incorporate commingling requirements "to the extent required by Applicable Law." Thus, to the extent that Applicable Law does not require commingling of Section 271 network elements, such commingling would not be required.

(XO-1b). There is no basis for SBC to require XO to submit a bona fide request ("BFR") for commingling. Requests for commingling generally are comparable to a request to convert wholesale services to UNEs, which is merely a billing change. The ILECs have been required to perform conversions since at least the issuance of the FCC's UNE Remand Order, several years ago, and SBC has completed such requests for XO. SBC, however, has never required XO to submit a BFR in order to have SBC process XO's conversion or billing change requests, nor has SBC offered any evidence to demonstrate that a BFR is necessary to process a commingling request.

(XO-2c). The *TRO* states that ILECs may assess monthly recurring rates for commingling on an element-by-element basis and a service-by-service basis, but the FCC has not authorized any non-recurring charges for commingling. *TRO* at ¶ 582. SBC's proposal to assess unspecified "time and material" charges for performing commingling functions thus is inconsistent with applicable law. Nor has SBC introduced any evidence on the nature of these functions, much less the costs that SBC claims it will incur. In any event, this issue in general, and any such evidence in particular, should be reviewed in the context of a generic costing proceeding, not this arbitration.

b.) SBC

First, XO's proposed language to require the commingling of "section 271 network elements" should be rejected. In its *Errata* to the *TRO*, the FCC expressly deleted the *single* reference to section 271 network elements that it originally made in its commingling discussion (in ¶ 584), indicating that that reference was in error. As a result, nowhere in that discussion does the FCC include section 271 network elements in the list of wholesale services that CLECs may commingle with UNEs. To the contrary, the FCC refers only to tariffed access services and section 251(c)(4) resale services. *TRO*, ¶¶ 579-84. Thus, the Commission should reject XO's attempt to include section 271 network elements in the parties' commingling contract language, and instead direct the parties to incorporate SBC Illinois' proposed language. (Section 3.14.1.)

Second, the Commission should adopt SBC Illinois' proposal to include the so-called "Verizon restrictions" in the parties' commingling contract language. (Section 3.14.1) Even if Verizon addressed only combinations, that does not mean XO should be allowed to demand commingling where doing so would, for instance, threaten the security or reliability of the network or discriminatorily impede the ability of other CLECs to access UNEs or interconnect.

Third, the Commission should approve the use of the bona fide request process for submitting commingling requests. (Sections 3.14.1.3 and 3.14.1.3.1.) That process, which is well-defined and has a long history, has previously been approved for use in situations for ordering undefined or unidentified arrangements, and there is no need to depart from the process here. Moreover, SBC Illinois has made a commitment to develop processes to eliminate the need for BFRs, as commingled arrangements are identified and defined.

Fourth, XO's suggestion that SBC Illinois should be required to perform commingling functions free of charge must be rejected. *See* Section 3.14.1.3.2. In the *TRO*, the FCC simply did not address the nonrecurring charges for performing the activities necessary to establish commingling arrangements. But that silence cannot be interpreted to mean that SBC Illinois cannot impose cost-based charges to recover the costs it incurs in performing such functions, any more than the FCC's failure to expressly address, for instance, the monthly charges for mass market loops means that all loops are now free. Nor can that silence be interpreted as an attempt to overrule the pricing requirements of the Federal Act (something the FCC could not lawfully do in any event) or the FCC's TELRIC rules, which allow incumbents to recover the costs they incur in providing network elements to competitors.

c.) Staff

XO is correct that commingling of certain UNEs and combinations of UNEs is required. SBC is correct to the extent that it contends it need not commingle UNEs unbundled pursuant to Section 271 with other UNEs or combinations thereof.

Neither party's proposed contract language reflects the state of the law. XO proposes language that would, if adopted, require SBC to commingle Section 271 UNEs with other UNEs and services. XO Issues Matrix at 5, Proposed Contract Provision 3.10.1.[17] SBC, on the other hand, makes several proposals that are equally improper, but rather more complex.

SBC appears to be positioning itself, in its proposed contract provisions, to unilaterally withdraw UNEs when some court or tribunal determines that they no longer need be offered on an unbundled basis. SBC's contract proposal absolves it of any responsibility to combine or commingle any UNEs not on the SBC-maintained list of so-called "Lawful UNEs." SBC Issues Matrix at 25, Contract Provision 3.14.1.4. Under its contract proposal, SBC appears to reserve to itself the right to determine – and, indeed, from time to time *re*-determine – what constitutes a "Lawful UNE." *See* SBC Issues Matrix at 1 *et seq*., Contract Provisions 1.1, 2.2, 6 (SBC only required to provide UNEs as required by law, as it changes from time to time, notwithstanding contract provisions to the contrary).

This, however, is not the only defect in SBC's contract proposal. SBC's proposed contract provisions state as follows:

> SBC-ILLINOIS shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) the CLEC is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-ILLINOIS's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-ILLINOIS would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-ILLINOIS's network; or (vi) CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, but such obligation under this Section ceases if SBC-ILLINOIS informs CLEC of such need to Commingle.

SBC Issues Matrix at 23, Provision 3.14.1

The limitations that SBC places upon commingling are found nowhere in the *TRO*. The *TRO's* findings with respect to commingling are abundantly clear: "We...modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services..., and to *require incumbent LECs to perform the necessary functions to effectuate such commingling upon request.*" TRO, ¶579 (emphasis added). Thus, SBC's proposal clearly over-reaches, and should be rejected.

[17] SBC, in its Issues Matrix, refers to XO's proposal as Provision 3.14.1. SBC Issues Matrix at 22.

Staff favors XO's contract provision, with an exclusion for Section 271 UNEs.

2. Analysis and Conclusions

XO Issue 2-a. This sub-issue is appropriately resolved in conjunction with SBC's version (SBC/XO-2). SBC is obliged to commingle[18] UNEs, combinations of UNEs and wholesale services. TRO ¶ 579. SBC is not required to commingle UNEs and UNE combinations with network elements unbundled pursuant to Section 271. The FCC specifically removed that requirement from TRO ¶ 584 when it issued its TRO Errata. XO's interpretation of the remaining text in TRO ¶ 584 is unsupportable.

The Commission rejects SBC's proposal to label the UNEs that SBC must commingle as "lawful." For the reasons discussed more extensively in connection with SBC Issue 1, this is superfluous terminology that appears designed to confer unilateral power on SBC and is likely to engender wasteful litigation. In particular, we agree with XO and Staff that SBC's proposed application of the term "lawful" would enable SBC to unilaterally incorporate changes of law concerning UNEs into the parties' ICA, in derogation of the ICA's existing change-of-law provision and the FCC's directive, in TRO ¶ 701, to use that provision to incorporate such changes. XO Init. Br. at 6-7; Staff Init. Br. at 38-39.

Regarding SBC's proposal to incorporate into the ICA, for commingling purposes, elements of the decision in Verizon Communications, Inc., v. FCC, 535 U.S. 467 (2002), concerning UNE *combinations*, SBC is straying beyond the boundaries of this proceeding. As the ALJ established by a Ruling on June 3, 2004, the scope of this arbitration is limited to the subject of the parties' negotiations, which focused solely on changes of law mandated by the TRO, as modified by USTA v. FCC, 359 F. 3d. 554 (D.C. Cir. 2004) ("USTA II"). The Verizon decision, which preceded the TRO and was therefore known to the parties when negotiations were requested, was not the subject of negotiation[19]. SBC Motion to Dismiss, Attach's 1 & 2; Petition, Ex. 1.

That said, even assuming *arguendo* that the principles of Verizon were arguably within the scope of this arbitration (for example, as part of the legal context surrounding the FCC's analysis in the TRO), we would still decline to apply the Verizon UNE combination rules to the ICA's provisions concerning the commingling of UNEs and wholesale services. The FCC did not elect to apply the pre-existing Verizon combination rules to commingling and we will not second-guess that decision. To the contrary, such threshold tests as whether SBC "would be placed at a disadvantage in operating its own network," which SBC proposes, are virtual invitations to delay and

[18] Commingling refers to the use of UNEs and wholesale services in the same network. Under previous FCC rulings prohibiting commingling, the CLECs had to operate two functionally equivalent networks or rely solely on either UNEs or wholesale services. TRO ¶580. Commingling thus "raise[d] the costs of competitive LECs." *Id.*, fn. 1788.

[19] Furthermore, to the extent SBC (or, for that matter, XO) believed Verizon constituted a material change of law under the parties' ICA, it could have invoked existing change-of-law provisions to address that decision.

dispute between competitors[20]. Additionally, SBC did not lay an evidentiary foundation for the conclusion that commingling creates functional issues similar to those posed by combinations.

XO Issue 2-b. SBC's proposed BFR process is cumbersome and, as a standardized procedural requirement, unnecessary. Although SBC is correct that this Commission has previously approved the BFR process for "specialized requests," SBC Init. Br. at 11, SBC has not established that commingling is typically (or even frequently) a specialized request. Indeed, XO maintains, and we concur, that commingling is generally comparable to a billing change. XO Init. Br. at 9. This is not to say that a BFR would never be appropriate for an individual commingling request. But a BFR, which can involve several months just for an SBC *response*, e.g., SBC Init. Br. at 11, is inapposite (and arguably anti-competitive) as a standardized mechanism for requesting commingling.

XO Issue 2-c. SBC's proposed commingling charge is unsupported by discussion – much less, approval – in the TRO. Nor has SBC otherwise established the justification (whether practical or legal) for such a charge. As the FCC notes, commingling originated as a *regulatory* construct, not a practical one, intended to temporarily impede the admixture of Section 251 UNEs and wholesale services[21]. TRO ¶ 579 & 583. In contrast, SBC's proposed commingling charge treats commingling as a practical task that differs from the practical tasks associated with combining, say, two Section 251 UNEs or two wholesale services. The Commission disagrees and, accordingly concludes that any cost of commingling is already recovered through SBC's rates for, respectively, UNEs and wholesale services, and any standard or extraordinary charges already imposed for provisioning such items[22]. SBC adduced no evidence to the contrary[23]. Additionally, we are concerned – though we need not decide here – that a discrete commingling charge could constitute an unreasonable condition on the procurement of wholesale services, per Section 251(c)(4)(B) of the Federal Act.

4. Is SBC required to convert a wholesale service, or a group of wholesale services, to unbundled network elements or combinations of unbundled network elements consistent with FCC and ICC rules?

SBC re-characterizes this issue as follows:

What terms and conditions should apply to conversions form wholesale services to UNEs?

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[20] Indeed, the FCC did not include this factor in its rules pertaining to *combinations*. 47 CFR 51.315.

[21] Thus, in the TRO, the FCC concluded that "the commingling restriction is no longer necessary to preserve the status quo while the [FCC] grapples with potential modifications to its universal service and access charge policies." TRO ¶583.

[22] "The work SBC Illinois performs to provide XO a commingled UNE is part of the cost of providing that UNE." SBC Init. Br. at 12.

[23] "SBC Illinois is not proposing to identify and quantify particular costs in this proceeding." SBC Reply Br. at 10.

1. Parties' Positions and Proposals

a.) XO

The FCC has required that upon XO's request and conditioned on XO satisfying the appropriate eligibility requirements, SBC must convert a wholesale service, or a group of wholesale services, to UNEs or a combination of UNEs. The D.C. Circuit's decision in USTA II should not be at issue in this proceeding, as XO explained in its motion to dismiss certain SBC issues. But even if it were, nothing in USTA II addresses conversions, much less relieves SBC of any obligation to undertake such conversions. In addition, as discussed in the context of the previous issues, XO objects to SBC's attempt to modify or alter the change-in-law provisions of its existing Agreement.

SBC is not entitled to charge for conversions of wholesale services to UNEs or UNE combinations. The FCC noted that ILECs may not impose termination charges, disconnect or re-connect fees and that because ILECs never have to perform a conversion to continue serving their own customers, it is inconsistent with the Act for an ILEC to impose such charges. *TRO* at ¶ 587. The FCC further noted that such conversions are "largely a billing function." *Id.* at ¶ 588. No service order charges are appropriate under such circumstances, but even if they were, the Commission should address this issue in a generic cost proceeding, not this arbitration, particularly when SBC has asked for *carte blanche* to charge whatever it likes without producing any evidence whatsoever of any costs that SBC will incur to make the conversions.

Similarly, SBC's proposed language that SBC will "develop and implement processes" for ordering conversions is improper and unreasonable. See, e.g., 3.15.4. SBC has already completed conversions for CLECs. Thus, the processes should be in place. The FCC concluded that, if necessary, carriers will establish necessary procedures to perform conversions through negotiations, which is what XO is proposing here. *TRO* at ¶ 585. XO currently submits orders for most UNEs and special access services via the ASR process. It only makes sense to revise that process to permit electronic orders for conversions. SBC, however should not be permitted to burden or delay XO's ability to obtain conversions while allegedly developing an appropriate process, as SBC has proposed. XO's contract language thus tracks the FCC requirements while SBC proposes language that would modify those requirements for the benefit of SBC.

Other provisions of SBC's proposed language are also unreasonable and would provide SBC with too much unilateral power. For example, the *TRO* provides no authority for SBC to engage in self-help if it believes that XO has not met the applicable eligibility requirements. Indeed, SBC's language leaves unclear how SBC would make such a determination, thus leaving SBC with virtually unfettered discretion to reconvert UNEs to special access services. Such discretion is fundamentally inconsistent with the FCC's objectives in the *TRO*.

b.) SBC

A "conversion" is the process of changing the provision of a wholesale service to the provision of the equivalent UNE (or combination of UNEs). In USTA II the D.C. Circuit disagreed with the FCC's "decision to allow 'conversions' of wholesale special access purchases to UNEs." USTA II, 359 F.3d at 593. The D.C. Circuit agreed with the ILECs that those rules were "too lax," because "the presence of robust competition in a market where CLECs use critical ILEC facilities by purchasing special access at wholesale rates . . . precludes a finding that the CLECs are 'impaired' by a lack of access to the element." *Id.* at 592-93. While XO suggests the Commission should ignore USTA II, the Commission cannot, consistent with the arbitration provisions of the Federal Act or the federal Constitution, ignore binding federal law. Thus, the Commission should adopt SBC Illinois' proposed contract language regarding USTA II (Section 3.15.1), which provides that upon the issuance of the mandate in USTA II, SBC Illinois is not required to perform conversions unless "lawful and effective FCC rules or orders require conversion."

The Commission should also approve SBC Illinois' proposed language to govern conversions in the event "lawful and effective FCC rules or orders require conversion," and reject XO's competing language. First, XO's proposal to prohibit SBC Illinois from assessing *any* charges in connection with conversions is clearly inconsistent with the *TRO*. In the *TRO*, the FCC identified only particular "wasteful and unnecessary charges" that should not be assessed. *See TRO*, ¶ 587. It did not prohibit all charges, as XO proposes. (Section 3.15.3.)

Moreover, nonrecurring charges to cover the costs that SBC Illinois actually incurs to process a conversion request are neither "wasteful" nor "unnecessary." To the contrary, they are required by the Federal Act and the FCC's pricing rules. XO does not deny that SBC Illinois actually performs activities and incurs costs to process an XO order for a conversion, such as service ordering and billing change functions and costs. Pursuant to the Federal Act and the FCC's TELRIC pricing rules, SBC Illinois is entitled to recover these costs from XO. Furthermore, the Commission recently approved cost-based non-recurring project administration charges applicable to conversions of special access services and resale private line circuits to UNEs. Order, Docket No. 02-0864, at 214-15 (June 9, 2004).

Similarly, the FCC held that CLECs cannot "supersede or dissolve existing contractual arrangements through a conversion request." *TRO*, ¶ 587. Thus, to the extent that XO seeks to do just that through a conversion request, it is appropriate (and required by the *TRO*) that SBC Illinois assess any applicable early termination or similar charges, as SBC Illinois' proposed language provides. Moreover, the FCC expressly refused to grant CLECs a "fresh look" with respect to special access to UNE conversions, holding that doing so "would neither be in the public interest nor represent a competitively neutral approach." *Id.* ¶ 696. Thus, SBC Illinois' proposed Section 3.15.10 should be adopted to implement these FCC requirements. Moreover, the Commission should reject XO's proposed section 3.15.7, which would require SBC Illinois to convert a special access service within 30 days, with no minimum period

termination liability, where SBC Illinois denies a request for a UNE (*e.g.*, for a lack of facilities). That proposed language finds no support in the *TRO*, and is contrary to the FCC's holdings regarding the applicability of early termination charges.

The Commission should also approve SBC Illinois' proposed language regarding the ordering processes for conversions. (Sections 3.15.4, 3.15.5, 3.15.6.) Where SBC Illinois has not developed processes for conversion orders, it should follow the change management guidelines. The change management process has previously been examined and approved by this Commission (and the FCC), and there is no reason to depart from that process. While XO would like to dictate new ordering processes via a two-party arbitration, the development of new processes is more appropriately handled through a process that allows for the input of all CLECs, as the change management process does. Moreover, the contract should require XO to "follow the guidelines and ordering requirements" in place for the particular service to be converted, as SBC Illinois proposes.

Finally, the Commission should approve SBC Illinois' proposed language regarding eligibility criteria. (Sections 3.15.2 and 3.15.8.) In the *TRO*, the FCC held that a CLEC must "meet[] the eligibility criteria that may be applicable" to convert services, and held that "the serving incumbent LEC may convert the UNE or UNE combination to the equivalent wholesale services in accordance with the procedures established between the parties" in the event the CLEC "fails to meet the eligibility criteria for serving a particular customer." *TRO*, ¶ 586. XO does not propose any language to implement these requirements. SBC Illinois' proposed language, on the other hand, appropriately implements these requirements.

c.) Staff

XO appears to be entitled under the *TRO* to seamless, quick, and inexpensive conversion of eligible wholesale services to UNEs. It is not clear how this is to be accomplished. XO proposes an "ASR-driven" conversion process, while SBC's proposed contract provisions appear to posit that there is no conversion process for wholesale service to UNEs currently in place, and accordingly one will be developed pursuant to SBC's so-called "Change Management Process". XO also proposes that conversions be completed within 15 days of XO's request for such conversion, while SBC does not propose any minimum period.

Staff is unclear as to why XO proposes an "ASR-driven" ordering process, or what precisely it means by "ASR" under these circumstances. "ASR" is an acronym for "Access Service Request", which is, as Staff further understands it, an obsolescent form of electronic ordering platform used for many years by ILECs and CLECs. Staff is unaware of any legal obligation that SBC is under to deploy such a platform, why it ought to be expected to do so, or whether such a platform is effective or standard. In any case, the TRO clearly does not require an "ASR-driven" ordering process.[24]

[24] The FCC specifically declined to order the adoption of any specific procedure or process for conversions. TRO, ¶585.

XO properly requests that conversion orders be processed within 15 days. The *TRO* clearly calls for "expeditious" conversions that are "seamless" to end users. The Staff therefore consider some time limitation upon the completion of conversions to be proper, and SBC fails to propose one. Moreover, the FCC directs that such timeframes be negotiated and memorialized in contracts. *Id.*, ¶¶588-89. In light of SBC's failure to make any proposal, XO's proposal for 15 days[25] appears reasonable, and the Staff urges its acceptance.

With respect to conversion charges, SBC proposes that it be permitted to charge applicable service ordering and record change charges.

While the FCC did not make clear in the *TRO* what charges it considers properly assessed for conversions, it made clear what charges it considers *improper*. First, it noted that ILECs never have to perform conversions to serve their own retail customers, and accordingly that termination, re-connection, and disconnection fees, and "other non-recurring charges associated with establishing a service for the first time" are inconsistent with Section 202 of the federal Act and an ILEC's duty of non-discrimination. Clearly, therefore, imposition of any such charges is improper.

Second, the FCC recognized that conversions are almost entirely billing functions. This appears to exclude any charges or fees not associated with executing a billing change.

While SBC might lawfully be permitted to assess a modest record change fee of some sort, any additional charge is clearly improper. SBC's request for a service ordering charge falls squarely within the prohibited category of "other non-recurring charges associated with establishing a service for the first time".

The Staff therefore recommends that SBC be permitted to assess a billing change charge, but no other.

2. Analysis and Conclusions

SBC's reframed version of XO Issue 4 (SBC/XO-4) is among those not properly presented as an open arbitration issue. It is a general and over-broad question that calls upon the Commission to draft a portion of the parties' ICA, not to resolve a dispute. Taken literally, it asks us to start from scratch on the subject of conversions, and to select every term and condition that will and will not apply. XO's version of this issue, when taken at face value, merely asks whether SBC must comply with FCC conversion rules. The answer to that question is self-evident and gets the parties no closer to interconnection. Patently, the real disputes here concern specific TRO directives concerning conversion, but XO did not properly frame those disputes as open issues.

[25] The FCC declined to adopt a 10-day interval, but not, apparently because of the brevity of the 10-day interval itself. TRO, ¶588.

Consequently, the Commission will identify those disputes that significantly impede amendment of the parties' existing ICA and provide guidelines for resolution.

The threshold issue concerns the effect of USTA II on the ILEC conversion duty established at TRO ¶ 586. SBC contends that USTA II removed that duty wherever parallel service is available at wholesale. SBC Reply Br. at 11. However, the court neither said that nor overturned the FCC's imposition of the conversion obligation. Rather, it articulated principles for the FCC to consider while it revisited the qualifying/non-qualifying services distinction remanded (but not vacated) on other grounds by the court. Those principles focus on the state of competition, not on the availability of wholesale service. Specifically, the court stated that where wholesale services have produced "robust competition," impairment is precluded. 359 F.3d at 593. Similarly, (with respect to EELs in particular) the court said that "if history showed that lack of access to EELs had not impaired CLECs in the past," that would be "evidence" of future non-impairment. *Id*. Unless and until the findings suggested by the court are made (presumably, by the FCC), the TRO conversion duty remains in effect.

Moreover, the court expressly upheld the TRO's eligibility requirements for CLEC access to EELs, *id*., which the FCC specifically applied to conversions from special access. TRO ¶ 593. That ruling is inconsistent with SBC's position that USTA II overturned the conversion obligation created by the TRO. Accordingly, the Commission concludes that the conversion obligation survived USTA II.

Regarding SBC's proposed non-recurring charges for processing conversions, there is no substantial disagreement that the charge we approved in Docket 02-0864[26], for conversions of special access to EELs (and conversions of resale private lines to UNEs), is appropriate here. SBC Reply Br. at 12; XO Reply Br. at 11; Staff Rep. Br. at 11. However, although SBC cites this "project administration charge" in support of including a conversion cost in the ICA, it is not clear that this charge is equivalent to what SBC characterizes as "service order charges and record change charges" in SBC proposed Section 3.15.3. If those latter charges address different underlying costs than does the administration charge, it was up to SBC to prove that fact. Moreover, our Order in Docket 02-0864 indicates that the activities associated with processing a conversion are either captured by the administrative charge or were disapproved for recovery in that case. Therefore, for conversion of access to EELs (and conversions of resale private lines to UNEs), SBC should be limited to the amount of the project administration charge approved in Docket 02-0864.

For other conversions, the TRO precludes imposition of conversion charges. TRO ¶ 587. SBC misreads TRO ¶587, presuming that the FCC intended to bar only those nonrecurring charges associated with a new service. SBC Reply Br. at 12. First-time charges were simply one example of the charges prohibited by the FCC. The essential principle in ¶587 is nondiscrimination – that is, since ILECs "are never required to perform a conversion in order to continue serving their own customers," *id*.,

[26] Illinois Bell Telephone Co., Filing to Increase Unbundled Loop and Nonrecurring Rates, Order, June 9, 2004, at 214-15.

CLECs would be disadvantaged by conversion-related charges. To avert that result - which the FCC characterized as unjust, unreasonable and discriminatory within the meaning of Sections 202 and 251 of the Federal Act - the FCC knowingly subordinated ILEC conversion cost recovery to parity among competitors[27].

SBC objects that the foregoing tradeoff is impermissible under the Federal Act, because it contravenes the cost-based pricing requirement of subsection 252(d)(1)(A)(i). SBC BOE at 19. That objection is better directed to the FCC, the agency that resolved the tension among federal statutory commandments concerning nondiscrimination (Sections 202 and 251) and cost recovery (Sections 252). In any case, this Commission notes that Section 252 itself treats nondiscrimination as co-equal with cost recovery[28]. We will not second-guess the FCC's balancing of these requirements in the TRO[29]. As for SBC's contention that the FCC barred only conversion charges that are not cost-based, SBC BOE at 19, the Commission observes that the FCC never said so and, moreover, that the FCC's examples of prohibited charges (e.g., re-connect and disconnect fees, TRO ¶587) *are* presumably cost-based, like SBC's own such charges. Docket 02-0864, Order, June 9, 2004, at 196-99.

However, in TRO ¶587, the FCC exempted properly applicable early termination penalties from its limitation on conversion related charges. Although XO posits that such penalties can be reduced or eliminated pursuant to TRO ¶698, XO Reply Br. at 12, that would simply mean that such penalties were no longer properly applicable (or "appropriate," as the TRO uses the latter term in ¶698). It has nothing to do with the FCC's intentional and detailed exemption of those penalties from its conversion charge limitation.

Regarding order processing and timing, SBC, despite having argued elsewhere in this arbitration for precision, clarity and detail in the ICA, proposes that parties develop procedures in the future through the industry-wide change management process associated with OSS. SBC Init. Br. at 18. Alternatively, SBC proposes to unilaterally develop processes at some unspecified future point. SBC proposed Section 3.15.4. SBC proposes no time limit for the completion of conversions.

For its part, XO proposes manually processing by SBC until an "ASR-driven conversion process" is developed. XO proposed Section 3.15.4. However, XO also asserts that the "necessary processes...already must be in place," including an ASR process, XO Init. Br. at 13, so it is not clear why XO's proposed text assumes that an ASR-driven conversion process still needs to be developed. SBC denies that an ASR

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[27] We will not apply the parity principle to access-to-EEL conversions or resale-private-line-to-UNE conversions, in order to avoid inconsistency with our holding in Docket 02-0864, which addressed charges solely under our state jurisdiction.

[28] That is, just as subsection 252(d)(1)(A)(i) mandates rates based on cost, subsection subsection 252(d)(1)(A)(ii) mandates nondiscrimination.

[29] SBC also endeavors to position *itself* as the object of discrimination with respect to conversion costs. It avers that because it receives no CLEC "contribution" for its own expenses, it would be disadvantaged if it had to give CLECs a "free ride" on conversions. SBC BOE at 20, fn. 7. However, as the FCC emphasized, an ILEC never has to convert its own services.

process is already in place, SBC Init. Br. at 18; SBC Reply Br. at 15, while Staff calls the ASR process obsolete. Staff Init. Br. at 43.

Since the parties waived evidentiary hearings, the record does not permit us to make findings regarding the foregoing claims. We can only articulate principles that the parties should employ in their amended ICA. First, a clear conversion ordering process must be included in the ICA and immediately available once the arbitrated amendment is approved and in effect. The purpose of this proceeding is to incorporate the TRO, including its conversion mandates, into the parties' ICA. Resort to the change management process unnecessarily and inefficiently postpones that incorporation indefinitely.

Second, the parties' ICA must specify a time frame for processing conversions, in keeping with the FCC's declaration that it "expect[s] carriers to establish any necessary timeframes to perform conversions in their [ICAs] or other contracts." TRO ¶¶ 588. Furthermore, such time frame must facilitate "expeditious" conversions. *Id*. We cannot determine, however, whether XO's 15-day proposal is reasonable. XO proposed Section 3.5.16. XO supplied no supporting evidence or argument, which might have demonstrated, for example, that a 15-day (or similar) interval is already used in comparable circumstances.

Third, SBC's proposed Section 3.15.8 is disapproved, for reasons also discussed in connection with SBC Issue 1 (below). It would empower SBC to refuse or discontinue a conversion, based upon SBC's unilateral assessment of the ramifications of regulatory and judicial authorities. Moreover, that proposed section wrongly authorizes SBC to act immediately upon service of written notice, without response, much less assent, from XO.

To be clear - our objection to Section 3.15.8 is not that it bars or terminates unwarranted conversions, but that it allows SBC to, first, unilaterally decide what conversions are unwarranted and, second, immediately disturb XO's provision of service to customers. Accordingly, as we require in connection with SBC Issue 2 (below), changes in law must be subjected to the ICA's existing change-of-law mechanisms, to determine whether SBC may bar conversions based on those changes. Disputes about individual conversions must first be addressed by the ICA's dispute resolution processes, to determine whether conversion is indeed unwarranted in each disputed case. Thereafter, if remedial action is appropriate, SBC must allow a reasonable amount of time, before implementing self-help measures, for XO and its customers to select alternative provisioning.

5. May XO, consistent with FCC rules, provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services?

SBC re-characterizes this issue as follows:

Should the agreement clearly set forth the terms and conditions pursuant to which XO may provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services?

1. Parties' Positions and Proposals

a.) XO

The FCC has concluded that XO may provide non-qualifying service using the same UNEs it uses to provide qualifying services. *E.g., TRO* at ¶ 148. XO's proposed language incorporates this concept, while SBC's proposed language includes numerous provisions that go beyond the requirements of the *TRO*, including additional certification and audit provisions that the FCC never envisioned, much less authorized. These provisions are unreasonable and would make it difficult and unduly burdensome for XO to use UNEs for non-qualifying services even though XO satisfies the conditions required by the FCC.

XO also objects to SBC's proposed definition of "local." Again, the FCC has adopted no such definition, nor is a definition warranted. The Parties' interconnection agreement has established the terms and conditions under which XO can obtain UNEs from SBC. Indeed, XO has been obtaining UNEs from SBC for years, and the Parties have a clear understanding of what XO can obtain from SBC as a UNE. Even were that not the case, SBC's proposed definition would unreasonably restrict XO's access to UNEs. XO, for example, may obtain interoffice dedicated transport from SBC between wire centers that are not within the same local calling area to enable XO to provide local services to customers in an SBC exchange other than the one in which XO's switch is located. The FCC did not even remotely contemplate such a restriction.

b.) SBC

In the *TRO*, the FCC promulgated "qualifying service" rules, intended to ensure that CLECs requesting UNEs use those UNEs to provide services in competition with traditional ILEC services, and not, for instance, solely to provide long distance. The D.C. Circuit concluded that "the prevention of 'gaming' by CLECs seeking to offer services for which they are not impaired" is a "legitimate" goal. USTA II, 359 F.3d at 592. Thus, the parties should include qualifying service language in their contract.

SBC Illinois' proposed language most accurately reflects the qualifying service restrictions, and should be adopted. SBC Illinois' proposal that a carrier cannot access UNEs unless it is a "telecommunications carrier" providing "telecommunications

services" (Section 1.2) is required by the Federal Act, which contains those very limitations. 47 U.S.C. § 251(d)(2). Thus, this language is appropriate regardless of the state of the FCC's qualifying service rules.

The Commission should also adopt SBC Illinois' proposed language providing that to access UNEs, XO must "provide" at least one "qualifying service" (that is, a service offered in competition with the telecommunications services traditionally the exclusive or primary domain of SBC Illinois, like local voice service) on a common carrier basis. (Sections 1.2, 2.22.2.) XO should not be allowed to access UNEs to provide solely "non-qualifying services," like long distance service. Section 251(d)(2) of the Federal Act provides for unbundled access where the lack of access would impair the ability of the entrant "to provide the services it seeks to offer," and it has never been shown (and SBC Illinois does not believe could ever be shown) that CLECs are "impaired" in offering solely non-qualifying services like long distance service without access to UNEs.

XO's proposed language, which would not require XO to actually provide any qualifying service, but only to "offer" a qualifying service, and even then only on a private carriage basis, would impermissibly allow XO to "game" any qualifying service restriction. For instance, XO could satisfy its proposed requirement by "offering" local service to select customers on a private carriage basis for ten times the prevailing prices, knowing full well that that offer would never be accepted, and then proceed to access UNEs to provide solely non-qualifying services. The Commission should also conclude, as did the FCC, that XO must offer qualifying services on a common carrier basis, to "ensure[] that the benefits of competition accrue to the general public." *TRO*, ¶ 151.

Further, SBC Illinois' proposed language regarding certification of compliance with qualifying service restrictions is reasonable and should be adopted. (Sections 1.2.3, 1.2.4, 1.2.4.1.) SBC Illinois' language provides that the CLECs' use of UNEs constitutes a representation that it complies with the qualifying service requirements, and requires the CLEC to provide written certification only upon request. Finally, the Commission should adopt SBC Illinois' proposed definition of "local." (Sections 2.22.1 and 2.22.3.) The term is significant in the context of the qualifying service provisions of the parties' contract, and should not be left undefined as XO proposes.

c.) Staff

XO is correct in its assertion that it is undoubtedly permitted to provide non-qualifying services using UNEs so long as it is also providing qualifying services. The Staff further notes that SBC is correct in asserting that it has provided "detailed language regarding the conditions pursuant to which XO may provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services." There are several anomalies in SBC's language, however.

First, for purposes of determining what qualifies as a "telecommunications services offered by requesting carriers in competition with those telecommunications

services that have been traditionally within the exclusive or primary domain of incumbent LECs." SBC would define "local" as "within the SBC Illinois designated local calling area in which the requested lawful UNE is provided."

While SBC makes much of the detailed nature of the contract provisions it proposes, it is silent upon what an "SBC ILLINOIS designated local calling area" might be. The Staff suspects, however, that SBC does not mean "within the same LATA," but more probably "within the same exchange or Band." The Staff further suspects that this restriction might have the effect of preventing XO from using UNEs to provide certain types of intraLATA service. The Staff therefore recommends that "local" be defined as "intraLATA". The Staff sees no impediment to the adoption of the remainder of SBC's proposal.

2. Analysis and Conclusions

XO's version of this issue is easily resolved – FCC rules permit XO to provide non-qualifying services using the same UNES it uses for qualifying services. TRO ¶ 143. SBC does not dispute this.

As for SBC's version of XO-5 (SBC/XO-5), a resolution of the issue, as phrased, would not address the actual disputes presented. That is, SBC is not really asking us to determine whether contract terms should be "clearly set forth," but to decide several specific - but unframed - issues concerning what those terms should be. Again, the presentation of differing contract provisions is not the same as framing issues, and it is not up to the Commission to determine what disputed issues arise from those provisions. That said, we will resolve those actual disputes between the parties that we find to be essential to completing ICA provisions addressing the mixture of qualifying services and non-qualifying services.

First, the Commission agrees with SBC's recommendation that the ICA define "common carrier" and require XO to offer at least one qualifying service on a common carrier basis. The purpose of the parties' negotiations has been to incorporate the TRO in their ICA. The common carrier requirement is a clear regulatory directive that the TRO freshly and emphatically attached to the identification of qualifying services[30]. TRO ¶ 149-153. We also approve SBC's proposal to incorporate, into the ICA the definition of common carrier in NARUC v. FCC, 533 F.2d 601 (**xx Cir**. 1976). The term "common carrier" is not self-defining and the FCC discussed the NARUC definition favorably in its analysis. *Id*., ¶ 152.

Second, we cannot perceive the basis for XO's objection to SBC's proposed requirement that XO be a "telecommunications carrier" under the law. It is a fundamental requirement (indeed, only a "telecommunications carrier" could participate in this arbitration under Section 252 of the Federal Act).

[30] That is, the qualifying service that must be provided with non-qualifying service(s) using UNEs.

Third, the Commission rejects SBC's contention that a definition of the term "local" should be included in the ICA terms pertaining to the use of qualifying services for both qualifying and non-qualifying services. Presumably, SBC is endeavoring to distinguish qualifying services ("telecommunications services offered by requesting carriers in competition with those telecommunications services that have been traditionally within the exclusive or primary domain of [ILECs]," TRO ¶ 140) from long distance services, which the FCC regards as non-qualifying. *Id.*, fn. 466. However, USTA II has clouded the meaning and viability of that distinction by questioning the FCC's analysis and remanding the pertinent TRO provisions for reconsideration. 359 F.3d 592.

Moreover, SBC's recommended definition of "local" ("within the [SBC] designated local calling area [LCA] in which the...UNE is provided") is unsuited to its purported purpose of delineating those services in "direct competition" with SBC's "core services." SBC Init. Br. at 23. Assuming, as Staff surmises, that SBC's intended LCA is less than the pertinent LATA, Staff Init. Br. at 48, it is not reflective of the manner in which local providers wage "direct competition" for, *e.g.,* POTS[31] customers. Such competition is conducted on a LATA-wide playing field. Indeed, SBC's restrictive definition gives support to the suggestion by Staff and XO that SBC's actual purpose is to hinder XO's provision of FX services. *Id.*; XO Init. Br. at 15.

Fourth, the Commission will not approve several of the conditions SBC attaches to its provision of qualifying services. While SBC purports that these conditions will tend to preclude ambiguity and dispute, we find that the opposite result is at least as likely.

For example, SBC's proposed Section 2.1 would allow XO to use a UNE to provide non-qualifying service only when "FCC orders and rules" so permit. At its most benign, this is a superfluous provision that merely says the parties will adhere to the law. More probably, however, it will become a source of contention as the contracting parties quarrel about the effects of future FCC rulings. Again, the purpose of this ICA amendment arbitration is to incorporate the provisions of the TRO, which *do* permit XO to provide non-qualifying service with a UNE. It is preferable to accommodate future regulatory rulings through the ICA's change-of-law mechanisms, rather than scattering litigious language among the day-to-day working provisions of the agreement.

SBC's proposed Section 1.2.1 contravenes the TRO, by requiring each UNE in a combination to meet criteria that the TRO either does not contain or expressly rejects. For example, the TRO states that certification is "unnecessary to verify that carriers provide qualifying services over [the "last-mile UNEs]." TRO ¶ 592, fn. 1824 & ¶ 623, fn. 1899. Thus, SBC Section 1.2.1 should not be included in the ICA.

SBC argues that the written certification requirement in its proposed Section 1.2.3 will only apply "upon request" from SBC and is, therefore, not an impediment to obtaining qualifying UNEs. SBC Init. Br. at 22. However, nothing in SBC's proposed amendatory ICA text would preclude SBC from making standardized requests. We

[31] Section 2.22 of the proposed ICA (undisputed); TRO ¶ 135.

disapprove the written certification requirement, both in its own right and as it would operate in conjunction with Section 1.2.1. Furthermore, it is unnecessary in light of the "continuous warrant" provision in Section 1.2.3, which we approve.

The Commission rejects the "offer" versus "provide" distinction urged by SBC in support of its proposed Section 1.2. SBC Init. Br. at 22. It is a false distinction and an invitation to needless dispute. Indeed, the FCC defines a qualifying service as one that is "*offered* by requesting carriers." TRO ¶ 135 (emphasis added). A carrier that offers a service will have to provide it to any qualified customer. If it does not do so, SBC can invoke our complaint processes.

We will render no judgment on the remaining terms proposed by SBC, since, as noted above, SBC framed no particular issues about them.

6. What eligibility and certification requirements should apply for access to high-capacity EELs pursuant to FCC and ICC rules?

1. Parties' Positions and Proposals

a.) XO

The *TRO* specifies the eligibility and certification requirements for obtaining enhanced extended links ("EELs"). XO's proposed contract language properly reflects those requirements, while SBC proposes additional language that exceeds the FCC mandates. SBC's contract language regarding certification is unnecessary, confusing, and goes beyond the requirements of the *TRO*. For example, SBC requires the CLEC to certify that it provide certification on a specific form provided by SBC that has not yet been developed by SBC nor seen by XO. Further, SBC requires CLEC to maintain documentation to support eligibility certifications. XO's language in contrast, is simpler and ensures compliance with the requirements of the FCC's rules and the *TRO*. SBC's alleged need for uniformity does not justify SBC's overreaching and in any event, can be accommodated in XO's proposed language through *negotiation*, rather than by having SBC unilaterally impose certification requirements.

As discussed in the issues above, moreover, XO objects to SBC's proposal to use the terms "Lawful UNE," as inconsistent with the change of law provision in the Parties' existing Agreement, and "local," as beyond the scope of the *TRO* and unduly restrictive of XO's rights to obtain UNEs. SBC's inclusion of the term "end user" should be rejected on the same grounds.

b.) SBC

In the *TRO*, the FCC promulgated specific eligibility criteria to govern access to EELs, designed to ensure that CLEC use EELs to provide local service, and imposed upon CLECs certain obligations to certify their compliance with those criteria. The D.C. Circuit affirmed the EEL eligibility criteria, finding them to be "reasonable" and "satisfactorily explained." USTA II, 359 F.3d at 592-93.

The FCC's rules requiring the unbundling of dedicated transport and high-capacity loops have been vacated, and the FCC's rules require the provision of combinations (including EELs) only of network elements that the FCC has found should be unbundled under Section 251. However, to the extent that the FCC were to require SBC Illinois in the future to provide unbundled high-capacity loops and dedicated transport (and thus EELs), the FCC's EEL rules would apply, and thus it is reasonable to reflect the FCC's EEL eligibility and certification rules in the parties' contract, although those rules (and corresponding contract language) would come into play only if the FCC adopts new rules that require EEL unbundling.

Thus, SBC Illinois' proposed contract language should be adopted. SBC Illinois' proposed language appropriately tracks and implements the FCC's EEL eligibility rules, while XO's proposed language does not. For instance, SBC Illinois' proposed definition of an EEL tracks the FCC's definition, while XO's proposed definition includes "entrance facilities" – which the FCC expressly held are *not* UNEs. (Section 2.13.) *See TRO*, ¶¶ 365, 368, n.1116. Similarly, the *TRO* (¶ 604) holds that an EEL must terminate in a collocation arrangement; SBC Illinois' proposed language incorporates this requirement, while XO's inexplicably does not.

The parties also dispute the appropriate language governing certification with the eligibility criteria. XO should be required to use a standard certification form, as SBC Illinois proposes, to increase efficiency and lower the costs of processing such forms. Sections 3.14.3.2 and 3.14.3.3. It would be inappropriate to allow XO to certify compliance via any undefined "method of its choosing," as XO proposes.

XO also opposes contract language proposed by SBC Illinois that provides commercial certainty regarding the types of documentation that XO must preserve in accordance with the requirements of the *TRO*. Section 3.14.3.6.2. But it is commercially reasonable to specify the records that must be maintained, rather than leave it open for future disputes, and SBC Illinois' proposed language should be adopted.

Further, XO would deny an auditor's finding of non-compliance with the EEL eligibility criteria any effect, but would instead require that an audit be "confirmed" by the Commission or the FCC. (Section 3.14.3.2.) That proposal is directly contrary to the *TRO*, which provides that *'[t]o the extent the independent auditor's report concludes that the competitive LEC failed to comply with the service eligibility criteria*, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis." *TRO*, ¶ 627 (emphasis added). Giving the auditor's report such effect is especially reasonable in light of the fact that an auditor must be *independent* and mutually agreed upon by *both* parties. Moreover, XO is not barred from seeking further review if it believes an auditor's report is in error. Pursuant to the *TRO*, however, SBC Illinois cannot be required in every instance to bear the burden to seek further review and "confirmation" from the Commission or the FCC if the auditor concludes XO has not complied with the EEL eligibility requirements.

The parties also have several disputes regarding the precise language to implement the FCC's detailed eligibility criteria. XO's proposed language violates those criteria, and must be rejected. SBC Illinois' proposed language, on the other hand, is directly supported by FCC's actual rule and the *TRO*, and should be adopted. For instance, SBC Illinois proposes (and XO opposes) language in Sections 3.14.3.3, 3.14.3.3.2, 3.14.3.3, 3.14.3.4, 3.14.3.5, 3.14.3.3.4.1, 3.14.3.3.4.2, and 3.14.3.3.5 that parallels the FCC's rule and its discussion in the *TRO* near or literally *verbatim*.

Finally, XO opposes SBC Illinois' proposed language providing that the failure of SBC Illinois to enforce the eligibility criteria does not constitute a waiver of its right to subsequently enforce those criteria. Section 3.14.4. XO has not explained its objection to this commercially reasonable language, and this language should be adopted.

c.) Staff

XO's proposed contractual provision that defines an EEL as "sometimes includ[ing] ... entrance facilit[ies]", is clearly contrary to the *TRO*, and cannot be adopted.

With respect to certification, SBC's proposal, goes beyond the requirements for certification imposed by the *TRO*. The *TRO* does not require self-certification by a CLEC to take any specific form, but instead states that a letter sent by a CLEC to an ILEC is a "practical" method. SBC's proposal, which requires specific certification to eight different facts, goes beyond practical and verges upon "the imposition of [an] undue gating mechanism[] that could delay the initiation of the ordering or conversion process," which the FCC clearly prohibited. Moreover, since the *TRO* clearly places the obligation to retain records associated with the certification process upon the CLEC, a simpler certification process does not prejudice SBC's rights in any way.

XO proposes that, in the event of an audit finding that it is not in compliance with certification requirements, SBC should be required to continue to provide the non-compliant circuits until such time as the Commission confirms the audit findings. This, while not quite as "incredible" as SBC appears to consider it, nonetheless is inconsistent with the TRO.

It is clear that the *TRO* requires a CLEC to convert non-compliant circuits upon an adverse finding by the auditor, not the confirmation of the auditor's findings by the Commission. The TRO does not provide for state Commission confirmation of an auditor's findings, nor does it provide for what effectively constitutes a stay of conversion of non-compliant circuits pending such Commission confirmation. Accordingly, XO's proposal must be rejected.

XO is not without a remedy if it considers itself aggrieved by perceived misuse of the audit process. As noted above, it can resort to the Commission to challenge the independence of any auditor SBC might select. Moreover, it may vindicate its rights under Sections 13-514 and 13-515 of the Illinois Public Utilities Act ("PUA"), which, respectively, prohibit a variety of anti-competitive acts, and provide for a complaint

process pursuant to which an aggrieved carrier may obtain relief from the Commission. Thus, XO's proposed remedy should not be adopted.

2. Analysis and Conclusions

In this instance, it is XO that has not properly presented an open arbitration issue. Again, the question posed is general and over-broad and asks the Commission to draft a portion of the parties' ICA, not to resolve a dispute[32]. Taken literally, it asks us to start from scratch on the subject of EELs, and to select every term and condition that will and will not apply. Consequently, as we do with other ill-framed issues in this proceeding, the Commission will address certain disputed factors that we perceive to be fundamental to drafting ICA provisions regarding high-capacity EELs[33]. However, we decline to speculate about other questions that the parties might have framed, based on their differences in proposed contract text.

First, we concur with SBC and Staff that entrance facilities are not included within the definition of EELs. SBC Init. Br. at 25; Staff Init. Br. at 53. The FCC was quite clear on this point. TRO ¶¶ 365-68 & fn. 1116, & ¶ 575.

Second, as SBC and Staff recommend, SBC Init. Br. at 25; Staff Init. Br. at 53, we disagree with XO (XO Section 3.14.3.2) that an auditor's nonconformance finding must be confirmed by this Commission before remedial action can be required. The FCC directed CLECs to come into compliance and make reparations based on *the auditor's* conclusions. TRO ¶ 627. The FCC also prefers that the audit occur "in a self-executing manner with minimal regulatory involvement." *Id.*, ¶ 628. This does not mean that an auditor's report is beyond challenge before this Commission[34]. But the FCC has concluded that a CLEC's obligation to take corrective action arises from the audit report, apart from Commission ratification. (Other issues concerning audits will be analyzed in connection with XO Issue 7, below.)

Third, the parties jockey for advantage by selective incorporation of elements in 47 CFR 51.318. To settle several disputes associated with that regulation, the Commission holds that the ICA should either incorporate it by reference in its entirety, or

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[32] The Commission also disapproves SBC's reference to disputes about "miscellaneous provisions" in its proposed contract language. SBC Init. Br. at 27. If a proposed contract provision elicits a dispute that a party wants resolved through arbitration, it is not "miscellaneous." It is, or should be, the subject of a properly posed open arbitration issue. Furthermore, when no properly framed issue is presented, as in the case of XO-6, how is the Commission to separate the material contract provisions from "miscellaneous" text?

[33] USTA II vacated the FCC's national impairment finding concerning dedicated transport, a principal component of the EEL. However, the FCC's *Status Quo* Order requires an ILEC to continue providing unbundled access to dedicated transport on "the same rates, terms and conditions that applied under their [ICAs] as of June 15, 2004" for a six-month period. *Status Quo* Order, ¶¶ 1 & 16. Additionally, USTA II did not vacate the TRO's EEL eligibility requirements.

[34] We will not address here what the appropriate mechanism(s) for an audit challenge would be under our enabling statutes and rules. Nor do we address now whether the Commission has authority to stay implementation of an audit report. We do conclude, however, that EEL compliance audits are subject to our jurisdiction.

spell out all of its provisions in the amended ICA. In either case, every provision should govern the parties' conduct.

Fourth, the Commission specifically disapproves of SBC's proposed Section 3.14.3.7. In that provision, SBC promises to abjure self-help *so long as XO is in compliance with all applicable requirements*. This begs the question of why SBC would need *any* remedy, self-executed or otherwise, if XO is in compliance. Furthermore, this illusory promise allows SBC to unilaterally determine XO's compliance status and, after rendering self-interested judgment, to impose a remedy. This effectively affronts the TRO, which bars self-help once *the CLEC* certifies compliance with FCC rules. TRO ¶ 623, fn. 1900.

Fifth, we reject SBC's insistence (in SBC Section 3.14.3.6) that XO must certify its eligibility for a high-capacity EEL on a specific form provided by SBC. The FCC indicated that a letter from the CLEC would suffice. TRO ¶ 624. In any event, SBC cannot achieve its purported goal of standardization for all carriers, SBC Init. Br. at 26, through an individual arbitration. On the other hand, XO's proposal to use some method "of its own choosing" (in XO Section 3.14.3.2) is capricious and potentially inefficient. It is better that XO use a "reasonably compliant" method (probably the letter described by the FCC), as XO also suggests[35].

Sixth, the Commission finds it preferable that the ICA refer to the "customer," rather than the "end user customer," as XO recommends. There is merit in XO's concern that "end user" has the potential to engender unproductive disputes. Our requirement, above, that the ICA include all of the provisions in 47 CFR 51.318 vitiates SBC's apprehension that customers other than local voice customers will improperly receive service. SBC Reply Br. at 24-25. Although SBC expresses a particular worry about wholesale customers, *id.*, at 25, the FCC declared that "[a]s a further check on potential for abuse, we make clear that there requirements apply to all *wholesale* as well as retail service offerings over high-capacity EELs." TRO ¶ 588 (emphasis added).

7. Should SBC's right to audit XO's compliance with the qualifying service eligibility criteria for high-capacity EELs be limited consistent with ICC rules?

SBC re-characterizes this issue as follows:

What terms and conditions should apply to audits to confirm that the CLEC meets service eligibility criteria?

1. Parties' Positions and Proposals

[35] If SBC prepares a standardized form[35], XO (and other CLECs) would presumably utilize it voluntarily if it promotes efficiency for all carriers. The fact that the parties cannot agree on an ordering mechanism suggests that the real dispute is not SBC's form versus XO's letter, but about substantive terms that will or will not be included therein.

a.) XO

XO's proposed language is consistent with the requirements that the FCC established for audits of compliance with high capacity EEL eligibility and certification obligations. Specifically with respect to XO's proposal to require SBC to identify particular circuits and eligibility criteria at issue and limit the audit accordingly ensures that SBC does not abuse its limited audit rights to undertake a regulatory fishing expedition. Indeed, because XO would be responsible for the audit costs if the auditor finds material noncompliance, SBC's unnecessary expansion of the audit to include circuits with which there are no compliance issues merely inflates the cost that XO could be required to pay.

SBC's proposed language gives SBC additional rights that are not included in the *TRO* and burdens the agreement with unnecessary verbiage. For instance in Section 3.14.3.8.5, XO proposes to track the requirements contained in the *TRO* and requires that XO convert non-compliant circuits. SBC, in contrast, adds language saying that SBC may convert these circuits without input from XO. SBC also proposes language that eliminates the *TRO* limit of one audit per twelve month period and potentially allows itself multiple audits within the course of a year. All of the language that SBC proposes to add to this section is inconsistent with the *TRO*.

SBC's proposed language also would burden the agreement with unnecessary detail. For example in Section 3.14.3.8.3, SBC proposes specifically to list auditing standards. Such a list is unnecessary because these standards are part of the standards of the American Institute for Certified Public Accountants.

b.) SBC

SBC Illinois' language best reflects and implements its "right to audit compliance with the qualifying service eligibility criteria" (*TRO*, ¶ 626), while XO's proposed language would impermissibly restrict that right.

The FCC held that "incumbent LECs may obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria." *TRO*, ¶626. XO's proposal to limit such audits (and resulting remedies) to instances where SBC Illinois identifies specific circuits with respect to which it asserts specific eligibility criteria are not satisfied is unreasonable and inappropriate, and should be rejected. *See* XO Sections 3.14.3.8.1 - .2 and 3.14.3.8.5 - .6. The *TRO* contains no such limitation on the ILEC's audit rights. And such a limitation would not make any sense. The FCC created the audit right precisely because ILECs do not possess the data required to determine whether a CLEC is in compliance with the eligibility criteria – that data is possessed by the CLEC. *See TRO*, ¶ 626 (audits are appropriate to satisfy "the incumbent LECs' need for usage information").

Moreover, the FCC already created the safeguards necessary to balance the ILECs' right to demand an audit to determine compliance against the risk of illegitimate audits. In particular, the FCC limited the right to require an audit to an annual basis,

requires the ILEC to pay for the audit, and requires the ILEC to reimburse the CLEC's costs if the auditor concludes the CLEC was in compliance.

With respect to auditing standards, SBC Illinois proposes (and XO opposes) tracking the FCC's language precisely. (Section 3.14.3.8.3.) In paragraph 626 of the *TRO*, the FCC provided specific guidance on the auditor's duties, and these requirements should be reflected in the parties' contract. XO's suggestion that incorporating the FCC's specific requirements "would burden the agreement with unnecessary detail" should be rejected. There is nothing "unnecessary" about the FCC's requirements.

The parties also disagree regarding proposed language governing true-up payments and the application of TELRIC-based rates where it is determined that XO was not in compliance with the eligibility criteria. (Section 3.14.3.8.5) While the *TRO* calls for true-up payments in such an event (¶ 627), it does not specify when such payments begin. The parties' contract should fill in this detail, as SBC Illinois' proposed language does. Moreover, TELRIC-based rates do not apply for any period where XO is not in compliance with the eligibility criteria, because for such periods XO is not entitled to UNEs at TELRIC-based rates. Indeed, that is the entire point of the eligibility criteria, and XO's objection to this language is unfathomable.

With respect to the conversion of noncompliant circuits (*e.g.*, the conversion of an EEL to special access where XO does not satisfy the EEL eligibility criteria), SBC Illinois' proposed language provides that it may "initiate and affect such a conversion on its own." (Section 3.14.3.8.5.) XO's contrary language would allow XO to delay compliance with the eligibility requirements until such time as XO chooses to submit a conversion request to convert noncompliant circuits. That is an unreasonable proposal. SBC Illinois' language, on the other hand, treats noncompliant EELs and other noncompliant conversions in an identical manner, and with respect to conversions in general the FCC held that "[t]o the extent a competitive LEC fails to meet the eligibility criteria for serving a particular customers, *the serving incumbent LEC may convert the UNE or UNE combination to the equivalent wholesale service*." *TRO*, ¶ 586 (emphasis added).

Finally, SBC Illinois' cost-shifting language should be adopted, and XO's rejected. (Section 3.14.3.8.6.) The FCC held that the burden to bear auditing costs depends on whether or not the auditor concludes that the CLEC has substantially complied with the eligibility criteria. If the CLEC was in substantial compliance, then the ILEC must bear auditing costs. If the CLEC was not in substantial compliance, then the CLEC must bear the costs. *TRO*, ¶¶ 627-28. SBC Illinois' language properly reflects the FCC's holding. XO's proposed "pro-rata" cost apportionment, on the other hand, is contrary to the FCC's requirements, and must be rejected.

C.) Staff

The TRO grants an ILEC the right to audit a CLEC's compliance with certification requirements "on an annual basis, compliance with the qualifying service eligibility

criteria." It does not specifically require the ILEC to indicate which, if any, circuits its believes to be non-compliant, nor does it require the ILEC to allege any sort of good cause or good faith belief that the CLEC in question is using non-compliant circuits. *Id.*

XO's proposal, however, explicitly requires SBC to specify which circuits it considers non-compliant, and to limit its audit to those facilities, and moreover appears to require SBC to show, or at least have, good cause to conduct an audit before it does so. This provision is at variance with the *TRO*, and cannot be adopted.

2. Analysis and Conclusions

Again, the parties fail to properly frame their disputed open issues for arbitration. SBC requests broad guidance on a topic, while XO poses a question (in essence, "should SBC comply with FCC rules?") that not only answers itself, but produces an answer SBC would not dispute. Such questions move the parties no closer to interconnection. Thus, the Commission will address those disputed factors that we perceive to be fundamental to drafting ICA provisions regarding audits.

We agree with XO that the FCC intended to grant ILECs a right, not a duty, to audit CLECs' compliance with qualifying service eligibility criteria. XO Init. Br. at 19. We further agree with XO that the right conferred on ILECs is a "limted" right, per TRO ¶626, and that such audits may occur no more than annually, again per TRO ¶626. *Id.* However, we disagree with XO's argument that an ILEC can exercise its annual audit right "only when the ILEC has reason to believe that the CLEC is not in compliance with applicable requirements." *Id.*, at 20. Nothing in TRO ¶¶625-29 indicates that an ILEC must have "cause" to initiate the annual audit[36].

Instead, the Commission concludes that the FCC gave ILECs the option of initiating an audit, with or without suspicion of noncompliance, no more than once every 12 months. By requiring the ILEC to pay auditing costs (at least initially), TRO ¶626, the FCC created a disincentive against invoking that option, even on an annual basis[37]. Thus, while the FCC imposed no "cause" requirement, it discouraged ILECs from acting without cause by allocating audit costs to the ILEC (unless an audit establishes material CLEC noncompliance, TRO ¶627).

XO's perception of the audit as a mechanism for resolving specific disputes was apparently based on text in TRO ¶623, fn. 1900, ("an [ILEC] that questions the competitor's certification may do so by initiating the audit procedures set forth below [in TRO ¶¶625-29]"). While XO's perception is certainly not unreasonable, we find that TRO footnote 1900 is better reconciled with TRO ¶¶625-29 by assuming that the

[36] SBC's own proposed contract text (Section 3.14.3.8.1) does state that SBC will identify "specific cause" when invoking its audit right. However, SBC rejects the cause requirement at SBC Init. Br. at 30-31. To whatever extent SBC believes its audit right is dependent upon suspicion of XO's non-compliance, it is, like XO, incorrect.

[37] That is, the FCC allocated audit cost "so that [an ILEC] will only rely on the audit mechanism in appropriate circumstances," TRO ¶628).

footnote does not imply a cause requirement, but simply describes circumstances that might well prompt the ILEC to invoke its annual audit right.

Therefore, the Commission disapproves of XO's proposed contract language that would require SBC to identify either specific EELs alleged to be out of compliance, or specific criteria purportedly violated. That said, because of the cost burden associated with a general audit (including the additional responsibility to pay XO's audit participation costs if material compliance is established by the audit, TRO ¶628), SBC might well choose to focus on specific allegations (and for that matter, the parties can *agree* about this in their ICA). We will not impose this requirement, however.

The Commission will also not approve SBC's request to set aside the 12-month limit on audits once non-compliance is established. SBC Init. Br. at 32, fn. 14. As already noted, the audit right is a *limited* one, and noncompliance is not necessarily a result of improper CLEC conduct. More frequent audits would upset the "appropriate balance" between CLEC and ILEC interests that the FCC fashioned in TRO ¶626. Moreover, because the FCC requires the CLEC to true-up "any difference in payments" between what the CLEC actually paid and should have paid, TRO ¶627, the ILEC will be made whole in any case. The CLEC would also risk paying the ILEC's audit costs in any subsequent annual audit, which is the FCC's intended disincentive against continued noncompliance.

The Commission additionally rejects SBC's request, in SBC proposed Section 3.14.3.8.5, that true up payments begin "from the date that the non-compliant circuit was established." As SBC knows, noncompliance does not necessarily start when a circuit is established[38]. Consequently, true-up responsibility should begin when noncompliance begins. While fixing the start of noncompliance may not always be simple, the answer to that concern is not to require true-up for time periods when the CLEC was *in* compliance.

On the other hand, we approve SBC's request to convert a noncompliant circuit at its own volition without CLEC consent (SBC proposed Section 3.1.4.3.8.5). This is not a form of self-help that contravenes TRO ¶623, fn. 1900, as XO contends. XO Init. Br. at 20. By its terms, SBC's proposed language only permits SBC to act *after* an auditor establishes noncompliance. We will, however, require the parties to include a reasonable notice provision in the ICA, so that XO, and the customers involved, will have time to consider alternative arrangements before SBC converts a circuit.

The parties disagreement concerning apportionment of auditing costs, when the auditor finds the CLEC is not compliant "in all material respects" with eligibility criteria, is a harbinger of future disputes regarding proportionality. XO is presumably apprehensive that, with an all-or-nothing approach, it will bear the entire cost of an audit because of a trivial instance of noncompliance. On the one hand, the FCC was creating

[38] *See*, e.g., SBC proposed Section 3.14.3.2 ("facilities...*at any time* determined to be noncompliant...") and SBC proposed Section 1.2.3 ("CLEC *continuously* represents and warrants that it satisfies Qualifying Service(s) conditions...") (emphasis added).

"an incentive for [CLECs] to request EELs only to the extent permitted by the rules we adopt here." TRO ¶623. On the other hand, the FCC strove to avoid "imposing undue burdens upon [CLECs]" with its auditing procedures. TRO ¶622. Furthermore, this Commission does not want to encourage an ILEC to initiate an audit it might not otherwise initiate, knowing that even a minor transgression will impose substantial cost and inconvenience on the CLEC. Accordingly, although we will not adopt XO's pro-rata allocation, which is unsupported in the TRO, we hold that the materiality requirement must be construed to require more than trivial violations before cost responsibility can be transferred to XO.

B. OPEN ISSUES PRESENTED BY SBC

1. Should the ICA obligate SBC to continue to provide network elements that have been declassified or should the ICA state that SBC is required to provide only "lawful" UNEs?

XO re-characterizes this issue as follows:

(a) Whether based upon the FCC's directive in the TRO, SBC may attempt to modify the Interconnection Agreement between the parties, to make changes in the law or the rules or regulations promulgated by the FCC or the [ICC] (including USTA II) self-effectuating or automatically effective without any need to negotiate those changes as required by the "Change of Law" provision in the ICA.

b) Does the issuance of USTA II mean that through this proceeding SBC may no longer make certain UNEs available under Section 251?

1. Parties' Positions and Proposals

a.) SBC

Issue SBC-1 concerns whether the interconnection agreement should obligate SBC Illinois to continue to provide network elements that are no longer required to be unbundled (*i.e.*, that have been "declassified") at the same rates, terms, and conditions that would apply if the network elements were required to be unbundled. SBC Illinois' proposed language appropriately reflects the scope of SBC Illinois' obligation to provide UNEs, stating that SBC Illinois is required to provide as UNEs only those network elements that are actually, and lawfully, UNEs. XO's proposed language, on the other hand, would have the inappropriate and unlawful effect of requiring SBC Illinois to provide, as UNEs, network elements that are not actually, lawfully UNEs.

The contract language SBC Illinois proposes provides that SBC Illinois is required to provide only "Lawful UNEs," defined as "UNEs that SBC Illinois is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders or lawful and effective orders and rules of the [ICC] that are necessary to further competition in the

provision of telephone exchange service or exchange access and that are not inconsistent with the [Federal Act] or the FCC's regulations to implement the [Federal Act]." Network elements that do not satisfy this standard, but were previously provided as UNEs, are considered "declassified." This language appropriately reflects SBC Illinois' obligations to provide UNEs under the *TRO* and the Federal Act.

While section 251(c)(3) of the Act requires ILECs to "unbundle" certain network elements, Congress did not specify the particular network elements that must be unbundled. Rather, it directed the FCC to determine which network elements must be unbundled by applying the "impairment" test of section 251(d)(2). Moreover, as the D.C. Circuit made clear in USTA II, it is the *FCC* that must determine which network elements satisfy the "impairment" requirement of section 251(d)(2), and thus must be offered as UNEs pursuant to section 2512(c)(3). USTA II, 359 F.3d at 561. In short, "the UNEs that SBC Illinois is required to provide pursuant to Section 251(c)(3) of the Act" are limited to those "determined by lawful and effective FCC rules and associated lawful and effective FCC . . . orders," precisely as SBC Illinois' proposed contract language provides.

SBC Illinois' proposed contract language also provides that "lawful UNEs" include those network elements that SBC Illinois is required to unbundle pursuant to "lawful and effective orders and rules of the [ICC] that are necessary to further competition in the provision of telephone exchange service or exchange access and that are not inconsistent with the [Federal Act] or the FCC's regulations to implement the [Federal Act]." Again, such language is required by the *TRO* and the Federal Act. In the *TRO*, the FCC held that "states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations." *TRO*, ¶ 187. Rather, the FCC held, such actions must be "consistent with the Act" and with "the [FCC's] section 251 implementing regulations" (*TRO*, ¶ 193 & n.614), which is precisely what SBC Illinois' proposed language provides. This language is also directly supported by section 261(c) of the Act ("additional state requirements"), which states: "Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are *necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with* [sections 251-261 of the Act] *or the [FCC's] regulations to implement* [those sections]." 47 U.S.C. § 261(c) (emphasis added).

SBC Illinois' proposed language appropriately implements the *TRO*. XO's objection that the language might have the effect in some circumstances of creating new "change in law"-like procedures, to the extent it would apply to future UNE declassifications, is without merit. XO also proposes contract language to govern future UNE declassifications in some situations, as well as additions to the list of UNEs, instead of relegating all such events to the parties' existing change of law process. Thus, XO's assertion that SBC Illinois' language must be rejected simply because it has the same effect as XO's proposed language must be rejected.

Moreover, the *TRO* unequivocally "declassified" certain network elements, including OCn loops, OCn dedicated transport, and enterprise switching, holding that

these facilities are no longer UNEs. These new rules were either not challenged on appeal, or were not disturbed on appeal. SBC Illinois' proposed contract language appropriately implements the *TRO* by classifying these facilities as "declassified" rather than "lawful UNEs," thus making clear SBC Illinois is no longer required to provide these elements as UNEs under the parties' contract.

Finally, XO's attempt to add section 271 checklist items to the parties' contract as items SBC Illinois must provide as section 251 UNEs must be rejected. Pursuant to the *TRO*, determination of the rates, terms, and conditions for section 271 checklist items is a matter for the FCC under sections 201 and 202 of the 1934 Communications Act. And even if this Commission did have jurisdiction to address the issue, XO's proposal must be rejected because the FCC unequivocally held that section 251 rates, terms, and conditions do *not* apply to section 271 checklist items, and the D.C. Circuit unequivocally approved that determination. TRO, ¶¶ 655-59; USTA II, 359 F.3d at 589.

b.) XO

(SBC/XO-1a). As an initial matter (and as previously noted in XO's prior filings), XO does not believe that SBC's proposed language associated with SBC Issue 1 should be considered in this arbitration or that it belongs in the Amendment, because the proposed language would make changes to the Agreement that are not required to implement the *TRO,* is beyond the scope of parties' negotiation, and is beyond the scope of this arbitration.

XO and SBC agreed to negotiate conforming changes to their Agreement to implement the *TRO* and that is the subject of this arbitration. The *TRO* expressly required parties to negotiate changes pursuant to existing "change-of-law" provisions in parties' underlying Agreements. The change of law provisions of the XO/SBC Agreement require that parties agree and negotiate mutually acceptable new terms.[39] SBC's proposed language, however, does not implement the *TRO* and would instead make sweeping changes to the Agreement's underlying change-of-law provisions by defining broadly and preemptively those UNEs that SBC may in the future unilaterally decide no longer to provide.

Specifically, an overarching problem with SBC's proposed language is that it gives SBC too much subjective power to determine when it will discontinue providing a UNE to requesting carriers. For example, SBC's proposed language defines a lawful UNE as that required under Section 251(c), as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and effective orders and rules of the state commission "that are not inconsistent with the [Act] or the FCC's regulations." *See* SBC proposed language at Section 1.1. Under this proposed language, SBC could unilaterally disregard state decisions or requirements, to the extent that SBC deems them to be inconsistent with the FCC's rules, which would be contrary to the intent of the Act and the FCC's orders.

[39] XO/SBC Interconnection Agreement, §28.2.

Moreover, SBC does not limit the scope of its unilateral authority to discontinue providing UNEs to changes of law effected by the *TRO*, or state decisions implementing the *TRO* and instead would modify the change of law provision itself to make any favorable changes of law self-effectuating upon 30-day notice (as discussed below in SBC I ssue 2). For example, SBC's proposed language could potentially permit SBC unilaterally to discontinue providing UNEs upon any event that it argues is a "change of law" (including, for example, the issuance of the D.C. Circuit decision in USTA II – without negotiating such changes of law, as required by the Agreement and the *TRO*. SBC could improperly assert that, based on USTA II, certain UNEs are no longer required to be unbundled, or provided at cost-based TELRIC rates. Such an action would, however, be contrary to the Act and the FCC's intent. Section 251(c) establishes the requirement that ILECs provide UNEs at cost-based rates and even in the absence of FCC rules, such UNEs must be provided at TELRIC (which is the FCC-established standard for UNE prices). Indeed, the FCC has noted that it will issue very shortly interim UNE rules in light of USTA II; thus any decision by SBC to discontinue providing UNEs on the grounds that USTA II vacated certain FCC rules would be premature.

In contrast to such broad and subjective language, XO's proposed language accurately and objectively implements the *TRO* and provides that SBC may only discontinue offering a network element to the extent that SBC is no longer required to provide UNEs under applicable law, which would include Sections 251, 271, FCC's orders and rules, *and orders of this Commission*. *See* XO proposed language, Section 1.1. Moreover, the PUA mandates the unbundling of network elements where technically feasible. 220 ILCS 5/13-801(a). The Commission has pre-existing authority under Section 13-801 to require unbundling to the fullest extent possible to maximize competition among telecommunications providers. *Id*. As elucidated by this Commission, its authority is not limited to the jurisdiction of the FCC or the Act; the Commission has the power to consider and include any appropriate provisions and terms. *See* Sage Arbitration Decision in Docket 03-0570, Order, December 9, 2003, at 6 (asserting the Commission has the power to address "many matters outside federal purview"). This Commission has already rejected SBC's claim that Section 13-801 is inconsistent with the federal Act and thus preempted. As noted by the Commission in Docket 01-0614: "In our view the legislature has determined that, in Illinois, it is appropriate that [SBC] be required to bear additional obligations as the price to pay for being the only ILEC being regulated under an alternative form of regulation." *See* Illinois Bell Telephone Company, Filing to implement Tariff Provisions related to 13- 801 of the Public Utility Act, Docket 01-0614, Order, June 11, 2002, at ¶41 ("01-0614 Order"). In other words, by deciding to take advantage of alternative rate regulation under the PUA, SBC has chosen to be subject to the additional requirements of Section 13-801.

In addition, XO's proposed language would not override existing change of law provisions by making such changes of law automatically self-effectuating.

(SBC/XO-1b). As discussed above, SBC's proposed language would modify the existing change of law provisions, by allowing SBC unilaterally to discontinue providing

UNEs upon any event that it considered a change of law without undergoing the required negotiations. Nothing in the *TRO,* orders of this Commission, the FCC, or the law gives SBC the right to modify the underlying change of law provisions of the existing Agreement. Instead, the FCC rejected the ILECs' request to override the Section 252 process and "unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions." *See TRO* at ¶ 701. The FCC specifically noted "voluntary negotiations for binding interconnection agreements are the very essence of section 251 and section 252." *Id.* Thus, it would thwart the purpose of the Act to permit SBC, under the guise of implementing substantive changes resulting from the *TRO*, to modify the underlying change of law language so that SBC may automatically implement any future changes of law regarding UNEs.

This Commission has previously identified a provision as "superior" when it provides for negotiation between the parties as opposed to "immediately disrupt[ing] the working relationship created by the ICA."[40] An SBC provision was undesirable in that it allowed for "immediate disability" and "immediate invalidation in the event of regulatory change." *Id.* The Commission realized a smooth transition implementing a change in law would be elusive with a provision allowing immediate paralyzation of any agreements. "The Commission does not want ICA's, which are intended to provide stability among interconnected competitors, to rest on such a precarious foundation." *Id.*

XO's proposed language does not modify the underlying change in law language. XO's proposed Section 1.1 provides that SBC should provide UNEs to the extent required by Section 251(c)(3), Section 271(c), the FCC rules, and/or other applicable law (including orders and rules of this state commission). Such language merely establishes the applicable law that governs SBC's obligations. As discussed further below in SBC Issue 2, XO's proposed language would - consistent with the change-of-law provisions of the Agreement - require parties to negotiate and mutually agree to amend their Agreement when additional changes of law occur.

Moreover, XO's proposed language requiring a "final and nonappealable" order of the FCC or a state commission before SBC may discontinue providing access to DS1 or DS3 loops or transport at a specific customer location does not, contrary to SBC's contentions, modify the underlying change of law provisions of the Agreement, as SBC contends. *See* XO Section 3.5.2.3 and 3.5.3.7. XO/SBC Interconnection Agreement, §28.2 XO's proposed language reflects and is consistent with the underlying language in the parties' Agreement regarding changes of law. Finally, in contrast to SBC's proposed language, XO's language does not broadly and preemptively implement *all* future changes of law without negotiation, and would instead implement specific provisions of the *TRO* by recognizing that a final and nonappealable state decision pursuant to the *TRO* would relieve SBC of a UNE obligation.

[40] Sage Petition For Arbitration, December 9, 2003, Decision in Docket 03-0570 at p. 26.

c.) Staff

SBC's proposed "Lawful" UNEs language reflects a position that goes beyond the TRO requirements. First, as the Staff noted above in XO Issue No. 2, SBC appears to be positioning itself, in its proposed contract provisions, to unilaterally withdraw UNEs when some court or tribunal determines that they no longer need be offered on an unbundled basis. Under its contract proposals, SBC appears to reserve to itself the right to determine – and, indeed, from time to time *re*-determine – what constitutes a "Lawful UNE." *See* SBC Issues Matrix at 1 *et seq.*, Contract Provisions 1.1, 2.2, 6 (SBC only required to provide UNEs as required by law, as it changes from time to time, notwithstanding contract provisions to the contrary).

In fact, SBC asks this Commission to do what SBC previously requested of the FCC, and which BOC request was specifically rejected by the FCC.[41] SBC's proposed language would have the effect of granting to SBC, alone, the authority to unilaterally implement any arguable Section 251(c)(3) changes of law based solely upon SBC's interpretation of any such potential change of law. The FCC directly declined to permit such unilateral implementation.

This Commission, like the FCC, should be loath to take the "extraordinary step" of "interfering with [the] contract process," which is the "very essence" of sections 251 and 252. XO, moreover, correctly perceives SBC's proposal to be an attempt to use a change of law to negotiate an alteration in the existing "change of law" provision, in a manner that would permit SBC to unilaterally abrogate UNE unbundling obligations. The *TRO* specifically contemplates the use of existing change of law provisions to negotiate conforming changes pursuant to the TRO. In other words, the TRO is itself a change of law, but not one that has any effect upon change of law provisions. SBC's attempt to bootstrap a change in the change of law provision should be rejected. Staff, accordingly, recommends that the Commission reject SBC's proposed language that would override the Section 252 process and allow SBC to unilaterally change the ICA to reflect its interpretation of any potential change of law regarding its obligations to provide requesting CLECs UNEs.

SBC's proposed language also limits SBC's obligations to provide CLECs with UNEs solely to any obligations formulated under Section 251(c)(3). In the TRO, the FCC stated, "we continue to believe that the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251." It is the Staff's position, consequently, that SBC continues to be obligated to provide UNEs under both Section 251 and under any independent obligation it has to provide UNEs under Section 271.

Further, although SBC's proposed language references orders and rules of the

[41] See TRO, ¶ 701, n. 2085, which cites a Letter from Michael K. Kellog, Counsel for SBC, Qwest, and BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-338 at 3-5 (filed Jan. 21, 2003)(arguing that the FCC may "negate" certain contract terms under the Mobile-Sierra doctrine).

applicable state commission, SBC's proposed language is heavily qualified with vague limitations.

Staff recommends that the Commission reject SBC's unreasonably vague language.

Regarding the issue of whether "the issuance of USTA II means that through this proceeding SBC may no longer make certain UNEs available under section 251", the ALJ explained that:

> Regarding USTA II, although XO personnel did decline negotiations concerning that decision, the inescapable fact is that USTA II modifies and nullifies portions of the TRO. The latter cannot be properly interpreted or implemented without reference to the former. Therefore, even if USTA II, qua USTA II, were excluded from negotiations, its impact on the TRO would have to be incorporated in the Commission's analysis of the issues properly presented for arbitration. Except insofar as there may be some practical distinction between consideration of USTA II in its own right and consideration of the TRO as modified by USTA II (and the ALJ can perceive none), the instant Motion cannot be granted.

ALJ Ruling, June 23, 2004, at 2.

It is the Staff's position that, at least as far as applying the proposed language at issue in this issue is concerned, the ALJ's perception that there is likely no difference between the TRO and USTA II is accurate. The stated FCC preference for negotiations, over language that would allow the BOC to over-ride section 252 negotiations, can address TRO related issues as modified by USTA II. Staff, accordingly, recommends that the Commission adopt XO's proposed language for all of the reasons articulated in detail above.

The Staff, moreover, takes the position that SBC is also obligated to provide UNEs to CLECs under the applicable state law, including the orders and rules of this Commission but also under the applicable requirements of the PUA.

2. Analysis and Conclusions

SBC-1. The Commission rejects SBC's proposal to insert the term "lawful" in the sections of the amended ICA that SBC discusses in connection with SBC-1, and in connection with any other disputed issue in this arbitration as well. Such language is unnecessary, likely to trigger future disputes between the parties, and could be readily abused to delay XO's access to SBC services. Since XO cannot hope to successfully demand access to "unlawful" UNEs, inclusion of this term serves no constructive

purpose. Indeed, if such inclusion were necessary to the identification of what is permissible under the ICA, the "lawful" modifier would have to be inserted before every material noun in the ICA.

Similarly, SBC proposes to place the "lawful" modifier before references to the orders and/or rules of the FCC, the courts and this Commission. Unless they are under stay by a superior authority, such orders and rules are inherently lawful and effective. In effect, SBC's proposed language would empower SBC to implement the ICA by second-guessing - outside regular appellate processes - the viability of regulatory and judicial rulings.

SBC compounds its error by proposing, in SBC Section 1.1, to add the condition that "lawful" and "effective" orders and rules must also be "necessary to further competition in the provision of telephone exchange service or exchange access and that are not inconsistent with the [Federal Act] or the FCC's regulations to implement the [Federal Act]." Thus, within the operation of the ICA, administrative and judicial decisions will be judged SBC for their consistency with SBC's view of the Federal Act and associated FCC regulations. At the logical extreme, nothing in SBC's proposed language would preclude SBC from holding that a conclusion in an administrative or judicial decision affronted the Federal Act, even when that decision expressly held to the contrary.

It is entirely reasonable for SBC to propose ICA language that will assure that SBC is not obligated to provide services at TELRIC prices unless those services, and the carriers requesting them, are entitled to such prices. It is entirely unreasonable to achieve the objective by empowering SBC to unilaterally adjudge the content, validity and viability of non-stayed judicial and administrative authorities[42]. Moreover, by arrogating such power, SBC will elicit disputes with XO and delay XO's access to competitive services. The far better course is to employ language providing that when SBC is relieved of the obligation to furnish a UNE under federal and state law, its corresponding obligation under the ICA will also be relieved (by the process discussed in relation to SBC-2, below).

The answer, then, to SBC-1 is that SBC is not obligated to continue providing UNEs under the ICA when no such obligation exists under federal or state law. However, SBC's "unlawful" UNE scheme is ill-suited to excluding that obligation from the ICA.

SBC-1 & SBC/XO-1a. Section 271 of the Federal Act creates an unbundling obligation to which SBC must adhere, irrespective of its duties under Section 251 and the associated impairment analysis[43]. "[T]he requirements of section 271(c)(2)(B)

[42] SBC itself objects, in the context of SBC Issue 13, that "XO cannot unilaterally determine the effect of...change in law, including whether that change in law will be give any effect at all." SBC Init. Br. at 89.
[43] SBC asserts that this Commission lacks "jurisdiction" to "require the parties to include in the contract language governing access to section 271 network elements." SBC BOE at 6. We disagree. Our detailed discussion of this claim appears in our analysis of SBC Issue 4, below. That discussion fully

establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251." TRO, ¶ 653. However, the FCC also held that Section 271 "does not require TELRIC pricing" for elements unbundled pursuant to that statute. TRO ¶ 659. Instead, prices for Section 271 UNEs must be just, reasonable and non-discriminatory, per Sections 201 and 201 of the Federal Act. TRO ¶ 656.

The parties' disagreement respecting 271 UNEs is reflected in so many provisions throughout their respective proposed TRO Attachments that we cannot address them individually. Nevertheless, certain principles should be adhered to throughout the parties' ICA. Language relieving SBC of its obligation to unbundle elements under Section 271 is prohibited; correspondingly, language authorizing such unbundling (e.g., XO proposed Section 3.1.4.1) is permissible. Language requiring SBC to offer 271 UNEs, qua 271 UNEs, at TELRIC prices, is prohibited; correspondingly, language authorizing SBC to offer 271, qua 271 UNEs, at prices determined per the criteria Sections 201 and 201 of the Federal Act is permissible.

SBC contends, however, that the *Status Quo* Order precludes incorporation into the ICA of provisions pertaining to Section 271 (or state law), on the ground that such provisions would impermissibly expand the XO's contract rights, thereby altering the status quo. SBC Supp. Br. at 5. Since the ICA is not in the record, the Commission cannot assess the factual support for this claim by comparing current ICA text with XO's proposed language. In any event, the Status Quo Order addresses and "freezes" only an ILEC's unbundling obligations under Section 251. The Section 271 obligations confirmed in the TRO are not addressed and, indeed, did not need to be, since (unlike Section 251 obligations) they were not vacated by USTA II. Furthermore, Section 271 unbundling rights are not an "expansion" upon Section 251 rights. They are lesser rights, involving higher prices to the CLEC and no right to demand combinations.

This state has also established unbundling requirements, characterized in Section 13-801 of the Act[44] as "additional" to federal unbundling requirements. When the pertinent ILEC is subject to an alternative regulation plan under Section 13-506.1 of the Act[45], as SBC is, such additional obligations may exceed or be more stringent than Section 251 obligations. *Id.* We have held that we lack authority to declare that Section 13-801 is preempted by federally authority, insofar as that statute authorizes unbundling in excess of federal requirements. Docket 01-0614, Order, June 11, 2002, ¶ 42.

The *FCC* does have the power to preempt, as subsection 13-801(a) expressly acknowledges. That power is codified in Section 253(d), and the FCC observed in the TRO that "[p]arties that believe that a particular state unbundling obligation is inconsistent with the limits of section 251(d)(3)(B) and (C) may" request preemption under that section. TRO ¶ 195. SBC has apparently not done so. XO Init. Br. at 28.

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applies with respect to SBC Issue 1, and to all the other open issues for which SBC makes the same assertion.

[44] 220 ILCS 5/13-801.

[45] 220 ILCS 5/13-506.1.

The FCC also explained in the TRO that:

> If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment - and thus has found that unbundling that element would conflict with the limits in Section 252(d)(2) - or otherwise declined to require unbundling on a national basis, we believe it unlikely that such decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C). Similarly, we recognize that in at least some instances existing state requirements will not be consistent with our new framework and may frustrate its implementation. It will be necessary in those instances for the subject states to amend their rules and to alter their decisions to conform to our rules.

TRO ¶195. Consequently, this Commission has reopened our Docket 01-0614 "to determine whether the Commission's unbundling decisions in this case are in conflict with federal law, and, if so, to determine the appropriate unbundling provisions to be established consistent with Illinois and federal law." Docket 01-0614, Order on Reopening, June 23, 2004, at 9.

Thus, this Commission is presently reconsidering its unbundling power and associated decisions under, *inter alia*, state law, while the FCC is simultaneously reconsidering its own unbundling decisions under federal law, after the remand in USTA II. Within this state of flux, we must nevertheless determine how *presently existing* state authority and regulatory decisions are to be reflected in the parties' ICA, without speculating about (or prejudging, with respect to Docket 01-0614) future developments. We conclude that our unbundling decisions, as well as the Section 13-801 authority on which they are premised, *presently* determine the state-based unbundling obligations of SBC (and XO's corresponding rights of access to unbundled elements). Therefore, ICA provisions that reflect these obligations and rights (e.g., XO proposed Section 1.1) should be included in the SBC-XO amended ICA.

Moreover, for purposes of the ICA, our presently effective rulings must be taken at face value. Although SBC may believe that we have required unbundling under Section 13-801 (including TELRIC-priced unbundling) that exceeds what Section 251 would allow, that belief is irrelevant at present. Similarly irrelevant is the argument that our rulings are inconsistent with Section 261(c) of the Federal Act, which would contravene Section 13-801. Our currently viable unbundling rulings were based on our judgment that they are consistent with Section 261(c). Such judgment would have to be overturned on appeal or preempted through Section 253(d), not collaterally challenged in arbitration (or worse, unilaterally by SBC, within the context of the ICA). Put simply, our unbundling mandates are effective today, and unless or until they are altered

(whether by us or by superior authority) they must be incorporated in the parties' ICA. Future unbundling developments should be accommodated through change-of-law provisions.

In view of the foregoing principles and conclusions, the Commission rejects XO's recommendation that only "final and non-appealable" non-impairment decisions will terminate an SBC unbundling obligation. The terms of a non-stayed regulatory order must be obeyed.

SBC/X0-1b. The Commission concurs with XO and Staff that SBC's proposals would essentially replace the change-of-law provisions in the parties' existing ICA with unilateral powers for SBC. XO Init. Br. at 29; Staff Init. Br. at 62. Those provisions contemplate bilateral negotiations between the signatories. In contrast, SBC's amendatory contract language (e.g., SBC proposed Section 1.1) would empower SBC to decline to provide UNEs, based upon, first, its unilateral assessment of the ramifications of regulatory and judicial authorities, and, second, its unilateral judgment of the efficacy of those authorities themselves, based on criteria we rejected above. Such provisions do not belong in the parties' ICA, whether to incorporate changes already compelled by the TRO or any future changes associated with the TRO and USTA II.

2. What is the appropriate transition and notification process for declassified UNEs?

XO re-characterizes this issue as follows:

(a) Whether SBC may attempt to modify the "Change of Law" provisions in the Agreement, in order to implement automatically any future changes in law to the agreement.

(b) What are the circumstances under which SBC may no longer be required to make certain UNEs available?

(c) May SBC unilaterally discontinue providing a UNE after a 30-day transitional period if the parties have not mutually agreed to negotiate terms and conditions regarding such UNE?

1. Parties' Positions and Proposals

a). SBC

In order to properly implement the *TRO*, the parties' contract must be amended to provide a clear, orderly, and definite process for the transition of network elements that are no longer UNEs. XO's proposed language does not provide for any real transition plan at all to implement the *TRO*'s declassifications, and thus does not appropriately implement the requirements of the *TRO*. (*See* XO Section 3.13.1.1.) In particular, XO's proposed language would allow for a transition only if the parties were

able to agree on a "transition schedule." In the event the parties could not agree on a transition schedule, the Commission would have to step in.

If that sounds familiar, it is because that is precisely where we are today. The parties were unable to agree on a transition schedule, and thus the Commission has been forced to step in to arbitrate the matter. XO's proposal to delay the creation of any transition schedule for many more months, pending more negotiation and after the Commission is forced to step in again, is unreasonable.

It is also contrary to the FCC's direction in the *TRO*. The FCC stated that, if the parties could not agree on "transition timing," state commissions should "conclude their consideration of such disputes within nine months of the effective date of this Order." *TRO*, ¶ 703. Under XO's proposal, however, the Commission's "consideration" of the transition timing dispute has not even begun. Thus, XO's proposed language, and SBC Illinois' should be adopted.

SBC Illinois' proposed transition plan language provides for a final, concrete, and well-defined transition period for those facilities that XO is no longer entitled to access as UNEs. That language appropriately defined "declassified" facilities and expressly identified network elements declassified by the *TRO* and USTA II (Sections 1.3, 1.3.1, 1.3.1.1, 2.20), and specifies that such facilities are subject to the transition procedures of the contract (Sections 1.3.1.3, 1.3.2, and 1.3.3). The transition procedures provide for written notice of a declassification, followed by a 30-day transition period where the CLEC can issue disconnect orders or agree upon an alternative arrangement (*e.g.*, resale or special access). (Section 1.3.4.) If the parties cannot agree, SBC Illinois may convert the facilities to resale or special access. (Section 1.3.4.)

XO's assertion that SBC Illinois' language would somehow inappropriately modify the parties' change in law language rather than implement the *TRO* should be rejected. As an initial matter, XO's proposed language too applies to certain future "declassifications," and to that extent would appear to supplement the parties' existing change of law process. XO cannot object merely because SBC Illinois' language might have the same effect.

In any event, SBC Illinois' proposed language appropriately implements the *TRO*'s new impairment standard and the *TRO*'s new approach to unbundling. Under this new regime, network elements are subject to frequent "de-listing," and may be de-listed at different times and in different places. XO's suggestion that each such future declassification should be followed by another round of negotiations, and likely another proceeding before this Commission, is unreasonable and inappropriate.

b.) XO

(SBC/XO-2a). To the extent that certain UNEs are no longer required by the *TRO*, XO proposes a specific mechanism for transitioning from these UNEs. Subsequent to the effective date of the Amendment, in the event that there is a change

in the status of certain UNEs pursuant to applicable law, XO proposes to incorporate these changes to the Agreement through the parties' mutual agreement.

For example, XO's proposed language in Section 3.13.2 provides that, as to network elements that the state commission determines (after the effective date of this amendment) to be no longer required to be unbundled (or "nonconforming facilities"), the parties "agree to amend the Agreement promptly to reflect the change and establish a mutually acceptable transitional mechanism if no transitional mechanism has been previously agreed upon or specifically dictated by the state commission."[46] As noted in SBC Issue 1, this is consistent with the *TRO* as it specifically requires the parties to negotiate changes to their agreements, consistent with underlying change of law provisions of their ICAs. *TRO* at ¶ 701. XO/SBC Interconnection Agreement, §28.2.

In contrast, SBC proposes a 30-day transition period for discontinuing its provision of certain UNEs that are no longer required to be provided pursuant to events that SBC deems to be changes of law. The effect of adopting SBC's language may not only be confusion but violation of the Act, the FCC's orders and rules, and this Commission's rules and requirements. For example, any attempt by SBC to discontinue providing UNEs based on USTA II would be premature and conflict with interim rules that the FCC has stated that it will promulgate within the next few weeks in the wake of USTA II. An attempt by SBC to abruptly discontinue providing UNEs is also contrary to Illinois law, which established rights to access network elements if technically feasible wherever competition would be promoted. 220 ILCS 5/13-801.

(SBC/XO-2b). Neither party may modify the underlying change of law provisions, as that is beyond the scope of the negotiations and this arbitration. However, SBC proposes unilaterally to discontinue providing UNEs, alone, or combined, upon 30 days notice to the CLEC. SBC Section 1.3.4. For the same reasons discussed above in SBC Issue 1, SBC's proposed language regarding declassified and unlawful UNEs is overly broad and improper and effectively constitutes an attempt to modify the change of law provisions, by eliminating the negotiation process specified in the change of law language in the Agreement. Thus, upon the issuance of USTA II, SBC's proposed language could potentially allow it to discontinue provision of certain UNEs, after the 30-day notice. This is inconsistent with the *TRO* and other applicable law, including past Commission decisions. Sage Telecom Arbitration, Docket No. 03-0570, Order, December 9, 2003, at 26 (preservation of parties' existing contractual rights.)

c.) Staff

The ALJ addressed the issue of future declassifications in his June 23, Ruling. In his Ruling, the ALJ found:

[46] Similarly, as noted above, to the extent that a change in applicable law requires SBC to provide UNE, combination, or commingling that is not offered under the amended agreement, XO's proposed language similarly states "the Parties shall *negotiate* an appropriate amendment to the Agreement that will contain the rates, terms and conditions for such UNE, Combination, or Commingling." Joint Matrix, XO Position, Section 1.4.

> Regarding future declassifications, a forward-looking process is not unrelated to implementation of the TRO (as modified by USTA II), to the extent that such process is designed to apply the modified TRO's principles and conclusions to future activity. Moreover (and as concluded above), the fact that amendatory provisions associated with implementation of the modified TRO may affect the operation of existing COL provisions does not mean that SBC Issue 2 exceeds the scope of the parties' pre-petition negotiations.
>
> On the other hand, future declassifications that are not based on the provisions of the modified TRO are beyond the scope of those negotiations. Accordingly, any proposed SBC text that purports to account for future declassifications required by authorities other than the modified TRO (e.g., SBC proposed section 2.20(e)) is hereby stricken.

ALJ Ruling, June 23, 2004, at 2-3.

In a footnote to the last sentence cited above, the ALJ further explained that:

> SBC may believe that the stricken text is inherently arbitrable because it concerns SBC's rights and duties under Section 251. It is not. It is inherently *negotiable*, and had it been negotiated (or even offered for negotiation), it would now be arbitrable. However, non-TRO related future rulings by, for example, any "judicial body," were not negotiated (or offered for negotiation) by the parties. *Id.*

Assuming that the language pertaining to "non-TRO related future rulings by, for example, any 'judicial body,' were not negotiated (or offered for negotiation) by the parties" is properly stricken, it is the Staff's position that the FCC has clearly articulated its preference for the parties to negotiate language to accommodate TRO related modifications. A process for future UNE declassifications could be negotiated at the same time as the current TRO related modifications, if, as the ALJ explained, it had been a subject of the parties negotiations. Staff, accordingly, recommends that the Commission adopt XO's proposed language for all of the reasons above and articulated in detail above in SBC Issue 1.

2. Analysis and Conclusions

SBC-2 is another over-broad request for guidance on a general subject matter, rather than a proper framing of specific open issues. SBC/X0-2b is similarly deficient, as well as substantively duplicative of SBC-1. Accordingly, we will specifically resolve

SBC/XO-2(a) and (c), and those related disputes concerning UNE "declassification" that we view as impediments to amending the ICA.

SBC/XO-2a & 2b. Important elements in the parties' discussion of SBC-1 more logically belong here. For instance, Staff maintains that "the TRO is itself a change of law, but not one that has any effect upon change of law provisions." Staff Init. Br. at 62. If that assertion is correct, the parties cannot establish a new "transition and notification process" in this arbitration. As Staff observes, the ALJ ruled that future UNE declassifications that are not based on the TRO (as modified by USTA II) are beyond the scope of arbitration here, because they were beyond the scope of the parties' limited negotiations. *Id.*, at 66.

SBC posits, however, that modification of the parties' existing change-of-law provisions is "consistent with implementing the requirements of the *TRO*. In other words, to the extent the *TRO* created a new legal landscape which the parties' existing change of law language is insufficient to reasonably and properly implement, then invoking the existing change of law process to negotiate a new change in law process that will accommodate the new legal landscape is perfectly appropriate."[47] SBC Init. Br. at 45. SBC's argument is conceptually valid. If modification of the parties' present change-of-law provision were necessary to proper incorporation of the TRO into the existing ICA, then such modification would be within the scope of this proceeding.

However, that is not the case here. To the extent that the TRO (as modified by USTA II and superceded by the *Status Quo* Order) has determined that specific network elements no longer need to be unbundled (or offered at TELRIC prices) – and to the extent that such unbundling is not required under presently applicable state law – there is no need to establish a process for *identifying* those elements and *incorporating* them into the ICA. The FCC has already identified them. They can be incorporated by simply listing them in the parties' amendment as elements that will not be unbundled (or TELRIC priced). Indeed, one of the apparent purposes of this arbitration was to reflect such "declassifications" in the ICA.

On exceptions, SBC insists that it has indeed propounded contract language that directly identifies services that the modified TRO exempts from unbundling (SBC proposed subsections 1.3.1.1 and 1.3.1.2). SBC BOE at 25-26. There are several flaws in SBC's proposed text, however. First, subsection 1.3.1.2 has been overtaken by the Status Quo Order. All of the listed items must remain unbundled (assuming they presently are in the parties existing ICA) during the time periods specified in that order. That is also true for several listed items in subsection 1.3.1.1 (ii, iv).

Second, several enumerated items in Section 1.3.1.1 are infected by SBC's insertion of the counter-productive term "lawful," which we rejected in our discussion of SBC Issue 1. Third, several items in that same section (e.g., subsections (i), (ii), (iv),

[47] To be clear, the Commission does not find that either party invoked the change of law process in their ICA in this instance. As we stated in Section II of this Decision, the ALJ ruled that this arbitration was compelled by TRO ¶ 703.

(xv)) would accommodate general, and future, regulatory directives from any source. These improperly bypass the ICA's change-of-law processes (see below). Fourth, SBC's lists contain items for which state law requirements have not been taken into account (e.g., subsections (i) & (ii) (dark fiber), (iv) and (viii)). Fifth, we have not determined that SBC is free of unbundling obligations regarding certain enumerated items in Section 1.3.1.1 (e.g., subsections (x), (xi)), or we have attached modifications and conditions that are not reflected in their bare enumeration (e.g., viii).

If the foregoing deficiencies are corrected, however, SBC's proposed Sections 1.3.1.1 and 1.3.1.2 can be included in the ICA (presumably as a single, combined section). The Commission has no preference between SBC's preferred term, "declassified," and XO's preferred term,"non-conforming." SBC's proposed Section 1.3.1.3, which is predicated on the concept of "lawful UNEs, should not be included in the ICA.

Regarding *future* identification of elements that must be "declassified" under rules and principles established in the TRO (as modified by USTA II), SBC has not demonstrated that the parties' existing change-of-law provisions are inadequate. SBC emphasizes that the TRO injected considerable granularity into the impairment analysis, so that unbundling may be discontinued for specific elements on specific routes. SBC Init. Br. at 45-46. SBC also stresses that, first, the FCC was responding to the finding in USTA I that the FCC's impairment analysis had been insufficiently granular, and, second, that USTA II did not "disturb" the FCC's revised impairment analysis in the TRO. *Id.* at 44. SBC concludes that the parties' existing change-of-law mechanism is not suitable for addressing the volume and frequency of "declassifications" that are likely to flow from the TRO's more granular analysis. *Id.*, at 45-46.

However, SBC's assessment of the TRO impairment standards, and of the impact of USTA II on them, is too literal, too narrow and, in this context, self-serving. It is too literal because, although the Court of Appeals did not remand the impairment standard, it did characterize an "important" element of that standard as "vague almost to the point of being empty," and noted that "the issue of whether the standard is too open ended is likely to arise again." USTA II, 359 F.3d at 572. Consequently, while the impairment standard remains viable in its present form (at least until the release of interim rules by the FCC), its usefulness in SBC's predictions regarding the future volume and frequency of "declassifications" is placed in doubt.

More substantively, in the TRO, the FCC found *national* impairment for certain UNEs. That finding could only be overcome with an evidentiary presentation related to specific criteria provided by the FCC. There was no guarantee that any particular ILEC would prove up any non-impairment. Moreover, the FCC established the process for proving non-impairment with the expectation of significant state commission involvement. Since USTA II has overturned that process, it cannot be assumed that the FCC would have included the same level of granularity in its impairment analysis, or that the granularity it would have required - without the findings of the state commissions - would have produced the volume and frequency of "declassifications"

SBC predicts. Accordingly, we do not adopt SBC's selective assessment of the impact of USTA II on the TRO, which treats the remanded elements of the TRO as if they were dissociated from, rather than integrated with, other elements that were not expressly reversed by the court. It follows that we do not agree that the TRO is likely to generate a future quantum of legal changes that will overwhelm the parties' change-of-law processes[48].

Additionally, neither SBC nor any other participant in this proceeding created an evidentiary record that would enable us to compare the volume, frequency and pace of "declassifications" before the TRO with what SBC predicts will occur under the modified TRO. Thus, an appraisal of the sufficiency of the present ICA change-of-law provisions would be based, to an uncomfortable extent, on guesswork.

For the foregoing reasons, we cannot conclude that the parties' present change-of-law provisions would be inadequate for identifying and incorporating "declassified" UNEs (either the UNEs expressly "declassified" in the TRO or UNEs "declassified" in the future pursuant to the principles of the modified TRO) into the parties' ICA. It follows that future disputes regarding the identification of network elements that must be unbundled (or sold at TELRIC prices) per the modified TRO should be subject to existing ICA change-of-law and dispute resolution provisions. It also follows that the amended ICA should reflect the modified TRO's explicit identification of those network elements that must, or need not, be unbundled[49]. However, any such elements that must be unbundled pursuant to presently valid state law or order should not be exempted from unbundling in the ICA.

SBC-2 and SBC/X0-2C. Once it has been determined that the unbundling obligation associated with a network element has been altered (either because the TRO has already altered that status or because the principles of the modified TRO so require in the future), practical steps must be taken by the parties to effectuate that change. Those practical measures are not a change of law, but a consequence of such change. That is, a change of law re-determines what must be unbundled; practical measures implement that change.

Each arbitrating party understandably proposes an implementation process that favors its own business case. Neither is satisfactory. XO would handle implementation on a "project basis," with resort to dispute resolution if the parties cannot agree, in a period of no less than 90 days, on implementation. Given our conclusion, above, that the identification of network elements with altered unbundling obligations will be subject to ICA change-of-law and dispute resolution provisions, the Commission sees no

[48] Similarly, the Status Quo Order also suggests that the parties will not be inundated by frequent and piecemeal changes in unbundling requirements. That order posits the withdrawal of certain unbundling duties on a *national* basis, presumably supported by a blanket non-impairment finding.

[49] For example, the TRO expressly finds that OCn loops and OCn dedicated transport need not be unbundled. That finding should be incorporated into the ICA, through the amendment that is the subject of this arbitration.

reason to delay commencement of implementation for at least three months, with the likelihood of additional dispute resolution concerning implementation itself.

SBC's proposal is flawed in two respects. First, its proposed 30-day "transition" period is too short to serve the public interest. Irrespective of the impact of change on XO, the Commission's first concern is the welfare of XO's customers. Unless XO seamlessly absorbs the additional costs associated with the loss of unbundling, its customers (depending upon the available options in their agreements with XO) will likely need time to assess the effect of change on their own telecommunications budgets and to confer with XO (and, perhaps, SBC or other providers). Second, SBC's transition procedure is linked to other proposed SBC provisions (discussed above) that allow SBC to make unilateral and inappropriate judgments regarding the content and validity of federal and state laws, orders and regulations.

Accordingly, we will articulate certain conclusions. First, the amended ICA should have a standard procedure for implementing TRO-related changes in unbundling obligations. Second, as previously discussed, any such future changes must be identified through the current change-of-law and dispute resolution procedures in the ICA. Third, if it is determined through those procedures that an unbundling obligation has been changed, no such change can be implemented in less than 60 days after service of written notice by the party demanding implementation (unless otherwise agreed by the parties). Fourth, upon expiration of the 60-day interval (or any shorter interval agreed to by the parties), the party serving such notice may either implement change unilaterally or request a Commission order requiring implementation. Fifth, the "disputed" texts of the arbitrating parties pose dozens of additional issues for resolution. Yet those issues have not been properly framed – or, in most instances, even mentioned - for resolution. The Commission will not resolve disputes that have not been framed as open issues, and cannot do so without briefing by the parties.

3. (a) Does a subloop include "house and riser cable and insider wire?"

(b) When SBC retires copper loops or subloops must it provision an alternative service over any available facility?

(c) Should the ICA include terms and conditions related to the loop "caps" set forth in 47 CFR 51.319(a)(5)(iii)?

(d) Should the pricing appendix contain pricing for declassified subloops?

1. Parties' Positions and Proposals

a). SBC

The parties have several disputes regarding the proper contract language governing access to unbundled loops. However, sub-issue SBC-2a has been settled.

First, the parties disagree regarding network disclosure requirements in the event of certain loop retirements. (Section 3.3.1.5.) In the *TRO*, the FCC promulgated new

rules that require certain disclosures before an ILEC retires copper loops that are replaced with fiber-to-the-home ("FTTH") loops. *TRO*, ¶¶ 281-83. While SBC Illinois' proposed language properly tracks these rules, XO proposes additional language that finds no support in the *TRO* or the FCC's rules. In particular, XO proposes that SBC Illinois be required to "provision an alternative service" before making any retirement. But the FCC's rules, by their plain terms, only require an ILEC to make certain disclosures before effecting such retirements. Similarly, section 251(c)(5) of the Federal Act, upon which the FCC's network disclosure rules are based, only requires public notice of certain network changes. Neither the Act nor the FCC's rules require an ILEC to first make alternative service arrangements before retiring copper loops, as XO proposes.

Second, the parties disagree regarding implementation of the *TRO*'s DS3 loop cap, which provides that a CLEC may obtain a maximum of two DS3 loops at any single customer location. *TRO*, ¶ 324. While XO does not object to reflecting the *TRO*'s DS3 loop cap in the parties' contract, it does oppose some additional language proposed by SBC Illinois that more clearly spells out how that cap would be implemented if the FCC were to require the unbundling of DS3 loops at some point in the future. XO, however, has not explained its objection to this additional language, and SBC Illinois' language is reasonable and appropriate. As the FCC itself recognized, carriers may sometimes need to "negotiate specific terms and conditions necessary to translate our rules into the commercial environment." *TRO*, ¶ 700.

SBC Illinois notes that the FCC's rules requiring the unbundling of high-capacity loops have been vacated. Accordingly, SBC Illinois' language would come into play only if the FCC were to re-institute such an unbundling requirement. Nevertheless, it is reasonable to adopt SBC Illinois' language, because that language clearly defines how the DS3 loop cap would be calculated (by making clear that it applies to each end user customer premises location) and applied in a commercial environment if the FCC were to require DS3 loop unbundling at some point in the future.

Third, XO opposes SBC Illinois' proposal to delete from the parties' pricing schedule the prices for three fiber feeder subloops identified by SBC Illinois. In the *TRO*, the FCC held that ILECs are not required to unbundle fiber feeder subloops. *TRO*, ¶253. Thus, SBC Illinois is not required to unbundle the three fiber feeder subloops it identified, and those prices may appropriately be deleted.

b.) XO

(SBC-3b). XO's proposed language, which would require SBC to provision alternate service over any available facility when SBC retires a copper loop or subloop, is consistent with the *TRO*. The *TRO* provides that competitors will continue to have access to loop facilities when copper loop is retired because of the installation of fiber-to-the-home. Specifically Paragraph 281 provides that "[s]uch notification [of retirement of copper loops] will ensure that incumbent and competitive carriers can work together to ensure that competitive LECs *maintain access to loop facilities*." (Emphasis added.) Further, 47 C.F.R. § 52.319(a)(3)(ii)c provides that upon retirement of a copper loop, the

ILEC "shall provide non-discriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis." XO's proposed language simply ensures that XO will have access to loop facilities consistent with the requirements of the *TRO*.

The TRO also contemplated this Commission's role in evaluating copper loop retirement, stating "that many states have their own requirements related to discontinuance of service, and our rules do not override these requirements." *TRO* at ¶ 284. The threat to access is subject to the state review process, which should "address the concerns...regarding the potential impact of an incumbent LEC retiring its copper loops." *Id.* This analysis must recognize that "the retirement of copper loop plant is a network modification that affects the ability of competitive LECs to provide service." *Id.* at ¶ 281.

(SBC-3c). XO agrees that the ICA should state that SBC is not required to provide more than two DS3 UNE local loops per requesting carrier to any single customer location, consistent with 47 C.F.R. § 51.319(a)(5)(iii) and XO's proposed language acknowledges that SBC has no obligation to provide XO more than two DS3 UNE local loops to any single customer location. However, the additional language SBC adds regarding how it may handle orders that may exceed two DS3 UNE local loops per requesting carrier to any single customer location is not necessary to implement the DS3 loop cap in 47 C.F.R. § 51.319(a)(5)(iii).

(SBC-3d). There is no basis, in light of the FCC's finding that SBC must make subloops available, for SBC to delete the pricing provisions for a wide range subloops. Paragraph 253 of the *TRO* only finds an ILEC should not be required to make feeder plant available as a subloop UNE where (1) the feeder is provided over fiber facilities and (2) where it is not necessary to provide a complete transmission path between the central office and the customer premises when ILECs provide unbundled access to the TDM-based capabilities of hybrid loops. SBC's proposed deletion of subloop pricing is not limited to subloops that meet these conditions. Thus, SBC is attempting to grant itself greater relief than the FCC granted it in the *TRO*.

c.) Staff

(SBC-3a). Staff agrees with SBC that the TRO and its accompanying implementing rules only defined the subloop to include inside wire "owned or controlled" by the SBC.

XO's proposed language, however, appears to posit that the FCC defined inside wire as facilities owned or controlled by SBC. Since the parties appear to be in agreement that a subloop includes inside wire only if SBC owns or controls such facilities, this is a non-issue and, accordingly, the Staff takes no position other than to acknowledge that it concurs with the proposition that a subloop includes inside wire only if SBC *owns or controls* such facilities.

Consequently, the issue remaining is whether House and Riser Cable are included in the FCC's definition of inside wire. As noted above, inside wire is defined as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter. Sections 68.105 and 68.3 provide an analysis that is fact specific.

Without the benefit of the specific facts, including the defined parameters of house and riser cable, required to determine whether house and riser cable are included in the FCC's definition of inside wire, the Staff is unable to offer an opinion on this issue.

(SBC-3b). The FCC clearly requires SBC to provide an alternative service when it retires copper loops or subloops. The Staff, accordingly, recommends that the Commission adopt language reflecting the FCC's requirements in 47 C.F.R. § 51.319(a)(3)(ii)(C).

(SBC-3c). This issue appears to the Staff to be a non-issue. The Staff agrees with SBC that XO's proposed language fails to reflect the FCC's cap on unbundling DS3 circuits. XO acknowledges the DS3 cap and also recommends that the ICA should contain language reflecting the DS 3 CAP. See Joint Issues Matrix, at 67. Staff agrees with both parties that the ICA should contain language reflecting the DS3 cap found in 47 C.F.R. § 51.319(A)(3)(iii).

(SBC-3d). Because XO has not taken issue with SBC's proposed language for § 3.10 (HFPL), the Staff takes no position on SBC's proposed language because it does not appear to be an issue in dispute. Staff, however, reserves the right to comment on SBC's proposed language in § 3.10 (HFPL) should XO object to it in XO's Initial Brief.

2. Analysis and Conclusions

SBC-3a. The parties settled this sub-issue during briefing.

SBC-3b. SBC's proposed Section 3.1.3.2.3 literally tracks the FCC's requirement in 47 CFR 51.319(A)(3)(II)(c) and should be included in the parties' ICA. XO's demand for "an alternative service over any available, compatible facility (e.g., copper or fiber)," XO proposed Section 3.3.1.5, exceeds the directives in the TRO and FCC regulations and should be excluded from the ICA.

SBC's briefings suggest that this is also a *timing* dispute[50]. If that is so, the Commission notes that customer welfare is paramount. A compliant voice-grade circuit must be available in a manner that makes the transition from copper to fiber as

[50] "[N]othing in the *TRO* or the FCC's rules requires that an ILEC actually provision alternative service *before*, and as a pre-condition to, a retirement. SBC Illinois is required only to make unbundled access to a voice-grade circuit *available*; the CLEC may or may not wish to actually take advantage of that offer." SBC Reply Br. at 43 (emphasis in original).

seamless to the customer as is technically feasible under current systems and processes. Narrowband service must not be interrupted unless, given current systems and processes, such interruption is necessary to effectuate the transition, or unless the customer requests interruption. Where service interruption is necessary, SBC shall minimize such interruption to the extent practicable.

SBC-3c. XO's principal concern with SBC's treatment of the DS3 loop cap is that SBC would be empowered to unilaterally convert an excess loop request to a special access request, without giving XO notice or an opportunity to "opt out or...challenge the cap assessment." XO Init. Br. at 37. SBC's countervailing concern is that its rights, when XO appears to have exceeded the cap, should be clearly delineated in the ICA. SBC Init. Br. at 53. Both parties' concerns are reasonable and can be accommodated in the amended ICA. Therefore, SBC's proposed Section 3.1.2.2.1 should be modified to provide written or electronic notice to XO, and a fair and specific time interval in which XO can object or select alternative treatment for an excessive DS3 loop request. Objections should be resolved through the ICA dispute resolution mechanism, and the status quo should not be altered pending such resolution.

XO's recommendation to address this issue through "industry discussions," XO Reply Br. at 37-38, is rejected. As we said in relation to XO Issue 4, *this* proceeding was initiated (by XO) for the purpose of incorporating TRO requirements, including the DS3 cap, into the parties' ICA. The Commission perceives no benefit in delaying that process, particularly for something as vague as "industry discussions."[51]

SBC's proposal to clarify the identity of the DS3 loop "customer," in SBC 3.1.2.2.1 is reasonable on its face, and XO does not support its objection to it. It should be included in the amended ICA.

SBC-3d. h the TRO, the FCC states that "the rules we adopt herein do not require [ILECs] to provide unbundled access to their *feeder* loop as stand-alone UNEs, thereby limiting [ILEC] subloop unbundling obligations to their *distribution* plant." TRO ¶ 254 (emphasis added). SBC asserts, without contradiction from XO, that the subject subloops are each part of SBC's feeder plant, not its distribution plant. SBC Init. Br. at 54. Therefore, SBC can delete subloop pricing for the three pertinent loops. However, XO will still have access to SBC's fiber feeder plant "as necessary to provide a complete a transmission path between the central office and the customer premises" under the circumstances set forth in TRO ¶ 253. However, such access does not require that the subloop component be available as a stand-alone UNE, but as part of the complete transmission path described in TRO ¶ 296.

[51] Although XO cautions that, absent industry-wide discussions, SBC is likely to "make system changes and procedures [regarding the DS3 loop cap] that it will apply to all other CLECs," XO BOE at 6, the Commission does not perceive how SBC (or any ILEC) can unilaterally alter existing ICAs or determine the terms of new ICAs.

4. (a) Must SBC provide loop conditioning free of charge?

(b) Is SBC required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops?

(c) What terms and conditions should apply to line conditioning?

(d) What terms and conditions should apply to the high frequency portion of a copper loop ("HFPL")?

1. Parties' Positions and Proposals

a). SBC

With respect to hybrid loops, SBC Illinois proposes to precisely track the detailed new rules promulgated by the FCC in the *TRO* regarding hybrid loops. XO's proposed language, on the other hand, states that SBC Illinois shall provide access to hybrid loops on an unbundled basis, and vaguely refers to "applicable law" and section 271. That language is unreasonable, because it fails to specify the parties' rights and obligations with respect to hybrid loops. The purpose of an interconnection agreement is to translate applicable law into the commercial environment, and spell out the parties' respective rights and obligations. SBC Illinois' proposed language does just that, closely following the FCC's hybrid loop rules. Moreover, the Commission should reject XO's attempt to invoke section 271 to require SBC Illinois to provide access to hybrid loops at section 251 rates, terms, and conditions, for the reasons explained above under Issue SBC-1.

With respect to line conditioning, the Commission should approve SBC Illinois' proposed contract language. That language properly implements the FCC's line conditioning rule (FCC Rule 319(a)(1)(iii)(A)), and XO has not explained its objection to SBC Illinois' proposed language.

With respect to access to the HFPL (line sharing), the Commission should adopt SBC Illinois' proposed language. In the *TRO*, the FCC conclusively held that ILECs are not required to unbundle the HFPL, and held that such a requirement would contravene Congress' goals in the Federal Act. *TRO*, ¶¶ 258-63. Thus, the FCC established detailed rules to govern the phase-out of the HFPL. FCC Rule 319(a)(1)(i). Moreover, the D.C. Circuit upheld the FCC's findings and rules in USTA II. Therefore, the parties' contract should be amended to precisely track and implement these new FCC rules, as SBC Illinois' proposed contract language does.

XO's proposed language, on the other hand, falls far short of implementing the *TRO*'s new line sharing rules. For instance, XO would define "grandfathered" line sharing arrangements in a manner different than the definition contained in the FCC's actual rules; would require SBC Illinois to provide the HFPL under section 271, even though the HFPL is not a section 271 checklist item (and even if it were, the Commission lacks jurisdiction over section 271 checklist items, and in any event could not require the provision of a checklist item at section 251 UNE rates, terms, and conditions, as explained above); and suggests that SBC Illinois might be required to

provide the HFPL under state law, even though the FCC (and NARUC and several other state commissions) made clear that any such requirement would be preempted.

Finally, the Commission should not address the additional language that XO inserted into the parties' joint issues matrix that does not relate the any of the issues raised by XO in its arbitration petition or by SBC Illinois in its response to that petition (*e.g.*, language relating to line splitting). Section 252(b)(4)(A) of the Federal Act expressly limits the issues to be considered in this arbitration to "the issues set forth in the petition and in the response," and XO's attempt to introduce new issues is thus contrary to the Act.

b.) XO

(SBC-4a & c). The Parties have settled these sub-issues with the exception of the use of the "lawful" FCC rules. As stated in the context of other issues, SBC improperly attempts to amend the existing Agreement's change of law provision to automatically incorporate SBC's interpretation of future events.

(SBC-4b). XO's proposed language establishes that SBC shall be required to provide nondiscriminatory access to hybrid loops on an unbundled basis, including narrowband and/or broadband transmission capabilities pursuant to *applicable law*, including but not limited to Section 271 of the Act and state law. The *TRO* states that "competitive LECs have [the right] to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service to customers." *TRO* at ¶ 294. In addition, the FCC requires ILEC to provide an entire non-packetized transmission path capable of voice-grade service on a hybrid loop for a requesting carrier to provide narrowband service. *TRO* at ¶ 296. XO's proposed language also identifies applicable law as including, but not limited to Section 271 and Illinois law.

XO shares the goal of the *TRO* to "prohibit incumbent LECs from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs" (including hybrid loops); the TRO also labels any ILEC practice that disrupts or degrades access to hybrid loops "prohibited under the section 251(c)(3) duty to provide unbundled access to loops on just, reasonable and nondiscriminatory terms and conditions." *TRO* at ¶ 294. SBC does not propose any language related to hybrid loops.

(SBC-4d). XO's proposed language regarding access to the HFPL is consistent with the *TRO* and should be adopted.

c.) Staff

Although SBC raises a number of sub-issues here, XO, apparently, only takes issue with SBC's proposed language for line conditioning. More specifically, XO objects to SBC's line conditioning charges and its restrictive definition of line conditioning

The Staff agrees with SBC that "[t]he TRO specifically contemplates that an ILEC

may seek compensation for line conditioning." On the other hand, the Staff also agrees with XO that line conditioning is a routine network modification and line conditioning is an intrinsic part of the local loop.

It appears to the Staff, that network modifications that are only provided upon request, such as line conditioning, are network modifications for which costs would not already have been recovered by SBC in its Local Loop UNE charges. Staff, accordingly, recommends that the Commission adopt SBC's proposed language for § 3.2.1 regarding line conditioning costs.

Regarding SBC's definition of line conditioning, the Staff agrees with XO that SBC's definition is overly restrictive, based upon the FCC's definition of line conditioning.

SBC's proposed language is overly restrictive in that it limits line conditioning to removing "bridge taps, load coils, and/or repeaters." Clearly, the FCC's definition of line conditioning in FCC Rule 51.319(a)(1)(iii)(A) is not as restrictive and its list of devices that must be removed in line conditioning goes beyond SBC's proposed language and, moreover, specifically states that such devices are not limited to the devices listed.

Staff, accordingly, recommends that the Commission adopt ICA language that properly reflects the FCC's definition of line conditioning in 47 C.F.R. § 51.319(a)(1)(iii)(A). In Staff's opinion, XO's proposed language regarding line conditioning more appropriately reflects the FCC's definition of line conditioning and should, thus, be adopted by the Commission.

XO also objects to alleged limitations that SBC's proposed language imposes on *when* it will provide line conditioning. SBC's proposed language states that it will provide line conditioning "upon CLEC's request." The Staff is hard-pressed to understand why XO would object to SBC providing line conditioning when XO requests it. The Staff, nonetheless, reserves its right to address any objection XO may have regarding when SBC will provide line conditioning if XO more fully articulates its position in its Initial Brief.

Likewise, Staff reserves the right to comment on SBC's proposed language at issue in SBC Issue No. 5 should XO articulate objections in its Initial Brief that are not contained in its preliminary position.

2. Analysis and Conclusions

SBC-4a & c. The arbitrating parties appear to have settled these sub-issues.

The Commission notes that SBC-4c was improperly framed as an open issue. Furthermore, to the extent that the parties belatedly attempted to modify the many discrete disputes residing under this over-broad question, those disputes were presented as dueling texts, not as properly framed open issues. Moreover, SBC avers

that we *cannot* address issues posed outside of the Petition and Response, SBC Init. Br. at 65, and we agree. Therefore, even if those disputes have not been settled, the Commission will not address them.

SBC-4b. SBC's proposed text would essentially incorporate the language of 47 CFR 51.319(a)(2) into the ICA. Despite XO's claim to the contrary, XO Reply Br. at 41, that text includes the degree of access to broadband capabilities required by the FCC. Such language is unobjectionable and the Commission approves it.

The parties' real disagreement concerns XO's demand (in XO proposed Section 3.1.4.1) for access to the broadband transmission capabilities of hybrid loops to the extent such access is required under Section 271 of the Federal Act or under state law. SBC argues, first, that this Commission lacks authority to address the terms and conditions of access to Section 271 UNEs and, second, even if we do have such authority, the modified TRO precludes the conclusion that 271 UNEs must be offered at TELRIC prices. SBC Reply Br. at 47.

Regarding our authority, SBC contends that "the states only have authority under [S]ection 252 to arbitrate issues arising under [S]ection 251," and that issues concerning Section 271 do not arise under Section 251. SBC BOE at 9. SBC's premises are incorrect. While subsection 251(c)(1) establishes an ILEC *duty* to negotiate the items enumerated in subsection 251(b), subsection 252(a)(1) empowers the parties to "negotiate and enter into a binding contract... *without regard to the standards set forth in subsections (b) and (c) of section 251*." (Emphasis added.) Thus, although SBC *had to* negotiate the subsection 251(b) items if XO so requested, the parties *could* negotiate anything pertaining to their interconnection, including the impact of the TRO on obligations arising under Section 271.

The foregoing analysis is entirely congruent with Coserv Limited Liabililty Corp. v. Southwestern Bell Telephone Co., 350 F. 2d 482 (5th Cir. 2003). There, the court stated:

> An ILEC is *required* by the [Federal] Act to negotiate about those duties listed in § 251(b) and (c). During negotiations, however, the parties are free to make any agreement they want without regard to the requirements of § 251(b) and (c). To that extent, the parties are free to include interconnection issues that are not listed in § 251(b) and (c) in their negotiations....
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> ***
>
> ...That is, Congress contemplated that voluntary negotiations might include issues other than those listed in 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission].

350 F. 3d 487 (emphasis in original).

SBC also emphasizes that subsection 252(c)(1) directs us to resolve open arbitration issues in a manner that "meet[s] the requirements of section 251." SBC BOE at 8. In SBC's view, this provision precludes us from arbitrating (or even approving) "obligations other than those set forth in section 251." *Id.*, at 9. The principles from Coserv refute this argument. The "requirements of section 251" mandate compliance with "the requirements...of section 252," including the requirement that we assess an ICA that has been negotiated, as subsection 252(a)(1) states, "without regard to the standards set forth in subsections (b) and (c) of subsection 251."

Furthermore, with specific regard to unbundled access (here, access to hybrid loops), subsection 251(c)(3) requires an ILEC to provide such access on rates, terms and conditions "that are just, reasonable, and nondiscriminatory *in accordance with the terms of the agreement* **and** the requirements of this section and section 252." (Emphasis added.) Thus, Section 251 allows incorporation, into the ICA, of standards other than those explicitly set forth in Sections 251 and 252. Within the Federal Act, the "just and reasonable" standard is imposed by Section 201, while the nondiscrimination standard derives from Section 202. These two sections apply to the rates, terms and conditions for Section 271 UNEs.

Moreover, SBC's objection to the presence of 271 UNEs in this arbitration appears newly minted. In Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission, 359 F.3d 493 (7th Cir. 2004), cited by SBC, the court observed that SBC itself had negotiated a Section 271 performance assurance plan *"as an amendment to its [ICA]."* 359 F.3d at 496 (emphasis added). We note that the court's holding had nothing to do with that plan, however. Rather, the court overturned a separate, "stand-alone" order establishing a different performance plan created by the IURC, which was available to any CLEC outside the ICA process. Significantly, the court did do on the ground that the IURC had thus "interfere[d] with...the process for [ICAs] for local service under Sections 251 and 252." *Id.*, 497. The court thus concluded that a Section 271 performance plan was properly addressed in the Section 252 ICA negotiation and arbitration process (as well as in a Section 271 application for long distance authority).

Additionally, the nature and extent of the "authority" we are exerting over Section 271 UNEs must not be exaggerated here. The only purpose of this arbitration is to incorporate into the ICA, at the FCC's direction, federal requirements set forth in the modified TRO. To resolve the parties' open issues that fall within that limited scope, we are, *inter alia*, directing the parties to incorporate in their ICA *the FCC's* substantive provisions pertaining to Section 271 UNEs. We are not altering those FCC rulings, nor are we attempting to define the extent to which Section 271 governs the parties' conduct. We are simply saying, in effect, "incorporate what the FCC said about 271 UNEs into your ICA, and it will have whatever effect the FCC said it will have." Indeed, if we permitted the parties to ignore the FCC's directives regarding 271 UNEs, *then* we would be contravening both the FCC and the Federal Act. Moreover (and in addition to

the Sections 251 and 252 authority discussed above), we can impose regulatory requirements under the power reserved to us by Section 261(c) of the Federal Act[52], so long as they are not inconsistent with FCC requirements.

Concerning the substantive content of the FCC's directives regarding Section 271 UNEs, we have already noted the FCC's view that Section 271 does contain unbundling requirements that are independent of Section 251. TRO ¶ 653. As for pricing, XO's proposed text does not request UNE access at TELRIC prices. Thus, XO's references to Section 271 and "state law" would give XO no more than whatever those authorities would provide. Since SBC correctly interprets the TRO (e.g., ¶ 656) and USTA II, TELRIC pricing is not accorded to 271 UNEs under federal law.

Therefore, we conclude that XO's references to Section 271 and state law are permissible. However, to prevent over-reaching, and to keep XO's text within the boundaries of this arbitration, we revise XO's proposed Section 3.1.4 as follows: "SBC Illinois shall provide nondiscriminatory access to hybrid loops on an unbundled basis, including narrowband and/or broadband transmission capabilities, to the extent required by 47 CFR 51.319(A)(2), Section 271 of the Act and state law."

SBC-4d. For the most part, SBC's proposed text pertaining to XO's access to the HFPL (also referred to as "line sharing") accurately mirrors the FCC's mandates in the TRO and in 47 CFR 51.319(1)(i). To that extent, it should be included in the amended ICA. However, we agree with XO that SBC proposed Section 3.10.1.2 alters the terms of subsection 47 CFR 51.319(1)(i)(A). That subsection refers to disconnection *by the customer*, not to the broader category of disconnection *of the service* (xDSL). Consequently, SBC's text should be revised to more accurately track 47 CFR 51.319(1)(i)(A). XO also appropriately complains that SBC's text automatically incorporates changes of law. Such changes should be specifically incorporated into the ICA through its existing change-of-law provisions and SBC's text must be revised accordingly.

On the other hand, the Commission agrees with SBC that XO's proposed Section 1.19.1.4 contains an "intent" provision that is not supported by the TRO, and is, in our view, unworkable. XO's text is therefore rejected, and the language in SBC proposed Section 3.10.1.1 should be placed in the ICA instead.

As for XO's contention that the ICA should reflect line-sharing obligations under Section 271 and state law, the Commission notes that the HFPL is not a 271 checklist item. SBC Init. Br. at 61; Staff Reply Br. at 27. Patently, no reference to Section 271 obligations belongs in the ICA. Regarding state law, Staff explains that:

[52] "Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part of the [FCC's] regulations to implement this part." 47 USC 261(c).

> Unlike hybrid loops and dark fiber, the Commission did not implement a state law requirement that SBC provide HFPL under mandatory statutory language found in the PUA, but, rather, the Commission exercised its prerogative authority under the discretionary language found in Section 13-506.6 of the PUA, which exercise of authority was then consistent with existing federal law. The Commission, moreover, re-opened ICC Docket No. 00-0393 because subsequent to the FCC issuing the TRO "changes to the federal scheme indicates several areas which implicate the need for a reapplication of Illinois and federal law to the issues addressed by this Commission in earlier orders in this docket."

Staff Reply Br. at 27.

However, no new final order has yet been issued in Docket 00-0093. Nor has our authority over the HFPL been preempted by the FCC pursuant to Section 253(d) of the Federal Act. Therefore, reference to state line sharing obligations can be placed in the amended ICA (although, depending on the final outcome of Docket 00-0093, XO may derive little benefit from that reference).

5. (a) What are the appropriate definitions of dark fiber loop and dark fiber transport?

(b) What terms and conditions should apply to SBC's provision of dark fiber loop and dark fiber transport?

1. Parties' Positions and Proposals

a). SBC

SBC Illinois' proposed language properly reflects the scope of SBC Illinois' obligation to provide unbundled dark fiber. In particular, SBC Illinois is required to provide unbundled dark fiber only where dark fiber is lawfully a UNE under section 251 of the Act. XO's proposed language, on the other hand, would unlawfully require SBC Illinois to provide unbundled dark fiber whether it was lawfully a UNE or not. (Section 3.5.3.1.) XO's proposed language must be rejected, and SBC Illinois' adopted, for the same reasons discussed above under Issue SBC-1.

The FCC's rules requiring the unbundling of high-capacity loops and dedicated transport (including dark fiber) have been vacated. Accordingly, SBC Illinois' language would come into play only if the FCC were to re-institute such unbundling requirements. Nevertheless, it is reasonable to adopt SBC Illinois' proposed language, because that language would most appropriately define SBC Illinois' obligations should the FCC require the unbundling of dark fiber in the future, while XO's language would not.

XO's proposed language regarding the declassification of dark fiber loops by this Commission must be rejected. (Section 3.1.6.) That language appears intended to implement an FCC Rule (the FCC's dark fiber loop rule, Rule 319(a)(6), which provides for state commission non-impairment determinations) that has been vacated.

XO opposes SBC Illinois' proposed contract language providing that, to the extent SBC Illinois is required by an FCC rule to unbundle dark fiber, unbundled dark fiber will be provided only where a CLEC is collocated. (Sections 3.1.6 and 3.5.3.1.) In the *TRO*, the FCC explained that a CLEC purchasing unbundled dark fiber must also collocate and provide optronics to light the dark fiber. *TRO*, ¶¶ 313, 381-82. SBC Illinois' proposed language is consistent with the FCC's language, and thus should be included in the parties' *TRO* amendment.

Finally, the Commission should approve SBC Illinois' proposed description of dark fiber dedicated transport, and reject XO's. (Section 3.5.3.1.) In the *TRO*, the FCC redefined dedicated transport to *include* only transmission facilities between ILEC switches and to *exclude* transmission facilities outside the ILEC's network, such as transmission facilities connecting the ILEC's network to a CLEC's network. *TRO*, ¶ 366. XO proposes to include only the first half of this new definition in the parties' contract. But XO has not identified any basis for excluding the second half of the FCC's definition from the parties' contract, and there is none. Rather, the parties' contract should be revised to make clear that dedicated transport now excludes transmission facilities between SBC Illinois' and a CLEC's network, as SBC Illinois' proposed language does.

b.) XO

SBC's proposed language would impermissibly limit the availability of dark fiber EELs (combination of dark fiber loop and dark fiber transport). For dark fiber loops, SBC would require XO to have collocation space in the central office where the dark fiber loop terminates. Similarly for dark fiber transport, SBC's proposal would require that XO have collocation space in each SBC central office where the requested dark fiber transport terminates. These requirements would not allow XO to order dark fiber EELs because XO would not have a collocation at the central office where the dark fiber loop terminates in the case of a dark fiber EEL (which is of course why an EEL would be used). There is no basis in the *TRO* or elsewhere for this restriction.

The TRO actually emphasizes *not* limiting the availability of dark fiber, declaring "we recognize the hard work of the state commissions to make dark fiber meaningfully available and endorse such efforts here." *TRO* at ¶ 385. Illinois' efforts to promote competition and provide unbundled elements are further supported by the directives of Section 13-801 of the PUA. 220 ILCS 5/13-801.

In fact, SBC's attempt to limit the availability of dark fiber EELs is inconsistent with the FCC's findings regarding the pro-competitive benefits of EELs. At ¶ 576, the FCC states: "[b]ased on the record before us, we conclude that EELs facilitate the growth of facilities-based competition in the local market. The availability of EELs extends the geographic reach for competitive LECs because EELs enable requesting

carriers to serve customers by extending a customer's loop from the end office serving the customer to a different end office in which the competitive LEC is already located. In this way, EELs also allow competitive LECs to reduce their collocation costs by aggregating loops at fewer collocation locations and then transporting the customer's traffic to their own switches." By imposing collocation requirements to obtain dark fiber loops, SBC is attempting to increase XO's costs and prevent it from realizing the economies of using dark fiber EELs to aggregate its traffic.

SBC's proposed language, providing for the provision of Dedicated Transport Dark Fiber only "when CLEC has collocation space in each SBC-12STATE CO where the requested dark fiber(s) terminate" creates another possible problem in addition to the inability to access the dark fiber UNE for EELs. XO may wish to order Dedicated Transport Dark Fiber that is routed through multiple SBC central offices. XO may not, and need not, have collocations in those intermediate central offices. Although XO would maintain that the dark fiber does not "terminate" in those intermediate central offices, SBC could interpret its proposed language as imposing such a collocation requirement and improperly refuse to provision Dedicated Transport Dark Fiber along the desired route.

SBC's proposed language contains yet another incorrect limitation on the provision of Dedicated Transport Dark Fiber, illustrating why its language must be rejected. The language provides that "Lawful UNE Dedicated Transport Dark Fiber does not include transmission facilities between the SBC-12STATE network and the CLEC network *or the location of CLEC equipment.*" XO should certainly be entitled to order Dedicated Transport Dark Fiber from SBC which connects to XO's collocations. Yet, an XO collocation is certainly a "location of CLEC equipment." Indeed, Dedicated Transport Dark Fiber would be useless if it did not connect at some point to a "location of CLEC equipment." Yet, SBC's proposed language improperly attempts to impose precisely that limitation.

SBC objects to XO's proposed language requiring that SBC provide dark fiber on an unbundled basis until a "final and nonappealable" order is issued. However, XO's proposed language is consistent with the terms of the underlying change in law provisions in the XO/SBC ICA – as discussed above in SBC Issue 2. SBC is improperly attempting to short-cut the existing change in law procedures and allow any changes favorable to SBC to be enacted without delay.

c.) Staff

(SBC-5a). SBC alleges that XO's proposed definition of a dark fiber loop is not the definition of a dark fiber loop, but rather the definition of dark fiber contained in ¶ 311 of the TRO. SBC also claims that using the defintion of dark fiber instead of a specific definition of a dark fiber loop "is illogical and potentially confusing." Joint Issues Matrix, at 77.

SBC's proposed language defines "Loop Dark Fiber" as "Loop dark fiber is an existing dedicated transmission facility between a distribution frame (or its equivalent) in a SBC State Central Office and the loop demarcation point at an End User customer premise that has not yet been activated through optronics to render it capable of carrying communications services." See SBC's proposed section 2.6 (Loop Dark Fiber). Furthermore, SBC's proposed language would limit its provisioning of dark fiber loops to a "CLEC when CLEC has collocation space in each SBC-12STATE CO where the requested dark fibers terminate." See SBC proposed section 3.1.6.

Staff finds no support for SBC's proposed limitations on dark fiber loops in the TRO. Although the FCC has defined dark fiber and dark fiber loops essentially the same (compare ¶ 311 of the TRO with 47 CFR § 51.319(a)(6)(i)), XO's proposed definition of a dark fiber loop closely tracks the FCC's definition of a dark fiber loop in 47 CFR § 51.319(a)(6)(i) ("Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services."). Moreover, in ¶ 202 of the TRO, n. 632, the FCC found no reason to distinguish dark fiber from its general unbundling analysis for loops. In light of the FCC's determination that there is no reason in its unbundling analysis to treat dark fiber loops differently from copper loops, Staff recommends that XO's proposed definition of a dark fiber *loop* be adopted.

SBC's proposed language would define dark fiber *transport* as "unactivated fiber optic interoffice transmission facilities are dedicated to a particular CLEC that are within SBC-Illinois' network, connecting SBC-Illinois switches or wire centers within a LATA." See SBC's proposed section 2.7 (Dark Fiber Transport). Paragraph 365 of the TRO provides support for SBC's definition of dark fiber transport. See TRO, ¶ 365 ("We limit our definition of dedicated transport under section 251(c)(3) to those transmission facilities connecting incumbent LEC switches and wire centers within a LATA."). Furthermore, SBC's proposed language would limit its provisioning of dark fiber *transport* to a "CLEC when CLEC has collocation space in each SBC-12STATE CO where the requested dark fibers terminate." See SBC proposed section 2.7.

(SBC-5b): SBC also objects that "even after a state commission finds that a carrier is not impaired without access to it", that under XO's proposed language SBC must continue to provide dark fiber on an unbundled basis until there is a "final and non-appealable" order issued. Joint Issue Matrix, at 78-79. As noted above under SBC Issue No. 1, the Staff recommends replacing any such "final and non-appealable order" language with a "lawful order."

2. Analysis and Conclusions

SBC-5a. The parties have settled this sub-issue.

SBC-5b. This sub-issue is not properly framed as an open issue. It is an invitation to the Commission to discourse on the subject of dark fiber, and to devise rules from the ground up, rather than the presentation of a dispute. We will nonetheless

address those apparent disputes that we perceive to be impediments to amending the parties' ICA.

The court of appeals vacated and remanded the TRO's national impairment finding with respect to dedicated transport elements, including dark fiber. USTA II, 359 F.3d at 594. However, as we noted above, the FCC's subsequent *Status Quo* Order requires an ILEC to continue providing unbundled access to dedicated transport on "the same rates, terms and conditions that applied under their [ICAs] as of June 15, 2004" for a six-month period. *Status Quo* Order, ¶¶ 1 & 16. That directive also applies to enterprise loops, including dark fiber loops[53].

XO says that its "primary concern" with SBC's proposed text is that SBC's collocation requirement (in the SBC central office(s) where the pertinent fiber terminates) would prevent XO from obtaining dark fiber EELs[54]. XO Reply Br. at 44. XO acknowledges that a collocation requirement is generally valid, but avers that collocation need not be at every SBC central office where a dark fiber EEL terminates. *Id.*, 44-45. We agree, and find SBC's rationale for its proposed provisions unpersuasive. The TRO passage on which it relies (¶ 382) does refer to "necessary...collocations" but does not address - much less establish a rule about - where EEL collocation must occur.

We agree with XO that the FCC concluded that EELs facilitate competition, innovation and efficient deployment of resources. TRO ¶ 576. Accordingly, the Commission holds that, with respect to EELs, collocation within the pertinent LATA can constitute the "necessary collocations" referred to in the TRO. We note that XO will still be subject to the eligibility criteria promulgated by the FCC in the TRO, as incorporated into the parties' ICA.

The *Status Quo* Order requires a caveat to that directive, however. Since the *Status Quo* Order states that ILECs must provide dedicated transport and enterprise market loops under the rates, terms and conditions contained in an applicable ICA as of June 15, 2004, the Commission concludes that it cannot alter any existing terms and conditions in the SBC/XO ICA pertaining to collocation. We do not know if such terms in fact exist, because the parties did not offer their present ICA for the record. Therefore, all we can require now is that the EEL collocation directive in the preceding

[53] The Commission does not agree with SBC and Staff that USTA II had overturned the TRO's loop unbundling requirements. When the Court of Appeals vacated the FCC's subdelegation to state commissions, the rationale of that ruling applied generally to subdelegation concerning any UNE, including loops. However, the rejection of subdelegation did not, by itself, overturn the FCC's national impairment findings. (Indeed, the purpose of subdelegation was to locate exceptions to those findings.) Thus, in a separate ruling, the USTA II court vacated the FCC's national impairment determinations regarding mass market switching and dedicated transport. It did not vacate the FCC's loop impairment findings.

[54] We disagree with SBC's assertion that dark fiber EELs were not "contemplate[d]" in the TRO. SBC Reply Br. at 49. A dark fiber EEL is simply a combination of separate elements, as described by the FCC. TRO ¶575. DS1 and DS3 are merely capacity designations for the same facilities that can be "lit" or left "dark."

paragraph should be incorporated in the ICA unless it is inconsistent with existing ICA provisions. In the event of such inconsistency, the preceding directive is inapplicable and the existing ICA terms shall continue in force.

Regarding state law, XO is correct that this Commission held in Docket 01-0614 that Section 13-801 of the PUA does not countenance a collocation requirement for termination of EELs. It certainly follows that state law does not require collocation *at a specific central office* for dark fiber EELs. Additionally, although SBC charges that XO presented no "evidence" that SBC's proposed collocation requirements would fail to implement the maximum development of competitive service offerings, as Section 13-801 mandates[55], the FCC has concluded that EELs reduce a CLEC's collocation costs, thereby (as noted above) "facilitat[ing] the growth of facilities-based competition in the local market." TRO ¶ 576. That is sufficient refutation of the competition-enhancing potential in SBC's collocation requirement. Therefore, we conclude that SBC's dark fiber EEL collocation requirement should be modified so that collocation at an SBC central office *within the LATA* satisfies the requirement[56].

The Commission rejects the requirement, in XO proposed Section 3.1.6, of a "final and non-appealable" non-impairment order before SBC can be relieved of an unbundling obligation. As we have said elsewhere in this Decision, a judicial or administrative order is effective from the time it is issued unless and until it is rendered otherwise by the authority that issued it or by a superior authority.

6. (a) Does dedicated transport include transmission facilities that connect SBC's switches or wire centers to those of another ILEC?

(b) Does dedicated transport include transmission facilities that connect SBC's switches or wire centers to the CLEC's premises or POP?

(c) Is SBC obligated to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2)?

(d) What terms and conditions should apply to the DS3 dedicated transport caps?

(e) Should the pricing schedule include pricing for and entrance facilities, OC3, OC12 and OC48 dedicated transport, cross connects and multiplexing?

XO re-characterizes this issue as follows:

Did the FCC distinguish between interconnection facilities and other types of entrance facilities or dedicated transport such that interconnection facilities must be provided at cost?

1. Parties' Positions and Proposals

[55] For that matter, SBC has not presented "evidence" that its collocation provisions would meet the statutory standard. The simple fact is that both parties waived evidentiary hearings and adduced no evidence.

[56] As requested by SBC, SBC BOE at 27, this collocation requirement does not apply to stand-alone dark fiber loops. We exempt stand-alone loops for the technical reasons explained by Staff, Staff BOE at 6-7.

a). SBC

SBC Illinois' proposed dedicated transport language appropriately limits the provision of dedicated transport to instances where dedicated transport is a lawful UNE. XO's proposed language, on the other hand, would require SBC Illinois to provide dedicated transport on an unbundled basis whether it is lawfully a UNE or not. XO's proposed language must be rejected, and SBC Illinois' adopted, for the same reasons discussed above under Issue SBC-1.

XO also proposes to continue to require SBC Illinois to provide entrance facilities at TELRIC rates. That proposal is unlawful. In the *TRO*, the FCC redefined dedicated transport to *exclude* facilities outside the ILEC's network, which the FCC held include entrance facilities. *TRO*, ¶ 366. Thus, the *TRO* "eliminates 'entrance facilities' as UNEs." *Id.* n. 1116. SBC Illinois' proposed definition of dedicated transport is necessary to implement this new law. While the FCC's rule requiring the unbundling of dedicated transport has been vacated, the D.C. Circuit did not vacate the FCC's determination that entrance facilities are no longer UNEs, and are no longer within the definition of "dedicated transport." Thus, SBC Illinois' proposed language is appropriate, in the event that the FCC adopts new rules requiring the unbundling of dedicated transport.

The Commission should also reject XO's attempt to turn the section 251(c)(2) duty to interconnect into some kind of duty on the part of ILECs to transport traffic for a CLEC from the CLEC's network to the point of interconnection, at TELRIC-based rates. Section 251(c)(2), by its plain terms, requires an ILEC to interconnect with a CLEC at a point *within* the ILEC's network. It does not require an ILEC to provide a transmission facility from that point within the ILEC's network to the CLEC's premises (*e.g.*, an entrance facility). Indeed, in the *TRO* the FCC explicitly contrasted "transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic" with "the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection." *TRO*, ¶ 365. In short, XO itself is responsible for delivering its traffic from its premises to the point of interconnection within SBC Illinois' network. Moreover, because entrance facility terms and conditions are outside section 251(b) and (c), and because SBC Illinois refused to negotiate the entrance facility issue, that issue is not subject to state commission arbitration. Coserv LLC v. SWBT, 350 F.3d 482 (5th Cir. 2003).

Finally, the Commission should approve SBC Illinois' proposed language regarding the cap on DS3 dedicated transport, required by FCC Rule 319(e)(2)(iii), and reject XO's proposed language. The FCC's rules requiring the unbundling of dedicated transport have been vacated, so the DS3 dedicated transport cap language would come into play only if the FCC were to re-institute such an unbundling requirement. Nevertheless, it is reasonable to adopt SBC Illinois' language, because that language clearly defines how the DS3 dedicated transport cap would be calculated and applied in a commercial environment if the FCC were to require DS3 dedicated transport

unbundling at some point in the future. XO's language finds no support anywhere in the FCC's Rule or its discussion of the cap, and thus must be rejected.

b.) XO

(SBC-6a). XO's position is that it may obtain interconnection facilities from SBC at cost-based TELRIC rates. The FCC specifically distinguished in the *TRO* between interconnection facilities that ILECs "explicitly must make available for section 251(c)(2) interconnection" (which are required) and those transmission facilities connecting ILEC networks to CLEC networks for the purpose of backhauling traffic, which the FCC stated were not required to be unbundled. *See TRO* at ¶ 365. The FCC explicitly re-emphasized that "to the extent that requesting carriers *need facilities* in order to 'interconnect[] with the [incumbent LEC's] network,' section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation." *TRO* at ¶ 366 (emphasis added).

Moreover, SBC incorrectly contends that XO may not arbitrate the issue of whether it is required to provide interconnection trunk entrance facilities; this issue is explicitly within the scope of Section 251(c) as discussed above; the FCC has held that ILECs are *required to provide such interconnection trunk entrance facilities*; and thus, this issue falls squarely within the scope of this arbitration.

(SBC-6b). Section 251(c)(2) of the Act requires ILECs to provide interconnection to requesting carriers at just and reasonable rates in accordance with Section 252. Section 252(d), moreover, provides that state commissions shall determine the just and reasonable rates for *interconnection* of facilities and equipment for purposes of Section 251(c)(2), based on cost. 47 U.S.C. Section 252(d)(1). The FCC has established that cost-based rates are to be set on TELRIC standards. Accordingly, SBC is incorrect that interconnection facilities do not need to be provided at TELRIC.

(SBC-6c). XO disagrees with the manner in which SBC proposed to implement the caps on DS3 transport as inconsistent with the *TRO* and unreasonable. XO's language is consistent with the *TRO*.

(SBC-6d). SBC should not delete all prices for entrance facilities, because SBC is required to provide interconnection trunk entrance facilities at cost-based rates, as discussed above. Only non-interconnection trunk entrance facility rates should be deleted from SBC's pricing sheet.

c.) Staff

(SBC-6a-c). The outcome of sub-issues (a), (b), and (c) found in SBC Issue 6 are dependant upon determining whether the FCC distinguished between (i) dedicated transport and (ii) interconnection facilities and other types of entrance facilities. As Staff pointed out above in SBC Issue 5, in light of the FCC's determinations in ¶¶ 365 and 366 of the TRO, it is clear that the dedicated transport UNE is "only those transmission facilities *within* an incumbent LEC's transport network." TRO, ¶ 366. XO does not

appear to dispute this conclusion. XO, however, proposes language referencing the "incumbent LEC's" facilities. SBC proposes that the phrase "incumbent LEC" be replaced with "SBC ILLINOIS" facilities to avoid any confusion that SBC Illinois needs to unbundled transmission facilities outside of its network, including those facilities that may be owned by SBC affiliate LECs. It is the Staff's position that SBC's proposal to replace the term "incumbent LEC's" facilities with "SBC ILLINOIS" facilities is reasonable and a failure to clarify "incumbent LEC" could result in some confusion. Staff, accordingly, recommends that SBC's proposal to replace "incumbent LEC" with "SBC ILLINOIS" be adopted by the Commission.

Replacing "incumbent LEC" with "SBC ILLINOIS", however, does not answer the question whether the FCC distinguished between (i) dedicated transport and (ii) interconnection facilities and other types of entrance facilities. In this regard, the FCC stated:

> We find that transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LECs' local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network.

TRO, ¶ 366 (emphasis in original).

Accordingly, it would appear that entrance facilities "that simply connect a competing carrier's network to the incumbent LEC's network" are not required to be unbundled by SBC and provided (at TELRIC rates) under section 251(c)(3). The FCC, however, continued to note that:

> In reaching this determination we note that, to the extent that requesting carriers need facilities in order to "interconnect[] with the [incumbent LEC's] network," section 251(c)(2) of the Act expressly provides for this and we do not alter the Commission's interpretation of this obligation. *Id*.
>
> * * *
>
> However, all telecommunications carriers . . . will have the ability to access transport *within* the incumbent LEC's network, pursuant to section 251(c)(3), and *to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2).*

TRO, ¶ 368 (emphasis added; internal citations omitted).

It is Staff's position, accordingly, that transmission facilities that connect SBC switches or wire centers to XO's premises or point of presence ("POP") are not required to be unbundled and provided by SBC to XO at TELRIC rates under section 251(c)(3), but, rather, SBC is required to provide XO such facilities under its obligations to provide interconnection under 251(c)(2), at cost-based rates.

(SBC-6d). It does not appear that XO has any dispute with SBC'S proposed language regarding the DS3 cap, with the following two exceptions: (1) XO's proposal includes the additional clarifying phrase "or DS3-equivalents (e.g., 336 DS1s)"; and (2) XO's proposed language labels any circuit capacity above the 12 circuit cap a "Nonconforming Facility" in lieu of SBC's proposal language clarifying what would happen should XO exceeded the 12 circuit DS3 cap. Regarding XO's proposed "DS3 equivalent" phrase, it is unclear to Staff at this time whether SBC objects to this seemingly innocuous additional phrase.

Regarding which parties' proposed language on what happens if XO should exceed the 12 circuit DS3 cap, the Staff recommends that the Commission adopt XO's proposal to label any circuit capacity above the DS3 Cap a "Nonconforming Facility" as it appears to be both more reasonable and appropriate than SBC's proposed language.

(SBC-6e): SBC's requests a determination of whether the pricing schedule should include pricing for an entrance facilities, OC3, OC12, and OC48 dedicated transport, cross connects and multiplexing. Joint Issues Matrix, at 80. XO "agrees that TELRIC rates for OCn loops and transport should be deleted" from the pricing schedule. *Id*. Which leaves open the issues of whether SBC should provide XO entrance facilities, cross connects, and multiplexing at TELRIC or cost based rates. As noted above in sub-issue (a), it is Staff's position that transmission facilities that connect SBC switches or wire centers to XO's premises or its POP are not required to be unbundled and provided by SBC to XO at *TELRIC rates* under section 251(c)(3), but, rather, SBC is required to provide XO such facilities under its obligations to provide interconnection under 251(c)(2), at *cost-based* rates. The Staff, accordingly, recommends that the Commission find that any XO requested entrance facilities, cross connects, and multiplexing are to be provided by SBC, under its interconnection obligations under 251(c)(2), at cost-based rates.

2. Analysis and Conclusions

SBC 6a-c. Initially, the Commission rejects SBC's argument that the USTA II decision effectively mooted this issue by overturning the FCC's dedicated transport rules. SBC Reply Br. at 50-51. SBC Issue 6 presents disputes concerning what *constitutes* unbundled dedicated transport. USTA II did not address that question. Rather, it vacated the FCC's *impairment* finding.

Staff correctly observes that the fundamental question posed by sub-issues (a) through (c) arises from the FCC's distinction, in the TRO, between an ILEC's obligations

under, respectively, subsections 251(c)(2) and 251(c)(3) of the Federal Act. Staff Init. Br. at 88. The arbitrating parties agree that the latter subsection does not require an ILEC to unbundle, and offer at TELRIC prices, any ILEC facilities beyond the ILEC's own network. However, XO maintains that subsection 251(c)(2), as viewed by the FCC, imposes a separate obligation on the ILEC to provide "transport facilities" for the purpose of interconnection, including ILEC facilities residing on the CLEC side of the parties' interconnection point. Staff initially agreed with XO, but retreated to a neutral position in its Reply Brief, on the ground that there is no record evidence identifying the facilities at issue. SBC strongly disagrees with XO's contentions.

The Commission concludes that SBC's position is correct. First, nothing in subsection 251(c)(2) itself mentions ILEC facilities, much less creates an obligation to provide them. Second, the FCC's analysis of ILEC duties under that subsection does not create such an obligation either. The TRO language on which XO relies (in ¶¶ 365, 366 and 368) simply does not support XO's claims to the contrary.

TRO ¶ 365 refers to "the facilities that [ILECs] explicitly must make available for section 251(c)(2) interconnection." Since the only facilities explicitly mentioned in 251(c)(2) are *CLEC* facilities, we must infer that the FCC is alluding to the facilities that an ILEC must have ready to receive those CLEC facilities. We cannot infer more, given the definition of "interconnection" in FCC rules as "the linking of two networks for the mutual exchange of traffic," and the specific exclusion of "the transport and termination of that traffic" from that definition. 47 CFR 51.5.

TRO ¶ 366 refers to the facilities needed by CLECs to interconnect with an LECs network. Once more, we construe this reference to pertain to the facilities an LEC must have ready to accommodate the CLEC's own facilities used in interconnection. Again, the only facilities identified in 251(c)(2) are CLEC facilities, and the above-cited FCC rule excludes transport and termination from the definition of interconnection. Thus, the ILEC's obligation is to provide connection to the *CLEC facilities*, including transport and termination facilities, that the CLEC employs to interconnect with the ILEC's network.

TRO ¶ 368 says this: "all telecommunications carriers...will have the ability to access transport facilities *within* the incumbent LEC's network, pursuant to section 251(c)(3), and to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2)." (Emphasis in original.) The FCC thus uses the term "facilities" only in connection with 251(c)(3), not in connection with 251(c)(2). That is entirely consistent with the language and titles of the respective statutory provisions. As SBC states, 251(c)(2) obliges an ILEC to accommodate interconnection, but not to "provide the 'facilities and equipment' *for* the requesting telecommunications carrier." SBC Reply Br. at 51 (emphasis by SBC).

SBC 6-d. This is another improperly framed general question, rather than an appropriate open disputed issue. Nevertheless, the Commission will furnish essentially the same resolution we provided for SBC-3c, for essentially the same reasons. Thus, SBC's proposed language should be modified to provide written or electronic notice to

XO, and a fair and specific time interval in which XO can object or select alternative treatment for an excessive circuit request. Objections should be resolved through the ICA dispute resolution mechanism, and the status quo should not be altered pending such resolution.

As for the parties' quarrel regarding "DS3 equivalents," the Commission notes that the cap will limit XO to the same number of circuits in either case. Nonetheless, since the TRO did not mention "DS3 equivalents," we will not speculate on what the FCC would have said about them. XO's proposal is rejected.

SBC 6-e. XO agrees that pricing for OC facilities (of any capacity) can be deleted. Given our conclusions regarding SBC 6a-c, we hold that entrance facility prices can also be deleted.

7. Should the ICA include the TRO's modifications to the rules regarding the provision of unbundled local switching and transport?

1. Parties' Positions and Proposals

a). SBC

The *TRO* created a new regime to govern the provision of unbundled switching. Most fundamentally, pursuant to the D.C. Circuit's direction in *USTA I* to take specific markets into account, the FCC defined two classes of switching, (1) switching used to serve enterprise customers (enterprise switching) and (2) switching used to serve mass market customers (mass market switching). The FCC defined enterprise customers to include all customers served by DS1 or higher capacity facilities, as well as customers served at a single location by multiple DS0s higher than the "DS0 cutoff," and defined mass market customers as customers served by a number of DS0s below the DS0 cutoff. *TRO*, ¶¶ 451, 497. XO's proposed language, however, unlike SBC Illinois', fails to reflect even this basic definitional distinction created by the FCC.

XO's proposed language also fails to reflect the law regarding enterprise switching – in particular the FCC's holding that enterprise switching is not a UNE. The FCC held, and promulgated a rule stating, that an ILEC is required to provide unbundled access to enterprise switching only where the FCC grants a waiver of its finding of non-impairment. XO's proposed language, unlike SBC Illinois' language, fails to clearly reflect this holding, but instead refers to section 271 and other "applicable law." But the applicable law is clear: pursuant to the *TRO*, (and *USTA II*, which upheld the FCC's rules regarding enterprise switching and its conclusions regarding section 271), SBC Illinois is not required to provide unbundled access to enterprise switching, and is not required by section 271 to provide such access on section 251 UNE rates, terms, and conditions. This law must be reflected in the parties' *TRO* contract amendment, as SBC Illinois' proposed language does.

XO's proposed language also violates federal law regarding a waiver of the FCC's non-impairment finding with respect to enterprise switching. The FCC held that, while state commissions may investigate impairment with respect to enterprise switching and petition the FCC for a waiver of its non-impairment finding, an ILEC is not required to provide unbundled access to enterprise switching unless "the [FCC] grants such waiver." FCC Rule 319(d)(3). XO's proposal that the state commission investigation itself, and the FCC's consideration of any state commission petition, act as a waiver of the FCC's non-impairment finding is unlawful, and must be rejected. (XO's proposed language regarding the transition for enterprise switching arrangements where enterprise switching is no longer required to be unbundled should be rejected for the same reasons discussed above under Issue SBC-2.) SBC Illinois' proposed contract language, on the other hand, properly tracks and implements the FCC's waiver rule, and thus should be adopted.

XO's proposed mass market switching contract language should also be rejected, because that language is unsupported by the FCC's rules. XO's proposed language fails to recognize that the FCC's rules requiring the unbundling of mass market switching have been vacated. SBC Illinois' proposed mass market switching language appropriate accounts for this fact, and would come into play only if the FCC were to re-institute such an unbundling requirement. Thus, SBC Illinois' proposed mass market switching language should be adopted. Moreover, as explained above, the Commission should reject XO's unlawful suggestion that the Commission should require SBC Illinois to continue providing non-UNEs at the same rates, terms, and conditions as UNEs pursuant to section 271.

XO's proposed definition of tandem switching also violates federal law, by failing to recognize that SBC Illinois is required to provide unbundled tandem switching only where it is required to provide unbundled switching. SBC Illinois' proposed language, on the other hand, properly reflect this federal law.

Finally, the Commission should adopt SBC Illinois' proposed language regarding the provision of unbundled shared transport. That language properly implements FCC Rule 319(d)(4) by providing, like FCC Rule 319(d)(4), that SBC Illinois is required to provide unbundled shared transport only where it is required to provide unbundled switching.

b.) XO

While XO is predominately a facilities based carrier in Illinois and generally does not use unbundled switching and shared transport, it does not object to including language that reflects changes made by the *TRO* to the provision of unbundled switching and shared transport. XO's proposed language has several advantages over SBC's proposed language. First, XO's proposed language explicitly recognizes that unbundling obligations for these elements may exist under Section 271 of the Act or state law provisions, not just Section 251 of the Act, and that these obligations continue even when unbundling is no longer available under Section 251. Second, XO's proposed language would ensure that customers that could not be migrated from UNE-

P to a UNE loop serving arrangement for technical reasons would continue to have competitive options.

In addition, XO's proposed language, consistent with existing change of law procedures, starts the clock for the time period for the transition away from Section 251 unbundled switching upon a final and non-appealable finding of non-impairment. Further, XO's proposed language would allow the parties to mutually agree on whether the interconnection agreement should be modified to reflect the implementation plan to transition away from Section 251 unbundled local switching or shared transport. In contrast, SBC's proposed language would bar amending the interconnection agreement to reflect the implementation plan.

Finally, SBC's proposed language has a number of provisions that are unnecessary and objectionable. For instance Section 3.7.3.4 and 3.7.3.5.2 would obligate XO to "disclose information, including customer account information sufficient for SBC to make determinations under, and apply, the Enterprise Market Customer provisions." It is not clear why such a provision is necessary. SBC would be providing the switching and loops, so it should have all the information it needs to determine whether the CLEC's customer is an enterprise customer and subject to the enterprise market provisions.

c.) Staff

XO finds SBC's proposed language regarding when ULS becomes unavailable for mass market switching to be "confusing." XO has failed to identify specifically which SBC proposed language it finds confusing. Thus, not knowing exactly what SBC proposed language XO finds objectionable, Staff nonetheless offers the following comments. First, the Staff finds all of SBC's proposed language regarding "Lawful UNEs" objectionable for all of the reasons articulated above in XO Issue 2 and SBC's Issues 1 and 2. Second, SBC's proposed language seems to be entirely based upon TRO related determinations, ignoring any independent obligations SBC may have under Section 271 (at cost-based rates) or under Illinois law. The Staff hopes that this issue is further fleshed out in the parties' respective Initial Briefs; in which case Staff will respond with further comments.

2. Analysis and Conclusions

The purpose of this arbitration is to incorporate the viable provisions of the TRO into the parties' ICA. Regarding mass market local switching and dedicated transport, the *Status Quo* Order directs the ILECs to continue supplying those UNEs under the rates, terms and conditions in their existing ICAs. Accordingly, TRO modifications concerning mass market local switching and dedicated transport should not be included in the ICA.

Regarding enterprise switching and shared local transport, which are not addressed by the *Status Quo* Order, XO identified four areas of dispute in the

"Summary XO Illinois, Inc., Arbitration Positions[57]" ("Position Summary") filed in conjunction with XO's Initial Brief as Attachment 1, pursuant to a directive of the ALJ. The ALJ had advised the parties that only positions included in their Position Summaries would be considered in this proceeding. Accordingly, we will consider only the matters raised in XO's Position Summary regarding SBC Issue 7[58].

First, we agree with XO that the amended ICA should recognize any unbundling obligation imposed by Section 271 of the Federal Act. As we held previously in this decision, the TRO declares that Section 271 creates an unbundling requirement that is distinct from the Section 251 requirement, TRO ¶ 653, although 271 UNEs need not be TELRIC priced. TRO ¶ 659. Any state-required unbundling should also be accounted for in the ICA.

Second, XO's concern for customers that cannot be migrated from UNE-P due to "technical reasons," XO Init. Br. at 45, must be balanced against SBC's concern that XO might take advantage of the general term "impediment" (the term in XO proposed Section 3.7.2.3) to improperly retain TELRIC pricing. SBC Reply Br. at 55. "Impediment" should either be replaced with specifically identified "technical difficulties" or deleted altogether. We observe that this issue concerns circumstances that will arise only after this Commission has made a non-impairment finding regarding mass market switching under Section 251 of the Federal Act. To the extent that it would be inconsistent with the Status Quo Order (whether during the Interim Period or the Transition Period described in that order) we cannot make such a finding

Third, regarding enterprise switching, we reject XO's proposal to begin the transition from Section 251 unbundled switching only after a final, non-appealable finding of non-impairment. As SBC states, its obligation to unbundle such switching arises only after a finding of *impairment.* 47 CFR 51.319(d)(3). Furthermore, the "final, non-appealable" requirement is unsupportable in its own right, for reasons articulated previously in this Decision.

Fourth, the Commission rejects SBC's demand for "customer account information" for the purpose of identifying enterprise market customers. That would compromise customer privacy and cause XO to disclose competitively sensitive information. The parties are free to agree on another means for assuring that enterprise market customers are being lawfully served.

8. What terms and conditions should apply to call related databases, LIDB and CNAM?

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[57] This document was subsequently revised, with the ALJ's permission. With respect to SBC Issue 7, the versions are identical.

[58] The parties, in fact, adopted opposing stances on several other matters generally related to SBC Issue 7, in most instances on a gradual basis as briefing proceeded. We will not address those disputes, which were neither properly framed as open issues in the Petition or Response, nor even necessarily implied by SBC Issue 7 as framed.

1. Parties' Positions and Proposals

a). SBC

Issue SBC-8 concerns the provision of call-related databases. The language to which XO objects is this: "Access to call-related databases LIDB [line information database] and CNAM [Caller Name with ID database], for SBC-Illinois will be provided as described in the following Appendices: LIDB and CNAM-AS, LIDB, and CNAM Queries." SBC Ill. Section 3.9.1. XO has not articulated any objection to this language, which merely specifies that SBC Illinois will provide access to LIDB and CNAM as provided for in the relevant appendices of the agreement, and SBC Illinois can discern none. SBC Illinois' language is reasonable and appropriate, and should be adopted.

Further, while XO did not originally designate this issue for arbitration, XO subsequently presented its own competing language for arbitration (in its response to SBC Illinois' response to the arbitration petition). XO's language should be rejected. XO proposes that SBC Illinois be required to continue providing call-related databases at sections 251 UNE rates, terms, and conditions as an obligation under section 271 of the Act. XO Sections 3.9.2.1, 3.9.2.2. As SBC Illinois explained previously, that proposal violates the FCC's holding that section 271 checklist items do *not* have to be provided on such terms, and, in any event, this Commission lacks jurisdiction to address the issue of section 271 rates, terms, and conditions.

b.) XO

XO does not use SBC's call related databases in conjunction with the provision of facilities-based services. However, XO does not object to including the *TRO* requirements regarding the ILEC provision of access to its call related databases in connection with the provision of UNE-P. As such, XO proposes language consistent with the *TRO* for access to call related databases for UNE-P.

c.) Staff

The Staff offers no opinion or comment on this issue, as it appears that XO does not object to SBC's proposed language. Joint Issues Matrix, at 94.

2. Analysis and Conclusions

This is another improperly framed issue. Again, the Commission is not presented with an open and two-sided dispute, but, instead, SBC's request to consider the general subjects of call-related data bases, LIDB and CNAM.

Additionally, XO's Position Summary merely refers the Commission to its proposed text, and identifies no disputed questions and stakes out no positions. This presumably reflects the fact that XO does not use SBC's call-related databases in connection with its facilities-based operations. In any event, XO's proposed text does not "speak for itself" with respect to identifying disputes or supporting arguments, and it

is not the Commission's responsibility to cull that text to discern what the disputed language might be. Therefore, pursuant to the directions of the ALJ regarding Position Summaries, there are no XO arguments for us to consider.

Accordingly, the Commission will make no ruling with respect to SBC Issue 8, except to hold, for the sake of consistency, that principles and conclusions articulated elsewhere in this Decision are applicable here as well. Specifically, Section 271 obligations should be accounted for in any amended ICA provisions pertaining to call-related data bases, LIDB and CNAM, with the understanding that TELRIC prices are not associated with Section 271 under federal law.

9. What terms and conditions should apply to SS7?

1. Parties' Positions and Proposals

a). SBC

Issue SBC-9 concerns implementation of the *TRO*'s new requirements with respect to unbundled access to signaling networks. While in the *UNE Remand Order* the FCC had concluded that CLECs are entitled to unbundled access to signaling networks, it modified that conclusion in the *TRO*. The FCC found that "competitive LECs are no longer impaired without access to such networks," except where the ILEC must "provide access to switching as a UNE," because "there are sufficient alternatives in the market." *TRO*, ¶ 544. Thus, except for where an ILEC must provide switching as a UNE, the FCC "reject[ed] the claims of competitive carriers that signaling networks should remain available as UNEs," and held that "we are no longer requiring incumbent LECs, pursuant to section 251(c)(3), to provide unbundled access to their switching networks." *Id.*, ¶¶ 546, 548. The FCC codified its new requirements in FCC Rule 319(d)(4)(i).

To implement this new FCC rule, SBC Illinois proposes language stating that it "will provide SS7 signaling on interswitch calls originating from a Lawful UNE ULS port," but that "[a]ll other use of SS7 signaling is pursuant to the applicable Access tariff." SBC Ill. Section 3.11.1. XO has not articulated its objection to this language, which is clearly necessary to implement the new requirements of the *TRO*, and thus SBC Illinois' proposed language should be adopted. The FCC held that CLECs are entitled to access signaling networks as a UNE only where an ILEC is required to provide switching as a UNE, and this holding must be reflected in the parties' *TRO* contract amendment.

While XO did not originally identify this as an issue for arbitration, XO subsequently presented competing contract language to govern the provision of unbundled access to signaling networks. XO's language is unlawful, and must be rejected. In particular, XO proposes that SBC Illinois be required to continue providing signaling networks at sections 251 UNE rates, terms, and conditions as an obligation under section 271 of the Act. XO Section 3.11.2.1. As SBC Illinois explained previously, that proposal violates the FCC's holding that section 271 checklist items do

not have to be provided on such terms, and, in any event, this Commission lacks jurisdiction to address the issue of section 271 rates, terms, and conditions.

b.) XO

XO does not use SBC's SS7 in conjunction with its provision of facilities-based services. However, XO does not object to including the *TRO* requirements regarding the ILEC provision of access to SS7 in connection with its provision of UNE-P. As such, XO proposes language consistent with the *TRO* for access to SS7 for UNE-P.

c.) Staff

SBC contends that its proposed language for SS7 signaling for interswitch calls originating from a lawful UNE ULS port tracks the TRO requirements. Again, as noted repeatedly above, Staff objects to SBC's entire "Lawful" theory and SBC's proposed accompanying language implementing the SBC "Lawful" theory. Staff, however, does acknowledge that the TRO, as SBC contends, found that CLECs are no longer impaired without unbundled access to an ILEC's signaling networks, unless they are purchasing switching as a UNE.

XO, apparently, does not take specific issue with SBC's proposed language as it is primarily a facilities-based carrier and, thus, does not use SBC's call-related data-bases. XO, nonetheless, offers its own proposed language, which it contends is consistent with the TRO requirements. In addition to the language XO proposes its section 3.11.2.1 (Signaling Networks), which would obligate SBC to provide access to signaling under its switching unbundling obligations (if any), the Staff points out that SBC is also required 'to provide for interconnection between their signaling networks and the signaling networks of alternative providers" under its obligations "pursuant to Sections 251(a), 251(c)(2) and our [FCC] rules implementing these requirements." TRO, ¶ 548.

2. Analysis and Conclusions

The Commission's comments and conclusions regarding SBC Issue 8 are fully applicable here. Therefore, they will constitute our comments and conclusions respecting SBC Issue 9 as well.

10. What terms and conditions should apply to the Advanced Intelligent Network (AIN)?

1. Parties' Positions and Proposals

a). SBC

Issue SBC-10 concerns implementation of the *TRO*'s new requirements with respect to unbundled access to the Advanced Intelligent Network ("AIN"). In the *TRO*,

the FCC modified its rules regarding unbundled access to AIN. In the *UNE Remand Order*, the FCC had found that ILECs "were required to provide unbundled access to AIN platform and architecture," but not "AIN service software." *TRO*, ¶ 556. In the *TRO*, however, the FCC "conclude[d] that the market for AIN platform and architecture has matured since the [FCC] adopted the *UNE Remand Order* and we no longer find that competitive LECs are impaired without unbundled access to those databases." *Id.* Thus, the FCC "no longer require[s] incumbent LECs to unbundle access to the AIN databases for carriers not using the incumbent LEC's switching capabilities." *Id.* n.1724. The FCC codified this holding in FCC Rule 319(d)(4)(i).

To implement this new FCC rule, SBC Illinois proposes new contract language that states that the provisions of the agreement relating to the provision of AIN apply only when the CLEC is providing service using unbundled switching. SBC Ill. Section 3.12.1. XO has not articulated any objection to SBC Illinois' proposed language, which is clearly necessary to implement the new requirements of the *TRO*, and thus SBC Illinois' proposed language should be adopted.[59]

b.) XO

XO does not use SBC's call related databases including its AIN databases in conjunction with its provision of facilities based services. XO does not object to including the *TRO* requirements regarding the ILEC provision of access to AIN provided in connection with its provision of UNE-P. As such, XO proposes language consistent with the *TRO* for access to AIN for UNE-P.

c.) Staff

Again, because XO is primarily a facilities-based carrier, it has not objected specifically to SBC's proposed language for AIN services, but instead proposes the same language that it proposes for SBC Issue 9 that it contends is consistent with the TRO. The Staff, again not knowing exactly what SBC proposed language XO takes issue with, offers just a few comments. First, Staff, notes that the TRO, as SBC contends, found that CLECs are no longer impaired without unbundled access to its AIN platform. TRO, ¶ 566. Second, as noted repeatedly above, Staff objects to SBC's entire "Lawful" theory and SBC's proposed language implementing the SBC "Lawful" theory. Finally, the Staff would agree with XO that SBC could have independent obligations (*e.g.*, under section 271) to provide access to its AIN platform.

2. Analysis and Conclusions

[59] XO proposes language under SBC Issue-9 to the effect that SBC Illinois is required to provide unbundled access to all call-related databases (including AIN) on section 251 rates, terms, and conditions pursuant to section 271. XO Section 3.9.2.1. As SBC Illinois has explained, that proposal is both unlawful and beyond this Commission's jurisdiction.

The Commission's comments and conclusions regarding SBC Issue 8 are fully applicable here. Therefore, they will constitute our comments and conclusions respecting SBC Issue 10 as well.

11. (a) Does the TRO provide that a CLEC may pick and choose between its ICA and any SBC tariff?

(b) Should the ICA terms and conditions, including those of the TRO Amendment, prevail over SBC's tariffs?

1. Parties' Positions and Proposals

a). SBC

XO inappropriately proposes to give itself a unilateral right to pick and choose between provisions of the parties' interconnection agreement and any SBC Illinois tariffs, at its sole option. SBC Illinois does not have the right to unilaterally decide that it will ignore the parties' interconnection agreement and instead provide service pursuant to the terms of a tariff, and XO should not have such a right either. The Federal Act provides that interconnection agreements are to be the "binding" statement of the parties' respective rights and obligations, and both parties should be held to the terms of their binding interconnection agreement. Moreover, the Seventh Circuit (and other courts) has held that state commissions may not "create an alternative method by which a competitor can obtain interconnection rights" through tariffs outside the section 252 process. Wisconsin Bell, Inc. v. Bie, 340 F.3d 441, 442-45 (7th Cir. 2003). *See also* Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm'n, 359 F.3d 493, 496-98 (7th Cir. 2004). The Commission should reject XO's proposal to bypass the detailed, comprehensive interconnection agreement scheme created by Congress by establishing a right to unilaterally evade its interconnection agreement rights and obligations.

b.) XO

(SBC-11a). In general, it is well established that, to the extent that a CLEC orders from a tariff or SGAT, the terms and conditions of that tariff or SGAT apply. SBC proposes here to prohibit a CLEC from its right to order from a tariff or SGAT, where the CLEC has an interconnection agreement with SBC.

Nothing in the law restricts a CLEC from ordering out of a tariff if a CLEC has an agreement with the ILEC. Although courts have held that a state commission may not ignore the detailed process for negotiation and arbitration of interconnection agreements in the Act by requiring ILECs to offer network elements and services through published tariffs, the courts have *not* prohibited CLECs from, at their option, ordering services or elements out of tariffs, which would effectively "amend" existing interconnection agreements. *See* US West Communications, Inc. v. Sprint Communications Co., 275 F.3d 1241 (10th Cir. 2002). Moreover, to the extent that a provision in an interconnection agreement allows a CLEC to purchase services out of a tariff, courts have recognized that the "challenged provision does not eliminate

interconnection agreements, but rather is part of one. A decision by [the competitor] to purchase services at the rates and terms set forth in one or more of [the ILEC's] tariffs does not result in abandonment of the interconnection agreement between itself and [the incumbent]." *Id.* at 1251. Thus, where a provision in an agreement allows a CLEC to opt-into tariff services or elements in addition to the agreement, such provision is not unlawful; nor inconsistent with the Act. *Id.* at 1252.

(SBC 11-b). As discussed above, XO's position is that the terms and conditions of its interconnection agreement with SBC should govern – unless XO orders a facility or service out of the tariff, in which case the tariff governs. SBC's proposed language would have the tariff terms and conditions take precedence over the Parties' Agreement, even with respect to terms and conditions that are not specific to tariffed services. Such a proposal would undermine the effectiveness of Commission-approved interconnection agreements and is wholly improper.

c.) Staff

This issue appears to have been overtaken by a recent FCC order which abolishes the FCC's pick and choose" rule.

While the change to the so-called "pick and choose" rule applies specifically to a carrier's right to opt into some or all of another carrier's interconnection agreement with an ILEC, the same essential logic holds. A carrier may not "pick and choose" individual provisions out of another carrier's interconnection agreement.

XO claims that it "is not asserting that it can pick and choose between an ICA or a tariff, but simply asserting that if it orders from a tariff or SGAT, the terms and conditions of the tariff or SGAT apply." XO further "does not agree that SBC may restrict or prohibit a CLEC from ordering out of any SBC tariff." The XO proposal appears to permit XO to "at [its] option, order from a [sic] SBC-13STATE tariff or SGAT."

The Staff does not endorse XO's argument. It is true that several carriers have concluded interconnection agreements pursuant to which they may order certain UNEs at tariffed rates, but such provisions are incorporated into the interconnection agreements, not in derogation of them. XO's proposal would entitle XO to take services under its interconnection agreement, or from the tariff, at its election. This proposal cannot be reconciled with the existing law, and Staff recommends its rejection.

2. Analysis and Conclusions

In a June 3, 2004 Ruling, at page 7, the ALJ determined that the scope of this arbitration was limited by the scope of the parties' negotiations, per Coserv Limited v. Southwestern Bell Telephone, 350 F.3d 482 (5th Cir. 2003), and that their negotiations had been limited to amending the ICA "to incorporate changes necessitated by the TRO." The Commission concurs with SBC that the disputed language in XO's proposed Section 1 to the Cover Amendment "has nothing to do with the TRO." SBC Init. Br. at 84. XO is seizing an opportunity presented by the amendment process to seek a

contract provision that it presumably believes advantageous. That provision, however, is unrelated to the contents (much less the requirements) of the TRO. Moreover, XO's supporting arguments do not address the actual issue framed by SBC ("Does *the TRO provide*...[for a pick-and-choose regime]"). (Emphasis added.) Our ruling, therefore, is that because XO's proposed text is outside the boundaries of this arbitration, we can neither require nor preclude its inclusion in the ICA.

Similarly, some of SBC's proposed contract language is also outside the scope of this proceeding. Specifically, the reference to SBC tariffs and SGAT in the second sentence of SBC's proposed Section 1 neither addresses incorporation of the TRO into the ICA, nor the effect of that incorporation, through the TRO amendment, on the pre-existing provisions of the ICA. Rather, that language addresses the relationship between the ICA and SBC's public offerings to qualified buyers of its services. Accordingly, SBC's proposed language is approved, but without the words "SBC tariff or an SBC-13STATE Statement of Generally Available Terms and Conditions ('SGAT')" in the second sentence.

12. (a) Should the cover amendment clarify how the terms and conditions of the amendment replace the terms and conditions of the underlying agreement?

(b) Should the cover amendment reserve both parties' rights with respect to "remedies and arguments with respect to any orders, decisions, legislation or proceedings?"

1. Parties' Positions and Proposals

a). SBC

Sub-issue 12(a) concerns additional language proposed by SBC Illinois that provides examples of how particular conflicts between the parties' original contract and the *TRO* amendment should be resolved. XO claims that this language is "confusing." But this language is not confusing at all, and appropriately sets forth the proper resolution of conflicts between the original agreement and the *TRO* amendment. For instance, XO should not be able to nullify the parties' *TRO* amendment by asserting that conflicting provisions of the original contract still apply merely because they still physically appear in the parties' contract. Moreover, XO has raised no objection to the substance of SBC Illinois' proposed language, in that XO does not disagree with SBC Illinois' explanation of how various conflicts should be resolved. Thus, SBC Illinois' proposed language should be adopted.

Sub-issue 12(b) concerns certain reservation of rights language proposed by SBC Illinois. Non-waiver of rights clauses are common in interconnection agreements, and even XO has proposed such provisions for the parties' *TRO* amendment. XO has not explained its objection to SBC Ilinois' proposed language, which equally protects both parties. SBC Illinois' language is reasonable, and should be adopted.

b.) XO

(SBC-12a). XO's proposed language unambiguously provides how the terms and conditions of the amendment amend or replace the terms and conditions in the underlying Agreement. SBC's proposed language, however, is confusing, inappropriate, and in conflict with the *TRO*. As discussed above, to the extent that SBC proposes language in the Amendment that would replace or modify change in law provisions of the XO/SBC ICA and/or condition SBC's obligation to provide UNEs to those that it defines as "Lawful UNEs," or "declassified UNEs," it conflicts with the *TRO*.

(SBC-12b). There is no need for parties to reserve their rights with regard to remedies and arguments. As a matter of law, both parties have such rights and the proposed language by SBC is simply superfluous, as well as ambiguous.

c.) Staff

(SBC-12a). This sub-issue essentially boils down to a rehashing of SBC Issue No. 1. For the reasons articulated under SBC Issue 1, Staff recommends that the Commission reject SBC's proposed language that would override the section 252 process and allow SBC to unilaterally change the ICA to reflect its interpretation of any potential change of law regarding its obligations to provide requesting CLECs UNEs. Moreover, XO correctly perceives SBC's proposal to be an attempt to use a change of law to negotiate an alteration in the existing "change of law" provision, in a manner that would permit SBC to unilaterally abrogate UNE unbundling obligations. The *TRO* specifically contemplates the use of existing change of law provisions to negotiate conforming changes pursuant to the TRO. *See, e.g.,* TRO, ¶¶700, 704 (FCC recognizes existing change of law provisions). In other words, the TRO is itself a change of law, but not one that has any effect upon change of law provisions. SBC's attempt to bootstrap a change in the change of law provision should be rejected. On balance, Staff favors XO's proposal.

(SBC-12b). Sub-issue (b) appears to be a non-issue as XO has not objected to it, at least in its Preliminary Position. Joint Issues Matrix, at 97-98. Because there appears to be no issue here, Staff will refrain from commenting but, rather, reserves its right to respond to the parties' respective Initial Briefs.

2. Analysis and Conclusions

SBC-12a. The Commission concurs with Staff and XO that all of the examples included in SBC's proposed Section 2 should be excluded from the Cover Amendment[60]. Staff Init. Br. at 103; XO Reply Br. at 65. We have already rejected SBC's proposed use of the term "lawful" with respect to UNEs, for the reasons previously explained. Moreover, we also find that the examples are superfluous, since

[60] So that there is no ambiguity about our ruling here, we note that the pricing example in the last sentence of Section 2 must be excluded with the other examples in the section.

the general - and undisputed - language that precedes them clearly states that the amendment supercedes provisions of the original ICA.

On exceptions, SBC requests that this decision "should be clarified to avoid any suggestion that the parties must continue to adhere" to pre-existing ICA provisions that no longer reflect the new requirements mandated by the modified TRO. SBC BOE at 2. The Commission does not perceive the need for such clarification. As we said in the preceding paragraph, SBC's proposed Section 2 unequivocally declares that the amendment both revises and trumps the present content of the ICA. SBC's proposed Section 1, discussed in connection with SBC Issue 11, above, similarly establishes the primacy of the amendment. Additionally, we have now approved, in connection with SBC Issue 2, a (properly modified) list of specific SBC services that the TRO has freed from a federal unbundling requirement. Nothing more is needed.

The penultimate sentence of SBC's proposed Section 3, which would obviate physical removal or replacement of portions of the original ICA, is reasonable and neutral. XO articulates no rationale for opposing it. It should be included in the Cover Amendment. We reach the same conclusion with respect to SBC's proposed Section 10, for the same reasons.

SBC-12b. Although the Commission shares XO's and Staff's doubts about the necessity of SBC's proposed non-waiver provision, we find the initial portion of the first sentence[61] in SBC's proposed Section 11 is an acceptable mechanism for emphasizing the absence of waiver. The remainder of Section 11 is disapproved. The lengthy list of "Government Actions" is unnecessary, and the declaration that those actions have not yet been fully incorporated into the ICA only creates contract ambiguity - in contradiction to SBC's purported intention to provide "commercial certainty" for the parties via the agreement. SBC Init. Br. at 82.

13. What will happen if the TRO is stayed, reversed or vacated?

1. Parties' Positions and Proposals

a). SBC

SBC Illinois' proposed language appropriately specifies what should occur upon a remand (but not a reversal) of portions of the *TRO*. Specifically, in the case of such an event, it is appropriate to maintain the affected portions of the parties' agreement in effect, unless those portions are otherwise rendered invalid or modified by a change of law or UNE declassification event. XO's contrary proposal to simply freeze the contract without regard to changes in law or UNE declassifications is improper, and should be rejected.

[61] That is, from the beginning of the first sentence ("In entering...) through the end of the first substantive parenthetical ("...this Amendment").

XO's proposed language regarding a stay, or reversal and vacatur, of the *TRO* should be rejected. XO's proposal would appear to give XO unilateral authority to determine the legal effect of such an event upon the parties' contract, and unilateral authority to determine which parts of the contract it will comply with, and which it will not. That proposal is unreasonable.

b.) XO

As a practical matter, it is premature to adopt any language related to USTA II. As XO noted in its Motion to Withdraw the Petition ("Withdrawal Motion"), the FCC recently announced that it would, within the next few weeks, promulgate interim rules in the wake of the issuance of the D.C. Circuit's decision in USTA II. It would be a waste of the parties and the Commission's resources to arbitrate this issue because the FCC's interim UNE rules will soon supersede the vacated *TRO*.

SBC's proposed language would maintain provisions of the Amendment in the event of a vacatur of the *TRO*, including its proposed Section 1.3, which provides that it will not provide UNEs that are not "Lawful UNEs" or "declassified UNEs." Thus, SBC could potentially argue that the issuance of USTA II allows it no longer to provide certain UNEs. Such a proposal would be improper and inconsistent with the Act, the FCC's rules and orders, the FCC's intention to issue interim rules soon, and this Commission's past decisions. As discussed above, SBC has the obligation as a matter of federal and state law to provide UNEs, and cannot unilaterally discharge itself of this obligation. Accordingly, XO believes that, in the event of a stay, reversal or vacatur of the *TRO*, consistent with the law and the FCC's intent to issue interim rules, SBC should continue to provide UNEs under the Agreement.

In addition, SBC's proposed language would authorize SBC to discontinue provisioning of UNEs upon vacatur of the *TRO*. As discussed in the context of other issues, such a proposal is wholly improper. The unavailability of any UNE should be the result only of negotiations and arbitration specific to that UNE, not a generic provision that automatically incorporates SBC's interpretation of future events. The *TRO* condemns unilateral action by any party, and holds that, "as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment." *TRO* at ¶ 15. When rules are issued, as opposed to the opportunistic and self-effectuating provisions SBC seeks, both parties are entitled to negotiate to interpret the rules. "[M]odification of existing agreements...cannot be accomplished overnight" and future rules that affect the interconnection agreement must be negotiated or arbitrated prior to implementation. *Id*. at ¶ 700.

c.) Staff

There appears to be no real difference between the parties' positions. However, SBC's "Lawful UNEs" list, which it proposes it should be permitted to change unilaterally, might, if adopted, affect this issue. Moreover, SBC's proposed contract

provisions appears to result in changes of law as defined becoming effective without subsequent negotiation. For this reason, the Staff favors XO's proposal.

2. Analysis and Conclusions

The Commission finds that this issue, as worded, has been mooted by the termination of the stay of vacatur in USTA II, and by the FCC's choice to issue interim rules pertaining to specified UNEs in the *Status Quo* Order. Wherever it has been pertinent, our findings and conclusions in this Decision have incorporated the fact that portions of the TRO have been reversed or vacated. Accordingly, we have given effect to those elements of the TRO that have not been vacated, and not given effect to vacated elements. Thus, nothing in SBC's proposed Section 5.b needs to be included in the amended ICA.

XO's proposed text is similarly unnecessary. Its proposed "option" would arise only after vacatur, and vacatur has already been taken into account in our analysis and rulings here. With regard to the non-waiver language in XO's prefatory text (which, ironically, would be "superfluous" under XO's arguments respecting SBC Issue 12), having found SBC's similar provision acceptable (under SBC Issue 12), we reach the same conclusion here[62].

We note that the proposed texts of the arbitrating parties account for the possibility that U.S. Supreme Court action could affect USTA II and, by extension, the TRO. In our view, any such action by the Supreme Court would now constitute a change of law that would have to be incorporated into the ICA, as appropriate, through the existing change-of-law provisions.

14. Should SBC be required to report and pay performance measures when a UNE is declassified?

1. Parties' Positions and Proposals

a). SBC

SBC Illinois' performance measures plan and remedies, previously approved by the Commission, is intended to ensure that SBC Illinois satisfies its obligations regarding the provision of UNEs to competitors. To the extent a network element is no longer a section 251 UNE, that plan and those remedies no longer apply. SBC Illinois' proposed language, which makes this consequence of UNE declassification expressly clear, is thus reasonable and appropriate, and should be adopted. Moreover, as explained above, the Commission should reject XO's unlawful suggestion that the Commission should require SBC Illinois to continue providing non-UNEs at the same rates, terms, and conditions as UNEs pursuant to section 271.

[62] If it chooses, XO is free to abandon this provision in the final text of the parties' amended ICA.

b.) XO

As an initial matter, for the same reasons discussed above, XO disagrees with SBC's definition of "declassified" UNEs and "lawful UNEs." Furthermore, nothing in the *TRO* relieves SBC of its obligation to meet performance measures and pay penalties, simply because a UNE is no longer required to be unbundled under Section 251. SBC still must provide nondiscriminatory service under the Act, and comply with its Section 271 requirements, which include performance measures and penalties. Accordingly, SBC's proposed language is inappropriate and XO's language should be incorporated into the Amendment.

c.) Staff

SBC's characterization of this issue is almost completely inaccurate. SBC is obliged, under the Commission's Section 271 Order, to continue to pay performance remedy penalties. The whole purpose of a performance remedy plan is to make certain that a regional Bell operating company (hereafter "RBOC") continues to keep its market open after it receives authority to provide interexchange service under Section 271 of the federal Telecommunications Act of 1996. SBC is obligated by its existing performance remedy plan, approved by the Commission in its Section 271 Orders.

2. Analysis and Conclusions

The Commission rejects SBC's proposed Section 7. It is an attempt to remove Section 271 network elements from the operation of the performance remedy plan adopted in connection with SBC's long distance approval under Section 271 (insofar as that plan is identified in the parties' ICA). As Staff aptly states, the performance remedy plan is a "Commission-approved bulwark against SBC's potential failure to honor its market-opening obligations after receiving Section 271 authority." Staff Reply Br. at 39.

SBC's contention, at SBC Reply Br. at 65, that network elements are fundamentally different under, respectively, Sections 251 and 271, is incorrect in the context of the performance remedy plan. That plan is intended to create disincentives to SBC failure to perform its pro-competitive obligations, irrespective of the specific statute, regulation or order that imposes any particular such obligation.

V. GENERAL APPLICATION OF THE STATUS QUO ORDER

In addition to its specific impact on certain issues in this arbitration, the Status Quo Order is also generally applicable to the parties and must be reflected in their ICA. Its salient provisions are associated with the Interim Period and Transition Period previously discussed here, and with a "Post-Transition Period" also defined in that order. The Interim Period will last for six months, unless the FCC issues final unbundling rules before that time. During that six-month period, existing ICA terms for mass market switching, dedicated transport and enterprise loops can only be superseded by voluntarily negotiated agreements, FCC orders specifically addressing

those UNEs, or state commission orders raising UNE rates. Either of the latter two events would constitute a change of law that should be addressed by the ICA's change-of-law processes.

The Transition Period covers the six months immediately following termination of the Interim Period. However, there will be no Transition Period for any of the aforementioned UNEs that the FCC determines should continue to be available under Section 251 of the Federal Act. But without such a determination, the following directives apply:

> First, in the absence of a Commission ruling that switching is subject to unbundling, an incumbent LEC shall only be required to lease the switching element to a requesting carrier in combination with shared transport and loops (*i.e.*, as a component of the "UNE platform") at a rate equal to the higher of (1) the rate at which the requesting carrier leased that combination of elements on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after Federal Register publication of this Order, for this combination of elements plus one dollar. Second, in the absence of a Commission ruling that enterprise market loops and/or dedicated transport are subject to section 251(c)(3) unbundling in any particular case, an incumbent LEC shall only be required to lease the element at issue to a requesting carrier at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for that element on June 15, 2004, or (2) 115% of the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after Federal Register publication of this Order, for that element. With respect to all elements at issue here, this transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers at these rates. As during the interim period, carriers shall remain free to negotiate alternative arrangements (including rates) superseding our rules (and state public utility commission rates) during the transition period. Subject to the comments requested in response to the above NPRM, we intend to incorporate this second phase of the plan into our final rules.

Status Quo Order, ¶ 29.

The foregoing transitional unbundling and pricing requirements should be incorporated into the SBC/XO ICA through the instant amendment. As a result, these requirements will not constitute changes of law when they occur. Similarly, it would not be a change of law if the FCC, in its final rules, determines that its unbundling requirements for a pertinent UNE will remain as they are presently. Any other future FCC or state requirement affecting the relevant switching, loop and transport UNEs may constitute a change of law to be addressed by ICA change-of-law mechanisms.

Additionally, we note that the transitional unbundling and pricing requirements apply only to a CLEC's "embedded customer base" and not to new customers. *Id.* Therefore, the law applicable to new customers may change before the law applicable to existing customers, and that change could trigger the ICA change-of-law provisions.

In the Post-Transition Period, the FCC's final rules will determine which UNEs must be unbundled and establish the terms and conditions for unbundling. "The specific process by which those rules shall take effect will be governed by each [ILEC's ICAs] and the applicable state commission's processes." *Id.* Presumably, if the substantive provisions of the ICA are inconsistent with the FCC's final rules, ICA change-of-law processes will apply.

VI. ARBITRATION STANDARDS

Under subsection 252(c) of the Federal Act, the Commission is required to resolve open issues, and impose conditions upon the parties, in a manner that comports with three standards. The Commission holds that the analysis in this arbitration decision satisfies that requirement.

First, subsection 252(c)(1) directs the state commissions to "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251." In this arbitration, the Commission has directed the parties to include provisions in their interconnection agreement that fully comport with Section 251 requirements and FCC regulations.

Second, subsection 252(c)(2) requires that we "establish any rates for interconnection, services or network elements according to subsection [252(d)]." Here, most of the pertinent rates were already established by the parties through mutual agreement. Insofar as the Commission's resolution of open issues will affect those or other rates in the parties' interconnection agreement, we require, and expect the parties to establish, rates that are in accord with subsection 252(d) of the Federal Act.

Third, pursuant to subsection 252(c)(3), the Commission must "provide a schedule for implementation of the terms and conditions by the parties to the agreement." Therefore, the Commission directs that the parties file, within 25 calendar days of the date of service of this arbitration decision, their complete interconnection agreement for Commission approval pursuant to subsection 252(e) of the Federal Act.

By Order of the Commission this 9th day of September, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman

Perkins Coie

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April 8, 2005

VIA UPS NEXT DAY AIR
AND ELECTRONIC MAIL
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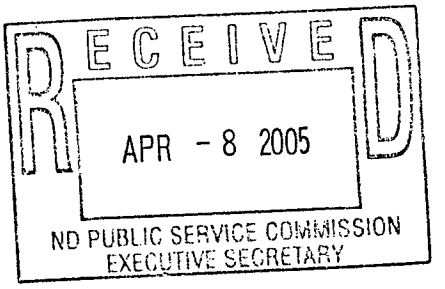

Illona Jeffcoat-Sacco, Executive Secretary
N.D. Public Service Commission
600 E. Boulevard Avenue, 12th Floor
Bismarck, ND 58505
701/328-2400

Re: In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation
Case No. PU-05-165

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing, please find Qwest Corporation's Response to DIECA Communications, Inc. d/b/a Covad Communications Company's Petition for Arbitration.

Please feel free to contact me with any questions.

Very truly yours,

James F. Cobb, Jr.

JC:jas
Enclosure

7 **PU-05-165** Pages: 1

Cover letter re Qwest's Response to Petition for Arbitration
by Qwest Corporation

04/08/2005 CC: Comm Legal Illona, Pat, Annette . .

[13141-0674/DA050980.008]

RECEIVED
APR - 8 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QWEST CORPORATION	Case No. PU-05-165 Qwest Corporation's Response to DIECA Communications, Inc. d/b/a Covad Communications Company's Petition for Arbitration

QWEST CORPORATION'S RESPONSE TO DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY'S PETITION FOR ARBITRATION

Pursuant to Section 252(b)(3) of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* ("Act") and N.D. Admin. Code Chapter 69-02-10-07, Qwest Corporation ("Qwest") submits this response to DIECA Communications, Inc. d/b/a Covad Communications Company's ("Covad") Petition for Arbitration of an Interconnection Agreement With Qwest Corporation ("Petition").

INTRODUCTION

Through extensive and lengthy negotiations, Qwest and Covad have resolved all disputed issues regarding their proposed interconnection agreement except one. The single remaining issue concerns Covad's improper and unlawful attempt to use the Section 251/252 negotiation and arbitration process to force Qwest to provide access to unbundled network elements under

6 PU-05-165 Pages: 18
Qwest's Response to Petition for Arbitration
by Qwest Corporation
04/08/2005 CC: Comm Legal Illona, Pat, Annette . .

Section 271 and state law.[1] Despite losing this same issue in Qwest/Covad arbitrations in Minnesota,[2] Washington,[3] and Utah[4] and voluntarily accepting Qwest's language for the parties' interconnection agreement in Colorado, Covad continues to attempt to demand that Qwest, through the parties' interconnection agreement, provide access to network elements it is not required to unbundle under Section 251. As discussed more fully below, Covad's attempt to invoke Section 271 in the Section 251/252 negotiation and arbitration process is improper, and the terms Covad seeks under that section cannot be granted in this arbitration. Similarly, Covad's reliance on North Dakota law to support its attempt to obtain broader network unbundling than the FCC allowed in the *Triennial Review Order* is improper. Accordingly, the North Dakota Public Service Commission ("Commission") should resolve the disputed issue in Qwest's favor.

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[1] Qwest disputes any suggestion by Covad that the parties have engaged in negotiations concerning access to network elements under Section 271 of the Act or state law. The negotiations leading to Covad's Petition were conducted pursuant to Sections 251 and 252 of the Act. The parties did not negotiate Covad's request for access to network elements pursuant to Section 271 or state law. Qwest's discussion of this issue should not be construed in any way as an acknowledgement that non-Section 251 obligations are a proper subject of this arbitration. Indeed, it is clear in the Act that while state commissions may have a consulting role, they do not have authority to make determinations under Section 271, and state commission authority in interconnection arbitrations is limited to issues relating to an ILEC's obligations under Sections 251(b) and (c).

[2] Arbitrator's Report, *In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Docket No. P-5692, 421/IC-04-549, OAH Docket No. 3-2500-15908-4 ¶¶ 46-50 (Minn. PUC December 16, 2004) ("Minnesota ALJ Order"), *aff'd in part* Order Resolving Arbitration Issues and Requiring Filed Interconnection Agreement, *In the Matter of the Petition of Covad Communications Company for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-5692, 421/IC-04-549 at 5 (Minn. PUC March 14, 2005) ("Minnesota Arbitration Order").

[3] Arbitrator's Report and Decision, Order No. 04, *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No. UT-043045 ¶¶ 54-60 (Wash. UTC November 2, 2004) ("Washington ALJ Order"), *aff'd in part* Final Order Affirming In Part Arbitrator's Report and Decision; Granting In Part Covad's Petition for Review; Requiring Filing of Conforming Interconnection Agreement, Order No. 06, *In the Matter of the Petition for Arbitration of Covad Communications Company with Qwest Corporation Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No UT-043045 ¶ 37 (Wash. UTC February 9, 2005) ("Washington Arbitration Order").

[4] Arbitration Report and Order, *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation*, Docket No. 04-2277-02 at 19-21 (Utah PSC February 8, 2005) ("Utah Arbitration Order").

BACKGROUND

As Covad accurately describes in its Petition, the parties have engaged in extensive good faith negotiations regarding the terms and conditions of the proposed interconnection agreement. Covad initiated negotiations with Qwest by a letter dated January 31, 2003. Pursuant to Covad's request, Qwest has been voluntarily negotiating interconnection agreements with Covad in states throughout Qwest's service territory, including North Dakota. Beginning in approximately January 2003, Qwest and Covad met at least weekly, most often by telephone and sometimes in person, to review proposed terms and conditions of the interconnection agreement. To address specific substantive areas, subject matter experts from Qwest and Covad participated in the negotiations and also met separately to discuss open issues. The parties engaged in more than 50 negotiating sessions involving hundreds of hours. These substantial efforts have been productive. There are no unresolved issues relating to Sections 251 and 252 of the Act, and the parties have resolved all but one issue.

Due to the progress made during the negotiations, Qwest and Covad agreed several times to extend the effective date of Covad's negotiation request in order to continue their discussions and resolve disputed issues where possible. Under the most recent extension agreement, Qwest and Covad agreed that the final day for either party to seek arbitration would be March 14, 2005. Accordingly, Qwest agrees that Covad timely filed its Petition.

ISSUES RESOLVED BY THE PARTIES

The contract language that Qwest and Covad have agreed upon is contained in the agreement attached as Exhibit A to the Petition. The parties' competing language relating to the one issue in dispute is also included in Exhibit A and is identified separately from the agreed language. To the extent Covad raises other issues or attempts to dispute other provisions of the

interconnection agreement, Qwest reserves the right to present evidence and arguments regarding those provisions.

UNRESOLVED ISSUES NOT SUBMITTED FOR ARBITRATION

There is only one unresolved issue, and it is being submitted for arbitration.

POSITION OF THE PARTIES REGARDING UNRESOLVED ISSUE

While Covad included extensive arguments in its Petition, it did not include a complete summary of Qwest's position. Qwest, therefore, has summarized its position below. Because Covad detailed its position in its Petition, Qwest has not repeated Covad's arguments in this response. Qwest respectfully submits that its proposed contract language relating to the disputed issue meets the requirements of the Act and other applicable law, reflects sound public policy and should be adopted in full.

ISSUE 1 – Section 4 Definition of "Unbundled Network Element" and Sections 9.1.1; 9.1.1.6; 9.1.1.7; 9.1.1.8; 9.1.5; 9.2.1.3; 9.2.1.4; 9.3.1.1; 9.3.1.2; 9.3.2.2; 9.3.2.2.1; 9.6; 9.6.1.5.1 (and related 9.6.1.5); 9.6.1.6.1 (and related 9.6.1.6); and 9.21.2.

The dispute concerns whether the parties' proposed Section 251/252 interconnection agreement should include provisions requiring Qwest to: (1) provide network elements and services not just under Section 251(c)(3), but also under Section 271; (2) provide access to network elements under state law that conflicts with the access the FCC required in the *Triennial Review Order*[5] and with the rulings of the United States Court of Appeals for the D.C. Circuit in

[5] 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; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*"), *vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

United States Telecom Association v. FCC ("*USTA II*");[6] and (3) price network elements provided under Section 271 at total element long run incremental cost ("TELRIC") rates despite rulings in the *Triennial Review Order* and *USTA II* establishing that TELRIC pricing does not apply to those elements.

As an initial matter, it is puzzling that Covad's Petition raises this issue. In a recent arbitration between Qwest and Covad in Colorado, Covad accepted Qwest's proposed interconnection agreement language for virtually all of the sections listed above. Why Covad would accept Qwest's proposal in Colorado but not in North Dakota is entirely unclear. Furthermore, when Covad raised the same dispute in other states, the ALJs and state commissions uniformly rejected its arguments. For example, the Washington State Utilities and Transportation Commission recently held that it "has no authority under Section 251 or Section 271 of the Act to require Qwest to include Section 271 elements in an interconnection agreement . . . [and] any unbundling requirement based on state law would likely be preempted as inconsistent with federal law, regardless of the method the state used to require the element."[7] The Utah Public Service Commission stated "Section 252 was clearly intended to provide mechanisms for the parties to arrive at interconnection agreements governing access to network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or

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[6] 359 F.3d 554 (D.C. Cir. 2004).

[7] Washington Arbitration Order ¶ 37.

state law."[8] The Minnesota ALJ found that "there is no legal authority in the Act, the TRO, or in state law that would require the inclusion of Section 271 terms in the interconnection agreement, over Qwest's objection."[9]

Although Covad has agreed to Qwest's language in Colorado and has had its proposed language rejected by all three state commissions that have considered the issue, here in North Dakota, Covad asserts that the interconnection agreement should contain language requiring Qwest to provide access to network elements pursuant to Section 271 and state law. For the reasons set forth below, the Commission should reject Covad's position and resolve the issue by approving Qwest's language.

I. Qwest's Proposed Language Complies With The Act, *USTA II*, and the *Triennial Review Order*.

In contrast to Covad's unbundling demands, Qwest's proposed language ensures that Covad will have access to the network elements that ILECs must unbundle under Section 251, while also establishing that Qwest is not required to provide elements for which there is no Section 251 obligation. In Section 4.0 of the proposed interconnection agreement, Qwest defines the UNEs available under the agreement as:

> [A] Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

Qwest's language also incorporates the unbundling limitations established by the Act, the courts, and the FCC by listing specific network elements that, per court and FCC rulings, ILECs

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[8] Utah Arbitration Order 19-20.

[9] Minnesota ALJ Report ¶ 46; Minnesota Arbitration Order at 5.

are not required to unbundle under Section 251. For example, Qwest's proposed Section 9.1.1.6 lists 18 network elements that the FCC specifically found in the *Triennial Review Order* do not meet the "impairment" standard and do not have to be unbundled under Section 251.

While Qwest's proposed language properly recognizes the limitations on unbundling, its exclusion of certain network elements does not mean that those elements are unavailable to Covad and other CLECs. As the Commission is aware, Qwest is offering access to non-251 elements through commercial agreements. Because Qwest's proposed language complies with the Act as interpreted by the courts and the FCC and accurately describes Qwest's obligations under Section 251, the Commission should approve Qwest's proposed language.

II. Covad's Proposed Language Is Inconsistent With the Act, *USTA II*, and the *Triennial Review Order.*

In the *Triennial Review Order*, the FCC required ILECs to provide CLECs with access under Section 251 to certain unbundled network elements. At the same time, the FCC declined to require access to other network elements under Section 251, ruling that CLECs are not "impaired," as that term is defined in Section 251(d)(2)(B), without access to those elements. In *USTA II*, the D.C. Circuit vacated substantial portions of the affirmative unbundling requirements the FCC established in the *Triennial Review Order*. In response, the FCC recently issued its *Triennial Review Remand Order*[10] in which it adopted a more limiting unbundling standard than it had adopted in the *Triennial Review Order*. As described by the FCC, the new "more targeted" standard "imposes unbundling obligations only in those situations where we find

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[10] Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*Triennial Review Remand Order*").

that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition."[11]

Here, Covad seeks to have the Commission impose many of the same unbundling requirements that the FCC rejected in the *Triennial Review Order* and that the D.C. Circuit vacated in *USTA II*. Thus, while the FCC has narrowed the scope of permissible unbundling as required under *USTA II*, Covad is attempting to go in precisely the opposite direction by asking this Commission to impose virtually limitless unbundling. This attempt to circumvent the still valid unbundling rulings in the *Triennial Review Order*, the effect of *USTA II*, and the *Triennial Review Remand Order* is improper for the following reasons.

A. The Act Does Not Permit The Commission To Create Under State Law Unbundling Requirements That The FCC Rejected In The *Triennial Review Order* And The *Triennial Review Remand Order* Or That The D.C. Circuit Vacated In *USTA II*.

Under Section 251 of Act, there is no unbundling obligation absent an FCC requirement to unbundle and a lawful FCC impairment finding. As the Supreme Court made clear in the *Iowa Utilities Board* case, the Act does not authorize "blanket access to incumbents' networks."[12] Rather, Section 251(c)(3) authorizes unbundling only "in accordance with . . . the requirements of this section [251]."[13] Section 251(d)(2) in turn provides that unbundling may be required *only if the FCC determines* (A) that "access to such network elements as are proprietary in nature is necessary" and (B) that the failure to provide access to network elements "would

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[11] *Id.* ¶ 2.

[12] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 390 (1998) ("*Iowa Utilities Board*").

[13] 47 U.S.C. § 251(c)(3).

impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[14]

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.[15] The Supreme Court confirmed that as a precondition to unbundling, Section 251(d)(2) "requires the [Federal Communications] Commission to determine on a 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."[16] And the D.C. Circuit has confirmed in *USTA II* that Congress did not allow the FCC to have state commissions perform this work on its behalf.[17] *USTA II*'s clear holding is that the FCC, not state commissions, must make the impairment determination called for by Section 251(d)(3)(B) of the Act.

Iowa Utilities Board makes clear that the essential prerequisite for unbundling any given element under Section 251 is a formal finding by the FCC that the Section 251(d)(2) "impairment" test is satisfied for that element. If there has been no such FCC finding, the Act does not permit any regulator, federal or state, to require unbundling under Section 251. In the *Triennial Review Order*, the FCC reaffirmed this:

> Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 and do not "substantially prevent" the implementation of the federal regulatory regime.

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[14] 47 U.S.C. § 251(d)(2).

[15] 47 U.S.C. § 251(d)(2).

[16] *Iowa Utilities Board*, 525 U.S. at 391-92.

[17] *See USTA II*, 359 F.3d at 568.

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> If a decision pursuant to state law were to require unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits of section 251(d)(2))—or otherwise declined to require unbundling on a national basis, we believe it unlikely that such a decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(c).[18]

Federal courts interpreting the Act have reached the same conclusion.[19] Indeed, in a recent decision, the United States District Court of Michigan observed that in *USTA II*, the D.C. Circuit "rejected the argument that the 1996 Act does not give the FCC the exclusive authority to make unbundling determinations."[20] The court emphasized that while the Act permits states to adopt some "procompetition requirements," they cannot adopt any requirements that are inconsistent with the statute and FCC regulations. Specifically, the court held, a state commission "cannot act in a manner inconsistent with federal law and then claim its conduct is authorized under state law."[21]

Moreover, in an order issued less fifteen days ago, the FCC ruled that state commissions are generally without authority to require ILECs to unbundle network elements that the FCC has declined to require ILECs to unbundle.[22] In its *BellSouth Declaratory Order*, the FCC addressed orders from four different state commissions that required BellSouth to provide DSL service over

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[18] *Triennial Review Order* ¶¶ 193, 195.

[19] *See Indiana Bell Tel. Co. v. McCarty*, 362 F.3d 378, 395 (7th Cir. 2004) (citing the above-quoted discussion in the *TRO* and stating that "we cannot now imagine" how a state could require unbundling of an element consistently with the Act where the FCC has not found the statutory impairment test to be satisfied).

[20] *Michigan Bell Tel. Co. v. Lark*, Case no. 04-60128, slip op. at 13 (E.D. Mich. Jan. 6, 2005).

[21] *Id.*

unbundled loops that CLECs were using to provide voice service.[23] This requirement, the FCC determined, effectively obligated BellSouth to unbundle the low frequency portion of the loop ("LFPL") which the FCC had specifically refused to require ILECs to unbundle in the *Triennial Review Order*.[24]

In striking down the orders, the FCC emphasized the preeminence of its regulations under the Act over state laws and regulations: "except in limited cases, the [FCC's] prerogatives with regard to local competition supersede state jurisdiction over these matters."[25] State authority is preserved under the Act, the FCC stated, only to the extent state regulations are not inconsistent with the requirements of Section 251 and do not "substantially prevent implementation of the requirements of section 251 or the purposes of sections 251 through 261 of the Act."[26] Because it had refused to require ILECs to unbundle the LFPL in the *TRO*, the FCC held that the four state orders requiring such unbundling "directly conflict and are inconsistent with the Commission's Rules and Policies implementing section 251."[27] It explained further that "[s]tate requirements that impose on BellSouth a requirement to unbundle the LFPL do exactly what the

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[22] Memorandum Opinion and Order and Notice of Inquiry, *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, FCC 05-78 ¶¶ 25-30 (FCC rel. March 25, 2005) ("*BellSouth Declaratory Order*").

[23] *Id.* ¶¶ 9-15.

[24] *Id.* ¶¶ 25-26.

[25] *Id.* ¶ 22.

[26] *Id.* ¶ 23.

[27] *Id.* ¶ 26.

Commission expressly determined was not required by the Act and thus exceed the reservation of authority under section 251(d)(3)(B)."[28]

Covad's broad proposals for unbundling under state law reflect its erroneous view that the Commission has plenary authority under state law and the savings clauses contained in the Act to order whatever unbundling it chooses. What Covad ignores and what the FCC has reaffirmed in its *BellSouth Declaratory Order* is that the Act's savings clauses preserve independent state authority *only to the extent it is consistent with the Act*, including Section 251(d)(2)'s substantive limitations on the level of unbundling that may be authorized. Thus, these savings clauses do not preserve the authority of state commissions to adopt or enforce under state law unbundling requirements that have been rejected by the FCC or vacated in *USTA II*.

Accordingly, the relevant question is not, as Covad presumes, whether sweeping unbundling obligations can be cobbled together out of state law, but rather whether any such obligations would be consistent with *Congress'* substantive limitations on the permissible level of unbundling, as authoritatively construed by the Supreme Court, the D.C. Circuit, and the FCC. Covad's proposals for unbundling under state law ignore these limitations and the permissible authority of state commissions to require unbundling.

B. The Commission Does Not Have Authority To Require Unbundling Under Section 271.

Covad's Petition and interconnection agreement proposal assumes incorrectly that state commissions have authority to impose binding unbundling obligations under Section 271. Section 271 confers no such authority. Section 271(d)(3) expressly confers upon the FCC, not state commissions, the authority to determine whether Bell Operating Companies ("BOCs") have

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[28] *Id.* ¶ 27.

complied with the substantive provisions of Section 271, including the "checklist" provisions upon which Covad purports to base its requests.[29] State commissions have only a non-substantive "consulting" role in that determination.[30]

Sections 201 and 202, which govern the rates, terms and conditions applicable to the unbundling requirements imposed by Section 271,[31] likewise provide no role for state commissions. That authority has been conferred by Congress upon the FCC and federal courts.[32] The FCC has thus confirmed that "[w]hether a particular [Section 271] checklist element's rate satisfies the just and reasonable pricing standard is a fact specific inquiry that *the Commission* [*i.e.*, the FCC] will undertake in the context of a BOC's application for Section 271 authority or in an enforcement proceeding brought pursuant to Section 271(d)(6)."[33]

Additionally, the process mandated by Section 252, the provision pursuant to which Covad filed its petition for arbitration, is concerned with implementation of an ILEC's obligations under Section 251, not Section 271. In an arbitration conducted under Section 252, therefore, state commissions only have authority to impose terms and conditions relating to Section 251 obligations, as demonstrated by the following provisions of the Act.

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[29] 47 U.S.C. § 271(d)(3).

[30] 47 U.S.C. § 271(d)(2)(B). *See also* Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission, 2003 WL 1903363 at 13 ("Section 271 clearly contemplates an advisory role for the [state commission], not a substantive role").

[31] *Triennial Review Order* ¶¶ 656, 662.

[32] *See id*; 47 U.S.C. 201(b)(authorizing the FCC to prescribe rules and regulations to carry out the Act's provisions); 205 (authorizing FCC investigation of rates for services, etc. required by the Act); 207 (authorizing FCC and federal courts to adjudicate complaints seeking damages for violations of the Act); 208(a)(authorizing FCC to adjudicate complaints alleging violations of the Act).

[33] *Triennial Review Order* ¶ 664. The process mandated by Section 252 -- the provision pursuant to which Covad filed its Petition -- is concerned with implementation of an ILEC's obligations under Section 251, not Section 271. Accordingly, state commissions do not have authority to consider non-251 issues, including issues relating to Section 271, in Section 252 arbitrations.

(a) By its terms, the "duty" of an ILEC "to negotiate in good faith in accordance with section 252 the particular terms and conditions of [interconnection] agreements" is limited to implementation of "the duties described in paragraphs (1) through (5) of [section 251(b)] and [section 251(c)]."[34]

(b) Section 252(a) likewise makes clear that the negotiations it requires are limited to "request[s] for interconnection, services or network elements *pursuant to section 251*."[35]

(c) Section 252(b), which provides for state commission arbitration of unresolved issues, incorporates those same limitations through its reference to the "negotiations under this section [252(a)]."[36]

(d) The grounds upon which a state commission may approve or reject an arbitrated interconnection agreement are limited to non-compliance with Section 251 and section 252(d).[37]

(e) The final step of the Section 252 process, federal judicial review of decisions by state commissions approving or rejecting interconnection agreements (including the arbitration decisions they incorporate), is likewise limited to "whether the agreement . . . meets the requirements of section 251 and this section [252]."[38]

It is thus clear that state commission arbitration of disputes over the duties imposed by federal law is limited to those imposed by Section 251 and excludes the conditions imposed by

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[34] 47 U.S.C. 251(c)(1).

[35] 47 U.S.C. 252(a)(emphasis added).

[36] *See* 47 U.S.C. 252(b)(1). The Fifth Circuit has ruled that state commissions may arbitrate disputes regarding matters other than the duties imposed by Section 251 if *both* parties *mutually agree* to include those matters in their section 252(a) negotiations. *CoServ Limited Liability Corp. v. Southwestern Bell Tel. Co.*, 350 F.3d 482 (5th Cir. 2003). Even if correct, that ruling is not relevant here, for Qwest has not included in its Section 252(a) negotiations with Covad its duties under section 271. *See id.* at 488 ("an ILEC is clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act when a CLEC requests negotiation pursuant to sections 251 and 252"). In the Qwest/Covad Minnesota and Utah arbitrations, the administrative law judges ruled that Qwest and Covad did negotiate Covad's request for unbundling under Section 271. In those cases, however, Qwest established that its negotiators consistently refused to negotiate those issues and expressly told Covad's representatives that the issues were not properly part of the section 251/252 process. The rulings incorrectly find that Qwest opened the door to Covad's insertion of section 271 issues into the negotiations by proposing ICA language to implement the section 251 unbundling obligations established by the *TRO*. Qwest itself, however, never proposed any language relating to section 271 unbundling obligations, and Qwest and Covad never discussed Covad's proposed language. There was not, therefore, *mutual agreement* to address those issues in the negotiations, as is required under *Coserv*.

[37] *See* 47 U.S.C. 252(e)(2)(b).

[38] 47 U.S.C. 252(e)(6).

Section 271. Accordingly, the Commission does not have the authority to require the Section 271 unbundling that Covad seeks or to establish prices for those elements.

C. Covad's Proposal To Use TELRIC Rates for Section 271 Elements Is Unlawful.

Under Covad's proposed language, existing TELRIC rates would apply to network elements that Qwest provides pursuant to Section 271 until new rates are established in accordance with "Sections 201 and 202 of the Act or applicable state law." In addition, it is clear from Covad's filings in other states that Covad seeks permanent TELRIC-based prices for Section 271 elements.

The absence of state decision-making authority under Sections 201, 202, and 271 establishes that state commissions are without authority to determine the prices that apply to network elements provided under Section 271. Significantly, the FCC rejected the argument that the pricing authority granted to state commissions by Section 252(c)(2) to set rates for UNEs provided under Section 251 gives commissions authority to set rates for Section 271 elements. In its opposition to the petitions for a *writ of certiorari* filed with the Supreme Court in connection with *USTA II*, the FCC addressed the contention that Section 252 gives state commissions exclusive authority to set rates for network elements. It stated that the contention "rests on a flawed legal premise,"[39] explaining that Section 252 limits the pricing authority of state commissions to network elements provided under Section 251(c)(3):

> Section 252(c)(2) directs state commissions to "establish any rates for . . . network elements *according to subsection (d)*." 47 U.S.C. 252(c)(2) (emphasis added).

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[39] Brief for the Federal Respondents in Opposition to Petitions for a Writ of Certiorari, *National Association of Regulatory Utility Commissioners v. United States Telecom Association*, Supreme Court Nos. 04-12, 04-15, and 04-18, at 23 (filed September 2004).

> Section 252(d) specifies that States set "the just and reasonable rate for network elements" *only* "for purposes of [47 U.S.C. 251(c)(3)]." 47 U.S.C. 252(d)(1).[40]

Accordingly, the FCC emphasized, "[t]he statute makes no mention of a state role in setting rates for facilities or services that are provided by Bell companies to comply with Section 271 and are *not* governed by Section 251(c)(3)."[41]

In requesting that the Commission adopt its rate proposal, Covad is therefore asking the Commission to exercise authority it does not have and that rests exclusively with the FCC. In addition, Covad's demand for even the temporary application of TELRIC pricing to Section 271 elements violates the FCC's ruling in the *Triennial Review Order* that TELRIC pricing does not apply to these elements. The FCC ruled unequivocally that any elements an ILEC unbundles pursuant to Section 271 are to be priced based on the Section 201-02 standard that rates must not be unjust, unreasonable, or unreasonably discriminatory.[42] In so ruling, the FCC confirmed, consistent with its prior rulings in Section 271 orders, that TELRIC pricing does not apply to these network elements.[43] In *USTA II*, the D.C. Circuit reached the same conclusion, rejecting the CLECs' claim that it was "unreasonable for the Commission to apply a different pricing standard under Section 271" and instead stating that "we see nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment."[44]

---

[40] *Id.* (emphasis in original).

[41] *Id.* (emphasis in original). In the same brief, the FCC commented that the *TRO* does not express an opinion as to the precise role of states in connection with section 271 pricing. *Id.*

[42] *Triennial Review Order* ¶¶ 656-64.

[43] *Id.*

[44] *USTA II*, 359 F.3d at 589; *see generally id.* at 588-90.

PROPOSED SCHEDULE FOR IMPLEMENTING THE TERMS AND CONDITIONS IMPOSED IN THE ARBITRATION

Qwest recommends that upon resolution of the dispute set forth in the Petition and this response, the Commission direct Covad and Qwest to finalize the Proposed Interconnection Agreement to conform to the Commission's order and file it within 30 days of issuance of the order.

RECOMMENDATION AS TO INFORMATION THAT SHOULD BE PROVIDED BY OTHER PARTIES TO THE NEGOTIATIONS

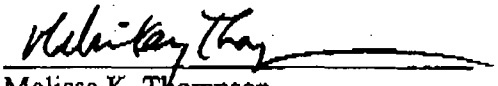
Qwest does not anticipate the need for discovery, but reserves its right to seek discovery and other information as may become necessary.

CONCLUSION AND REQUEST FOR RELIEF

Qwest urges the Commission to enter an order adopting Qwest's proposed language on the disputed issue for the interconnection agreement between Qwest and Covad.

DATED: April 8, 2005

Respectfully submitted,



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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of April 2005, I caused to be served a true and correct copy of QWEST CORPORATION'S RESPONSE TO DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY'S PETITION FOR ARBITRATION by U.S. mail and electronic mail to the following:

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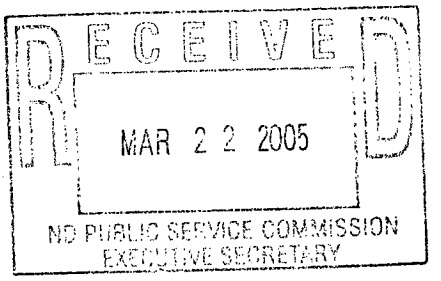
March 22, 2005

HAND-DELIVERED



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed for filing is DIECA Communications, Inc., d/b/a Covad Communications Company's Substitute Exhibit "A" to Petition to Arbitrate.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosures.
cc w/enc: Linda Miles, Qwest Corporation
John Devaney, Perkins, Coie, LLP

• ALSO LICENSED IN MINNESOTA • ALSO LICENSED I

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Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

RECEIVED
MAR 22 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

SUBSTITUTE EXHIBIT "A" TO PETITION TO ARBITRATE

IN THE MATTER OF THE PETITION OF	)	**Case No. _____**
DIECA COMMUNICATIONS, INC. D/B/A	)	
COVAD COMMUNICATIONS COMPANY	)	
FOR ARBITRATION OF AN	)	
INTERCONNECTION AGREEMENT WITH	)	
QUEST CORPORATION	)	

COMES NOW DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad") through its undersigned counsel and files the attached Substitute Exhibit "A" to its Petition to Arbitrate an Interconnection Agreement with Qwest filed on March 14, 2005. Exhibit "A" filed with the Petition contained numerous markouts that should not have appeared in the document. A representative of Qwest brought this oversight to our attention.

The parties hereto are in agreement that the original Exhibit "A" filed with the Petition on March 14, 2005 should be discarded and the substitute Exhibit "A" attached hereto should be attached to the Petition in its place

Respectfully submitted, this *22* day of March, 2005.

DIECA COMMUNICATIONS, INC.,
D/B/A COVAD COMMUNICATIONS
COMPANY

By: _____

Patrick W. Durick
Pearce & Durick, PLLP
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Gregory Diamond
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CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of March, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Linda Miles
Qwest Corporation
1600 7th Ave
Room 3007
Seattle, Washington 98191
(206) 345-0225 (Fax)

__X__ U.S. Mail
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (Fax)
_____ Email

John Devaney
Mary Rose Hughes
Perkins Coie, LLP
607 Fourteenth Street, N.W., Suite 800
Washington, DC 20005-2011
(202) 434-1690 (Fax)

__X__ U.S. Mail
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (Fax)
_____ Email

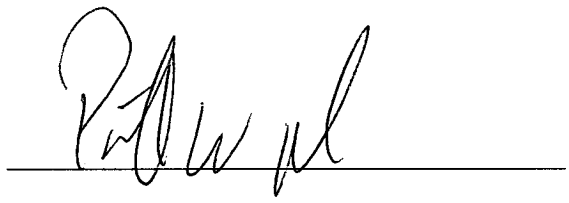

Exhibit A
North Dakota*

New			Recurring	Recurring, Per Mile	Non-Recurring	Notes REC	Notes REC per Mile	Notes NRC
6.0 Resale - Intentionally Left Blank								
7.0 Interconnection - Intentionally Left Blank								
8.0 Collocation								
8.1 All Collocation								
8.1.1 Planning and Engineering Fees								
8.1.1.1 Intentionally Left Blank								
8.1.1.2 Cable Augment Quote Preparation Fee					$1,488.56			C
8.1.2 Entrance Facility								
8.1.2.1 Standard Shared, per Fiber			$6.02		$659.96	C		C
8.1.2.2 Cross Connect, per Fiber			$6.18		$774.12	C		C
8.1.2.3 Express, per Cable			$96.45		$9,641.86	C		C
8.1.3 Cable Splicing								
8.1.3.1 Fiber, per Set-Up					$506.81			C
8.1.3.2 Per Fiber Spliced					$38.24			C
8.1.4 Power Usage								
8.1.4.1 Power Plant								
8.1.4.1.1 Less Than 60 Amps			$12.51			C		
8.1.4.1.2 Greater Than or Equal to 60 Amps			$9.75			C		
8.1.4.2 Power Usage								
8.1.4.2.1 Less Than or Equal To 60 Amps, per Amp			$1.98			C		
8.1.4.2.2 Greater Than 60 Amps, per Amp			$3.97			C		
8.1.5 AC Power Feed								
8.1.5.1 Backup AC Power Feed, per Amp, per Month								
8.1.5.1.1 120 V			$20.12			C		
8.1.5.1.2 208 V, Single Phase			$34.87			C		
8.1.5.1.3 208 V, Three Phase			$60.32			C		
8.1.5.1.4 240 V, Single Phase			$40.23			C		
8.1.5.1.5 240 V, Three Phase			$69.60			C		
8.1.5.1.6 480 V, Three Phase			$139.20			C		
8.1.5.2 Backup AC Power Feed, per Foot, per Month								
8.1.5.2.1 20 Amp, Single Phase			$0.0119		$8.04	C		C
8.1.5.2.2 20 Amp, Three Phase			$0.0148		$9.97	C		C
8.1.5.2.3 30 Amp, Single Phase			$0.0128		$8.67	C		C
8.1.5.2.4 30 Amp, Three Phase			$0.0176		$11.91	C		C
8.1.5.2.5 40 Amp, Single Phase			$0.0151		$10.20	C		C
8.1.5.2.6 40 Amp, Three Phase			$0.0208		$14.04	C		C
8.1.5.2.7 50 Amp, Single Phase			$0.0179		$12.10	C		C
8.1.5.2.8 50 Amp, Three Phase			$0.0250		$16.89	C		C
8.1.5.2.9 60 Amp, Single Phase			$0.0203		$13.68	C		C
8.1.5.2.10 60 Amp, Three Phase			$0.0288		$19.44	C		C
8.1.5.2.11 100 Amp, Single Phase			$0.0251		$16.94	C		C
8.1.5.2.12 100 Amp, Three Phase			$0.0392		$26.45	C		C
8.1.6 Inspector Labor, per Half Hour								
8.1.6.1 Regular Hours Rate					$34.37			C
8.1.6.2 After Hours Rate, minimum 3 Hours					$44.70			C
8.1.7 Channel Regeneration								
8.1.7.1 DS1			$0.00		$0.00	C		C
8.1.7.2 DS3			$0.00		$0.00	C		C
8.1.8 Collocation Terminations								
8.1.8.1 Shared Access								
8.1.8.1.1 DS0								
8.1.8.1.1.1 Cable Placement, per 100 Pair Block			$0.1980		$225.69	C		C
8.1.8.1.1.2 Cable Placement, per Termination			$0.0079		$9.03	C		C
8.1.8.1.1.3 Cable, per 100 Pair Block			$0.2931		$334.21	C		C
8.1.8.1.1.4 Cable, per Termination			$0.0059		$6.68	C		C
8.1.8.1.1.5 Blocks, per 100 Pair Block			$0.5075		$578.65	C		C
8.1.8.1.1.6 Blocks, per Termination			$0.0102		$11.57	C		C
8.1.8.1.1.7 Block Placement, per 100 Pair Block			$0.2083		$237.53	C		C

Exhibit A
North Dakota*

				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
			8.1.8.1.1.8 Block Placement, per Termination	$0.0042		$4.75	C		C
		8.1.8.1.2	DS1						
			8.1.8.1.2.1 Cable Placement, per 28 DS1s	$0.5802		$391.80	C		C
			8.1.8.1.2.2 Cable Placement, per Termination	$0.0624		$42.13	C		C
			8.1.8.1.2.3 Cable, per 28 DS1s	$0.5713		$385.79	C		C
			8.1.8.1.2.4 Cable, per Termination	$0.0614		$41.48	C		C
			8.1.8.1.2.5 Panel, per 28 DS1s	$0.3918		$264.56	C		C
			8.1.8.1.2.6 Panel, per Termination	$0.0470		$31.77	C		C
			8.1.8.1.2.7 Placement Panel, per 28 DS1s	$0.1195		$80.69	C		C
			8.1.8.1.2.8 Placement Panel, per Termination	$0.0128		$8.68	C		C
		8.1.8.1.3	DS3						
			8.1.8.1.3.1 Cable Placement, per Termination	$0.2147		$144.97	C		C
			8.1.8.1.3.2 Cable, per Termination	$0.3689		$249.13	C		C
			8.1.8.1.3.3 Panel / Connector, per Termination	$0.3750		$253.21	C		C
			8.1.8.1.3.4 Panel / Connector Placement, per Termination	$0.0289		$19.49	C		C
		8.1.8.1.4	Fiber Termination						
			8.1.8.1.4.1 Terminations, per 12 Fibers	$28.32		$1,637.87	C		C
			8.1.8.1.4.2 Cable Racking for Fiber Terminations - Dedicated, First 12 Fibers	$2.30		$1,551.41	C		C
			8.1.8.1.4.3 Connector, Each Additional, if Applicable	$0.66		$445.37	C		C
			8.1.8.1.4.4 Cable Racking - Shared, per 12 Fibers	$27.96			C		
		8.1.8.1.5	Direct Connect			ICB			C 3
	8.1.9	Security Charges							
		8.1.9.1	Access Card, per Employee, per Card	$0.93			C		
		8.1.9.2	Card Access per Employee, per Office	$9.05			C		
	8.1.10	Composite Clock / Central Office Synchronization							
		8.1.10.1	Synchronization – Composite Clock, per Port	$8.48			C		
	8.1.11	Intentionally Left Blank							
	8.1.12	Space Availability Charge				$365.21			C
	8.1.13	Collocation Space Reservation Fee				The charge will be 25% of Nonrecurring Fee			
	8.1.14	Collocation Space Option Administration Fee				$1,198.04			C
	8.1.15	Collocation Space Option Fee, per Square Foot		$2.00			C		
	8.1.16	Viewing Available Space (prior to quote acceptance)				$150.00			1
8.2	**Virtual Collocation**								
	8.2.1	Planning and Engineering Fees							
		8.2.1.1	Quote Preparation Fee, per Collocation			$4,539.46			C 6
	8.2.2	Maintenance Labor, per Half Hour							
		8.2.2.1	Regular Hours Rate			$31.39			C
		8.2.2.2	After Hours Rate			$42.20			C
	8.2.3	Training Labor, per Half Hour							
		8.2.3.1	Regular Hours Rate			$31.39			C
	8.2.4	Bay Space							
		8.2.4.1	Equipment Bay, per Shelf	$4.37			C		
	8.2.5	Engineering Labor, per Half Hour							
		8.2.5.1	Regular Hours Rate			$35.64			C
		8.2.5.2	After Hours Rate			$46.85			C
	8.2.6	Installation Labor, per Half Hour							
		8.2.6.1	Regular Hours Rate			$34.37			C
		8.2.6.2	After Hours Rate			$44.70			C

Exhibit A
North Dakota*

				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.2.7	Rent								
	8.2.7.1	Floor Space Lease, per Square Foot		$3.02			C		
8.2.8	Intentionally Left Blank								
8.2.9	-48 Volt DC Power Cable								
	8.2.9.1	20 Amp Feed		$6.42		$4,334.96	C		C
	8.2.9.2	30 Amp Feed		$7.31		$4,935.66	C		C
	8.2.9.3	40 Amp Feed		$8.83		$5,961.10	C		C
	8.2.9.4	60 Amp Feed		$15.63		$10,557.33	C		C
	8.2.9.5	100 Amp Feed		$26.37		$17,806.34	C		C
	8.2.9.6	200 Amp Feed		$49.09		$33,146.31	C		C
	8.2.9.7	300 Amp Feed		$77.19		$52,120.67	C		C
	8.2.9.8	400 Amp Feed		$109.60		$74,004.44	C		C
8.3	**Cageless Physical Collocation**								
8.3.1	Planning and Engineering Fees								
	8.3.1.1	Quote Preparation Fee, per Collocation Ordered				$4,539.46			C 6
8.3.2	Space Construction and Site Preparation								
	8.3.2.1	Site Preparation				ICB			C 3
	8.3.2.2	2 Bays		$31.31		$21,147.27	C		C
	8.3.2.3	Intentionally Left Blank							
	8.3.2.4	Intentionally Left Blank							
	8.3.2.5	Each Additional Bay, per Bay		$3.72		$2,512.64	C		C
	8.3.2.6	Adjustment for Single Bay, Change to Standard Design		($3.72)		($2,512.98)	C		C
	8.3.2.7	DC Power Cable							
		8.3.2.7.1	-48 Volt DC Power Cable						
			8.3.2.7.1.1 20 Amp Feed	$6.42		$4,334.96	C		C
			8.3.2.7.1.2 30 Amp Feed	$7.31		$4,935.66	C		C
			8.3.2.7.1.3 40 Amp Feed	$8.83		$5,961.10	C		C
			8.3.2.7.1.4 60 Amp Feed	$15.63		$10,557.33	C		C
			8.3.2.7.1.5 100 Amp Feed	$26.37		$17,806.34	C		C
			8.3.2.7.1.6 200 Amp Feed	$49.09		$33,146.31	C		C
			8.3.2.7.1.7 300 Amp Feed	$77.19		$52,120.67	C		C
			8.3.2.7.1.8 400 Amp Feed	$109.60		$74,004.44	C		C
8.3.3	Floor Space Lease, per Square Foot			$3.02			C		
8.4	**Caged Physical Collocation**								
8.4.1	Planning and Engineering Fees								
	8.4.1.1	Quote Preparation Fee, per Collocation				$4,539.46			C 6
8.4.2	Space Construction and Site Preparation								
	8.4.2.1	Site Preparation Fee				ICB			C 3
	8.4.2.2	Intentionally Left Blank							
	8.4.2.3	Intentionally Left Blank							
	8.4.2.4	Space Construction							
		8.4.2.4.1	Cage: Up to 100 Sq. Ft.	$54.43		$36,755.70	C		C
		8.4.2.4.2	Cage: 101 to 200 Sq. Ft.	$48.32		$32,629.55	C		C
		8.4.2.4.3	Cage: 201 to 300 Sq. Ft.	$59.60		$40,246.31	C		C
		8.4.2.4.4	Cage: 301 to 400 Sq. Ft.	$62.44		$42,159.89	C		C
	8.4.2.5	Intentionally Left Blank							
	8.4.2.6	DC Power Cable							
		8.4.2.6.1	-48 Volt DC Power Cable						
			8.4.2.6.1.1 20 Amp Feed	$6.42		$4,334.96	C		C
			8.4.2.6.1.2 30 Amp Feed	$7.31		$4,935.66	C		C
			8.4.2.6.1.3 40 Amp Feed	$8.83		$5,961.10	C		C
			8.4.2.6.1.4 60 Amp Feed	$15.63		$10,557.33	C		C
			8.4.2.6.1.5 100 Amp Feed	$26.37		$17,806.34	C		C
			8.4.2.6.1.6 200 Amp Feed	$49.09		$33,146.31	C		C
			8.4.2.6.1.7 300 Amp Feed	$77.19		$52,120.67	C		C
			8.4.2.6.1.8 400 Amp Feed	$109.60		$74,004.44	C		C

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.4.3	Space Construction - Fencing Credit							
8.4.3.1	Cage: Up to 100 Sq. Ft.		($8.18)		($5,521.00)	C		C
8.4.3.2	Cage: 101 to 200 Sq. Ft.		($10.19)		($6,883.87)	C		C
8.4.3.3	Cage: 201 to 300 Sq. Ft.		($11.45)		($7,732.18)	C		C
8.4.3.4	Cage: 301 to 400 Sq. Ft.		($12.65)		($8,538.78)	C		C
8.4.4	Floor Space Lease, per Square Foot		$3.02			C		
8.4.5	Intentionally Left Blank							
8.4.6	Intentionally Left Blank							
8.4.7	Intentionally Left Blank							
8.4.8	Grounding							
8.4.8.1	2/0 AWG, per Foot		$0.0137		$9.26	C		C
8.4.8.2	1/0 AWG, per Foot		$0.0241		$16.30	C		C
8.4.8.3	4/0 AWG, per Foot		$0.0284		$19.18	C		C
8.4.8.4	350 kcmil, per Foot		$0.0367		$24.75	C		C
8.4.8.5	500 kcmil, per Foot		$0.0424		$28.65	C		C
8.4.8.6	750 kcmil, per Foot		$0.0647		$43.67	C		C
8.5	**Adjacent Collocation**				ICB			C 3
8.6	**Remote Collocation**							
8.6.1	Physical & Virtual Remote Collocation							
8.6.1.1	Space, per Standard Mounting Unit		$0.44		$719.98	C		C
8.6.1.2	FDI Terminations, per 25 Pair		$0.26		$524.62	C		C
8.6.1.3	Power Usage							
	8.6.1.3.1	Less Than or Equal To 60 Amps, per Amp	$1.98			C		
8.6.1.4	Quote Preparation Fee				$1,151.71			C
8.6.2	Adjacent Remote Collocation							
8.6.2.1	Adjacent Remote Collocation (New)				ICB			C 3
8.6.2.2	Adjacent Remote Collocation (Existing)							
	8.6.2.2.1	Space, per Standard Mounting Unit	$0.44		$719.98	C		C
	8.6.2.2.2	FDI Terminations, per 25 Pair	$0.26		$524.62	C		C
	8.6.2.2.3	Power Usage						
		8.6.2.2.3.1 Less Than or Equal To 60 Amps, per Amp	$1.98			C		
	8.6.2.2.4	Quote Preparation Fee			$1,151.71			C
8.6.3	Additional Virtual Remote Collocation Elements							
8.6.3.1	Flat Charge, per Job				$40.40			C
8.6.3.2	Engineering Labor, per Half Hour				$35.99			C
8.6.3.3	Maintenance Labor, per Half Hour				$33.43			C
8.6.3.4	Installation Labor, per Half Hour				$33.43			C
8.6.3.5	Training, per Half Hour				$33.43			C
8.7	**CLEC-to-CLEC**							
8.7.1	Design, Engineering & Installation, Mechanized - No Cables							
8.7.1.1	Fiber Flat Charge				$1,334.85			C
8.7.1.2	Flat Charge				$687.23			C
8.7.2	Cable Racking							
8.7.2.1	DS0, per Foot, per Cable		$0.15606			C		
8.7.2.2	DS1, per Foot, per Cable		$0.16909			C		
8.7.2.3	DS3, per Foot, per Cable		$0.13891			C		
8.7.2.4	Fiber, per Foot, per Fiber		$1.26758			C		
8.7.3	Virtual Connections (if Applicable Connections Only; No Cables)							
8.7.3.1	DS0, per 100 Connections				$210.31			C
8.7.3.2	DS1, per 28 Connections				$99.04			C
8.7.3.3	DS3, per 1 Connection				$6.38			C
8.7.3.4	Fiber Connections							
	8.7.3.4.1	Fiber, per Set-Up			$506.81			C
	8.7.3.4.2	Per Fiber Spliced			$38.24			C

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		Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.7.4	Cable Hole (if Applicable)			$483.48			C
8.7.5	CLEC to CLEC Cross-Connection			$204.36			C
8.8	**Interconnection Distribution Frame (ICDF) Collocation**			ICB			C 3
8.9	**Application to Request Cancellation**			QPF, Prorated Job Costs			C
8.10	**Microwave Entrance Facility**			Under Development			
8.11	**Intentionally Left Blank**						
8.12	**Intentionally Left Blank**						
8.13	**DC Power Reduction**						
8.13.1	Quote Preparation Fee			$761.34			C
8.13.2	Power Reduction Less Than 60 Amps			$534.95			C
8.13.3	Power Reduction Equal To 60 Amps			$764.81			C
8.13.4	Power Reduction Greater Than 60 Amps			$968.64			C
8.13.5	Power On / Off			$671.96			C
8.13.6	Battery Distribution Fuse Board (BDFB) Rent	$68.21			C		
8.14	**Collocation Transfer of Responsibility**						
8.14.1	Interconnection Facility Options - Wireline and Wireless Local Interconnection Service Trunks						
8.14.1.1	Per Trunk Group			$33.26			1
8.14.1.2	Per Facility Circuit			$33.26			1
8.14.2	Transfer of Responsibility Assessment Fee			$1,058.00			1
8.14.3	Netrwork System Administration Fee			$1,663.00			1
8.14.4	Unbundled Loop, per Circuit			$33.26			1
8.14.5	Sub-Loop, and Shared Distribution Loop, per Circuit			$33.26			1
8.14.6	Line Sharing and Line Splitting, per Circuit			$33.26			1
8.14.7	Unbundled Dedicated Interoffice Transport, per Circuit			$33.26			1
8.14.8	Enhanced Extended Loop / Loop MUX Combination, per Circuit			$33.26			1
8.14.9	Loop Splitting, per Circuit			$33.26			1
8.14.10	Unbundled Dark Fiber, per Circuit			$33.26			1
8.15	**Collocation Available Inventory**						
8.15.1	Standard Sites						
8.15.1.1	Removal of Terminations						
8.15.1.1.1	DSO (per 100)			ICB			3
8.15.1.1.2	DS1 (per termination)			ICB			3
8.15.1.1.3	DS3 (per termination)			ICB			3
8.15.1.1.4	OCN (per 12 fibers)			ICB			3
8.15.1.2	Quote Preparation Fee						
8.15.1.2.1	Caged Collocation			$4,626.54			A, 6
8.15.1.2.2	Cageless Collocation			$4,981.81			A, 6
8.15.2	Special Sites						
8.15.2.1	Special Site Assessment Fee			$1,058.00			4
8.15.2.2	Network Systems Assessment Fee			$1,663.00			4
8.15.2.3	Site Survey			$150.00			4
8.15.3	Re-usable Elements			ICB			3
8.16	**Collocation Decommissioning**						
8.16.1	Additional Labor Other – Basic			$28.90			1
8.16.2	Additional Labor Other – Overtime			$38.60			1
8.16.3	Additional Labor Other – Premium			$48.31			1
8.16.4	Additional Dispatch			$88.10			1
8.17	**Joint Testing**						
8.17.1	Virtual Collocation Maintenance Charge (price contains a one hour set up fee)			$40.96			1
8.17.2	Per half-hour test time fee at the Virtual Collocation Charge			$20.48			1
9.0	**Unbundled Network Elements (UNEs)**						
9.1	**Interconnection Tie Pairs (ITP) – Per Termination**						
9.1.1	DS0						
9.1.1.1	2-Wire	$0.00			C		
9.1.1.2	4-Wire	$0.79			C		

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.1.2	DS1		$1.47			C		
9.1.3	DS3		$17.46			C		
9.2	**Unbundled Loops**							
9.2.1	Analog Loops				See 9.2.4			
	9.2.1.1	2-Wire Voice Grade Loop						
		9.2.1.1.1 Zone 1	$14.53			C		
		9.2.1.1.2 Zone 2	$24.49			C		
		9.2.1.1.3 Zone 3	$55.47			C		
	9.2.1.2	Intentionally Left Blank						
	9.2.1.3	4-Wire Voice Grade Loop						
		9.2.1.3.1 Zone 1	$28.54			C		
		9.2.1.3.2 Zone 2	$48.11			C		
		9.2.1.3.3 Zone 3	$108.99			C		
	9.2.1.4	Intentionally Left Blank						
	9.2.1.5	Unbundled Loop Grooming (2-Wire)	$0.00			C		
	9.2.1.6	Unbundled Loop Grooming (4-Wire)	$0.00			C		
9.2.2	Nonloaded Loops				See 9.2.4			
	9.2.2.1	2-Wire Nonloaded Loop						
		9.2.2.1.1 Zone 1	$14.53			C		
		9.2.2.1.2 Zone 2	$24.49			C		
		9.2.2.1.3 Zone 3	$55.47			C		
	9.2.2.2	Intentionally Left Blank						
	9.2.2.3	4-Wire Nonloaded Loop						
		9.2.2.3.1 Zone 1	$28.54			C		
		9.2.2.3.2 Zone 2	$48.11			C		
		9.2.2.3.3 Zone 3	$108.99			C		
	9.2.2.4	Cable Unloading / Bridge Tap Removal			No Charge at this Time			C
9.2.3	Digital Capable Loops							
	9.2.3.1	Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop			See 9.2.4			
		9.2.3.1.1 Zone 1	$14.53			C		
		9.2.3.1.2 Zone 2	$24.49			C		
		9.2.3.1.3 Zone 3	$55.47			C		
	9.2.3.2	Intentionally Left Blank						
	9.2.3.3	DS1 Capable Loop			See 9.2.5			
		9.2.3.3.1 Zone 1	$74.88			C		
		9.2.3.3.2 Zone 2	$78.63			C		
		9.2.3.3.3 Zone 3	$83.57			C		
	9.2.3.4	DS3 Capable Loop			See 9.2.6			
		9.2.3.4.1 Zone 1	$748.54			C		
		9.2.3.4.2 Zone 2	$953.76			C		
		9.2.3.4.3 Zone 3	$1,009.89			C		
	9.2.3.5	Intentionally Left Blank						
	9.2.3.6	2-Wire Extension Technology	$4.75			C		
	8.2.3.7	2-Wire Extension Technology Grooming	$1.61			C		
9.2.4	Loop Installation Charges for 2 & 4-Wire Analog / Nonloaded, ISDN BRI Capable, xDSL - I Capable, and ADSL Compatible Loop where conditioning is not required.		See 9.2.1 & 9.2.2					
	9.2.4.1	Basic Installation						
		9.2.4.1.1 First			$55.27			C
		9.2.4.1.2 Each Additional			$48.77			C
	9.2.4.2	Basic Installation with Performance Testing						

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				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
		9.2.4.2.1	First			$142.10			C
		9.2.4.2.2	Each Additional			$86.24			C
	9.2.4.3		Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.4.3.1	First			$171.87			C
		9.2.4.3.2	Each Additional			$94.09			C
	9.2.4.4		Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.4.4.1	First			$59.81			C
		9.2.4.4.2	Each Additional			$53.32			C
	9.2.4.5		Basic Installation with Cooperative Testing						
		9.2.4.5.1	First			$142.10			C
		9.2.4.5.2	Each Additional			$94.09			C
9.2.5	DS1 Loop Installation Charges			See 9.2.3.3					
	9.2.5.1		Basic Installation						
		9.2.5.1.1	First			$124.61			C
		9.2.5.1.2	Each Additional			$78.01			C
	9.2.5.2		Basic Installation with Performance Testing						
		9.2.5.2.1	First			$207.62			C
		9.2.5.2.2	Each Additional			$146.05			C
	9.2.5.3		Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.5.3.1	First			$248.42			C
		9.2.5.3.2	Each Additional			$146.04			C
	9.2.5.4		Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.5.4.1	First			$115.22			C
		9.2.5.4.2	Each Additional			$83.36			C
	9.2.5.5		Basic Installation with Cooperative Testing						
		9.2.5.5.1	First			$212.82			C
		9.2.5.5.2	Each Additional			$146.40			C
9.2.6	DS3 Loop Installation Charges			See 9.2.3.4					
	9.2.6.1		Basic Installation						
		9.2.6.1.1	First			$124.61			C
		9.2.6.1.2	Each Additional			$78.01			C
	9.2.6.2		Basic Installation with Performance Testing						
		9.2.6.2.1	First			$207.61			C
		9.2.6.2.2	Each Additional			$146.05			C
	9.2.6.3		Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.6.3.1	First			$248.42			C
		9.2.6.3.2	Each Additional			$146.05			C
	9.2.6.4		Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.6.4.1	First			$173.22			C
		9.2.6.4.2	Each Additional			$122.68			C
	9.2.6.5		Basic Installation with Cooperative Testing						
		9.2.6.5.1	First			$212.82			C
		9.2.6.5.2	Each Additional			$146.40			C
9.2.7	Intentionally Left Blank								
9.2.8	Private Line to Unbundled Loop Conversion					$37.47			C
9.3	**Subloop**								
9.3.1	2-Wire Distribution Loop (Applies to both Analog and Nonloaded Loops)								8
	9.3.1.1		First Loop			$64.83			C

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.3.1.2	Each Additional				$17.69			C
9.3.1.3	First & Each Additional 2-Wire Distribution Loop							
	9.3.1.3.1	Zone 1	$9.60			C		
	9.3.1.3.2	Zone 2	$15.44			C		
	9.3.1.3.3	Zone 3	$20.88			C		
9.3.2	Intentionally Left Blank							
9.3.3	Intra Building Cable		$0.53			C		
9.3.3.1	No Dispatch, First				$35.85			C
9.3.3.2	No Dispatch, Each Additional				$14.93			C
9.3.3.3	Dispatch, First				$75.58			C
9.3.3.4	Dispatch, Each Additional				$25.14			C
9.3.4	Feeder Loop							
9.3.4.1	DS1 Capable Feeder Loop							
	9.3.4.1.1	First Loop			$191.97			C
	9.3.4.1.2	Each Additional			$142.32			C
	9.3.4.1.3	First & Each Additional DS1 Capable Feeder Loop						
		9.3.4.1.3.1 Zone 1	$66.33			C		
		9.3.4.1.3.2 Zone 2	$70.07			C		
		9.3.4.1.3.3 Zone 3	$75.01			C		
9.3.5	MTE Terminal Subloop Access							
9.3.5.1	Subloop MTE - POI Site Inventory, per Request				$113.17			C
9.3.5.2	MTE - POI Rearrangement of Facilities				ICB			C 3
9.3.5.3	MTE - POI Construction of New SPOI		ICB			C 3		
9.3.6	Intentionally Left Blank							
9.3.7	Field Connection Point (FCP)							
9.3.7.1	Feasibility Fee / Quote Preparation Fee				$1,107.09			C
9.3.7.2	FCP Reclassification				$427.17			C
9.3.8	Intentionally Left Blank							
9.3.9	Intentionally Left Blank							
9.3.10	Intentionally Left Blank							
9.3.11	Intentionally Left Blank							
9.3.12	Construction Fee		ICB		ICB	C		C 3
9.4	**Shared Services**							
9.4.1	Shared Loop, per Loop		$5.00		$34.24	C		C
9.4.2	Line Splitting							
9.4.2.1	Basic Installation Charge for Line Splitting				$34.24			B
9.4.3	Loop Splitting							
9.4.3.1	Basic Installation Charge for Loop Splitting				$34.24			C
9.4.4	OSS, per Line, per Month		$3.33			C		
9.4.5	Reclassification Charge				ICB			C 3
9.4.6	Splitter Shelf Charge		$4.96		$541.39	C		C
9.4.7	Splitter TIE Cable Connections							
9.4.7.1	Splitter in the Common Area - Data to 410 Block		$4.31		$2,909.32	C		C
9.4.7.2	Splitter in the Common Area - Data Direct to CLEC		$4.57		$3,084.48	C		C
9.4.7.3	Splitter on the IDF - Data to 410 Block		$1.34		$903.30	C		C
9.4.7.4	Splitter on the IDF - Data Direct to CLEC		$2.60		$1,756.45	C		C
9.4.7.5	Splitter on the MDF - Data to 410 Block		$1.38		$932.51	C		C
9.4.7.6	Splitter on the MDF - Data Direct to CLEC		$3.08		$2,079.88	C		C
9.4.8	Engineering				$1,429.90			C
9.5	**Network Interface Device (NID)**		$0.00		$52.98	C		C

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.6	**Unbundled Dedicated Interoffice Transport (UDIT)**							
9.6.1	DS0 UDIT *(Recurring Fixed & per Mile)*				$173.02			C
	9.6.1.1	Over 0 to 8 Miles	$26.09	$0.09		C	C	
	9.6.1.2	Over 8 to 25 Miles	$26.09	$0.09		C	C	
	9.6.1.3	Over 25 to 50 Miles	$26.09	$0.11		C	C	
	9.6.1.4	Over 50 Miles	$25.60	$0.11		C	C	
9.6.2	DS1 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.2.1	Over 0 to 8 Miles	$34.12	$3.25		C	C	
	9.6.2.2	Over 8 to 25 Miles	$34.95	$3.28		C	C	
	9.6.2.3	Over 25 to 50 Miles	$36.80	$1.86		C	C	
	9.6.2.4	Over 50 Miles	$35.44	$0.79		C	C	
9.6.3	DS3 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.3.1	Over 0 to 8 Miles	$421.97	$5.87		C	C	
	9.6.3.2	Over 8 to 25 Miles	$421.97	$5.87		C	C	
	9.6.3.3	Over 25 to 50 Miles	$421.97	$5.87		C	C	
	9.6.3.4	Over 50 Miles	$420.30	$24.40		C	C	
9.6.4	Intentionally Left Blank							
9.6.5	Intentionally Left Blank							
9.6.6	Intentionally Left Blank							
9.6.7	UDIT DS0 Channel Performance							
	9.6.7.1	DS0 Low Side Channelization	$12.56			C		
	9.6.7.2	DS1 to DS0 Low Side Channelization	$8.41		$184.43	C		C
9.6.8	Multiplexing							
	9.6.8.1	DS1 to DS0	$273.18		$197.38	C		C
	9.6.8.2	DS3 to DS1	$300.35		$1,662.65	C		C
9.6.9	Intentionally Left Blank							
9.6.10	Intentionally Left Blank							
9.6.11	UDIT Rearrangement							
	9.6.11.1	DS0 Single Office			$183.55			C
	9.6.11.2	DS0 Dual Office			$248.25			C
	9.6.11.3	High Capacity Single Office			$248.25			C
	9.6.11.4	High Capacity Dual Office			$277.03			C
9.7	**Unbundled Dark Fiber (UDF) - Intentionally Left Blank**							
9.8	**Shared Transport - Intentionally Left Blank**		$0.001823			C		
9.9	**Unbundled Customer Controlled Rearrangement Element (UCCRE) - Intentionally Left Blank**							
9.10	**Intentionally Left Blank**							
9.11	**Local Switching - Intentionally Left Blank**							
9.12	**Customized Routing - Intentionally Left Blank**							
9.13	**Intentionally Left Blank**							
9.14	**Intentionally Left Blank**							
9.15	**Intentionally Left Blank**							
9.16	**Intentionally Left Blank**							
9.17	**Intentionally Left Blank**							
9.18	**Intentionally Left Blank**							
9.19	**Construction Charges**		ICB		ICB	C		C 3

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			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.20	**Miscellaneous Charges**							
9.20.1	Additional Engineering, per Half Hour or fraction thereof							
	9.20.1.1	Additional Engineering – Basic			$30.03			C
	9.20.1.2	Additional Engineering – Overtime			$37.14			C
9.20.2	Additional Labor Installation, per Half Hour or fraction thereof							
	9.20.2.1	Additional Labor Installation – Overtime			$8.54			C
	9.20.2.2	Additional Labor Installation – Premium			$17.08			C
9.20.3	Additional Labor Other, per Half Hour or fraction thereof							
	9.20.3.1	Additional Labor Other – Basic			$26.18			C
	9.20.3.2	Additional Labor Other – Overtime			$34.96			C
	9.20.3.3	Additional Labor Other – Premium			$43.76			C
9.20.4	Testing and Maintenance, per Half Hour or fraction thereof							
	9.20.4.1	Testing and Maintenance – Basic			$27.81			C
	9.20.4.2	Testing and Maintenance – Overtime			$37.14			C
	9.20.4.3	Testing and Maintenance – Premium			$46.48			C
9.20.5	Maintenance of Service, per Half Hour or fraction thereof							
	9.20.5.1	Maintenance of Service – Basic			$26.18			C
	9.20.5.2	Maintenance of Service – Overtime			$34.96			C
	9.20.5.3	Maintenance of Service – Premium			$43.76			C
9.20.6	Additional Cooperative Acceptance Testing, per Half Hour or fraction thereof							
	9.20.6.1	Additional Cooperative Acceptance Testing – Basic			$27.81			C
	9.20.6.2	Additional Cooperative Acceptance Testing – Overtime			$37.14			C
	9.20.6.3	Additional Cooperative Acceptance Testing – Premium			$46.48			C
9.20.7	Nonscheduled Cooperative Testing, per Half Hour or fraction thereof							
	9.20.7.1	Nonscheduled Cooperative Testing - Basic			$27.81			C
	9.20.7.2	Nonscheduled Cooperative Testing - Overtime			$37.14			C
	9.20.7.3	Nonscheduled Cooperative Testing - Premium			$46.48			C
9.20.8	Nonscheduled Manual Testing, per Half Hour or fraction thereof							
	9.20.8.1	Nonscheduled Manual Testing – Basic			$27.81			C
	9.20.8.2	Nonscheduled Manual Testing – Overtime			$37.14			C
	9.20.8.3	Nonscheduled Manual Testing – Premium			$46.48			C
9.20.9	Cooperative Scheduled Testing							
	9.20.9.1	Cooperative Scheduled Testing - Loss	$0.08			C 5		
	9.20.9.2	Cooperative Scheduled Testing - C Message Noise	$0.08			C 5		
	9.20.9.3	Cooperative Scheduled Testing - Balance	$0.33			C 5		
	9.20.9.4	Cooperative Scheduled Testing - Gain Slope	$0.08			C 5		
	9.20.9.5	Cooperative Scheduled Testing - C Notched Noise	$0.08			C 5		
9.20.10	Manual Scheduled Testing							
	9.20.10.1	Manual Scheduled Testing - Loss	$0.17			C 5		
	9.20.10.2	Manual Scheduled Testing - C Message Noise	$0.17			C 5		
	9.20.10.3	Manual Scheduled Testing - Balance	$0.67			C 5		
	9.20.10.4	Manual Scheduled Testing - Gain Slope	$0.17			C 5		
	9.20.10.5	Manual Scheduled Testing - C Notched Noise	$0.17			C 5		
9.20.11	Additional Dispatch				$79.80			C
9.20.12	Date Change				$9.81			C
9.20.13	Design Change				$69.90			C
9.20.14	Expedite Charge				ICB			C 3
9.20.15	Cancellation Charge				ICB			C 3
9.21	**Channel Regeneration**							
9.21.1	DS1		$0.00		$0.00	C		C
9.21.2	DS3		$0.00		$0.00	C		C
9.22	**Intentionally Left Blank**							
9.23	**UNE Combinations - Intentionally Left Blank**							
10.0	**Ancillary Services - Intentionally Left Blank**							
12.0	**Operational Support Systems**							

Exhibit A
North Dakota*

		Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
12.1	Development and Enhancements, per Order			No charge at this time			C
12.2	Ongoing Maintenance, per Order			No charge at this time			C
12.3	Daily Usage Record File, per Record	$0.0003926			C		
12.4	Trouble Isolation Charges			See 9.20			
17.0	**Bona Fide Request Process**						
17.1	Processing Fee			$1,897.30			C

NOTES:

Unless otherwise indicated, all rates are pursuant to North Dakota Public Service Commission dockets:

A: U S WEST and AT&T Interconnection Agreement approved by the North Dakota Public Utilities Commission in Docket Number PU-453-96-497, effective June 23, 1997.

B: 271 Compliance Investigation Docket Number PU-314-97-193, Order on Group 2 Checklist Items dated 10/15/01.

C: Cost Docket Case No. PU-2342-01-296 effective 12/29/04.

[1] Rate not addressed in cost docket (estimated TELRIC)

[2] Market-based rates contained in the Stipulation and Settlement Agreement in Case No. PU-2342-01-296.

[3] ICB, Individual Case Basis pricing.

[4] Rates per FCC Guidelines. Pole Attachment & Innerduct Occupancy rates revised in 9/17/04 Exhibit A to reflect newly calculated rates.

[5] Rates not applicable to UNE Elements. See Qwest's North Dakota Access Service Catalog

[6] The preliminary QPF costs are included in the Caged, and Cageless space construction charges. The engineering and planning charges are also included in the caged and cageless quote preparation fees. Upon completion of the collocation construction, the quote preparation fee (QPF) will be credited to the final space construction charge for the collocation job. The credit will apply to whichever QPF is applied. This exhibit currently lists multiple QPFs based on what has been proposed on the cost docket and what was approved in the AT&T interconnection agreement. CLEC may choose either QPF at this time.

[7] Intentionally Left Blank

[8] When distribution is purchased only for the purpose of campus wire, no recurring or nonrecurring charges will be assessed. This does not include collocation charges or FCP placement.

[9] Intentionally Left Blank

[10] Intentionally Left Blank

[11] All technically feasible Vertical Switch Features are available with compatible unbundled switch ports. No monthly recurring charge applies for Basic Vertical Switch Features. Only Basic Vertical Features with non-recurring charges are listed. Non-recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity.

[12] A Special Request is a request by the customer to perform something that is technically feasible but the process and pricing are not yet in place.

NORTH DAKOTA DRAFT – 3-10-05

AGREEMENT FOR
TERMS AND CONDITIONS FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES, AND RESALE OF TELECOMMUNICATIONS SERVICES PROVIDED BY

QWEST CORPORATION

FOR

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY

IN THE STATE OF NORTH DAKOTA

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EXHIBIT J Intentionally Left Blank

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Section 1.0 - GENERAL TERMS

1.1 This Agreement for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("CLEC"), a Virginia corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 Intentionally Left Blank.

1.3 This Agreement sets forth the terms, conditions and pricing under which Qwest will provide to CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of North Dakota, for purposes of providing local Telecommunications Services.

1.4 Intentionally Left Blank.

1.5 Intentionally Left Blank.

1.6 Intentionally Left Blank.

1.7 Once this Agreement is approved , any amendment to the Agreement by the Parties will be accomplished through Section 252 of the Act. This Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in the SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the Change Management Process (CMP). CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and Billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options unless the Commission orders otherwise.

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, and CLEC wishes to purchase such new product prior to execution of an Amendment with different terms and conditions, CLEC agrees to abide by the terms and conditions defined by Qwest for such new product on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 CLEC may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, contained in an existing Interconnection Agreement or SGAT, Qwest may require CLEC to accept Legitimately Related provisions to ensure that the opted into provision retains the context set forth in the Interconnection Agreement or this Agreement. The expiration date of the Interconnection Agreement from which the opted into provision was selected or the expiration date specified in the SGAT respectively, whichever is closer to the present date, shall be considered Legitimately Related. In all other instances, Qwest bears the burden of establishing that an Interconnection Agreement or SGAT provision is Legitimately Related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are Legitimately Related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are Legitimately Related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not Legitimately Related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.2.1 Nothing in this Agreement shall preclude CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such provision or agreement itself resulted from an opting in by CLEC that is a party to it.

1.8.3 If Qwest has identified additional provisions that Qwest believes are Legitimately Related and has specified provisions in the proposed amendment to which those provisions are not Legitimately Related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are Legitimately Related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) Days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, 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 metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorneys' fees and costs in prosecuting/defending the action. However, if either Party is found by the Commission to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorneys' fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission

Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successor) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of Telecommunications industry administrative or technical standards.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as of October 3, 2003 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendancy of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60)

Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be resolved by the arbitrator(s) during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendancy of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.2.1 In addition to, but not in limitation of, 2.2 above, nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the FCC's decision and rules adopted in ***In the Matter of 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 and 98-147, FCC 03-36, ***Report and Order and Order on Remand and Further Notice of Proposed Rulemaking***, nor rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same (Decision(s)). Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decision should be changed, vacated, dismissed, stayed or modified.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between this Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates terms and conditions of this Agreement shall prevail.

2.3.1 Intentionally Left Blank.

Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. The Parties shall complete Qwest's "New Customer Questionnaire," as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New Customer Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain Billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new New Customer Questionnaire; however, CLEC will update its New Customer Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this Agreement, which may include an amendment pursuant to Section 1.7.1.

3.3 Intentionally Left Blank.

3.4 Intentionally Left Blank.

Section 4.0 - DEFINITIONS

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a Switch used to connect End Office Switches to interexchange Carrier Switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline Telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video Telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

"Applicable Law" means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and Interconnection for Telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in Switch technology that initially records telecommunication message information. AMA format is contained in the AMA

document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification" or "ALI" is the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Number Identification" or "ANI" is the Billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit Switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to End User Customers which provides the End User Customer with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such End User Customer to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

"Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User Customer and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Carrier Liaison Committee" or "CLC" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a Switch used to provide Telecommunications Services, including, but not limited to:

> "End Office Switches" which are used to terminate End User Customer station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and
>
> "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be considered Tandem Office Switch(es) to the extent such Switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch. A fact-based consideration by the Commission of geography should be used to classify any Switch on a prospective basis.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record Billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Centrex" shall have the meaning set forth in Section 6.2.2.9.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the Billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the State Regulatory Commission or Board with jurisdiction for the services provided pursuant to this Agreement. In the State of North Dakota, "Commission" means the North Dakota Public Service Commission.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, Customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data" means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Data Local Exchange Carrier" or "DLEC" is a CLEC interconnecting primarily for purposes of transporting data.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between Qwest Wire Centers, Qwest End Office Switches, and Qwest Tandem Switches to which CLEC is granted exclusive use. The path may operate at DS-1 or DS-3 transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated Cross Connection of Digital Signal Level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with Cross Connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated Cross Connection

capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a Switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay, or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

> "ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.
>
> "HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.
>
> "HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.
>
> "IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.
>
> "RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the loop and optimize the line rate for a given line

quality.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Section 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Lists" shall have the meaning set forth in Section 10.6.1.1.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 5.2.1.

"Electronic Bonding" is a real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area.

The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

"Enhanced Services" means any service offered over Common Carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve End User Customer interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Section 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access" (IntraLATA Toll) as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the Agreement shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the Local Calling Area as determined by the Commission.

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually-agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail Customers. Finished Services do not include Unbundled Network Elements or

combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the Provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Individual Case Basis" or "ICB" shall have the meaning set forth in Exhibit I.

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"Integrated Digital Loop Carrier" means a subscriber Loop Carrier system, which integrates multiple voice channels within the Switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When CLEC signs and delivers a copy of this Agreement to Qwest pursuant to the notice provision of the Agreement, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(e) of the Act.

"Interexchange Carrier" or "IXC" means a Carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately Related" terms and conditions are those rates, terms, and conditions that relate solely to the individual Interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other Interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular Interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXCs to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP" shall have the meaning set forth in Section 10.2.1.1.

"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and Billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying Carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the technician performs work on a business Day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply

when the technician performs work on either a Sunday or Qwest recognized holiday. These charges may be assessed by either Qwest or CLEC in accordance with 12.3.4.4.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one Carrier's responsibility for service begins and the other Carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" means an Interconnection between two (2) networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the Billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the Carrier in the call routing process immediately preceding the terminating Carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for Maintenance and Repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element (including all of its features, functions and capabilities) that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Section 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"Non-Qualifying Service" is a service that is not a Qualifying Service.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the basic numbering plan for the Telecommunications networks located in the United States as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone

number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit Switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and Billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the Billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility Provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where Technically Feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User Customers, its Affiliates or to any other party.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and IntraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop Concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

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

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7, including out of hours coordination.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider.

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in

place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Qualifying Service" is a Telecommunications Service that competes with a Telecommunications Service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, Local Exchange Service, such as plain old telephone service (POTS), and Access Services, such as Digital Subscriber Line services and high-capacity circuits. Services used solely as an input for CLEC to provide retail interexchange or information services are not Qualifying Services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center, and 2) the corresponding geographic area which is associated with one or more particular NPA-NNX codes which have been assigned to a LEC or its provision of Telephone Exchange Service.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes, but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the Central Office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for Provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Premises" means all Qwest Premises, other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User Customer and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital Loop Carriers, fiber hubs, DSLAMs, etc.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

1) Message Transfer Part (MTP), which provides functions for basic routing of signaling messages between signaling points;

2) Signaling Connection Control Part (SCCP), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;

3) Integrated Services Digital Network User Part (ISUP), which provides for transfer of call setup signaling information between signaling points; and

4) Transaction Capabilities Application Part (TCAP), which provides for transfer of non-circuit related information between signaling points.

"Signaling Transfer Point" or "STP" means a Packet Switch that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common channel Signaling (CCS) messages.

"Special Request Process" or "SRP" shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two (2) copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all Loop lengths, model Loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the Loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or "SATE" shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Technically Feasible." Interconnection, access to unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as

complimentary Transaction Sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trouble Reports" means trouble reports received via MEDIACC, CEMR, or reported to one of Qwest's call or repair centers, and managed and tracked within Qwest's repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

OPEN - Covad proposed; Qwest cannot agree

"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, for which unbundled access is required under section 271 of the Act or applicable state law, or for which unbundled access is provided under this Agreement.

"Unbundled Network Element Platform" or "UNE-P" is a combination of Unbundled Network Elements as set forth in Section 9.23.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network as required by the FCC, the Commission or this Agreement.

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice

facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

Section 5.0 - TERMS AND CONDITIONS

5.1 General Provisions

5.1.1 Intentionally Left Blank.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1 If such impairment is material and poses an immediate threat to the safety of either Party's employees, Customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other Party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates the provision or refuse to provide the same type of service if it reasonably appears that the particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other Party shall provide written notice within five (5) calendar Days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar Days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar Days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its End User Customers and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and order of the Federal Communications Commission and orders of the Commission.

5.2 Term of Agreement

5.2.1 This Agreement shall become effective on the date of Commission Approval. This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire on [to be filled in by CD&S].

5.2.2 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 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the term, or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses.

5.3 Proof of Authorization

5.3.1 Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all Applicable Laws and rules and shall be subject to any penalties contained therein.

5.4 Payment

5.4.1 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.

5.4.1.1 Qwest may send bills to CLEC or CLEC may send bills to Qwest, containing amounts found to be unbilled or underbilled ("Backbill(s)"), as follows:

5.4.1.1.1 Except as provided in Section 5.4.1.1.5 below, for erroneous failure to bill or underbilling of any charges incurred by the billed Party under this Agreement, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120) Days prior to the Backbill Date. For the purposes of this Section 5.4.1.1, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the Billing cycle in which the Billed Party used such service; or

5.4.1.1.2 For failure to bill or underbilling where data exchange with third party Carriers is required, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120)Days prior to the Backbill Date; or

5.4.1.1.3 Where Qwest or CLEC is required by regulatory agencies, arbitrators, courts, or legislatures to implement new pricing structures, Qwest may submit to CLEC, or CLEC may submit to Qwest, up to one hundred twenty (120) Days after the later of the implementation date required in the regulatory action, the date of the final, non-appealable arbitration or order, or the effective date of the legislation or Tariff (each such date hereinafter referred to as a "Governmental Requirement Date"), a Backbill for charges incurred by CLEC, or incurred by Qwest, as a result of, and since the applicable Governmental Requirement Date; or

5.4.1.1.4 Qwest and CLEC will exert commercially reasonable efforts not to send Backbills from their Billing systems outside the time periods defined in Section 5.4.1.1.1 through 5.4.1.1.3, above. In any event, except as provided in Section 5.4.1.1.5 below, neither CLEC nor Qwest will be liable for charges contained in Backbills that are sent outside the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3.

5.4.1.1.5 The Billing Party may send Backbills outside of the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3, but otherwise subject to the limitations in this Agreement applicable to Billing disputes, for charges incurred by the billed Party where the failure to bill or underbilling is caused

solely by the acts, failure or refusal to act, errors or omissions of the billed Party, and the billed Party shall be liable for such Backbilled charges. Where such failure to bill or underbilling is caused in part by the billed Party and in part by the Billing Party, the Parties may agree upon other time periods for Backbilling.

5.4.2 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 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. 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.

5.4.3 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 5.4.4 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 reconnect charge set forth in Exhibit A required to reconnect each resold 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 will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 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.

5.4.4 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. To the extent that either Party disputes any charges or monthly billing pursuant to this Section 5.4.4, the

Party's withholding of such disputed charges pursuant to this Section 5.4.4 shall not constitute a default under Section 5.13 until such dispute is resolved. Nothing in this Section shall be construed to restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall be subject to the time limits set forth in Section 5.18.5.

5.4.4.1 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.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, 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.

5.4.4.3 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 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or Commission rules.

5.4.5 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 this Section 5.4 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 of undisputed amounts 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 if allowed by the applicable Commission regulations, 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.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission 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.

5.4.7 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 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 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 Customers to make other arrangements for such non-paid services.

5.5 Taxes

5.5.1 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.

5.6 Insurance

5.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding $10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the $10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than $100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than $1,000,000 each occurrence and $2,000,000 general aggregate limit.

5.6.1.3 Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than $1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of $10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is $11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the Premises or Remote Premises.

5.6.2 Each Party will initially provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificates upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar Days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by the other Party; and (4) acknowledge severability of interest/cross liability coverage.

5.7 Force Majeure

5.7.1 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.

5.8 Limitation of Liability

5.8.1 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. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.

5.8.2 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. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

5.8.3 Intentionally Left Blank.

5.8.4 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.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 Intentionally Left Blank.

5.9 Indemnity

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

5.9.1.1 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.

5.9.1.2 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 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.

5.9.1.3 Reserved for Future Use.

5.9.1.4 For purposes of Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS Splitter: "End User Customer" means the DSL provider's End User Customer for claims relating to DSL and the voice service provider's End User Customer for claims relating to voice service.

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 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.

5.9.2.2 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.

5.9.2.3 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.

5.10 Intellectual Property

5.10.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to Telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities,

equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than Qwest services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause End User Customers to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes End User Customer confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective Owners. The Parties shall comply with all Applicable Law governing Marks worldwide and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

5.11 Warranties

5.11.1 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.

5.12 Assignment

5.12.1 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.

5.12.2 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) Days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission'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. Qwest will provide notice to CLEC after all required state and federal approvals for the transfer have been issued. 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.

5.12.3 Nothing in this section is intended to restrict CLEC's rights to opt into interconnection agreements under § 252 of the Act.

5.13 Default

5.13.1 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.

5.14 Disclaimer of Agency

5.14.1 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.

5.15 Severability

5.15.1 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.

5.16 Nondisclosure

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party shall from that time forward, treat such information as Proprietary Information. To the extent permitted by Applicable Law, either Party may disclose to the other proprietary or confidential customer, technical or business information.

5.16.2 Upon request by the disclosing Pearty, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. Each Party shall use the other Party's Proprietary Information only in connection with this Agreement and in accordance with Applicable Law, including but not limited to, 47 U.S.C. § 222. In accordance with Section 222 of the Act, when either Party receives or obtains Proprietary Information from the other Party for purposes of providing any Telecommunications Services, that Party shall use such information only for such purpose, and shall not use such information for its own marketing efforts. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. Violations of these obligations shall subject a Party's employees to disciplinary action up to and including termination of employment. If either Party loses, or makes an unauthorized disclosure of, the other Party's Proprietary Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery

by the disclosing Party; or

b) is or becomes publicly known through no wrongful act of the receiving Party; or

c) is rightfully received from a third Person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; or

f) is approved for release by written authorization of the disclosing Party; or

g) is required to be disclosed by the receiving Party pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 Forecasts provided by either Party to the other Party shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to Qwest's legal personnel in connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which CLEC provided it to Qwest under this Agreement, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Upon the specific order of the Commission, Qwest may provide the forecast information that CLEC has made available to Qwest under this Agreement, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to CLEC involved, in order to allow it to prosecute such procedures to their completion.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

5.17 Survival

5.17.1 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.

5.18 Dispute Resolution

5.18.1 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 5.18 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to

resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 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 pendancy of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the arbitrator, such decision shall supersede any provisional remedy.

5.18.2 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.

5.18.3 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 5.18.3.1. 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 5.18. 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 or in another mutually agreeable location. 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). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty-eight (48) hours of the determination to arbitrate.

5.18.3.1 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 5.18.3.1, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 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.

5.18.3.3 Arbitrator's Decision

5.18.3.3.1 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.

5.18.3.3.2 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.

5.18.3.4 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 5.16 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.

5.18.4 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.

5.18.5 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. No Dispute relating to bills submitted by either Party to the other Party may be brought more than one hundred twenty (120) Days after the date of the bill(s) at issue.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 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.

5.18.8 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.

5.19 Controlling Law

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota .

5.20 Responsibility for Environmental Contamination

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the Work Locations or (ii) the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement or equipment placement activities undertaken by CLEC, which are not in accordance with Technical Publication 77350, that result in the release of respirable asbestos from asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could

affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

5.21 Notices

5.21.1 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 below:

Qwest Corporation
Director - Interconnection Compliance
1801 California Street, Suite 2410
Denver, CO 80202
Phone: 303-965-3029
Fax: 303-896-7077
Email: 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:

Covad Communications
Mr. Jim Kirkland
Senior Vice President and Senior Counsel
110 Rio Robles
San Jose, CA 95134-1813
Phone: (408)952-6400
Fax: (408)952-7539
Email: kirkland@covad.com

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 5.21.

5.22 Responsibility of Each Party

5.22.1 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.

5.23 No Third Party Beneficiaries

5.23.1 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.

5.24 Reserved for Future Use

5.24.1 Reserved for Future Use.

5.25 Publicity

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

5.26 Executed in Counterparts

5.26.1 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.

5.27 Compliance

5.27.1 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.

5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense,

modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

5.29 Cooperation

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, Provisioning and Billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

5.30 Amendments

5.30.1 Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar Days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

5.30.2 Intentionally Left Blank.

5.30.3 The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Agreement may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

5.31 Entire Agreement

5.31.1 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.

5.32 Intentionally Left Blank

5.33 None of the terms and conditions contained herein shall be construed, interpreted or applied to limit or in any way impede the full and complete execution upon, or enforceability of, any separate or independent agreement entered into by the Parties relating to the purchase of services or other network components that are not required to be included under this Agreement or any other agreement that must be filed pursuant to Section 252 of the Act. Any separate or independent agreement entered into by the Parties that creates a filing obligation

pursuant to Section 252 must be filed as an interconnection agreement with the appropriate state commissions(s). The Parties enter into this Agreement without waiving any current or future legal rights and without prejudicing any position either Party may take on issues before state or federal regulatory or legislative bodies or courts of competent jurisdiction.

Section 6.0 – RESALE

This agreement does not include resale or resale commingling. In the event CLEC wishes to order resale or resale commingling, the Parties will negotiate an amendment to this agreement, subject to Applicable Law.

Section 7.0 - INTERCONNECTION

CLEC does not intend to order Interconnection; however in the event CLEC wishes to order Interconnection, the Parties will negotiate an appropriate amendment to this Agreement.

Section 8.0 – COLLOCATION

8.1 Description

8.1.1 Collocation allows for the placing of equipment by CLEC at Qwest's Premises, where Technically Feasible and space is legitimately available, that is necessary for accessing Unbundled Network Elements (UNEs), ancillary services or Interconnection. Collocation includes the leasing to CLEC of physical space in Qwest Premises, as well as the resources necessary for the operation and economical use of collocated equipment, such as the use by CLEC of power; heating, ventilation and air conditioning (HVAC); and cabling in Qwest's Premises. Collocation also allows CLEC to access Interconnection Distribution Frames (ICDF) for the purpose of accessing and combining Unbundled Network Elements and accessing ancillary services. There are currently eight (8) standard types of Collocation available pursuant to this Agreement – Virtual, Caged Physical, Shared Caged Physical, Cageless Physical, Interconnection Distribution Frame, Adjacent Collocation, Common Area Splitter Collocation, and Remote Collocation. Other types of Collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of Collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this Agreement. Nothing in this Agreement shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the Parties or ordered by the state Commission or any other competent authority

8.1.1.1 Virtual Collocation -- A Virtual Collocation arrangement requires CLEC to purchase and deliver to Qwest CLEC's own equipment for Qwest to install, repair, and maintain in Qwest's Premises. CLEC does not have physical access to its virtually collocated equipment in the Qwest Premises.

8.1.1.2 Caged Physical Collocation -- allows CLEC to lease caged floor space for placement of its equipment within Qwest's Premises for the purpose of interconnecting with Qwest Finished Services or accessing Unbundled Network Elements. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within the cage.

8.1.1.3 Cageless Physical Collocation -- is a non-caged area within a Qwest Premises. Qwest shall provide such space in an efficient manner that minimizes the time and costs. In Wire Centers, space will be made available in single frame bay increments. Qwest shall provide space, where available, in existing Qwest line ups, under existing cable racking and ironwork, where there is existing HVAC and proximately available power supplies, subject to the reservation guidelines set forth in Section 8.2.1.16. In Wire Centers, the current minimum square footage is nine (9) square feet per bay, however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly. Space will be provided utilizing industry standard equipment bay configurations in which CLEC can place and maintain its own equipment. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within CLEC's

leased Collocation space. CLEC may elect to share its Cageless Collocation space (e.g. sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, provisioning, repairing, maintaining, and billing for equipment, cross-connects, and services in its Collocation space.

8.1.1.4 Shared Caged Physical Collocation -- allows two (2) or more CLECs to share or sublease a single Collocation enclosure. Under Shared Physical Collocation, one (1) CLEC obtains a Caged Physical Collocation arrangement from Qwest pursuant to this Agreement or an approved Interconnection agreement, and another CLEC, pursuant to the terms of its Agreement or approved Interconnection agreement, may share use of that space, in accordance to terms and conditions of a sublease agreement between the two (2) CLECs. Shared Collocation may also be established through joint Application by CLECs in which Qwest will have a separate Billing relationship with each applicant and will look to each collocating CLEC for payment of its proportionate share of the charges relating to the Collocation space. Qwest will prorate the charge for site conditioning and preparation undertaken by Qwest to construct the Shared Collocation cage or condition the space for Collocation use, regardless of how many Carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating CLEC (and billed directly to each such CLEC) based on the percentage of the total space utilized by that CLEC as per the Collocation Application. Qwest shall not place unreasonable restrictions on CLEC's use of a Collocation cage, such as limiting CLEC's ability to contract with other CLECs to share CLEC's Collocation cage in a sublease-type arrangement. In addition, if two (2) or more CLECs who have Interconnection agreements with Qwest utilize a Shared Collocation arrangement, Qwest shall permit each CLEC to order UNEs to and provision service from that Shared Collocation space, regardless of which CLEC was the original collocator, directly from Qwest. Qwest shall make Shared Collocation space available in single-bay increments or their equivalent.

8.1.1.5 Interconnection Distribution Frame (ICDF) Collocation -- is offered for the purpose of facilitating CLEC's combining of Unbundled Network Elements and ancillary services. Under ICDF Collocation, CLEC need not collocate equipment in the Qwest Wire Center. With ICDF Collocation, CLEC will have access to the Qwest Wire Center and an ICDF to combine UNEs and ancillary services. The ICDF connects through tie cables to various points within the Wire Center (e.g., MDF, COSMIC™ or DSX, etc.) providing CLEC with access to UNEs and ancillary services.

8.1.1.5.1 The ICDF is a distribution frame shared by multiple providers. If CLEC desires a dedicated distribution frame for the purpose of facilitating CLEC's combination of UNEs and ancillary services, CLEC may do so through the placement of a CLEC-owned Cross Connection device collocated in the Qwest Wire Center through either Caged or Cageless Physical Collocation.

8.1.1.6 Adjacent Collocation – is available in those instances where space is legitimately exhausted in a particular Qwest Premises to accommodate Physical Collocation. Qwest shall make space available in adjacent controlled environmental vaults, controlled environmental huts, or similar structures to the extent Technically Feasible. Qwest shall permit CLEC to construct or otherwise procure such an adjacent structure on property owned, leased or otherwise controlled by Qwest, subject only to applicable OSHA, EPA, federal, state, and local safety and maintenance requirements. Such adjacent structure shall be in accordance with Qwest's design and space planning

for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval, which approval may not be unreasonably withheld or delayed. Qwest must provide power and Physical Collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other Physical Collocation arrangement. Qwest must permit CLEC to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and Telecommunications equipment, in adjacent facilities constructed by Qwest, by CLEC itself, or a third party.

8.1.1.7 Common Area Splitter Collocation – See Section 9.4 for a description.

8.1.1.8 Remote Collocation – allows CLEC to collocate equipment in or adjacent to a Qwest Remote Premises. The terms for Remote Collocation are set forth more fully in Section 8.2.7 and 8.4.6.

8.1.1.8.1 With respect to Cross Connections for access to Subloop elements in multi-tenant environments (MTE), and field connection points (FCP), the provisions concerning Subloop access and intervals are contained in Section 9.3. This type of access and Cross Connection is not Collocation.

8.1.2 Collocation – Available Inventory

8.1.2.1 Collocation Available Inventory provides the terms and conditions under which (1) CLEC can purchase returned Collocation sites and elements ("Qwest Postings") and (2) CLEC may post CLEC controlled sites that are available for a Transfer Of Responsibility ("CLEC Postings"). Available sites will be posted on the "Collocation Classified" web site: http://www.qwest.com/cgi-bin/wholesale/collocation.cgi.

8.1.2.1.1 Qwest Postings: Collocation sites available on the Qwest Available Inventory list may be totally or partially completed before being returned to Qwest inventory. Both caged and cageless sites will be offered on the inventory list. Sites will be offered "AS IS, WHERE IS."

8.1.2.1.2 CLEC Postings: Available sites listed in the "CLEC Postings" section of the Collocation Classifieds are eligible for Transfer to an assuming CLEC with or without working circuits as described in the Collocation Transfer of Responsibility Product offering.

8.1.2.1.3 The "Collocation Classified" web site refers to a tool used by CLEC and Qwest to post listings of available collocation sites. The site contains Qwest Postings and CLEC Postings.

8.1.3 Collocation – Joint Testing

8.1.3.1 Qwest's Joint Testing at the Interconnection Distribution Frame (ICDF) allows a CLEC to request Qwest to participate in Joint Testing of CLEC terminations at the ICDF once CLEC's equipment has been placed in CLEC's Collocation.

8.1.4 Collocation – DC Power Reduction

8.1.4.1 Qwest's Power Reduction Procedure offers CLEC the option to reduce power on an existing feed. It allows a CLEC to reserve a fuse or breaker position on the power board or Battery Distribution Fuse Bay (BDFB) when reducing a multiple feed to zero. CLEC's payment of the Monthly Power Maintenance charge will provide an option to hold the existing power cabling and fuse position for the CLEC's future power augment requests as described in Section 8.2.11.6 below.

8.1.5 Collocation – Cancellation of Collocation Application

8.1.5.1 Cancellation of Collocation Request. CLEC may cancel a Collocation request prior to the completion of the request by Qwest. CLEC does so by submitting a written request by certified mail to the Qwest account manager. CLEC shall be responsible for payment of all costs incurred by Qwest up to the point when the cancellation is received.

8.1.5.1.1 Cancellation is available for all Collocation sites under a particular Billing Authorization Number (BAN) for which the CLEC has NOT received notification of completion from Qwest. A Cancellation will only occur upon request by the canceling CLEC.

8.1.5.2 Cancellation is offered for all types of Collocation.

8.1.5.3 A request for Cancellation is irrevocable once Qwest has accepted the application.

8.1.6 Collocation – Decommissioning of Collocation Space

8.1.6.1 Decommissioning refers to the deactivation of a Collocation site occupied by CLEC and removal of CLEC equipment there from.

8.1.6.2 Decommissioning is offered for all types of Collocation.

8.1.6.3 A request for Decommissioning is irrevocable once Qwest accepts the application.

8.1.7 Collocation – Transfer of Responsibility

8.1.7.1 Transfer of Responsibility refers to the transfer of a Collocation site to an assuming CLEC or from a vacating CLEC subject to the conditions set forth herein. A Transfer of Responsibility Collocation site is identified via the vacating CLEC's 11 character CLLI™ code.

8.1.7.2 Transfer of Responsibility is offered for Caged Physical, Cageless Physical, Shared Caged and Virtual Collocation.

8.1.7.3 All other types of Collocation to be transferred will be handled on an Individual Case Basis (ICB) by contacting the appropriate Qwest Wholesale Project Manager (WPM).

8.1.7.4 There are two types of Transfer of Responsibility:

8.1.7.4.1 Transfer of Responsibility without working circuits – there are no active terminations (e.g., Digital Signal Level 0 (DS0), Digital Signal Level 1 (DS1)) for the Collocation site to be transferred.

8.1.7.4.2 Transfer of Responsibility with working circuits – active terminations (e.g., DS0, DS1) are associated with the Collocation site to be transferred.

8.1.7.5 Transfer of Responsibility with working circuits is offered if only administrative changes are required and the transfer does not involve translations activity that need to be processed in conjunction with the transfer. If the CLEC's transfer plans allow for the completion of the Transfer of Responsibility prior to the translation activity, then the transfer request would be permissible within the product offering.

8.1.7.6 A request for Transfer of Responsibility is irrevocable upon one hundred percent (100%) payment by the assuming CLEC of the nonrecurring Collocation transfer charges reflected on the quote.

8.2 Terms and Conditions

8.2.1 Terms and Conditions - All Collocation

8.2.1.1 Qwest shall provide Collocation on rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall provide Collocation in accordance with all applicable federal and state laws.

8.2.1.1.1 In accordance with the FCC rules regarding combinations of Unbundled Network Elements and Commingling of facilities and services which are addressed in Sections 9.1 and 9.23, Qwest will not Commingleservices or Network Elements that are offered to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

8.2.1.1.1.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price

lists, or other Telecommunications Services offerings.

8.2.1.1.1.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

8.2.1.2 Collocation of Switching Equipment. CLEC may collocate any equipment that is necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.2.1 Digital Subscriber Line Access Multiplexers (DSLAMS) always meet this legal standard.

8.2.1.2.2 Asynchronous Transfer Mode (ATM) or Packet Switching equipment also meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL or VoDSL. Equipment used predominantly to support DSLAMs and ATMs, such as routers and concentrators, as well as testing and network management equipment also meet this legal standard. Before any equipment that includes switching functionality is installed, CLEC must provide a written inventory to Qwest of all switching equipment and how it will be used for Interconnection or access to Unbundled Network Elements. Once CLEC establishes that it will use a certain type of equipment for Interconnection or access to Unbundled Network Elements, Qwest will allow future Collocations of similar equipment without requesting a written justification unless and until Qwest can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Qwest will complete the Collocation within the appropriate interval unless granted relief by the Commission.

8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Local Exchange Service.

8.2.1.2.4 Except as provided for in Sections 8.2.1.2.1 through 8.2.1.2.3 above, CLEC may not collocate equipment that is not necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.3 CLEC must identify what transmission and Cross Connection equipment will be installed and the vendor technical specifications of such equipment so that Qwest may verify the appropriate power, floor loading, heat release, environmental particulate level, HVAC, and tie cables to CLEC-provided Cross Connection device.

8.2.1.4 Demarcation Points for Unbundled Network Elements (UNEs) and ancillary services. The Demarcation Point for Unbundled Network Elements and ancillary services is that physical point where Qwest shall terminate its Unbundled Network Elements and ancillary services for access by CLEC. There are two (2) standard Demarcation Points where Unbundled Network Elements and ancillary services may be delivered to CLEC. CLEC shall specify its choice of standard Demarcation Points for its access to UNEs and ancillary services. One available Demarcation Point is at CLEC-provided Cross Connection equipment in CLEC's

Physical or Virtual Collocation space. Alternatively, the Demarcation Point can be at an Interconnection Distribution Frame (ICDF) or may be established at a location jointly agreed to by CLEC and Qwest. To the extent CLEC selects a Demarcation Point outside of its collocated space, CLEC shall provide and Qwest shall install the tie cables from CLEC's collocated equipment to the Demarcation Point. Alternatively, Qwest shall provide and install these tie cables, at CLEC's expense. CLEC shall be provided with access to all test access points on the ICDF or at the first test point in the Qwest network at which CLEC's cables terminate on the ICDF or on the MDF in offices where there is no ICDF.

8.2.1.5 Qwest will provide a connection between Unbundled Network Elements and ancillary services and a Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). The Demarcation Point shall be:

a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation space; or

b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF;

d) at a direct connection point of termination as described in Section 8.3.1.11.2; or

e) at another Demarcation Point mutually-agreed to by the Parties.

8.2.1.6 CLEC may purchase Qwest's finished Private Line or Switched Access Services via applicable Tariff terms and conditions. These services will be terminated at the Demarcation Point.

8.2.1.7 For Caged and Cageless Physical Collocation, Shared Caged Physical Collocation and Virtual Collocation, CLEC must lease space for the placement of CLEC's equipment within Qwest's Premises. Qwest will provide the structure that is necessary in support of Collocation including physical space, a cage (for Caged Physical Collocation), required cabling between equipment and other associated hardware.

8.2.1.8 All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards. Qwest shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Qwest imposes on its own equipment located on its Premises. Applicable documents are available via the PCAT.

8.2.1.9 Space Availability Report -- Upon request by CLEC, Qwest will submit to a requesting CLEC within ten (10) calendar Days of CLEC's request, a report for each requested Premises, that includes:

a) available Collocation space in a particular Qwest Premises (including new

collocation space as well as available inventory collocation space);

b) number of collocators;

c) any modifications in the use of the space since the last report;

d) measures that Qwest is taking to make additional space available for Collocation;

e) whether sufficient power is available to meet the specific CLEC request;

f) number of CLECs in queue at the Premises, if any;

g) whether the Wire Center is equipped with DS3 capability; and

h) the number and description of Qwest and its Affiliates and CLEC reservations of space.

8.2.1.9.1 A Space Availability Report Charge in Exhibit A will apply to each Space Availability Report requested by CLEC and shall apply on per Premises basis.

8.2.1.9.2 Inventory Report – Remote Premises. The locations of the Remote Premises (e.g., Feeder Distribution Interfaces, "FDI") and the Customer addresses served by each Remote Premises are available to CLECs through the Raw Loop Data Tool. Remote Premises with Digital Loop Carrier and Pair Gain equipment will be provided on the web site in the ICONN database. (ICONN is available through the Qwest web site located at http://www.qwest.com/iconn.). If CLEC is unable to determine the information it seeks regarding Remote Premises after using such database tools, Qwest will provide CLEC with a report that contains the information. The Parties agree that a charge may apply to such report, based on time and material, unless the database information is inaccurate or unusable for the Remote Premises then no charge would apply. Qwest will provide CLEC access to relevant plats, maps, engineering records and other data in accordance with Section 10.8.2.4. In addition, CLEC can request a copy of Qwest's distribution area map associated with the Remote Premises, with a charge for time and material.

8.2.1.10 Collocation is offered on a first-come, first-served basis. Requests for Collocation may be denied due to technical infeasibility and/or the legitimate lack of sufficient space in a Qwest Premises for placement of CLEC's equipment. If Qwest determines that the amount of space requested by CLEC for Caged Physical Collocation is not available, but a lesser amount of space is available, that lesser amount of space will be offered to CLEC for Caged Physical Collocation. Alternatively, CLEC will be offered Cageless Physical Collocation (single frame bay increments), or Virtual Collocation as an alternative to Caged Physical Collocation. In the event the original Collocation request is not available due to lack of sufficient space, and CLEC did not specify an alternative form of Collocation on the original order form, CLEC will be required to submit a new order for CLEC's preferred alternative Collocation arrangement. If CLEC identifies alternate choices for Collocation on its original Collocation request, Qwest will determine the feasibility of the next preferred option in

the event CLEC's first choice is not available. To the extent possible, Qwest shall make contiguous space available to CLEC when it seeks to expand its existing Collocation space. Where adjoining space is not available, Qwest will engineer a route for CLEC to provide facilities between the non-adjoining CLEC Collocation spaces as part of the Collocation order. When planning renovations of existing facilities or constructing or leasing new facilities, Qwest shall take into account projected demand for Collocation of equipment. In rendering its determination as to whether space is available to fulfill a CLEC request for new collocation, collocation augment or Available Inventory Collocation, Qwest will review the application to determine whether there is new, vacated, returned or abandoned space, offered "as is" or modified, that may fill the CLEC's requirement.

8.2.1.10.1 Space Denial Queue – Qwest will maintain a list of denied Collocation requests, in order of the date of receipt (Space Denial Queue), for each Premises where Qwest has exhausted Collocation space. A separate queue will be maintained for each Premises. When space becomes available in a Premises in which a queue has developed, Qwest will inform CLECs in the queue that space for Collocation has become available. If there is insufficient space to accommodate all CLECs in queue, Qwest shall notify CLECs of the availability of space in accordance with CLEC's position in the queue. CLEC must respond within fifteen (15) calendar Days of receipt of notification from Qwest with a new Collocation Application. If CLEC does not provide a Collocation Application within fifteen (15) calendar Days of receipt of notification, or if CLEC responds that it no longer requires the Collocation space, CLEC shall be removed from the queue and the available space shall be offered to the next CLEC in the queue. If the space made available to a CLEC in the queue is not sufficient to meet such CLEC's needs, such CLEC may deny the space that becomes available and keep its position in the queue.

8.2.1.11 If Qwest denies a request for Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to tour the entire Premises escorted by Qwest personnel within fourteen (14) calendar Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed floor plans for the Premises with CLEC during the tour, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact, it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Collocation Application Date for determining RFS unless both Parties agree to a revised date.

8.2.1.12 Qwest shall submit to the Commission, subject to any protective order as the Commission may deem necessary, detailed floor plans or diagrams of any Premises where Qwest claims that Physical Collocation is not practical because of space limitations.

8.2.1.13 Qwest will maintain a publicly available document, posted for viewing on the Internet, (http://www.qwest.com/wholesale/notices/collo/spaceavail.html) indicating all Premises that are full, and will update this document within ten (10) calendar Days of the date at which a Premises runs out of physical space and will update the document within ten (10) calendar Days of the date that space becomes available. In addition, the

publicly available document shall include, based on information Qwest develops through the Space Availability Report process, the Reservation Process, or the Feasibility Study Process:

a) Number of CLECs in queue at the Premises, if any;

b) Premises that have not been equipped with DS3 capability;

c) Estimated date for completion of power equipment additions that will lift the restriction of Collocation at the Premises; and

d) Address of the Remote Premises that have been inventoried for Remote Collocation, and if the Remote Premises cannot accommodate Collocation.

Notwithstanding the foregoing, the Qwest web site will list and update within the ten (10) Day period, all Wire Centers that are full, whether or not there has been a CLEC requested Space Availability Report.

8.2.1.14 Reclamation and Reconditioning of Space

8.2.1.14.1 Reclamation of Space -- Reclamation of space is performed by Qwest removing unused, obsolete Qwest equipment to make space for equipment use. The cost of removal of the obsolete unused equipment shall be borne by Qwest.

8.2.1.14.1.1 If CLEC issues a forecast or reservation for Collocation, Qwest shall use its best judgement to determine whether it would be appropriate to reclaim space and or equipment to meet expected Collocation requirements.

8.2.1.14.1.2 If CLEC issues a Collocation Application and unused, obsolete equipment must be removed to provide the requested Collocation, Qwest will affirmatively remove such unused, obsolete equipment as necessary to fulfill the Collocation request within the applicable interval set forth in section 8.4.

8.2.1.14.2 Reconditioning of Space -- Reconditioning of space is the remodeling of space for equipment use, such as, but not limited to, adding HVAC. The Collocation feasibility study will identify whether reconditioning of space is available and necessary to meet CLEC needs for Collocation. If requested by CLEC, Qwest will assess the cost of such reconditioning, provide a quote to CLEC for the costs, and upon Acceptance of quote by CLEC, perform the necessary work to recondition the space. For reconditioned space, CLEC is responsible for prorated charges based on the amount of space requested.

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8.2.1.16 Qwest may retain a limited amount of floor space for its own specific future uses, provided, however, that neither Qwest nor any of its Affiliates may reserve space for future use on terms more favorable than those that apply to CLEC's reservation of Collocation space for CLEC's own future use. Qwest shall relinquish any

space held for future use before denying a request for Virtual Collocation on the grounds of space limitations, unless Qwest proves to the Commission that Virtual Collocation at that point is not Technically Feasible.

8.2.1.17 In addition to the requirements of Section 8.2.1.8, all Collocation installation and structures shall meet applicable earthquake safety rating requirements comparable to and to the same extent that Qwest installations and structures meet earthquake rating requirements as contained in the Network Equipment Building System (NEBS) - BR GR-63-CORE document. A list of Qwest Premises and the applicable related earthquake ratings is available for review on the Qwest website at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.2.1.18 Qwest will review the security requirements, issue keys, ID cards and explain the access control processes to CLEC. Applicable documents are contained in the Collocation PCAT and are titled "Qwest Premises Access. The access control process includes but is not limited to the requirement that all CLEC approved personnel are subject to trespass violations if they are found outside of designated areas and approved areas and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) or if they provide access to unauthorized individuals. Likewise, Qwest personnel are subject to trespass violations if they are found to be wrongfully inside CLEC physical caged collocated areas or if they wrongfully provide access to unauthorized individuals.

8.2.1.18.1 Qwest will take all reasonable measures to insure that CLEC equipment collocated in Qwest Premises is afforded physical security at parity with Qwest's similarly situated equipment. Should an event occur within a Qwest Premises that suggests vandalism, theft of, or other tampering with CLEC's equipment, Qwest will, at CLEC's request, vigorously and thoroughly investigate the situation. CLEC shall cooperate in the investigation as requested by Qwest. Qwest will keep CLEC apprised of the progress of any investigation, and report any conclusions in a timely manner. Qwest will take all reasonable action, consistent with standard Qwest procedures, to deter, to the extent possible, further tampering, vandalism or theft of CLEC equipment.

8.2.1.18.2 Qwest shall have fifteen (15) calendar days to remedy any legitimate safety violation identified by CLEC.

8.2.1.19 Qwest shall provide access to CLEC's collocated equipment, authorized CLEC testing points as described in Section 8.2.1.18 above, existing eyewash stations, bathrooms, and drinking water within the Premises on a twenty-four (24) hours per day, seven (7) Days per week basis for CLEC personnel and its designated agents. Such access shall be permitted without requiring either a security escort of any kind or delaying CLEC's employees entry into Qwest Premises. Qwest shall provide CLEC with access to other basic facilities, including parking, where available on a first-come, first-served basis.

8.2.1.20 CLEC shall be restricted to corridors, stairways, and elevators that provide direct access to CLEC's space, or to the nearest restroom facility from CLEC's designated space and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) and such direct access

will be outlined during CLEC's orientation meeting. Access shall not be permitted to any other portion of the building.

8.2.1.21 Nothing herein shall be construed to limit CLEC's ability to obtain more than one form of Collocation (i.e., Virtual, Caged, Shared and Cageless Physical Collocation or ICDF Collocation) in a single Premises, provided space is available.

8.2.1.22 Termination of Collocation Arrangement.

8.2.1.22.1 Collocation Cancellation. The canceling CLEC may only submit a Cancellation Application if a Collocation quote has been accepted and the initial payment has been paid. The collocation Cancellation may only be initiated if the Collocation job is in progress and not yet complete.

8.2.1.22.1.1 Intentionally Left Blank

8.2.1.22.1.2 Qwest will stop work on a job in progress upon receipt and acceptance by Qwest of a valid Cancellation Application.

8.2.1.22.1.3 Based on when the Cancellation Application is received by Qwest, the completion status of the Collocation job and the determination of the amount paid to Qwest, the following will occur: Qwest will cancel the Collocation job in progress, conduct an inventory, and issue a final revised quote setting forth the amount due or the appropriate adjustments. The revised final quote will be issued within 30 calendar days of Qwest's acceptance of the Cancellation Application.

8.2.1.22.1.4 The Quote Preparation Fee (QPF) for the original Collocation Request must be paid, if the job is cancelled.

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8.2.1.22.1.6 In the event Splitter Collocation with the BAN of the collocation site is to be canceled, such Splitter Collocation will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.1.7 In the event that CLEC has requested Direct CLEC-to-CLEC with the BAN of the collocation site to be cancelled, such Direct CLEC-to-CLEC will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.2 Collocation Decommissioning.

8.2.1.22.2.1 A Collocation site will be considered eligible for decommissioning at any time after the site is built-out and accepted by CLEC.

8.2.1.22.2.2 Qwest requests the vacating CLEC remove equipment prior to submitting a Decommissioning Request. If CLEC does not

remove its equipment within thirty (30) calendar days from Qwest's acceptance of the Decommissioning Application, Qwest will send a notification stating the equipment is considered abandoned.

8.2.1.22.2.2.1 Upon receiving notification of abandonment from Qwest, CLEC will have fifteen (15) calendar days to notify Qwest that the equipment is not abandoned and remove the equipment, unless CLEC receives authorization from Qwest to extend the removal date.

8.2.1.22.2.2.2 In the case of Virtual Collocation, Qwest will automatically remove all equipment within ninety (90) calendar days from receipt of the Decommissioning Request.

8.2.1.22.2.2.3.1 Qwest will negotiate with CLEC for the pick up of the equipment.

8.2.1.22.2.2.3.2 For Virtual Collocation, there will be no cost for the removal of CLEC equipment.

8.2.1.22.2.3 Prior to submitting a Decommissioning Request, financial obligations with respect to the collocation site to be decommissioned must be current, with the exception of formally disputed charges.

8.2.1.22.2.3.1 CLEC financial obligations include payment of 100% of all non-recurring quoted charges and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.1.22.2.4 CLEC must disconnect all services from the Collocation site to be decommissioned prior to submitting the Decommissioning Request. Services to be disconnected by CLEC include, but are not limited to: Unbundled Network Elements (UNE), administrative lines, finished services, and line sharing services. Services will need to be disconnected via Access Service Request (ASR)/Local Service Request (LSR). If CLEC does not disconnect services, all charges with respect to such site will continue to accrue and the Decommissioning Application will be rejected.

8.2.1.22.2.4.1 Prior to disconnecting the circuits associated with the Collocation site CLEC must notify, in writing, all current affected End User Customers of the discontinuation of service.

8.2.1.22.2.4.2 CLEC must submit an e-mail notification attached to the Decommissioning Request representing to Qwest that all End User Customers have been properly notified. Failure to include such representation will result in the rejection of the Decommissioning Request.

8.2.1.22.2.5 When submitting a Decommissioning Request for a

Collocation site that also has a Direct CLEC-to-CLEC arrangement:

8.2.1.22.2.5.1 Qwest requires that the Direct CLEC-to-CLEC Connection be disconnected at the same time that Qwest performs the decommissioning.

8.2.1.22.2.5.2 The CLEC submitting the Decommissioning Request must:

8.2.1.22.2.5.2.1 Submit a Letter of Authorization (LOA) signed by both the vacating CLEC and partnering CLEC that authorizes Qwest to disconnect the installed Direct CLEC-to-CLEC cabling.

8.2.1.22.2.5.2.2 If a copy of the required Letter of Authorization is not attached to the Decommissioning Request; the application will be rejected as incomplete.

8.2.1.22.2.6 Vacating CLEC will be eligible for a potential refund for all elements defined as either reusable or reimbursable at the time of decommissioning, if and when acquired by another CLEC. An inventory will be completed by Qwest and furnished to CLEC within ninety (90) calendar days of the Collocation Decommission Application acceptance identifying the reimbursable and re-useable elements and the potential credit. If CLEC, reasonably and in good faith, disputes the total amount of the credit identified, Qwest will promptly evaluate CLEC's dispute and provide an updated credit amount, if it agrees with CLEC, or an explanation for the credit amount, if it disagrees with CLEC.

8.2.1.22.2.6.1 Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to collocation site, i.e. Express Fiber Entrances)These elements will be eligible for a potential refund for up to one (1) year after the date of decommissioning.

8.2.1.22.2.6.2 Reusable elements include Qwest inventoried components (e.g. cage, bays, HVAC, cable racking) to provision the original Collocation site. These elements will be available for a potential refund for up to three (3) years after decommissioning.

8.2.1.22.2.6.3 Upon assumption of the collocation space by an assuming CLEC, Qwest will issue the applicable credit within thirty (30) days to the vacating CLEC.

8.2.1.22.3 Collocation Transfer of Responsibility.

8.2.1.22.3.1 A Collocation site is considered eligible for Transfer of

Responsibility only after Qwest completes the site build-out and the vacating CLEC has accepted the site.

8.2.1.22.3.2 The assuming CLEC is required to have an Interconnection Agreement with Qwest prior to the original CLEC submitting a Transfer of Responsibility request. Assuming CLEC will need to amend any previously-existing Interconnection Agreement prior to submitting a Transfer of Responsibility request if it does not contain the Terms and Conditions and rate elements for the services that will be transferred.

8.2.1.22.3.2.1 If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with 11 U.S.C. Section 365.

8.2.1.22.3.3 Both vacating and assuming CLEC's Interconnection Agreements with Qwest must contain finalized terms and conditions associated with the Transfer of Responsibility of a Collocation site and all associated services.

8.2.1.22.3.4 The Collocation site referenced in the Transfer of Responsibility request generally will be transferred "as is" and in its entirety. This includes, but is not limited to, entrance facilities (from the Point of Interface (POI) utility hole), Splitters, cables, and working circuits (if applicable). Terms and conditions pertaining to the transfer of equipment between the vacating and assuming CLECs will be the responsibility of the vacating and assuming CLECs.

8.2.1.22.3.5 The assuming CLEC will provide the information Qwest will need to update the following items: Customer Name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), Customer address, phone number, billing and contact information, and contract number. The 11 character CLEC CLLI™ code will remain the same. The Transfer of Responsibility request may not include translations work for associated working circuits.

8.2.1.22.3.5(a) The Transfer of Responsibility request is available if there are no space requests pending by a CLEC or Qwest that could be satisfied by the space that CLEC seeks to transfer, or if the vacating and assuming CLEC were affiliate corporate entities prior to the proposed transfer, or the transfer is due to a bankruptcy court order. Collocation Transfer of Responsibility is not available if another CLEC and/or Qwest are in waiting queue for available space within the requested Central Office.

8.2.1.22.3.6 The negotiation of the transfer terms and conditions between the vacating CLEC and the assuming CLEC is the responsibility of those two Parties. Qwest will only manage the database and records transfer.

8.2.1.22.3.7 Qwest is not responsible for the physical condition of the CLEC's equipment, with the exception of equipment associated with a Virtual Collocation site, as set forth in CLECs' Interconnection Agreement.

8.2.1.22.3.8 If a CLEC submits a Transfer of Responsibility request for a site that has a related Splitter Collocation associated with it, the Splitter Collocation will be transferred as part of the Transfer of Responsibility.

8.2.1.22.3.9 Submission of new connect, change, and disconnect orders will be restricted from quote acceptance until the transfer of the working circuits is complete. If new connect, change, and disconnect orders need to be submitted between quote acceptance and the completion of the transfer, it will be handled on an ICB and could affect the Ready for Service (RFS) date.

8.2.1.22.3.10 Submission of Collocation augment orders will be restricted from the time that the Application for Transfer of Responsibility has been validated until the assuming CLEC has accepted the quote for the Transfer of Responsibility.

8.2.1.22.3.11 All work in progress related to the Collocation site and/or associated working circuits (if applicable) must either be completed or cancelled by vacating CLEC prior to quote acceptance.

8.2.1.22.3.12 If vacating CLEC does not lease another physical Collocation site at the specified Central Office at the time of the Transfer of Responsibility request, then vacating CLEC must relinquish security access to the building.

8.2.1.22.3.13 CLEC's obligations:

8.2.1.22.3.13.1 Prior to submitting a Transfer of Responsibility request, vacating CLEC's financial obligations to Qwest with respect to the Collocation site to be transferred must be met, with the exception of formally disputed charges. The vacating CLEC's financial obligations will include payment of one hundred percent (100%) of all undisputed nonrecurring charges and all undisputed recurring charges for the specific Collocation space that are more than 30 days past due.

8.2.1.22.3.13.2 Prior to submitting a Transfer of Responsibility request, the assuming CLEC's financial obligations to Qwest must be in good standing.

8.2.1.22.3.13.3 Prior to submitting a Transfer of Responsibility (without working circuits) request, vacating CLEC must ensure that no live circuits exist at the Collocation site to be transferred.

8.2.1.22.3.13.4 Prior to transferring a Collocation site with working circuits, vacating CLEC must notify, in writing, all of its current end-users and service customers that utilize its Transfer of Responsibility Collocation site equipment or facilities of the transfer of service to the assuming CLEC, unless vacating CLEC has a waiver from the FCC.

8.2.1.22.3.13.5 Vacating and/or assuming CLEC will be responsible for submitting Local Service Request (LSR) orders for Unbundled Loops, Enhanced Extended Loops (EELs), Line Sharing, and Line Splitting. Orders to transfer Local Interconnection Service (LIS) trunks and ancillary services (e.g., SS7, 911, Operator Services) with no translation activity, as well as Dark Fiber, Private Line, and Access circuits, will be processed based on the information provided in the Transfer of Responsibility Spreadsheet found in the Product Prerequisite section of the Collocation General PCAT.

8.2.1.22.3.13.6 Assuming CLEC is responsible for Directory Assistance (DA), Operator Services (OS), Directory Listings (DL), Busy Line Verify/Busy Line Interrupt (BLV/BLI), and 911 changes, if applicable. Any additional SS7 changes will need to be made after the transfer is complete.

8.2.1.22.3.14 Required documentation:

8.2.1.22.3.14.1 Transfer of Responsibility Application Form.

8.2.1.22.3.14.2. Vacating CLEC must send Qwest an e-mail notification (if the transfer includes working circuits), along with the Transfer of Responsibility Application, representing to Qwest that all of its end-users and service customers have been properly notified (refer to section 2.14.4). An exception is if the CLEC has a waiver from the FCC, which would then need to be included with the Transfer of Responsibility request.

8.2.1.22.3.14.3 Vacating and assuming CLEC must provide Qwest, along with the Transfer of Responsibility Application, a signed Qwest Transfer Authorization Agreement. Required information on the Qwest Transfer Authorization Agreement: Qwest Central Office Name, applicable CLLI™ codes, Collocation BAN numbers, and charges (as provided by Qwest) for the transfer of the Collocation site.

8.2.1.22.3.14.4 If there are working circuits associated with the Collocation site to be transferred, the vacating or assuming CLEC must complete the Transfer of Responsibility Spreadsheet and submit it along with the Transfer of Responsibility Application.

8.2.1.22.3.14.5 If Collocation site being transferred has a

CLEC-to-CLEC (Direct) arrangement, then the CLEC submitting the Transfer of Responsibility must submit a Letter of Authorization (LOA), along with the Transfer of Responsibility Application, signed by both the vacating CLEC and the CLEC partner authorizing the transfer of the CLEC-to-CLEC service to the assuming CLEC. A separate LOA is required, as a condition precedent, for each separate CLEC-to-CLEC relationship with respect to the facility that is the subject matter of the Transfer of Responsibility Application.

8.2.1.22.3.14.6 Once Collocation site transfer is complete the vacating CLEC, assuming CLEC, and Qwest are all required to sign the Qwest Services Transfer Agreement.

8.2.1.23 Qwest shall design and engineer the most efficient route and cable racking for the connection between CLEC's equipment in its collocated spaces to the collocated equipment of another CLEC located in the same Qwest Premises; or to CLEC's own contiguous and non-contiguous Collocation space. The most efficient route generally will be over existing cable racking, to the extent Technically Feasible, but to determine the most efficient route and cable racking, Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection. CLEC shall have access to the designated route and construct such connection, using copper, coax, optical fiber facilities, or any other Technically Feasible method utilizing a vendor of CLEC's own choosing. CLEC may place its own fiber, coax, copper cable, or any other Technically Feasible connecting facilities outside of the actual Physical Collocation space, subject only to reasonable NEBS Level 1 safety limitations using the route specified by Qwest. CLEC may perform such Interconnections at the ICDF, if desired. CLEC may interconnect its network as described herein to any other collocating Carrier, to any collocated Affiliate of CLEC, to any end users premises, and may interconnect CLEC's own collocated space and/or equipment (e.g., CLEC's Physical Collocation and CLEC's Virtual Collocation on the same Premises). CLEC-to-CLEC Connections shall be ordered either as part of an Application for Collocation under Section 8.4, or separately from a Collocation Application in accordance with Section 8.4.7. CLEC-to-CLEC Cross Connections at an ICDF are available, as follows:

8.2.1.23.1 CLEC-to-CLEC Cross Connections at the ICDF:

8.2.1.23.1.1 CLEC-to-CLEC Cross Connection (COCC-X) is defined as CLEC's capability to order a Cross Connection from it's Collocation in a Qwest Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Qwest Premises at the ICDF.

8.2.1.23.1.2 Qwest will provide the capability to combine these separate Collocations through an Interconnection Distribution Frame (ICDF). This is accomplished by the use of CLECs' Connecting Facility Assignment (CFA) terminations residing at an ICDF. Also, ICDF Cross Connections must terminate on the same ICDF at the same service rate level.

8.2.1.23.1.3 If CLEC has its own Dedicated ICDF, CLEC is responsible for ordering tie cables to the common ICDF frame/bay where the other CLEC resides. These tie cables would be ordered through the existing Collocation Application form.

8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration may be required, depending on the distance parameters of the combination.

8.2.1.23.1.5 If two (2) CLECs are involved, one CLEC acts as the "ordering" CLEC. The ordering CLEC identifies both connection CFA's on the ASR. CLEC requests service order activity by using the standard ASR forms. These forms are agreed upon nationally at the OBF (Ordering and Billing Forum). Refer to the DMP (Document Management Platform)/Carrier/Carrier Centers/"A"/"ASOG" for copies of all forms including definitions of the fields. CLEC is responsible for obtaining these forms. Qwest must not reproduce copies for its Customers, as this is a copyright violation. The standard industry forms for CLEC-to-CLEC Cross Connections (COCC-X) are: Access Service Request (ASR), Special Access (SPE) and Additional Circuit Information (ACI).

8.2.1.24 Qwest will provide CLEC the same connection to the network as Qwest uses for provision of services to Qwest end users. The direct connection to Qwest's network is provided to CLEC through direct use of Qwest's existing Cross Connection network. CLEC and Qwest will share the same distributing frames for similar types and speeds of equipment, where Technically Feasible and space permitting.

8.2.1.25 CLEC terminations will be placed on the appropriate Qwest Cross Connection frames using standard engineering principles. CLEC terminations will share frame space with Qwest terminations on Qwest frames without a requirement for an intermediate device.

8.2.1.26 If CLEC disagrees with the selection of the Qwest Cross Connection frame, CLEC may request a tour of the Qwest Premises to determine if Cross Connection frame alternatives exist, and may request use of an alternative frame or an alternative arrangement, such as direct connections from CLEC's Collocation space to the MDF or COSMIC™ frame.

8.2.1.27 Conversions of the various Collocation arrangements (e.g., Virtual to Physical) will be considered on an Individual Case Basis. However, conversions from Virtual Collocation to Cageless Physical Collocation, where the conversion only involves an administrative and Billing change, and the virtually collocated equipment is located in a space where Cageless Physical Collocation is available, shall be completed in thirty (30) calendar Days. CLEC must pay all associated conversion charges.

8.2.1.27.1 Qwest will maintain and repair the POTS splitter shelf assembly. If CLEC has Physical Caged or Cageless collocation, CLEC will have the option to perform maintenance and repair of the POTS splitter cards. Election of this

option requires CLEC to perform all maintenance associated with the splitter cards including troubleshooting, repair and replacement of cards. CLEC will also be responsible to supply and inventory spare cards including adding new cards to provision un-carded splitter shelf slots. Election of splitter cards maintenance requires CLEC to maintain the splitter cards in all of its common area splitter collocation sites in Qwest's 14 state operating territory. If Qwest maintains the splitter cards, CLEC will not be permitted to remove or replace splitter cards and will only be allowed access for the purposes of troubleshooting and assisting in the isolation of reported troubles to the splitter cards or to add additional card capacity to an existing shelf. Splitter shelves and associated cabling will continue to be installed and maintained by Qwest; such charges are detailed in the Line Sharing section of Exhibit A.

8.2.1.28 Qwest shall permit CLEC to construct or subcontract the construction and build-out of Physical Collocation arrangements with CLEC employees or CLEC-selected contractors approved by Qwest. Such CLEC construction of Physical Collocation arrangements are for within CLEC's physical space including the cage, if appropriate, frames, and cable racking, and also outside CLEC's physical space, CLEC may install the tie cables, blocks, and terminations on the ICDF or for CLEC-to-CLEC connections. Qwest approval of CLEC contractors involves security access arrangements and shall not be unreasonably withheld. CLEC is not required to use Qwest or Qwest contracted personnel for the engineering and installation of CLEC's collocated equipment. Approval by Qwest of CLEC's employees, vendors or subcontractors shall be based on the same criteria that Qwest uses in approving contractors for its own purposes. Such approval shall not be unreasonably withheld.

8.2.1.29 Qwest will provide CLEC with written notification at least five (5) business days before any scheduled non-emergency AC or DC power work or power related activities in the collocated facility that may cause a power disruption to CLEC equipment located in the Qwest facility, service outage, or otherwise may disrupt service provided by CLEC to its end user customers. This does not include notification of routine power testing or power installation work not expected to cause a power disruption, service outage or other service disruption. Qwest will use diligent efforts to notify CLEC by the Abnormal Condition Report (ACR) of: (a) general power outages as soon as Qwest becomes aware that an outage is to take place or has occurred and (b) any emergency power disruption that would impact CLEC equipment no later than thirty (30) minutes after such activity commences. Finally, Qwest shall immediately notify CLEC by ACR if an alarm condition exists with respect to the monitoring of power that poses a material risk to the continued operation of CLEC equipment.

8.2.1.30 Qwest will inform CLEC of Central Office construction work of Qwest, its employees or any independent contractors retained by it that could affect CLEC's collocated equipment or services offered by CLEC out of that Central Office. Such construction work is that which takes place in or around CLEC's collocation space, work in the space over or around a CLEC's collocation space (e.g., ladder racking work) or collocated equipment, or any work in adjacent areas that will generate dust, debris or falling objects that might impact CLEC's collocation space or collocated equipment. Daily routine equipment work shall be performed in the Central Office without notification to CLEC.

8.2.1.31 Qwest shall provide continuity testing for new, existing or augmented

collocation space at any time the CLEC requests such testing.

8.2.1.32 All equipment or property of CLEC not removed from the Qwest Premises within thirty (30) days after (i) the vacation or abandonment thereof, (ii) the breach of any of the terms of Collocation, or (iii) the termination of this Agreement for any cause whatsoever, shall conclusively be deemed to have been abandoned, transferred, deeded, and assigned by CLEC to Qwest and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest without notice to CLEC and without obligation to account therefor, and CLEC shall reimburse Qwest for all reasonable expenses incurred in connection with the storage or disposition of such equipment or property. The provisions regarding abandoned equipment where CLEC has submitted a Decommissioning Application, are set forth in the Decommissioning Section.

8.2.2 Terms and Conditions - Virtual Collocation

8.2.2.1 Qwest is responsible for installing, maintaining, and repairing virtually collocated equipment for the purpose of Interconnection or to access UNEs, ancillary and Finished Services. When providing Virtual Collocation, Qwest shall install, maintain, and repair collocated equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest.

8.2.2.2 CLEC will not have physical access to the virtually collocated equipment in the Qwest Premises. However, CLEC will have physical access to the Demarcation Point in the Qwest Premises.

8.2.2.3 CLEC will be responsible for obtaining and providing to Qwest administrative codes (e.g., common language codes) for all equipment provided by CLEC and installed in Qwest Premises.

8.2.2.4 CLEC shall ensure that upon receipt of CLEC's virtually collocated equipment by Qwest, all warranties and access to ongoing technical support are passed through to Qwest at CLEC's expense. CLEC shall advise the manufacturer and seller of the virtually collocated equipment that CLEC's equipment will be possessed, installed and maintained by Qwest.

8.2.2.5 CLEC's virtually collocated equipment must comply with Telcordia Network Equipment Building System (NEBS) Level 1 safety standards and any statutory (local, state or federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. CLEC shall provide Qwest interface specifications (e.g., electrical, functional, physical and software) of CLEC's virtually collocated equipment. Such safety and engineering standards shall apply to CLEC equipment only to the degree that they apply to Qwest equipment located in Qwest's Premises.

8.2.2.6 CLEC must specify all software options and associated plug-ins for its virtually collocated equipment.

8.2.2.7 CLEC will be responsible for payment of Qwest's initial direct training charges associated with training Qwest employees for the maintenance, operation and installation of CLEC's virtually collocated equipment when such equipment is different than the standard equipment used by Qwest in that Premises. This includes per diem charges (i.e., expenses based upon effective Qwest labor agreements), travel and lodging incurred by Qwest employees attending a vendor-provided training course.

8.2.2.8 CLEC will be responsible for payment of reasonable charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment in accordance with this Agreement, unless otherwise agreed by the Parties. Notwithstanding the foregoing, CLEC shall not be responsible for any costs or charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment where such costs or charges result from Qwest's fault or negligence.

8.2.3 Terms and Conditions - Caged and Cageless Physical Collocation

8.2.3.1 Qwest shall provide Caged and Cageless Physical Collocation (including Shared Caged Collocation) to CLEC for access to UNEs and ancillary services and Interconnection, except that Qwest may provide Virtual Collocation if Qwest demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act.

8.2.3.2 Physical Collocation is offered in Premises on a space-available, first come, first-served basis.

8.2.3.3 Reserved for Future Use.

8.2.3.4 Qwest will design the floor space in the most efficient manner possible within each Premises that will constitute CLEC's leased space. CLEC will, in accordance with the other terms and conditions of this Section, have access to its leased space.

8.2.3.5 When Qwest constructs the collocated space, Qwest will ensure that the necessary construction work (e.g., racking, ducting and caging for Caged Physical Collocation) is performed pursuant to Qwest Technical Publication 77350, including all construction of CLEC's leased physical space and the riser from the vault to the leased physical space.

8.2.3.6 CLEC owns or leases and is responsible for the installation, Maintenance and Repair of its equipment located within the physically collocated space leased from Qwest.

8.2.3.7 Qwest shall permit CLEC to commence installation of its equipment prior to completion of Qwest's work on the remaining Collocation infrastructure, at no additional charge to CLEC. Such "early access" date will be negotiated by Qwest and CLEC on a site specific basis. In order to obtain early access, CLEC must pay eighty (80) percent of the remaining fifty (50) percent of the quoted nonrecurring charges before early access is granted, leaving a holdback of ten (10) percent of the originally quoted nonrecurring charges. All appropriate (i.e. space and cable racking) recurring charges will begin on a negotiated date. The enclosure for Caged Physical Collocation must be complete before early access is granted. Such early access by CLEC shall not interfere with the work remaining to be performed by Qwest.

8.2.3.8 Upon completion of the construction of the Collocation project, Qwest will work cooperatively with CLEC in matters of joint testing and maintenance.

8.2.3.9 If, during installation, Qwest determines CLEC activities or equipment do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work until the situation is remedied. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLECs equipment fails to meet. If such conditions pose an immediate threat to the safety of Qwest employees, interfere with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission, a court of competent jurisdiction or pursuant to Section 5.18 of this Agreement

8.2.3.10 All equipment placed will be subject to random safety audits conducted by Qwest. These audits will determine whether the equipment meets the NEBS Level 1 safety standards required by this Agreement. CLEC will be notified of the results of this audit. If, at any time, pursuant to a random audit or otherwise, Qwest determines that the equipment or the installation does not meet the NEBS standards described in Section 8.2.1.8, CLEC will be responsible for the costs associated with the removal, modification to, or installation of the equipment to bring it into compliance. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC, and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC's equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If CLEC fails to correct any non-compliance within fifteen (15) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct any non-compliance as soon as reasonably possible, Qwest may pursue immediate resolution by the Commission or a court of competent jurisdiction. If there is an immediate threat to the safety of Qwest employees, or an immediate threat to the physical integrity of the conduit system, cable facilities, or other equipment in the Premises, Qwest may perform such work and/or take such action as is necessary to correct the condition at CLEC's expense.

8.2.3.11 Qwest shall provide basic telephone service with a connection jack at the request of CLEC for Caged and Cageless Physical Collocation. Upon CLEC's request, this service shall be available per standard Qwest business service Provisioning processes and rates. CLEC may have access to telephone service

provided by Qwest at any ICDF location where test access may be required. CLEC shall share these lines for circuit testing only and may use them only for such purpose.

8.2.3.12 For Caged Physical Collocation, CLEC's leased floor space will be separated from other CLECs and Qwest space through a cage enclosure. Qwest will construct the cage enclosure or CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval which may not be unreasonably withheld, to construct the cage enclosure. All CLEC equipment placed will meet NEBS Level 1 safety standards, and will comply with any local, state, or federal regulatory requirements in effect at the time of equipment installation or that subsequently become effective.

8.2.3.13 For Cageless Physical Collocation in a Wire Center, the minimum square footage is nine (9) square feet per bay (however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly). Requests for multiple bay space will be provided in adjacent bays where possible. CLEC may elect to share its Cageless Collocation space (e.g., sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, Provisioning, repairing, maintaining, and Billing for equipment, cross-connects, and services in its Collocation space. When contiguous space is not available, bays may be commingled with other CLECs' equipment bays. CLEC may request, through the Qwest Space Reclamation Policy, a price quote to rearrange Qwest equipment to provide CLEC with adjacent space.

8.2.4 Transmission Facility Access to Collocation Space

8.2.4.1 For Virtual or Physical Collocation, CLEC may select from four (4) optional methods for facility access to its Collocation space. They include: 1) fiber entrance facilities, 2) purchasing private line or Access Services, 3) Unbundled Network Elements; and 4) microwave entrance facilities. Other Entrance Facility technologies may be requested through the BFR process.

8.2.4.2 Collocation Fiber Entrance Facilities. Qwest offers three (3) Fiber Collocation Entrance Facility options – Standard Fiber Entrance Facility, Cross-Connect Fiber Entrance Facility, and Express Fiber Entrance Facilities. These options apply to Caged and Cageless Physical Collocation and Virtual Collocation. Fiber Entrance Facilities provide the connectivity between CLEC's collocated equipment within the Qwest Wire Center and a Collocation Point of Interconnection (C-POI) outside the Qwest Wire Center where CLEC shall terminate its fiber-optic facility, except the Express Fiber Entrance Facilities.

8.2.4.3 CLEC is responsible for providing its own fiber facilities to the C-POI outside Qwest's Wire Center. Qwest will extend the fiber cable from the C-POI to a Fiber Distribution Panel (FDP). Additional fiber, conduit and associated riser structure will then be provided by Qwest from the FDP to continue the run to CLEC's leased Collocation space (Caged or Cageless Physical Collocation) or CLEC's equipment (Virtual Collocation). The Qwest provided facility from the C-POI to the leased Collocation space (Physical Collocation) or CLEC equipment (Virtual Collocation) shall be considered the Collocation Fiber Entrance Facility. The preceding provisions do not apply to Express Fiber Entrance Facility which provides that CLEC fiber will be pulled to CLEC Collocation equipment without splices or termination on an FDP.

8.2.4.3.1 Standard Fiber Entrance Facility -- The standard fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to the C-POI and CLEC's Collocation space in increments of 12 fibers. CLEC's fiber cable is spliced into a Qwest-provided shared fiber entrance cable that consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable shall be terminated on a Fiber Distribution Panel (FDP). A 12 fiber Interconnection cable is placed between CLEC's Collocation space and the FDP. The FDP provides Qwest with test access and a connection point between the transport fiber and CLEC's Interconnection cable.

8.2.4.3.2 Cross-Connect Fiber Entrance Facility -- The cross-connect fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to a C-POI and multiple locations within the Qwest Wire Center. CLEC's fiber cable is spliced into a Qwest provided shared fiber entrance cable in 12 fiber increments. The Qwest fiber cable consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable terminates in a fiber distribution panel. This fiber distribution panel provides test access and flexibility for Cross Connection to a second fiber distribution panel. Fiber Interconnection cables in 4 and 12 fiber options connect the second fiber distribution panel and equipment locations in the Qwest Wire Center. This option has the ability to serve multiple locations or pieces of equipment within the Qwest Wire Center. This option provides maximum flexibility in distributing fibers within the Wire Center and readily supports Virtual and Cageless Physical Collocation and multiple CLEC locations in the office. This option also supports transitions from one form of Collocation to another.

8.2.4.3.3 Express Fiber Entrance Facility – Qwest will place CLEC-provided fiber cable from the C-POI directly to CLEC's Collocation space. The fiber cable placed in the Wire Center must meet NEBS Level 1 fire rating requirements. If CLEC provided cable does not meet NEBS Level 1 fire rating requirements then a transition splice will occur in the cable vault to insure that the cable within the Qwest Wire Center meets requirements. This option will not be available if there is only one conduit with two (2) unused innerducts (one (1) for emergency restoral and one (1) for a shared entrance cable).

8.2.4.4 Qwest will designate the location of the C-POI for Virtual, Caged Physical or Cageless Physical Collocation arrangements.

8.2.4.5 The Collocation entrance facility is assumed to be fiber optic cable and meets industry standards (GR. 20 Core). Metallic sheath cable is not considered a standard Collocation entrance facility. Requests for non-standard entrances will be considered through the BFR process described in the Bona Fide Request Process Section of this Agreement. All costs and Provisioning intervals for non-standard entrances will be developed on an Individual Case Basis.

8.2.4.6 Qwest shall provide an Interconnection point or points, physically accessible by both Qwest and CLEC, at which the fiber optic cable carrying CLEC's circuits can enter Qwest's Wire Center, provided that Qwest shall designate Interconnection points as close as reasonably possible to its Premises. Qwest shall offer at least two (2) such Interconnection points at each Qwest Wire Center when at least two (2) entry points pre-exist and duct space is available. Qwest will not initiate

construction of a second, separate Collocation entrance facility solely for Collocation. If Qwest requires the construction of a new Collocation entrance facility for its own use, then the needs of CLEC will also be taken into consideration.

8.2.4.7 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase Qwest Tariffed or cataloged Private Line or Switched Access Services.

8.2.4.8 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase unbundled dedicated interoffice transport.

8.2.4.9 Microwave Entrance Facilities. Qwest offers Microwave Entrance Facilities on Premises owned or controlled by Qwest, to access CLEC transmission equipment collocated on or inside the Qwest Premises. The rooftop, duct, conduit and riser cable space for Microwave Entrance Facilities is available on a first-come, first-served basis where Technically Feasible. CLEC may place its microwave antenna on a Qwest owned or controlled existing tower, building or supporting structure, where space is available, or CLEC may construct such tower or supporting structure, if necessary and if there is sufficient space and the building structure is not jeopardized. Such microwave equipment will be limited to that which is necessary for Interconnection to Qwest's network or access to Qwest's Unbundled Network Elements.

8.2.4.9.1 Qwest will jointly coordinate and plan with CLEC for the placement and location of the microwave equipment on a non-penetrating roof mount, or an existing tower or supporting structure on the exterior of a Qwest Premises. The method of placing CLEC microwave equipment shall be mutually agreed upon. Tower space or building roof space that allows for unobstructed line-of-sight will be provided by Qwest where Technically Feasible. A weather proof cable entry hatch or an existing wave-guide hatch or other suitable entrance into the building is required. If space is available, CLEC may use an existing cable entry hatch or a new cable entry hatch will need to be constructed. The cable entry hatch charges are on a per Port used basis.

8.2.4.9.2 CLEC can perform the determination of line-of-sight feasibility or CLEC can request Qwest perform the line-of-sight feasibility. CLEC will submit a microwave Entrance Facility application for each antenna arrangement and each Qwest Premises requested. A site visit will include appropriate Qwest and CLEC personnel for the purpose of determining whether an unobstructed line-of-sight is Technically Feasible and structural analysis of the building. The site visit will take place within fifteen (15) calendar after receipt by Qwest of the CLEC's microwave Entrance Facility application, unless the CLEC requests a later date. If CLEC performs the structural analysis and line-of-sight feasibility, it shall submit a response regarding its analysis to Qwest and Qwest will only bill for an escort fee per site requested. If either Party disputes the technical feasibility, space availability, or other conditions proposed by Qwest, the Parties will promptly petition the Commission for resolution of the dispute.

8.2.4.9.3 If Qwest performs the feasibility analysis, a response will be provided to CLEC within thirty (30) calendar Days of the site visit with the structural analysis and line-of-sight feasibility. If the site visit determines that unobstructed line-of-sight and placement of the microwave equipment are not Technically Feasible, CLEC will be billed only for the site visit. If the site visit

determines that the placement of microwave equipment is Technically Feasible, Qwest will provide a quote for the microwave Entrance Facility with the quote for the submitted Collocation Application. If CLEC does not submit a Collocation Application for the Premises within thirty (30) Days following the completion of the line-of-sight and structural feasibility analysis or CLEC subsequently cancels the Collocation Application, CLEC will be billed for the site visit.

8.2.4.9.4 CLEC must obtain all necessary variances, licenses, approvals and authorizations from governmental agencies with jurisdiction, such as use permits, building permits, FCC licenses and FAA approval, if required, to construct, operate and maintain the CLEC facilities. If Qwest's assistance is required in order for CLEC to obtain necessary licenses or permits, Qwest will not unreasonably withhold such assistance. CLEC will pay all expenses associated with that assistance on a time and materials basis.

8.2.4.9.5 CLEC is responsible for the engineering, purchasing, supplying, installing, maintaining, repairing and servicing of its microwave specific equipment. CLEC shall provide the cable from the Radio Frequency (RF) equipment to the building cable entry hatch. However, CLEC is not permitted to penetrate the building exterior wall or roof. Qwest will do all building penetration and Qwest will install the coaxial cable or wave-guide/transmission facility from the cable entry hatch to CLEC's Collocation space within the interval as set forth in Section 8.4 for the type of Collocation requested by CLEC. CLEC facilities shall not physically, electronically, or inductively interfere with the existing Qwest or other CLECs' equipment. Each transmitter individually and all transmitters collectively, for Qwest, Qwest Affiliates and CLECs, at a given location shall comply with appropriate federal, state, and local regulations governing the safe levels of RF radiation.

8.2.4.9.6 Upon expiration or termination, CLEC shall return the antenna space to its original condition. CLEC shall repair any damages caused by removal of its microwave equipment, or by the use, operation or placement of its microwave equipment on the Premises. If CLEC performs the foregoing, Qwest shall impose no charges on CLEC for such work. In the event the CLEC fails to remove its microwave equipment, CLEC shall be liable to Qwest for all reasonable costs of removal, restoration of the property, storage, and transportation to CLEC of such microwave equipment incurred by Qwest.

8.2.5 Terms and Conditions – ICDF Collocation

8.2.5.1 Interconnection Distribution Frame (ICDF) Collocation is available if CLEC has not obtained Caged or Cageless Physical Collocation, but requires access to the Qwest Wire Center for combining Unbundled Network Elements, Finished Services, including local Interconnection trunks, and ancillary services. ICDF Collocation provides CLEC with access to the Interconnection Distribution Frame, where Qwest will terminate the Unbundled Network Elements, Finished Service and ancillary services ordered by CLEC. CLEC may combine such services by running a jumper on the ICDF, in accordance with Section 8.2.5.3. CLEC access to the ICDF will be on the same terms and conditions described for other types of Collocation in this Section. There are

multiple frames that could be used for ICDF Collocation including, but not limited to, the following: a) existing Interconnection Distribution Frame (ICDF); b) existing DSX panels for DS-1 and DS-3 services; c) new Interconnection Distribution Frame; d) existing toll frame; e) fiber distribution panel; and, f) existing intermediate frame. CLEC requested combinations at the ICDF must be in accordance with Sections 9.1 and 9.23. Qwest provided combinations in accordance with Sections 9.1 and 9.23.3.7 are not provided by Qwest in CLEC's ICDF Collocation space.

8.2.5.2 All Qwest terminations on the Interconnection Distribution Frame will be given a frame address. Qwest will establish and maintain frame address records for Qwest terminations. Qwest will maintain assignment records for each Unbundled Network Element and ancillary service ordered by CLEC that is terminated on the Interconnection Distribution Frame. Qwest will provide CLEC with the frame assignments for each Unbundled Network Element and ancillary service terminated on the ICDF.

8.2.5.3 CLEC will be required to place the jumper connection between frame addresses to connect Unbundled Loops, ancillary and Finished Services. CLEC will be required to maintain the records for CLEC-provided jumpers.

8.2.5.4 Reserved for Future Use.

8.2.6 Terms and Conditions - Adjacent Collocation and Adjacent Remote Collocation

8.2.6.1 CLEC may request Adjacent Collocation and Adjacent Remote Collocation in an existing Qwest controlled environmental vault, controlled environmental hut, or similar structures on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises, to the extent Technically Feasible. Adjacent Collocation in an existing structure shall be ordered as Physical Collocation.

8.2.6.1.1 Alternatively, if no such structure described above exists, CLEC may choose to construct or procure a structure to place on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval. Qwest will review the building and property plans for the new structure within thirty (30) calendar Days.

8.2.6.1.2 CLEC shall own such structure, subject to a reasonable ground space lease. If CLEC terminates its Adjacent Collocation space, Qwest shall have the right of first refusal to such structure under terms to be mutually agreed upon by the Parties. In the event Qwest declines to take the structure or terms cannot be agreed upon, CLEC may transfer such structure to another CLEC for use for Interconnection and or access to UNEs. Transfer to another CLEC shall be subject to Qwest's approval, which approval shall not be unreasonably withheld. If no transfer of ownership occurs, CLEC is responsible for removal of the structure and returning the property to its original condition.

8.2.6.2 Qwest shall provide written authorization for use of Qwest's property to CLEC or CLEC's contractor, to the extent that Qwest owns or controls such property, to assist CLEC in obtaining any building permits or other approvals that may be necessary

to construct the facility. CLEC is responsible for construction of the structure or procurement of an existing structure. CLEC is responsible for meeting all state and municipal building and zoning requirements.

8.2.6.3 Qwest will provide power and all other Physical Collocation services and facilities.

8.2.6.4 Upon request, Qwest will evaluate all parking or other spaces outside the Qwest Premises on Qwest property that can be reasonably made available to CLEC for Adjacent Collocation. Qwest will retain a reasonable amount of parking space for Qwest technicians or other vehicles, including CLEC's. Space below a hoisting area will not be relinquished for Collocation space.

8.2.6.5 If Physical Collocation space becomes available in a previously exhausted Qwest structure, Qwest shall not require CLEC to move, or prohibit CLEC from moving its Collocation arrangement into the Qwest structure. Instead, Qwest shall continue to allow CLEC to collocate in any adjacent controlled environmental vault, controlled environmental hut, or similar structure.

8.2.7 Terms and Conditions – Remote Collocation

8.2.7.1 Remote Collocation allows CLEC to collocate in a Qwest Remote Premises that is located remotely from a Qwest Wire Center building property. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

8.2.7.2 The terms and conditions for Virtual or Physical Collocation shall apply to Remote Collocation as appropriate to the specific Remote Premises structure and subject to technical feasibility (e.g., Section 8.2.3.11 and Section 8.2.4 would not apply), or if appropriate, Adjacent Collocation as set forth above. Space will be offered in increments appropriate to the Remote Premises structure (i.e., shelf, relay rack, etc.).

8.2.8 Terms and Conditions – Available Inventory

8.2.8.1 The offering of a Collocation site from the Qwest Available Inventory list shall be limited to the offering of a specified site in Qwest's control to CLEC that either: (i) has a commission-approved Interconnection Agreement covering the specific type of Collocation to be obtained or (ii) is currently in negotiations with Qwest for such an Agreement. CLEC obtaining a Collocation site from the Qwest Available Inventory must not have any undisputed overdue financial obligations (i.e. more than thirty (30) days past due) owed to Qwest. Formally disputed charges will be treated as an exception.

8.2.8.2 The assuming CLEC for all Qwest posted sites will be required to pay a minimum of six (6) months of Space Construction and Floor Space Lease recurring charges should the CLEC terminate its rights of occupancy prior to six (6) months of occupancy.

8.2.8.3 Standard Sites

8.2.8.3.1 Qwest Postings: Collocation sites available in the Qwest Postings may be partially or fully completed before being returned to Qwest inventory. Both caged and cageless sites will be offered in the Qwest Collocation Postings section. Sites will be offered under the terms and conditions set forth in CLEC's Interconnection Agreement. In its Collocation application for such a site, CLEC may request to add to or complete the Collocation site to the CLEC's specifications. In CLEC Collocation application for such a site, CLEC may also request that Qwest reduce cable terminations. CLEC will be charged for the removal of such cable terminations.

8.2.8.3.2 All services that were previously connected to the Collocation (e.g. Unbundled Network Elements, CLEC to CLEC connections, administrative lines, Finished Services, Line Splitting and Line Sharing, etc.) will be disconnected before the site is listed on the "Qwest Postings" section of the Collocation Classifieds. Power, Grounding for caged sites and Entrance Facilities are also disconnected prior to a site being posted. Qwest shall inventory all Reusable and Reimbursable Elements and list them in the Qwest Postings. Shared resources including HVAC and racking will not be listed in the Qwest postings. When other Collocation space is not available, Qwest reserves the right to remove Qwest postings from the Available Inventory web site to satisfy CLEC Applications for Collocation, for Qwest space requirement needs, or for CLEC Collocation augments to existing sites. Qwest shall not use the Qwest Postings as a basis to claim exhaust (space, power, terminations, etc.) in any Qwest Premises.

8.2.8.3.3 Qwest will provide CLEC with a feasibility study within ten (10) Calendar Days after receipt of the application. Qwest will provide CLEC with a quote within twenty-five (25) Calendar Days after providing the feasibility study. Price quotes will be honored for thirty (30) Calendar Days from the date the quote is provided and the associated space is reserved during such period, pending CLEC's acceptance of the quoted charges.

8.2.8.3.4 CLEC must pay the initial fifty percent (50%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receiving the quote. If the payment is not received by Qwest within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4 Special Sites:

8.2.8.4.1 Qwest may elect to offer Collocation sites returned through Chapter 7 bankruptcy or abandonment. These sites "Special Sites" will not be decommissioned and may be offered with Electronic Equipment (Equipment), Equipment Racks, Cages, DC power, Grounding and Terminations. These Special Sites will be posted in the Qwest Available Inventory posting under "Unverified sites with equipment".

8.2.8.4.2 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Calendar Days after

receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receipt of the quote. If Qwest does not receive the payment within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4.3 Upon receipt of the full payment for the quoted nonrecurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that the CLEC requires Qwest to install Augments (additional services) to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.

8.2.8.4.4 For Special Sites; IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT QWEST IS SELLING EQUIPMENT THAT IS CLASSIFIED AS "USED" OR "SURPLUS" EQUIPMENT ON AN "AS IS, WHERE IS" BASIS. CLEC UNDERSTANDS AND AGREES THAT ALL EQUIPMENT IS, CONVEYED (I) IN AN "AS IS" "WHERE IS" CONDITION WITH ALL FAULTS, LATENT AND PATENT AND (II) ALL EQUIPMENT IS CONVEYED WITHOUT ANY QWEST WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED BY A PARTICULAR COURSE OF DEALING.

8.2.8.4.4.1 All software and software license agreements for any Equipment conveyed as part of a Special Site shall be the sole responsibility of the assuming CLEC.

8.2.8.4.4.2 CLEC hereby warrants and certifies that its handling, scrap, destruction or other disposition of any Equipment conveyed as part of a Special Site shall conform and comply with the following.

a) All applicable federal, state, county and municipal laws, statutes, regulations, and codes regulating hazardous wastes, materials or substances, including, but not limited to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.); the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.); Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 et seq.); Occupational Safety and Health Act (OSHA) (29 U.S.C. 651 et seq.); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq.); and any successor acts thereto or the regulations promulgated thereunder and any applicable International laws and regulations;

b) Environmental rules and regulations governing environmental impacts associated with the production and or recovery of precious metals, scrap metals and material processing and or residual material disposition whether hazardous or non-hazardous as defined by governing laws and or applicable laws and are the sole responsibility of the CLEC; and

c) All hazardous waste, hazardous material, hazardous substances or solid waste manifests relating to the shipping, receiving, disposal or final disposition of the Equipment shall not reference, list or otherwise indicate on the manifest that Qwest is the generator, arranger, transporter, owner or otherwise the party that owns, controls, manages, handles, stores, generates or otherwise uses the Equipment. On any required hazardous waste, hazardous material, hazardous substances or solid waste manifest relating to the shipping, receiving, disposal or final disposition of the Equipment, the CLEC shall be listed as the generator, arranger and owner of the materials.

d) The CLEC shall comply with the applicable Qwest Technical Publications as defined in the CLEC's Interconnection Agreement when removing any equipment from a Special Site.

8.2.8.5 CLEC Posting: Sites listed in the "CLEC Postings" section are eligible for Transfer Of Responsibility to an assuming CLEC. Sites may be offered with or without working circuits. The terms and conditions for the Transfer of Responsibility shall be in accordance with the Transfer of Responsibility Product offering.

8.2.9 Terms and Conditions – Joint Testing

8.2.9.1 Qwest will only test between the CLEC Collocation and the ICDF (or the first test point, i.e., the Demarcation Point between Qwest's and CLEC's network) once CLEC equipment is in place. Joint Testing is available for those terminations that are affected on a New/Change/Augment Collocation Application or which are in service for an existing collocation arrangement.

8.2.9.2 For New/Change/Augment collocation applications, Joint Testing will be available from the time of your installation and for a period up to sixty (60) calendar Days past the actual scheduled Ready For Service (RFS) date. Joint Testing will be completed within ninety (90) calendar days of the actual RFS date. CLEC must specify the type of test to be performed with Qwest presence on the Joint Testing at the ICDF Application or the New/Change/Augment Collocation Application form. Joint testing also will be available for existing collocation arrangements if CLEC provides a good faith reason demonstrating that joint testing is necessary. Testing on an existing collocation arrangement will be requested on a Joint Testing at ICDF application.

8.2.9.3 CLEC must provide contact information on the application for Qwest to arrange the Joint Testing date. Collocation application forms are located in the Ordering section of Collocation General Information at: http://www.qwest.com/wholesale/pcat/collocation.html#order.

8.2.9.4 Qwest will acknowledge acceptance of your application within ten (10) calendar days of an accepted New/Change/or Augment Collocation Application or Joint Testing at the ICDF Application.

8.2.9.5 CLEC will be required to provide the installation administration (e.g. Method of Procedures (MOPs) and Completion Notifications (CNs)) in a manner that is consistent with other policies for all Qwest Collocation product offerings. Refer to Qwest's Technical Publication 77350 located in the Product Description section of Collocation General information at: http://www.qwest.com/wholesale/pcat/collocation.html#prod for procedures.

8.2.9.6 CLEC will provide test gear for CLEC technicians and Qwest will provide test gear for Qwest's technicians to operate. Qwest employees will assist CLEC in conducting continuity tests on terminations at the ICDF. Qwest employees will not operate CLEC test gear

8.2.9.7 If an error rate of more than 2% is determined to exist on the terminations identified for testing and being tested during the scheduled joint testing period, and the errors are identified as Qwest errors, Qwest will not charge for this Joint Testing ordered by CLEC. However, if there are less than 2% errors found or if the errors are facility errors and CLEC provided the facilities, Qwest will charge for the Joint Testing (i.e. one (1) pair is counted as two (2) terminations and errors are counted as one (1) termination basis).

8.2.9.8 If CLEC wants additional testing not identified on CLEC application, CLEC will need to complete a new Joint Testing at the ICDF Application.

8.2.9.9 If CLEC requests charges be waived because Qwest errors are found during testing, Qwest may request access to CLEC Collocation space to identify if the facility cabling sequence is correct, per applicable standards. CLEC agreement to such access will not be unreasonably withheld and will be given in all circumstances in which a waiver of charges is requested. CLEC may view Qwest facility cabling at the ICDF to identify cable sequence. If the errors are validated as Qwest errors, the charges are waived. Otherwise, Qwest will charge for the test.

8.2.9.10 If errors are found during the Joint Test, Qwest will only provide tools and materials for the repair of Qwest-network faults. If errors are facility errors and CLEC provided the facilities, CLEC will be responsible for the replacement or repair of those facilities.

8.2.9.11 Qwest will only provide tools and materials for the repair of Qwest-network faults.

8.2.10 Terms and Conditions – Security

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8.2.10.2 Intentionally Left blank.

8.2.10.3 CLEC shall have the right to perform equipment modifications within an existing Caged Physical Collocation arrangement without first obtaining permission from Qwest, provided that such modifications can be accomplished in a way as to isolate the Qwest network from any potential harm. Equipment modifications to all other existing Collocations will require a Method of Procedure (MOP) per Qwest Technical Publication 77350.

8.2.10.4 Qwest shall provide to CLEC a list of CLEC employees and the designated Premises to which they have access on a monthly basis to confirm appropriate billing and access information for security purposes.

8.2.11 Terms and Conditions – DC Power Reduction

8.2.11.1 If a CLEC wishes to reduce its amount of power and will not require it for future use, Qwest will process the request as a standard augment order and not as a DC Power Reduction request.

8.2.11.2 Applications for DC Power Reduction may be submitted only for collocation sites that have been previously accepted by the CLEC. Power reductions to sites under construction or for sites not previously accepted by the CLEC, will follow standard change or augment procedures and rates.

8.2.11.3 Before submitting a power reduction application, CLEC's financial obligations with respect to the collocation site must be current, with the exception of formally disputed charges. CLEC's financial obligations include payment of one hundred percent (100%) of all undisputed non-recurring quoted charges for the collocation site and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.11.4 Collocation applications for new, change and augment requests must be submitted to the Collocation Project Management Center (CPMC) on the form provided by Qwest at www.qwest.co./wholesale/pcat/collocation.html.apform. The CPMC will notify the CLEC of any deficiencies in the application within ten (10) days of receipt. A nonrefundable Quote Preparation Fee (QPF) in the amount reflected in Exhibit A of this Agreement must be submitted with the application.

8.2.11.5 A walk through will be performed prior to quote preparation to determine the amount of work required to perform the power reduction.

8.2.11.6 When eliminating a secondary feed, CLEC may purchase the option to have the power cable and fuse position held for its future use. CLEC will be required to pay a monthly Power Maintenance Charge until such time as CLEC notifies Qwest that it wishes either to reenergize the feed or to discontinue the option. In instances where a shortage of fuse position is imminent, Qwest reserves the right to notify CLEC of the need to exercise its option or relinquish the fuse position to Qwest. Upon receipt of

such notification, CLEC will have the option of energizing the secondary feed to at least 20 amps or returning the fuse position to Qwest within thirty (30) days of receipt of the notification.

8.2.11.7 CLEC assumes all responsibility for outages and/or impacts to CLEC-provided service and equipment due to the reduction in DC Power. CLEC shall be notified at least 48 hours in advance of the time and date of the power reduction and given the opportunity to observe the actual reduction procedure from within the Central Office spaces to which CLEC normally has access.

8.2.11.8 Restoration of the desired power is contingent upon desired power and fuse position availability.

8.3 Rate Elements

Rate elements for Collocation are included in Exhibit A.

8.3.1 Rate Elements - All Collocation

8.3.1.1 Qwest will recover Collocation costs through both recurring and nonrecurring charges. The charges are determined by the scope of work to be performed based on the information provided by CLEC on the Collocation Order Form. A quote is then developed by Qwest for the work to be performed.

8.3.1.2 The following elements as specified in Exhibit A of this Agreement are used to develop a price quote in support of Collocation:

8.3.1.3 Quote Preparation Fee. A non-refundable charge for the work required to verify space and develop a price quote for the total costs to CLEC for its Collocation request. Qwest will assess a QPF when it delivers a Collocation quote to CLEC. Once the quote is delivered, the QPF becomes a non-refundable charge for the work required to verify the space and develop a price quote for the total costs to CLEC for its Collocation request. The QPF shall also apply to all new Collocations and Collocation Cabling Augments. Upon completion of a new Caged or Cageless Collocation, the QPF shall be credited against the final non-recurring charges for the Collocation.

8.3.1.3.1 A Collocation Cable Augment QPF is specified in Exhibit A. A Collocation Cable Augment is an augment to existing termination cables which are the transmission facilities purchased by CLEC for the purpose of accessing UNEs within the collocated Central Office premises. In order to qualify as a cable augment, the following criteria must be satisfied:

- Augment terminations must originate and terminate in the same Central Office.
- Augment terminations must originate from the same collocation site location as the existing terminations.
- Augment terminations must terminate on the same frame as existing terminations.

- Augment terminations must be of the same transmission facility type as existing terminations (i.e., copper or fiber).

- Augment terminations must be of the same signal level as existing terminations (DS0, DS1, DS3, fiber).

The Collocation Cable Augment QPF is a non-recurring rate element and separate from other non-recurring costs associated with the quote. Because this rate element is not part of a space construction fee, it will not be credited to the other non-recurring costs upon acceptance of the quote. The Collocation Cable Augment QPF rate element shall be the only rate element under which Qwest will recover non-recurring costs associated with the development of the Collocation Cable Augment quote.

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8.3.1.3.3 Intentionally Left blank.

8.3.1.3.4 Where CLEC disputes the accuracy or validity of a quote provided by Qwest, and Qwest agrees that the quote was incorrect, Qwest shall revise the quote and promptly provide it to CLEC.

8.3.1.3.5 Where CLEC disputes in good faith the accuracy or validity of a quote provided by Qwest, CLEC shall not be required to pay any charges incurred by Qwest prior to delivery of the quote if the CLEC determines that it will not accept the quote.

8.3.1.4 Collocation Entrance Facility Charge. Provides for the fiber optic cable (in increments of 12 fibers) from the C-POI utilizing Qwest owned, conventional single mode type of fiber optic cable to the collocated equipment (for Virtual Collocation) or to the leased space (for Caged or Cageless Physical Collocation). The Collocation entrance facility includes manhole, conduit/innerduct, placement of conduit/innerduct, fiber cable, fiber placement, splice case, a splice frame, fiber distribution panel, and relay rack. Charges apply per fiber pair. Express Fiber Entrance Facility does not include fiber cable, splice case, a splice frame or fiber distribution panel. Microwave Entrance Facility charges are addressed in 8.3.1.17.

8.3.1.5 Cable Splicing Charge. Represents the labor and equipment to perform a subsequent splice to CLEC provided fiber optic cable after the initial installation splice. Includes per-setup and per-fiber-spliced rate elements.

8.3.1.6 -48 Volt DC Power Usage Charge. Provides -48 volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Usage Charge contains two components: (i) the capacity of the power plant available for CLEC's use, and (ii) the DC power used. The -48 Volt DC Power Usage Charge is specified in Exhibit A and applies to the quantity of -48 volt capacity specified by CLEC in its order. The minimum initial DC power order is twenty (20) amps. CLEC may, thereafter, augment or reduce DC power in increments of one (1) amp beyond the initial twenty (20) amp minimum, but CLEC may not reduce DC power below the twenty (20) amp minimum.

8.3.1.7 AC Power Feed. Recovers the cost of providing for the engineering and installation of wire, conduit and support, breakers and miscellaneous electrical equipment necessary to provide the AC power, with generator backup, to CLEC's space. The AC Power feed is optional. The AC Power Feed is available with single or triple phase options. The AC Power Feed is rated on a per foot and per ampere basis.

8.3.1.8 Inspector Labor Charge. Provides for Qwest qualified personnel, acting as an inspector, when CLEC requires access to the C-POI after the initial installation. A call-out of an inspector after business hours is subject to a minimum charge of three hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' Qwest employee (or contract employee) is required to go 'on-shift' on behalf of CLEC.

8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2 (EICT). Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

8.3.1.10 Interconnection Tie Pairs (ITP) are described in the UNE Section, and apply for each Unbundled Network Element, ancillary service or Interconnection service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element, ancillary service or Interconnection service and the Demarcation Point. Qwest will charge CLEC for ITPs pursuant to Exhibit A.

8.3.1.11 Collocation Terminations. Terminations are purchased by CLEC for the purpose of accessing Unbundled Network Elements. These terminations may be requested in Shared Access and Direct Connection Configurations.

8.3.1.11.1 Shared Access

8.3.1.11.1.1 In a Shared Access configuration, there are multiple frames that could be designated as an ICDF or appropriate Demarcation Point including, but not limited to, the following:

a) Existing Interconnection Distributing Frame (ICDF)

b) Existing DSX Panels for DS1 and DS3 services

c) New Interconnection Distributing Frame

d) Existing Toll Frame

e) Fiber Distribution Panel

f) Existing Intermediate Frame

8.3.1.11.1.2 The ICDF is the test access point. It would not be uncommon to find multiple service providers, including Qwest, on the ICDF at any one time. This element includes Qwest's provided termination blocks, installation labor between CLEC collocated equipment and the appropriate cross connect device. Cabling is also required and may be provided by CLEC or at their request, Qwest will provide cabling at an additional charge. When Qwest provides the cabling, Collocation Block Termination rates will apply as contained in Exhibit A of this Agreement. When CLEC provides the cabling, Collocation Termination rates, on a per termination basis, will apply as contained in Exhibit A of this Agreement. When CLEC provides and installs the tie cables, blocks and terminations on the ICDF, no Collocation Termination rates will apply.

8.3.1.11.2 Direct Connection

8.3.1.11.2.1 Direct Connection provides an uninterrupted path from the Collocation space to an existing frame. This option will guarantee that there will not be an ICDF. The connection will be designed from the Collocation space to the same frame that Qwest uses to connect to that specific service. For example, if CLEC wants to connect directly from their Collocation space to a 911 router, the infrastructure for the 911 trunks will terminate in a DS1 bay location with the 911-router circuits. There are several options for the location of the Demarcation Point. CLEC will select their desired option via the supplemental Direct Connection (DC-POT) With Collocation Form DC050900. If CLEC chooses a demarcation inside the Collocation space, the collocator should order and install the termination equipment itself. Demarcation equipment must be noted on the order form so that a CLLI code and unique tie cable assignments can be generated for systems flow through. If CLEC chooses a demarcation outside its Collocation space, Qwest will maintain and inventory this device. Direct terminations may be ordered where frame space is available. If frame space is exhausted the terminations may need to be made at another frame. Upon completion of the pre-Provisioning of the Direct Connection, CLEC will receive an Alternate Point of Termination (APOT) form so that they may order Finished Services and UNEs. CLEC will be responsible for augmenting terminations as required. The Direct Connection APOT information must be provided on the ASR or LSR to insure that the services are designed to the dedicated path.

8.3.1.11.2.2 CLEC's termination point will require a CLLI code (e.g., Frame Number) and the dedicated tie pairs will require a unique name to enable automatic assignment through TIRKS™ and SWITCH™ via Carrier Facilities Address (CFA) methods.

8.3.1.11.2.3 If CLEC wishes to arrange terminations on a 2-wire POTS level cross-connect device of the modular type, i.e. COSMIC™ Hardware, standard-engineering principles will apply. Provisioning intervals and costs will be customized and determined on an Individual Case Basis (ICB). A five (5) year forecast including terminations per quantities will be required. MELD™ runs will be required for the initial

COSMIC™ plan and each subsequent block addition. To minimize CLEC's cost, to the extent feasible, Qwest shall consolidate CLEC's requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest, Minimum installation requires at least one (1) block for every two (2) outside plant modules. A one half (½) shelf of block capacity must be reserved for future block space.

8.3.1.11.2.4 Requests for terminations at a DSO, DS1, DS3 and optical level (non-POTS) may also be made directly to the respective frame or panel (i.e. toll frame, DSX, FDP, etc.). Direct Connections to these frames do not require MELD™ runs and short jumper engineering principals, as with the COSMIC™ frame. However these connections will require coordination between Qwest and CLEC to ensure that the cable is terminated in an existing frame with the service that CLEC is wishing to connect with. Direct Connection is ordered via the supplemental Collocation order form, Direct Connection (DC-POT) With Collocation Form DC050900. Timing, pricing and feasibility will be determined on the basis of a specific, in-depth building analysis. Direct Connections are available where available frame space permits. If frame space is exhausted, terminations may need to be made at another frame. Space availability will be determined during the feasibility request phase of the order. Rates for Direct Connection Terminations will be on an ICB basis using rates defined in Exhibit A.

8.3.1.11.3 Terminations must be purchased in the following increments: DS0 in blocks of 100; DS1 in increments of one (1); and DS3 in increments of one (1) coaxial cable or fiber pair.

8.3.1.12 Security Charge. This charge applies to the keys/card and card readers, required for CLEC access to the Qwest Premises for the purpose of Collocation. Charges are assessed per CLEC employee, per card, per Premises on a monthly basis.

8.3.1.13 Composite Clock/Central Office Synchronization. Recovers the cost of providing composite clock and/or DS1 synchronization signals traceable to a stratum one source. CLEC must determine the synchronization requirements for CLEC's equipment and notify Qwest of these requirements when ordering the clock signals. Central Office Synchronization is required for Virtual Collocation involving digital services or connections. Synchronization may be required for analog services. Central Office Synchronization is available where Qwest Central Offices are equipped with Building Integrated Timing Supply (BITS). The rate is applied on a per Port basis in accordance with Exhibit A.

8.3.1.14 -48 Volt DC Power Cable Charge. Provides for the transmission of -48 volt DC power to the collocated equipment and is fused at one hundred twenty-five percent (125%) of request. It includes engineering, furnishing and installing the main distribution bay power breaker, associated power cable, cable rack and local power bay to the closest power distribution bay. It also includes the power cable (feeders) A and B from the local power distribution bay to the leased physical space (for Caged or

Cageless Physical Collocation) or to the collocated equipment (for Virtual Collocation). It is charged per foot, per A and B feeder.

8.3.1.15 Space Availability Report Charge – Recovers the cost of preparing a Space Availability Report in accordance with Section 8.2.1.9.1.

8.3.1.16 CLEC-to-CLEC Connection Charge. Recovers the cost of order processing, design and engineering. Additional charges will be assessed for Virtual Collocation connections and cable holes, if applicable. There will be recurring charges for cable racking.

8.3.1.17 Microwave Entrance Facility - The charges for Microwave Entrance Facility include the recurring and nonrecurring charges associated with the preliminary rooftop engineering and survey analysis, Premises structural analysis and line-of-sight feasibility, if performed by Qwest; space rental for the rooftop and existing antenna support structure, cable racking, cable, building penetration for cable entry, and other work as required.

8.3.2 Rate Elements - Virtual Collocation

The following rate elements, as specified in Exhibit A, apply uniquely to Virtual Collocation.

8.3.2.1 Maintenance Labor. Provides for the labor necessary for repair of out of service and/or service-affecting conditions and preventative maintenance of CLEC virtually collocated equipment. CLEC is responsible for ordering maintenance spares. Qwest will perform maintenance and/or repair work upon receipt of the replacement maintenance spare and/or equipment from CLEC. A call-out of a maintenance technician after business hours is subject to a minimum charge of three (3) hours.

8.3.2.2 Training Labor. Provides for the training of Qwest personnel on a metropolitan service area basis provided by the vendor of CLEC's virtually collocated equipment when that equipment is different from Qwest-provided equipment. Qwest will require three (3) Qwest employees to be trained per metropolitan service area in which CLEC's virtually collocated equipment is located. If, by an act of Qwest, trained employees are relocated, retired, or are no longer available, Qwest will not require CLEC to provide training for additional Qwest employees for the same virtually collocated equipment in the same metropolitan area. Where more than one (1) CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs so selecting.

8.3.2.3 Equipment Bay. Provides mounting space for CLEC virtually collocated equipment. Each bay includes the seven (7) foot bay, its installation, and all necessary environmental supports. Mounting space on the bay, including space for the fuse panel and air gaps necessary for heat dissipation is limited to 78 inches. The monthly rate is applied per shelf. CLEC may request use of alternate bay heights of 9 foot and 11 foot 6 inches, which will be considered on an Individual Case Basis. No Equipment Bay Charge is assessed if CLEC provides its own equipment bay.

8.3.2.4 Engineering Labor. Provides the planning and engineering of CLEC

virtually collocated equipment at the time of installation, change or removal.

8.3.2.5 Installation Labor. Provides for the installation, change or removal of CLEC virtually collocated equipment.

8.3.2.6 Floor Space Lease. Required for Virtual Collocation only in the instance where CLEC provides its own equipment bay. This rate element provides the monthly lease for the space occupied by the CLEC-provided equipment bay, including property taxes and base operating cost without –48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or –48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises areas surrounding the CLEC-provided equipment bay and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the CLEC-provided equipment bay.

8.3.3 Rate Elements - Physical Collocation

8.3.3.1 Space Construction and Site Preparation. Includes the material and labor to construct and prepare the space, including all support structure, cable racking and lighting required to set up the space. It also includes air conditioning (to support CLEC loads specified), lighting (not to exceed 2 watts per square foot), and convenience outlets (3 per Caged or Cageless Collocation or number required by building code) and the cost associated with space engineering. If a new line-up is established for Cageless Collocation, an AC power outlet will be provided at every other bay in the line-up. Cageless bays placed in existing line-ups will use the existing outlets. For Caged Collocation, it includes a nine foot high cage enclosure. CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval, which may not be unreasonably withheld, to construct the space, including the cage in the case of Caged Collocation, in accordance with NEBS Level 1 safety requirements. Pricing for the Space Construction and Site Preparation is described in Exhibit A. In the case of Shared Collocation, Qwest may not increase the cost of site preparation or nonrecurring charges above the TELRIC cost for Provisioning such a cage of similar dimensions and material to a single collocating Party, and Qwest must prorate the charge for site conditioning and preparation by determining the total charge for site preparation and allocating that charge to CLEC based on the percentage of the total space used by CLEC. Qwest must in all cases of shared space Collocation allocate space preparation, conditioning, security measures and other Collocation charges on a pro-rated basis to ensure that the charges paid by CLEC as a percentage of the total overall space preparation and conditioning expenses do not exceed the percentage of the total Collocation space used by CLEC.

8.3.3.2 Floor Space Lease. Provides the monthly lease for the leased physical space, property taxes and base operating cost without -48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); a pro-rata share of biweekly housekeeping

services (sweeping, spot cleaning, trash removal) of Qwest Premises common areas surrounding the leased physical space and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the cage enclosure, as applicable.

8.3.3.3 Intentionally Left Blank.

8.3.3.4 Collocation Grounding Charge. Used to connect the Premises common ground to CLEC equipment. Recurring and nonrecurring charges are assessed per foot to CLEC's equipment.

8.3.4 Rate Elements - ICDF Collocation

8.3.4.1 The charges for ICDF Collocation are the nonrecurring and recurring charges associated with the Unbundled Network Elements or ancillary services ordered by CLEC, the cost of extending the Unbundled Network Elements or ancillary services to the Demarcation Point, which are recovered through the ITP charges described in the UNE Section, and the Security charge, described in this Section.

8.3.5 Rate Elements – Adjacent Collocation

8.3.5.1 The charges for Adjacent Collocation will be developed on an Individual Case Basis, except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined, depending on the specific needs of CLEC and the unique nature of the available adjacent space (e.g., existing structure or new structure to be constructed).

8.3.6 Rate Elements – Remote Collocation and Adjacent Remote Collocation

8.3.6.1 The charges for Remote Collocation will be developed on an Individual Case Basis except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined.

8.3.7 Rate Elements – CLEC-to-CLEC Connections

8.3.7.1 The charges for CLEC-to-CLEC Connections are addressed in Section 8.3.1.16.

8.3.8 Rate Elements – Collocation Cancellation

8.3.8.1 Qwest will not charge for the cancellation service except as specifically provided in the terms and conditions for Collocation Cancellation.

8.3.9 Rate Elements – Collocation Decommissioning

8.3.9.1 Qwest will not charge for the decommissioning service except as specifically provided in the terms and conditions for Collocation Decommissioning

unless equipment has been abandoned or the Collocation space has not been returned to turnover condition.

8.3.9.2 Miscellaneous labor hourly charges as defined in the attached Exhibit A will apply if Qwest is required to remove equipment or to restore the collocation space to turnover condition.

8.3.9.3 Additional dispatch charges, will apply for unmanned offices, as defined in the attached Exhibit A.

8.3.10 Rate Elements – Transfer of Responsibility

8.3.10.1 Vacating CLEC will not incur charges for the transfer of the Collocation site.

8.3.10.2 Assuming CLEC's quote will reflect the following nonrecurring charges associated with the transfer of the Collocation site: Assessment Fee, payable regardless of whether the quote is accepted, and Network Systems Administrative Fee.

8.3.10.3 Nonrecurring charge for processing Interconnection circuits.

8.3.11 Rate Elements – Available Inventory

8.3.11.1 Pricing for sites listed within the Qwest Available Inventory list will be provided on a site-specific basis. Pricing shall be in accordance with the Interconnection Agreement of the assuming CLEC. Vacating CLEC's may receive a potential refund from sale of available/discounted sites based on outstanding Nonrecurring charges, amounts for reimbursable elements and transfer fees.

8.3.11.2 The following items are charged to a CLEC purchasing a "Standard site" from the Qwest Available Inventory List. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before work begins.

8.3.11.2.1 Quote Preparation Fee (QPF) - Found in CLEC's existing Interconnection Agreement for a each specific type of Collocation site.

8.3.11.2.2 Reusable Elements are those Qwest inventoried components used to provision the Collocation site. The quote will be for all components used to install the Collocation space. These elements include Qwest inventoried components (i.e. cage, bays, HVAC, cable racking) to provision the original Collocation site.

8.3.11.2.2.1 Nonrecurring Collocation Rate Elements that are reused, will be available at a 50% discount to an assuming CLEC.

8.3.11.2.3 Reimbursable Elements are those which are not subject to a discount to the assuming CLEC. This includes any reusable termination cabling that is part of the available site. Reimbursable Elements considered for a

potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to Collocation site, i.e. Express Fiber Entrances).

8.3.11.3 Special Site Rates: The following items are charged to an assuming CLEC for a Special Site from the Qwest Postings. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before Qwest begins work.

8.3.11.3.1 Site Survey Fee: A non-refundable site survey fee for a formal site survey visit with the CLEC per Exhibit A. Payment is to be submitted in conjunction with the Collocation Application for a Special Site.

8.3.11.3.2 Quote Preparation Fee (QPF). The QPF for Special Sites will be a flat rate fee per Exhibit A. If the assuming CLEC requires Augments (additional services) to the existing site the QPF will revert to the rate defined in the CLEC's Interconnection Agreement.

8.3.11.3.3 Non recurring Collocation Rate Elements: Include all Reusable elements defined above, DC Power, grounding and terminations. Special sites will be offered at a flat 50% discount to an assuming CLEC based on the rates in its current Interconnection Agreement. Augments (additional services) or changes to the sites will not be discounted and will be charged at the rates as defined in the CLEC's Exhibit A of their Interconnect Agreement or Exhibit A of this document, payable in full prior to commencement of work.

8.3.11.3.4 Network Assessment Fee for transfer of existing circuits to the assuming CLEC per Exhibit A.

8.3.11.3.5 Any Equipment contained in the site will be conveyed at a $0.00 charge.

8.3.11.4 Recurring charges for all Products and Services will be charged at rates listed in the assuming CLEC's Exhibit A of their Interconnection Agreement without a discount.

8.3.12 Rate Elements – Joint Testing

8.3.12.1 The Joint Testing Nonrecurring Charge is specified in Exhibit A of this Agreement. The rate is a minimum of one (1) hour per Joint Testing request at the Virtual Collocation maintenance rate and a per thirty minute charge at the same rate for any time exceeding the first hour. Qwest identified trouble during the ninety (90) calendar Day period for New/Change/Augment collocations, following the acceptance of the collocation site, will be corrected by Qwest at no additional charge. Qwest identified trouble for existing collocation sites will also be corrected at no additional charge.

8.3.12.2 Qwest will not charge a Quote Preparation Fee (QPF) for Joint Testing.

8.3.13 Rate Elements – DC Power Reduction

8.3.13.1 Collocation charges will be based upon the information provided to Qwest by CLEC on the Collocation Application Form. Below is an example of additional charges that are unique to a Power Reduction Request and will be provided to CLEC via a quote:

8.3.13.1.1 Based on this evaluation of work provided in the quote, the rates provided in Exhibit A to this Amendment will apply. One QPF per application/per collocation site will be charged. When multiple feeds at the same collocation space are reduced or eliminated, CLEC will pay one QPF. Other nonrecurring and recurring charges may apply as reflected in CLEC's Interconnection Agreement. If the quote contemplates the performance of work not included in rates identified in Exhibit A of this Amendment, such charges shall be identified in the quote.

8.3.13.1.2 Qwest will provide CLEC a quote for additional nonrecurring charges associated with the Power Reduction Procedure based upon the rates provided in Exhibit A. All quoted nonrecurring charges must be paid within thirty (30) Days from the quote. Such payment constitutes CLEC's quote acceptance and authorizes Qwest to perform the work to effect the requested power reduction. All rates and charges identified in the quote will be based on those rates in the Agreement and Exhibit A of this Amendment. If appropriate rates and charges are not available from those sources, Qwest will use tariffs or other rate sources as a basis for preparing the quote.

8.3.13.1.3 Billing to CLEC for initial power value at the collocation site will be modified to reflect the reduced amount upon receipt of payment of the quoted charges and will be made effective back to the date of acceptance of the Power Reduction Application by the CPMC.

8.3.13.1.4 Recurring billing for the Power Maintenance Charge will terminate on the day CLEC energizes the feed or returns the fuse position to Qwest.

8.3.13.2 Nonrecurring Charges

8.3.13.2.1 QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the Power Reduction request. It covers the project, order and support management associated with the administrative functions of processing the request.

8.3.13.2.2 Power Reduction Charge: Includes costs associated with reducing the fuse/breaker size. Rates are categorized in this manner based upon the work involved and power distribution point (e.g., BDFB or power board) and are set forth in Exhibit A of CLEC's Interconnection Agreement. Where additional work is needed, such as rewiring the power lead at the power source (or some cases may require relocation of the feed), rates will be calculated on an Individual Case Basis (ICB) basis. These rates will be provided to CLEC on the quote prior to work beginning.

8.3.13.2.3 Power Restoration Charge (assessed if power is restored): ICB Charge associated with restoring the power cable to the power source and is

contingent upon whether the desired power and fuse position is available. Qwest will evaluate work required to perform the Power Restoration request and provide CLEC a quote utilizing standard power element charges (for example, DC power usage, labor, and cabling charges) included in Exhibit A of CLEC's Interconnection Agreement.

8.3.13.3 Recurring Charge

8.3.13.3.1 Power Maintenance Charge: Monthly recurring charge associated with option to hold the power infrastructure from a secondary feed in place for potential CLEC requests.

8.4 Ordering

8.4.1 Ordering - All Collocation

8.4.1.1 CLEC must complete the requirements in the Implementation Schedule Section of this Agreement before submitting a Collocation Application Form to Qwest.

8.4.1.2 Any material changes, modifications or additional engineering (Material Changes) requested by CLEC, subsequent to its original Collocation order, as to the type and quantity of equipment or other aspects of the original Collocation order, must be submitted with a revised Collocation Application. For purposes of this section, Material Changes are changes that would significantly impair Qwest's ability to provision the requested Collocation within the applicable intervals if the changes are provisioned with the original Collocation order and would require Qwest to incur financial penalties under the terms of this Agreement or other Applicable Law. Qwest shall determine the additional time required to comply with CLEC's request for Material Changes (Additional Time), and CLEC shall have the option of (a) having the request for Material Changes implemented with the original Collocation order (within the original Provisioning intervals) as extended by the Additional Time; or (b) having Qwest process and provision the request as a subsequent construction activity or augmentation to the original Collocation order. Any nonmaterial changes, modifications, or additional engineering requested by CLEC, subsequent to its original Collocation order, may be submitted with a revised Collocation Application or otherwise communicated to Qwest and shall be implemented with the original Collocation order within the original applicable intervals.

8.4.1.3 There are three (3) primary steps in the ordering of Collocation – 1) Forecasting, 2) Application, and 3) Acceptance of Quote.

8.4.1.4 CLEC shall submit an annual forecast, updated at the end of each quarter, of its future Collocation requirements. The quarterly forecast shall be reviewed by CLEC and the Qwest account team. CLEC forecast shall be considered accurate for purposes of Collocation intervals if the subsequent Collocation Application correctly identifies a) and e) below, and b) and c) below are within twenty percent (20%) of the forecast. If at the time the Application is made the forecasted type of Collocation is not available, CLEC may specify a different type of Collocation without affecting the Collocation intervals. The forecast shall include, for each Qwest premises, the following:

a) Identification of the Qwest Premises;

b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;

c) Power requirements;

d) Heat Dissipation (optional);

e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, ICDF, Virtual, etc.);

f) Intentionally Left Blank.

g) Entrance Facility Type (e.g., Express Fiber, Private Line);

h) Type and Quantity of Terminations (optional); and

i) Month or Quarter during or after which CLEC expects to submit its Collocation Application.

8.4.1.4.1 The following terms shall apply to the forecasting process:

a) CLEC forecasts shall be provided as detailed in Section 8.4.1.4;

b) CLEC forecasts shall be confidential information and Qwest may not distribute, disclose or reveal, in any form, CLEC forecasts other than as allowed and described in Sections 5.16.9.1 and 5.16.9.2.

c) Reserved for Future Use.

d) Reserved for Future Use.

8.4.1.5 CLEC shall submit a Collocation Application to order Collocation at a particular Qwest Premises. A Collocation Application shall be considered complete, if it contains:

a) Identification of the Qwest Premises;

b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;

c) Power requirements;

d) Heat Dissipation;

e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, Virtual, etc.);

f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality i.e., Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the Application, how this equipment is necessary for access to UNEs or Interconnection. High

level equipment interface or connectivity schematic for equipment that is not on the approved equipment list or has not been used by CLEC for a similar purpose before, must also accompany this Application. CLEC using approved equipment found at www.qwest.com/wholesale/pcat/collocation.html need not comply with this provision);

g) Entrance Facility Type;

h) Type and Quantity of Terminations;

i) If desired, an alternate form of Collocation if first choice is not available; and

j) Billing Contact.

8.4.1.5.1 Parties will work cooperatively to ensure the accuracy of the Collocation Application. If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days after receipt of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.1.6 Acceptance – After receipt of a Collocation Quote Form from Qwest, CLEC shall formally accept the quote in order for Qwest to continue the processing of the Collocation Application. A Collocation Acceptance shall be considered complete, if it contains:

a) Signed Notification of Acceptance; and

b) Payment of fifty percent (50%) of quoted charges.

8.4.1.6.1 CLEC shall have the option of viewing the available space prior to quote acceptance, at the rate set forth in Exhibit A.

8.4.1.7 Collocation Space Reservation – allows CLEC to reserve space and identify, to the extent available, infrastructure incidental to that space such as power, HVAC, in a Qwest Premises for up to one (1) year for transmission equipment (ATM, Packet Switching, DSLAM), three (3) years for circuit switching equipment, and five (5) years for power equipment. CLEC may reserve space in a particular Qwest Premises through the Collocation Space Reservation Application Form. Requests for contiguous space will be honored, if available.

8.4.1.7.1 Collocation Space Reservation Application – Upon receipt of the Collocation Space Reservation Application Form, Qwest will provide space feasibility within ten (10) calendar Days.

8.4.1.7.2 Collocation Space Reservation Quotation – If space is available, Qwest will provide a specific price quote based on the requested Collocation requirements described on the Collocation Space Reservation Application Form.

The quote and a Billing invoice for twenty-five percent (25%) payment of nonrecurring charges will be sent to CLEC within twenty-five (25) calendar Days from the Collocation Space Reservation Application receipt.

8.4.1.7.2.1 Collocation Space Reservation Acceptance CLEC must electronically submit Acceptance or non-Acceptance of the quote within seven (7) calendar Days of receipt of the quotation. If CLEC submits the Acceptance between eight (8) and thirty (30) calendar Days of receipt of the quotation, Qwest will honor the reservation upon receipt of the payment only if Qwest does not receive a competing request for the same space from another CLEC. Qwest will not honor reservations if CLEC submits the Acceptance more than thirty (30) calendar Days after receipt of the quotation.

8.4.1.7.3 Upon receipt of the twenty-five percent (25%) payment, Qwest will reserve the space on behalf of CLEC in accordance with the Application and take the necessary steps to ensure the availability of power, HVAC and other components reflected on the application for reservation. Qwest will hold the reservation for the applicable reservation period after the twenty-five percent (25%) payment. This payment will be applied to the subsequent Collocation Application.

8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. Upon notification of the cancellation, Qwest will refund a prorated portion of the twenty-five percent (25%) payment as follows:

a) Cancellation notification within ninety (90) calendar Days from receipt of wire transfer, seventy five percent (75%) of the initial down payment will be returned to CLEC.

b) Cancellation notification within ninety-one (91) and one hundred and eighty (180) calendar Days from receipt of wire transfer, fifty percent (50%) of the initial down payment will be returned to CLEC.

c) Cancellation notification within one hundred and eighty-one (181) and two hundred and seventy (270) calendar Days from receipt of wire transfer, twenty-five percent (25%) of the initial down payment will be returned to CLEC.

d) Cancellation notification after two hundred and seventy (270) calendar Days from receipt of wire transfer, zero percent (0%) of the initial down payment will be returned to CLEC.

8.4.1.8 Collocation Space Option

8.4.1.8.1 CLEC, Qwest, and Qwest Affiliates may Option space in Qwest Wire Center Premises in accordance with the terms of this Section 8.4.1.8 for the following equipment and time periods:

a) Transmission equipment – one (1) year

b) Circuit switching equipment – three (3) years

c) Power plants –five (5) years

8.4.1.8.2 Optioned space is offered to CLECs for Caged, Cageless, and Virtual Collocation. To promote fairness and prevent warehousing, the following limits apply:

a) The Party requesting the Option may specify the amount of space to be Optioned but not a specific location within the Wire Center, unless CLEC requests an Option for bay space adjacent to existing cageless lineups. CLEC may also request space be contiguous to its existing Collocation space.

b) A requesting CLEC may Option one (1) Collocation space per Wire Center.

c) The maximum amount of space per Wire Center to be Optioned is:

- 200 square feet for Caged Collocation

- 4 bays for Cageless and Virtual Collocation

8.4.1.8.3 The Collocation Space Option Application form will be processed upon receipt of a properly completed request. Such form shall be considered properly completed if it contains identifying information of CLEC, the applicable Qwest Premises, the amount of Collocation space sought, the type of Collocation (Caged, Cageless, Virtual) and the type of equipment (from the categories identified in Section 8.4.1.8.1) for which the option is being sought. CLEC must have met all past and present undisputed financial obligations to Qwest. Upon receipt of the Collocation Space Option Application form, Qwest will confirm in writing, within ten (10) calendar Days, the availability of, and price quote (the "Option Fee") for the Optioned space. If space is not available, Qwest will deny the request.

8.4.1.8.4 CLEC must electronically submit Acceptance with full payment of the nonrecurring portion of the Option Fee, or acknowledge non-Acceptance of the quoted Option Fee, within seven (7) calendar Days of receipt of the quotation. When Qwest takes an Option on space for itself, Qwest shall impute an amount equal to the Option Fee to the appropriate operations for which the Optioned Space applies. The Option quote expires seven (7) calendar Days after delivery to CLEC.

8.4.1.8.5 Upon receipt of Acceptance and full payment of the nonrecurring portion of the Option Fee, Qwest will Option the space on behalf of CLEC including the contiguous space requests if available (or itself if appropriate) and the Option time frame will begin. The prioritization of Optioning will be based upon the date and time of the Acceptance. The earlier in time an Acceptance is received by Qwest, the higher in priority is such Option. The Option is limited to space only and does not include other elements required to

provision the Collocation.

8.4.1.8.6 In order for an Option request to avoid expiration, CLEC must:

a) Submit a Collocation Application during the Option time frame; or

b) The Option may be renewed if a Collocation Space Option Application is received at least ten (10) calendar Days prior to the expiration of the term of the existing Option. The priority of a renewed Option is determined by the date CLEC accepts the quote from Qwest on CLEC's renewal application.

8.4.1.8.7 First Right of Refusal – If Qwest receives a valid Collocation Application (CLEC A is the requesting Party) for a Qwest Wire Center in which all available space has been occupied or Optioned, the following provisions for First Right of Refusal will apply:

8.4.1.8.7.1 All Qwest out of space reporting requirements apply to the Collocation Application (Sections 8.2.1.11 and 8.2.1.12). In addition, Qwest will provide CLEC A with Option space information (e.g., Caged and Cageless Optioned space) that may fulfill the requirements of CLEC A's Collocation Application. At CLEC A's request, Qwest will initiate the Option Enforcement Notice process by notifying the Option Party or Parities with the most recent space Option(s) that meets the requirements of CLEC A's Collocation Application.

8.4.1.8.7.2 The Option Enforcement Notice serves as notification to the Option Party that Qwest is in possession of a valid Collocation Application, and calls for the Option Party to exercise their Right of First Refusal, or relinquish their space Option. The Option Party may exercise it's Right of First Refusal by submitting either a Collocation Application as set forth in Section 8.4.1.5, or by submitting the Collocation Space Reservation Application set forth in Section 8.4.1.7, within ten (10) calendar Days of receipt of the Option Enforcement Notice. This process continues for all Optioned space until all Optioned space is exercised or Optioned space is relinquished (affirmatively by CLEC or upon expiration of the notice period, whichever is earlier) to fulfill the Collocation Application. Once Optioned space has been relinquished for use to fulfill the Collocation Application, the standard ordering terms and conditions for Collocation shall apply.

8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLEC require the use of CLEC's contiguous space. Upon notification, CLEC will have ten (10) calendar days to indicate its intent to submit a Collocation Application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.

8.4.1.8.7.4 The rate elements for the Collocation Space Option are comprised of the following:

a) Space Option Administration Fee is a nonrecurring fee for all Collocation Space Option requests and covers the processing of application, feasibility, common space engineering, records management, and administration of the First Right of Refusal process.

b) Space Option Fee is a monthly recurring fee that will be charged based upon the amount of space being optioned, at two dollars ($2.00) per square foot per month.

8.4.1.8.8 In the event that the Option Party proceeds with a Collocation Application for optioned space, all payments made pursuant to Section 8.4.1.8.7.4(b) above shall be applied to such Application.

8.4.1.9 The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs.

8.4.2 Ordering - Virtual Collocation

8.4.2.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.2.2 Quotation – If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar Days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing virtually collocated equipment, will be processed and provisioned within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's Acceptance of the quoted charges.

8.4.2.3 Acceptance -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.2.4 Interval -- The interval for Virtual Collocation shall vary depending upon four factors – 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7; 2) whether CLEC provides its Acceptance within seven (7) calendar Days receipt of the quotation; 3) whether CLEC delivers its collocated equipment to Qwest in a timely manner, which shall mean within fifty-three (53) calendar Days of the receipt of the complete Collocation Application; and 4) whether the Application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no instance shall any such interval exceed thirty (30) calendar Days. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.2.4.1 Forecasted Applications with Timely Acceptance – If an Application is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.2 Forecasted Applications with Late Acceptance – If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.2.4.3 Unforecasted Applications with Timely Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest

within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.4 Unforecasted Applications with Late Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.3 through 8.4.2.4.4 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.2.4.6 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. – If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to ensure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application. If not withstanding these efforts, Qwest is unable to meet the interval and cannot reach agreement with CLEC for an extended interval. Qwest may seek a waiver from the Commission to obtain an extended interval.

8.4.3 Ordering - Caged and Cageless Physical Collocation

8.4.3.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premises. The feasibility study will be provided within ten

(10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.3.2 Quotation -- If Collocation entrance facilities and space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.3.3 Acceptance – Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.

8.4.3.4 Interval – The interval for Physical Collocation shall vary depending upon two (2) factors – 1) whether CLEC provides its Acceptance within seven (7) calendar Days of receipt of the quotation; and, 2) whether the Application requires major infrastructure additions or modifications. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.3.4.1 Applications with Timely Acceptance – If CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application.

8.4.3.4.2 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.

8.4.3.4.3 Reserved for Future Use.

8.4.3.4.4 Reserved for Future Use.

8.4.3.4.5 Reserved for Future Use.

8.4.3.4.6 Intervals for Major Infrastructure Modifications (Unforecasted)– An Unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC power plant, standby generators, heating, venting or air conditioning equipment. The installation intervals in Sections 8.4.3.4.1 through 8.4.3.4.2 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the Collocation Arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.4 Ordering - Interconnection Distribution Frame (ICDF) Collocation

8.4.4.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's terminations within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities. The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by DS0, DS1 and DS3 capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.4.2 Quotation -- If space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of receipt of the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.4.3 Acceptance -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.4.4 Interval – The interval for ICDF Collocation shall vary depending upon whether CLEC provides its Acceptance within seven (7) calendar Days of the quotation

and was forecasted or unforecasted. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.4.4.1 Reserved for Future Use.

8.4.4.4.2 Reserved for Future Use.

8.4.4.4.3 Applications with Timely Acceptance – If CLEC provides a complete Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of an unforecasted Collocation arrangement within ninety (90) calendar Days or, forty-five (45) calendar Days for a forecasted Collocation arrangement of the receipt of the complete Collocation Application. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.4.4.4 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days if its unforecasted, or forty-five (45) calendar Days, if it's a forecasted Collocation arrangement, of the receipt of the complete Collocation Acceptance. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.5 Ordering – Adjacent Collocation

8.4.5.1 If space for Physical Collocation in a particular Qwest Premises is not available at the time of CLEC's request, CLEC may request Qwest to conduct a feasibility study for Adjacent Collocation for that Premises site. Qwest recommends that Qwest and CLEC conduct a joint site visit of such Premises to determine if suitable arrangements can be provided on Qwest's property. Qwest will make available, within ten (10) business days, drawings of the Qwest physical structures above and below ground for the requested Adjacent Collocation site.

8.4.5.2 If a new structure is to be constructed, the interval shall be developed on an Individual Case Basis, to account for the granting of permits or ROW, if required, the provision of Collocation services by Qwest, in accordance with CLEC's Application, and the construction by CLEC of the adjacent structure. If CLEC disputes the interval proposed by Qwest, Qwest must promptly petition the Commission for approval of such disputed interval.

8.4.5.3 If Adjacent Collocation is provided within an existing Qwest Premises, the ordering procedures and intervals for Physical Collocation shall apply.

8.4.6 Ordering – Remote Collocation and Adjacent Remote Collocation

8.4.6.1 The ordering procedures and intervals for Physical Collocation or Virtual Collocation shall apply to Remote Collocation, and to Adjacent Remote Collocation provided within an existing Qwest Premises, except Sections 8.4.3.4.3 and 8.4.3.4.4. Remote Collocation and Adjacent Remote Collocation are ordered using the Remote Collocation Application Form.

8.4.6.2 If space for Physical Collocation or Virtual Collocation in a particular Qwest Remote Premises is not available at the time of CLEC's request, CLEC may order Adjacent Remote Collocation using the ordering procedures described above for Adjacent Collocation in Sections 8.4.5.1 and 8.4.5.2.

8.4.7 Ordering – CLEC to CLEC Connections

8.4.7.1 Application -- Upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j). Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of CLEC's copper, coax, or fiber optic cable, or any other Technically Feasible method used to interconnect CLEC's collocated equipment that is in separate locations in the same Qwest Premises, or to another CLEC's equipment in the same Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.7.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.7.2 Quotation -- If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route to CLEC with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a feasibility and quote to CLEC no later than ten (10) calendar Days of receipt of the Collocation Application. CLEC-to-CLEC Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.7.3 Acceptance -- There are two (2) forms of Acceptance for CLEC-to-CLEC Connections:

8.4.7.3.1 CLEC-to-CLEC connections with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its Acceptance. Upon receipt of a complete Collocation Acceptance, CLEC may begin placement of its copper, coax, or fiber cables along the Qwest designated cable rack route. Recurring charges will begin with CLEC Acceptance.

8.4.7.3.2 CLEC-to-CLEC Connections using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest

will begin construction of the new cable rack.

8.4.7.4 Interval – Pursuant to Section 8.4.7.3.2, the construction interval for CLEC-to-CLEC Connections requiring the construction of new cable rack by Qwest shall be within sixty (60) calendar Days of the receipt by Qwest of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.7.5 A CLEC need not utilize the CLEC to CLEC connection process or the collocation application process to connect two contiguous collocation spaces leased by that CLEC that are adjacent to each other; provided that there is existing cable racking that the CLEC can use.

8.4.8 Ordering – Direct Connections

8.4.8.1 Application – Where Direct Connection is requested in a Wire Center where CLEC already has established Collocation, upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j), Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of copper, coax, or fiber optic cable, or any other Technically Feasible method, used for Direct Connection (as described in Section 8.3.1.11.2). The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.8.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.8.2 Quotation – If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a quote to CLEC no later than ten (10) calendar Days after receipt of a complete Collocation Application. Direct Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.8.3 Acceptance – There are two (2) forms of Acceptance for Direct Connection:

8.4.8.3.1 Direct Connection with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its acceptance notification.

8.4.8.3.2 Direct Connection using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.8.4 Interval – The construction interval for Direct Connections shall be dependent upon whether the Direct Connection is to the COSMIC™ frame requiring a MELD™ and or if new cable racking is required.

8.4.8.4.1 If CLEC provides a complete Acceptance within thirty (30) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Direct Connection above the DS0 level where no new cable racking is required within thirty (30) calendar Days of the receipt of the complete Collocation Acceptance. If Direct Connection is required at the DS0 level, to the COSMIC™, or if new cable racking needs to be installed, Qwest will provision the direct trunking within sixty (60) calendar Days of the receipt of the complete Collocation Acceptance.

8.4.9 Ordering – Collocation Cancellation, Decommission and Transfer of Responsibility Form

8.4.9.1 Cancellation requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.1.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.1.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.1.3 Qwest will follow its standard Cancellation order validation procedures, providing acknowledgment of acceptance or rejection within one business day of receipt of a valid and complete Application.

8.4.9.2 Decommissioning requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.2.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.2.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.2.3 Qwest will notify CLEC within one (1) business day if the prerequisites have been met. Qwest will validate the order within two (2)business days from receipt of the application.

8.4.9.3 The Transfer of Responsibility process requires submission of the Transfer of Responsibility Application Form containing information for both the vacating and the assuming CLEC.

8.4.9.3.1 The Transfer of Responsibility Application Form can be found on

Qwest's web site at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.4.9.3.2 The Transfer of Responsibility request should be submitted to colo@qwest.com and rfsmet@qwest.com simultaneously.

8.4.10 Ordering – Available Inventory

8.4.10.1 CLEC must submit a "Qwest Collocation Application Form (new, change or augment)" on the Qwest web at: http://www.qwest.com/wholesale/pcat/collocation.html

8.4.10.2 The "submit" date for the Collocation Available Inventory request will commence on the date that the Wholesale Project Manager (WPM) notifies the Collocation Project Management Center (CPMC) that all prerequisites for this request to have been met.

8.4.10.3 Qwest will process the Available Inventory Request pursuant to the Collocation Intervals contained in this Agreement.

8.4.10.3.1. Special Site interval will be forty-five (45) Calendar Days from the receipt of payment.

8.4.10.4 For purposes of first–come, first-served determination of availability, priority will be defined by the date and time the complete application is received by rfsmet@qwest.com.

8.4.10.5 CLECs should submit an alternative option when requesting an available site by populating the "Second Choice" and/or "Third Choice" tabs included on the Qwest Collocation Application Form. This will prevent the possible cancellation of the submitted application in the event that the first choice is no longer available.

8.4.11 Ordering – Joint Testing

8.4.11.1 Qwest will accept a request to provide Joint Testing for up to sixty (60) calendar days past scheduled RFS. CLEC is required to submit a request for Joint Testing by checking the Joint Testing box on the New, Change or Augment Collocation Application Form or by sending in the separate Joint Testing Application Form.

8.4.11.2 Applications should be sent to rfsmet@qwest.com. Upon receipt of a complete Application Form, Qwest will contact CLEC to set up a testing time based upon the scheduled RFS.

8.4.12 Ordering – DC Power Reduction

8.4.12.1 CLEC should submit the "Collocation Application for New, Augment or Change" and indicate specific power feeds to be reduced (e.g., eliminate or reduce multiple feeds from 60 to zero amps or reduce main feed from 60 to 20 amps). Under

the "type of request" category CLEC should indicate that this is an Augment.

8.5 Billing

8.5.1 Billing - All Collocation

8.5.1.1 Upon completion of the Collocation construction activities and payment of the remaining nonrecurring balance, Qwest will provide CLEC a completion package that will initiate the recurring Collocation charges. Once this completion package has been signed by CLEC and Qwest, and Qwest has received the final fifty percent (50%) balance, Qwest will activate CLEC transport services and/or UNEs or ancillary services coincident with completion of the Collocation.

8.5.1.2 In the event Qwest has completed all associated construction activities and CLEC has not completed its associated activities (e.g., delivering fiber to the C-POI, or providing the equipment cables for connecting to the Interconnection Distribution Frame), Qwest will bill an adjusted amount of the remaining nonrecurring balance, close the job, and begin Billing the monthly recurring rent charge. In those instances where the job is delayed due to CLEC not having its fiber to the POI, Qwest will request the balance due minus the dollar amount specific to this work activity, and begin Billing the monthly recurring rent charge. Once CLEC has completed fiber placement, CLEC can request Qwest to return and complete the splicing activity at the rate reflected in this Agreement. In the case of missing equipment cables, CLEC will be responsible for installing the cables if not delivered at job completion. The installation activity must be conducted by a Qwest approved vendor and follow the designated racking route. Final test and turn-up will be performed under the Maintenance and Repair process contained herein.

8.5.1.3 Should Qwest fail to activate CLEC equipment or services, CLEC MRCs for such equipment or services will be credited on a monthly pro-rata basis until the equipment or services ordered are fully usable.

8.5.2 Billing - Virtual Collocation

8.5.2.1 Virtual Collocation will be considered complete when the Premises is Ready for Service (RFS). Cooperative testing between CLEC and Qwest may be negotiated and performed to ensure continuity and acceptable transmission parameters in the facility and equipment.

8.5.3 Billing - Caged and Cageless Physical Collocation

8.5.3.1 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charges, Qwest will schedule with CLEC, a walk through of the space. During this joint walk through, Qwest will turn over access to the space and provide security access for the Premises. Upon completion of the Acceptance walk through, CLEC will be provided the Caged or Cageless Physical Collocation completion package. The monthly Billing for leased space, DC Power, Entrance Facility, and other associated

monthly charges will commence with CLEC sign off on the completion of the physical space. CLEC may then proceed with the installation of its equipment in the Collocation space, unless early access has been arranged pursuant to Section 8.2.3.7. If Qwest, despite its best efforts, including notification through the contact number on the Collocation Application, is unable to schedule the walk through with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the monthly recurring charges.

8.5.4 Billing – Transfer of Responsibility

8.5.4.1 Vacating CLEC is obligated to pay all recurring charges associated with the Collocation until Qwest completes the Transfer of Responsibility request. When the RFS date is met, Qwest will begin to bill the assuming CLEC for all recurring billing, charges based on the CLEC's Interconnection Agreement, and cease the recurring billing for the vacating CLEC.

8.5.4.2 Assuming CLEC will be responsible for the monthly charges for the working circuits and charges for the transfer of the working circuits agreed to be transferred as part of the Transfer of Responsibility request (if applicable).

8.6 Maintenance and Repair

8.6.1 Virtual Collocation

8.6.1.1 Maintenance Labor, Inspector Labor, Engineering Labor and Equipment Labor business hours are considered to be Monday through Friday, 8:00 am to 5:00 pm (local time) and after business hours are after 5:00 pm and before 8:00 am (local time), Monday through Friday, all day Saturday, Sunday and holidays.

8.6.1.2 Installation and maintenance of CLEC's virtually collocated equipment will be performed by Qwest or a Qwest authorized vendor.

8.6.1.3 Upon failure of CLEC's virtually collocated equipment, Qwest will promptly notify CLEC of such failure and the corrective action that is needed. Qwest will repair such equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest. CLEC is responsible for transportation and delivery of maintenance spares to Qwest at the Premises housing the failed equipment. CLEC is responsible for purchasing and maintaining a supply of spares.

8.6.2 Physical Collocation

8.6.2.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's leased space.

8.6.3 Interconnection Distribution Frame Collocation

8.6.3.1 CLEC is responsible for using industry accepted practices for its terminations. Additionally, CLEC is responsible for having tools for such operations. Qwest is responsible for the overall repair and maintenance of the frame; including horizontal and vertical mounting positions, cable raceways, rings, and troughs, and

general housekeeping of the frame.

8.6.4 Adjacent Collocation and Adjacent Remote Collocation

8.6.4.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's Adjacent Collocation and Adjacent Remote Collocation space.

8.6.5 Reserved for Future Use

SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

9.1 General Terms

OPEN - Covad proposed; Qwest cannot agree

9.1.1 Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations. Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) or Section 271 of the Act, or other Applicable Laws. Failure to list a Section 251, Section 271 or state-mandated UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A.

9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services, for the commingling of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications services pursuant to Applicable Law.

9.1.1.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with access services or other Non-Qualifying services. All variations of Commingling of services that include a high capacity loop, which may include multiplexing or any other means by which this combination is achieved, and transport facility or service are subject to the Service Eligibility Criteria in Section 9.1.1.5.

9.1.1.2.1 Work performed by Qwest to Commingle services at CLEC's request or to provide services that are not subject to standard provisioning intervals will not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled facility or service. Provisioning intervals applicable to services included in a requested Commingled facility or service will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

9.1.1.3 Qwest will not Commingle services or Network Elements that are required to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

9.1.1.3.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

9.1.1.3.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

9.1.1.4 **Ratcheting -** To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of the UNEs or UNE Combinations involved.

9.1.1.4.1 Intentionally Left Blank.

9.1.1.4.2 Intentionally Left Blank.

9.1.1.4.3 To the extent a multiplexer is included in a Commingled circuit then: (1) the multiplexer will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs, or (2) in all other situations the multiplexer will be ordered and billed pursuant to the appropriate Tariff

9.1.1.5 **Service Eligibility Criteria -** With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport (High Capacity EELs), there are additional eligibility criteria that do not apply to other UNEs. CLEC can not order any EELs without an EEL amendment. This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs. Upon request by CLEC, and to the extent required by Applicable Law, the parties will negotiate an amendment to this Agreement that will enable CLEC to order EELs subject to any

service eligibility criteria established by Applicable Law.

OPEN – Covad proposed deletion; Qwest cannot agree; Covad counter below

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

OPEN – Qwest proposed; Covad cannot agree; Covad counter below

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a Interconnection Agreement, any of the Network above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, then Qwest shall bill for such UNEs and services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs .

9.1.1.8 Intentionally Left Blank.

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network

Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities (either "as is" or modified via conditioning or incremental facility work that fits the criteria for the service requested or is otherwise required by the Existing Rules) exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.2.1 Qwest will also perform routine modifications to existing loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers, including, but not limited to, rearrangement or splicing of cable (including rearrangement of existing pairs to include fiber hub counts and rearrangement of existing pairs to extend the line), adding a doubler or repeater, adding and/or rearranging an equipment case, adding a smart jack, installing a repeater shelf, adding a line card, and deploying a new multiplexer or reconfiguring an existing multiplexer. Rates for such modifications are included in Exhibit A. For DS1 capable loops, this Section is effective immediately. For all other loop facilities, this Section will be effective July 2, 2004.

9.1.2.1.2.2 Qwest will also perform routine modifications to existing Dark Fiber loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers (including the work done on Dark Fiber to provision lit capacity to End User Customers). Rates for such modifications are

included in Exhibit A. This Section is effective July 2, 2004. To the extent such modifications constitute a construction of Special Access services, pursuant to retail construction provisions of Special Access or stand-alone construction Tariffs, the terms and conditions of such Tariffs will apply to CLEC. The provisions of this Section shall not be construed to require Qwest to provide unbundled access to a Fiber-to-the-Home loop when Qwest deploys such a loop to a End User Customer premises.

9.1.2.1.2.3 Qwest performs routine, day-to-day work activities while managing its network. Activities such as accessing manholes and deploying bucket trucks to reach aerial cable do not comprise network modifications. Rather these activities are performed by Qwest to effectuate network modifications.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a supplemental order to change the Due Date to a later date.

9.1.2.1.3.2 Qwest will send CLEC a jeopardy clearly stating there is a lack of available facilities and the order will be delayed. In the event Qwest notifies CLEC that facilities ordered are not available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall send a new FOC to the CLEC identifying for the CLEC a new Due Date. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this section.

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for

Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

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9.1.3 Reserved for Future Use.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Loop Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other Central Office Demarcation Point. The ITP is ordered in conjunction with a UNE. The charges for the ITP are contained in Exhibit A. The ITP may be ordered per termination. The Demarcation Point shall be:

a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation Space; or

b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF; or

d) if CLEC elects to use a direct connection from its Collocation space to the distribution frame serving a particular element, at the distribution frame; or

e) at another Central Office Demarcation Point mutually-agreed to by the Parties.

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9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271 et seq. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Qwest provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this Section 9.1.6 are contained in Exhibit A to this Agreement.

9.1.6.1 When elements are provisioned by Qwest on an individual element basis (whether or not such elements are combined by CLEC with other elements provided by Qwest or CLEC):

a) Qwest will perform testing necessary or reasonably requested by CLEC, to determine that such UNE is capable of meeting the technical parameters established for each UNE.

b) Pursuant to Section 12.3, Qwest will repair and maintain such elements to ensure that they continue to meet the technical parameters established for each UNE. CLEC is responsible for the end–to-end transmission and circuit functionality testing for UNE Combinations created by CLEC.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to assist in determining end-to-end transmission and circuit functionality of such UNE.

9.1.6.2 When elements are provisioned by Qwest in combination:

a) Qwest will perform testing necessary or reasonably requested by CLEC to determine that such combination and each UNE included in such combination is capable of meeting the technical parameters of the combination.

b) Pursuant to Section 12.3, Qwest will repair and maintain such combination and each UNE included in such combination to ensure that they continue to meet the technical parameters of the combination.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to determine end-to-end transmission and circuit functionality of such combination.

9.1.7 Installation intervals for Unbundled Network Elements are contained in Exhibit C.

9.1.8 Maintenance and Repair is described herein. The repair center contact telephone numbers are provided in the Maintenance and Repair PCAT, which is located on the Qwest Web site.

9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC.

9.1.9.1 Qwest shall provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Qwest provides such disclosures on an Internet web site.

9.1.10 Intentionally Left Blank.

9.1.11 Exhibit A of this Agreement contains the rates for Unbundled Network Elements.

9.1.12 Miscellaneous Charges are defined in Section 4.40 (a). Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in Exhibit A. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges. Rates for Miscellaneous Charges are contained in Exhibit A. Unless otherwise provided for in this Agreement, no additional charges will apply.

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9.1.14 Intentionally Left Blank.

9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper Subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site (www.qwest.com/disclosures); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.

9.2 Unbundled Loops

9.2.1 Description

The Unbundled Loop is defined as a transmission facility between a distribution frame (or its equivalent) in a Qwest Central Office and the Loop Demarcation Point at an End User Customer's premises. The Unbundled Loop includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, Dark Fiber, attached electronics and line conditioning. As used in this Agreement, "attached electronics" means any electronics necessary to provide the requested transmission path, including electronics added through incremental facilities work, but does not include multiplexing equipment, such as Digital Subscriber Line Access Multiplexers, used for the provision of Advanced Services. The Unbundled Loop includes DS0, DS1, and DS3 Loops. Qwest will not provide Unbundled OCn Loops or features and functionalities of OCn Loops.

9.2.1.1 "Loop Demarcation Point" – For purposes of this section, Loop Demarcation Point is the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, owner or landlord ownership of facilities begins.

9.2.1.2 **FTTH Loops.** For purposes of this Section, a Fiber-to-the-Home ("FTTH") loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's premises.

9.2.1.2.1 FTTH New Builds. Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's premises that had not previously been served by any loop facility prior to October 2, 2003.

9.2.1.2.2 FTTH Overbuilds. Qwest shall have no obligation to provide

access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH loop parallel to, or in replacement of, an existing copper loop facility:

9.2.1.2.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's premises after deploying the FTTH loop to such premises and (ii) upon request to provide access to such copper loop as an Unbundled Network Element. Not withstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 9.2.1.2.2 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 9.2.1.2.3 below.

9.2.1.2.2.2 In the event Qwest, in accordance with the provisions of Section 9.2.1.2.3 below, retires the existing copper loop connected to the End User Customer's premises, Qwest shall provide access, as an Unbundled Network Element over the FTTH loop, to a 64 kbps transmission path capable of voice grade service.

9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) provide notice of such planned replacement on its website (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified. Such notices shall be in addition to any applicable state Commission requirements.

9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replaced by like copper facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.

9.2.1.2.3.2 When Qwest retires Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition

of current working facilities to the new working facilities so that service interruption is held to a minimum.

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9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location pursuant to Section 251 of the Act, Qwest will provide access to such loops pursuant to Section 271 of the Act and applicable state law. Qwest will maintain on its website a separate listing for DS1, DS3, and Dark Fiber Loops for those End User Customer premises for which the Commission has found non-impairment under Section 251 of the Act. In the event CLEC has DS1, DS3, or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for any records changes, or alternate services, as required by applicable state law, and requested by Qwest. If such alternative arrangements are not in place within sixty (60) days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with Section 9.1.1.7 above.

OPEN – Covad proposed; Qwest cannot agree

9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide pursuant to Section 251 of the Act, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location. Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7 above.

9.2.1.5 Hybrid Loops – A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

9.2.1.5.1 Packet Switching Facilities, Features, Functions and Capabilities – CLEC will not order packet switching under this Agreement.

9.2.1.5.2 Broadband Services – When CLEC seeks access to a Hybrid Loop for the provision of broadband services, Qwest shall provide CLEC with nondiscriminatory access to the time division multiplexing (TDM) features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between Qwest's Central Office and an End User Customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information. Qwest will not engage in any practice, policy or procedure that has the effect of disrupting or degrading access to TDM-based features, functions, and capabilities of hybrid loops for serving end users.

9.2.1.5.3 Narrowband Services – When CLEC seeks access to a Hybrid

Loop for the provision of narrowband services, Qwest may either:

a) Provide nondiscriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology, allowing CLEC to obtain access to UNE loops comprised of the feeder, distribution, the attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer's premises and the Central Office; or

b) Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis if Qwest has not removed such loop facilities, and they remain functional.

9.2.2 Terms and Conditions

9.2.2.1 Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops, (unbundled from local switching and transport) of substantially the same quality as the Loop that Qwest uses to provide service to its own end users. For Unbundled Loops that have a retail analogue, Qwest will provide these Unbundled Loops in substantially the same time and manner as Qwest provides to its own end users. Unbundled Loops shall be provisioned in accordance with Exhibit C and the performance metrics set forth in Section 20 and with a minimum of service disruption.

9.2.2.1.1 Use of the word "capable" to describe Loops in Section 9.2 means that Qwest assures that, upon delivery to CLEC, the Loop meets the technical standards associated with the specified Network Channel/Network Channel Interface codes, as contained in the relevant technical publications and industry standards, and is in good working condition. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.2 Use of the word "compatible" to describe Loops in Section 9.2 means that, upon delivery to CLEC, the Unbundled Loop complies with technical parameters of the specified Network Channel/Network Channel Interface codes as specified in the relevant technical publications and industry standards, and is in good working condition. Qwest makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer premises equipment. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.3 If Qwest uses Integrated Digital Loop Carrier (IDLC) systems to provide the Local Loop, Qwest will first attempt, to the extent possible, to make alternate arrangements such as Line and Station Transfers (LST), to permit CLEC to obtain a contiguous copper Unbundled Loop. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair

pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. If no such facilities are available, Qwest will make every feasible effort to provision Unbundled Loops over IDLC in order to provide the Unbundled Loop for CLEC. All such attempts will be made and completed within the standard interval specified in Exhibit C and at the rates specified in Exhibit A for the type of Local Loop ordered by CLEC.

9.2.2.1.3.1 CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of available copper facilities, pursuant to the procedures set forth in Section 9.2.2.8 and its subsections. Qwest may provide mediated access to such information once the information has been provided to CLEC in the same manner as it is provided to any Qwest employee. Qwest may recover any reasonable costs it incurs to provide such mediated access in the same manner as it recovers other OSS transition costs under the Commission's orders.

9.2.2.2 Analog (Voice Grade) Unbundled Loops. Analog (voice grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local exchange type services. For the two-wire configuration, CLEC must specify the signaling option. The actual Loop facilities may utilize various technologies or combinations of technologies. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

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9.2.2.2.2 If there are state service quality rules in effect at the time CLEC requests an Analog Unbundled Loop Qwest will provide an Analog Unbundled Loop that meets the state technical standards. If necessary to meet the state standards, Qwest will, at no cost to CLEC, remove load coils and excess Bridged Taps from the Loop in accordance with the requirements of the specific technical standard.

9.2.2.3 Digital Capable Loops – DS1 and DS3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops. Unbundled digital Loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including, but not limited to, metallic wire, metallic wire based digital Loop carrier, and fiber optic fed digital carrier systems. Qwest will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. Digital Loops may use a single or multiple transmission technologies. DC continuity does not apply to digital capable Loops. If conditioning is required for BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops or xDSL-I Capable Loops, then CLEC shall be charged for such conditioning, if applicable, as set forth in Exhibit A, if it authorized Qwest to perform such conditioning. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall

accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.3.1 If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) the BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. Qwest will perform line moves from digital loop carrier or UDCs to an available spare copper loop or removal of UDCs 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. If applied by Qwest, the interim charge for UDC removal or line move will be no more than the conditioning charge contained in Exhibit A until permanent rates are approved by the Commission. These charges for UDC removal or line moves will not be assessed to CLEC unless Qwest also has filed with the Commission allowing charges for its retail customers for the same work. Qwest will notify CLEC through CMP prior to implementing any charges for UDC removal or line moves.

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9.2.2.3.3 If CLEC orders a 2/4 wire non-loaded or ADSL compatible Unbundled Loop for a Customer served by a digital Loop carrier system Qwest will conduct an assignment process which considers the potential for a line move to alternative spare copper facility. If no copper facility capable of supporting the requested service is available, Qwest will hold the order pending availability of facilities as set forth in Section 9.1.2.1.3.2.

9.2.2.4 Non-Loaded Loops. CLEC may request that Qwest provide a non-loaded Unbundled Loop. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide. CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary. If CLEC has not pre-approved conditioning, Qwest will obtain CLEC's consent prior to undertaking any conditioning efforts. Upon CLEC pre-approval or approval of conditioning, and only if conditioning is necessary, Qwest will dispatch a technician to perform line move or condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded Loop. Qwest's FOC will not reflect the loop conditioning interval until such time that Qwest determines conditioning is the only available solution for providing the loop. CLEC will be charged the nonrecurring conditioning charge (i.e., cable unloading and Bridged Taps removal), if applicable, in addition to the Unbundled Loop installation nonrecurring charge.

9.2.2.4.1 In the event that Qwest seeks to begin charging for conditioning, where Qwest fails to meet a Due Date for performing Loop conditioning, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the Unbundled Loop involved within three (3) months of such Due Date. Where Qwest does not perform conditioning in accord with the standards applicable under this

Agreement, and such performance causes the due date to be missed, CLEC shall be entitled to a waiver of all non-recurring charges associated with the installation of the loop. Any credit to which CLEC is entitled under this provision will be automatically credited by Qwest to CLEC's bill within sixty (60) calendar Days.

9.2.2.5 When CLEC requests a Basic Rate ISDN capable or an xDSL-I capable Loop, Qwest will dispatch a technician, if necessary, to provide Extension Technology that takes into account for example: the additional regenerator placement, Central Office powering, Mid-Span repeaters, if required, BRITE cards in order to provision the Basic Rate ISDN capable and xDSL-I capable Loop. Extension Technology may be required in order to bring the circuit to the specifications necessary to accommodate the requested service. If the Circuit Design requires Extension Technology, to bring it up to the design standards, contained in Technical Publication 77384, it will be added by Qwest, at no charge. Extension Technology can also be requested by CLEC to meet their specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Qwest will provide the requested Extension Technology and will charge CLEC. Qwest will provision ISDN (BRI) Capable and xDSL-I capable Loops using the specifications in the Technical Publication 77384. CLEC will be charged an Extension Technology recurring charge in addition to the Unbundled Loop recurring charge, if applicable, as specified in Exhibit A of this Agreement. The ISDN Capable Loop may also require conditioning (e.g., removal of load Coils or Bridged Taps) pursuant to Exhibit A.

9.2.2.6 For DS1 or DS3 capable Loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. Prior to delivery, Qwest will test to ensure circuit continuity from the demarcation point in the Central Office to the NID. Qwest will perform a loop back test when a Network Interface Unit (NIU) is in place. In addition, CLEC will have access to these terminations for testing purposes.

9.2.2.6.1 DS1 capable Loops provide a transmission path between a Central Office network interface at a DS1 panel or equivalent in a Qwest serving Central Office and the network interface at the end user location. DS1 capable Loops transport bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s. DS1 capable Loops shall meet the design requirements specified in Technical Publication 77384 (Unbundled Loops) and 77375 (DS1). Cable unloading and bridge tap removal that may be required as part of the provisioning of DS-1 Capable Loops are included as a part of routine network modifications. Other functions of routine network modifications are described in Section 9.1.2.1.2 and its subsections.

9.2.2.6.2 DS3 capable Loops provide a transmission path between a Qwest Central Office network interface and an equivalent network interface at an end user location. DS3 capable Loops transport bi-directional DS3 signals with a nominal transmission rate of 44.736 Mbit/s. DS3 capable Loops shall meet the design requirements specified in Technical Publications 77384 (Unbundled Loop) and 77324 (DS3).

9.2.2.7 Intentionally Left Blank

9.2.2.8 Loop Qualification Tools. Qwest offers five (5) Loop qualification tools:

the ADSL Loop Qualification Tool, Raw Loop Data Tool, POTS Conversion to Unbundled Loop Tool, MegaBit Qualification Tool, and ISDN Qualification Tool. These and any future Loop qualification tools Qwest develops will provide CLEC access to Loop qualification information in a nondiscriminatory manner and will provide CLEC the same Loop qualification information available to Qwest. CLEC may request an audit of Qwest's company records, back office systems and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

9.2.2.8.1 ADSL Loop Qualification Tool. CLEC may use the ADSL Loop Qualification tool to pre-qualify the requested circuit utilizing the existing telephone number or address to determine whether it meets ADSL specifications. The qualification process screens the circuit for compliance with the design requirements specified in Technical Publication 77384.

9.2.2.8.2 Raw Loop Data Tools. Qwest offers two (2) types of Raw Loop Data Tool. If CLEC has a digital certificate, CLEC may access the Wire Center Raw Loop Data Tool via: http://ecom.qwest.com.

9.2.2.8.2.1 The Wire Center Raw Loop Data Tool functions and capabilities are described in the PCAT.

9.2.2.8.2.2 The Wire Center Raw Loop Data Tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, and pair gain type.

9.2.2.8.2.3 CLEC may also access the IMA Raw Loop Data Tool for Loop specific information. The IMA Raw Loop Data Tool may be accessed through IMA-GUI or IMA-EDI. This tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, number of loads, and pair gain type.

9.2.2.8.3 POTS Conversion to Unbundled Loop Tool. The POTS Conversion to Unbundled Loop Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool informs CLEC whether the facility is copper or pair gain and whether there are loads on the Loop.

9.2.2.8.4 MegaBit Qualification Tool. The MegaBit Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool provides a "yes/no" answer regarding the Loop's ability to support Qwest DSL (formerly MegaBit) service. If the MegaBit Qualification Tool returns a "no" answer, it provides a brief explanation.

9.2.2.8.5 ISDN Qualification Tool. The ISDN Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool permits CLEC to view information on multiple lines and will inform CLEC of the number of lines found. If an ISDN capable Loop is found, the tool identifies the facility and, if

applicable, pair gain.

9.2.2.8.6 If the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if CLEC identifies any inaccuracy in the information returned from the Loop qualification tools, and provides Qwest with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Qwest will perform a manual search of the company's records, back office systems and databases where Loop information resides. Qwest will provide CLEC via email, the Loop information identified during the manual search within forty-eight (48) hours of Qwest's receipt of CLEC's request for manual search. The email will contain the following Loop make-up information: composition of the Loop material; location and type of pair gain devices; the existence of any terminals such as remote terminals or digital Loop terminals; Bridged Tap and load coils; Loop length; wire gauge. Effective December 8, 2003, the email will also contain Loop make-up data showing the presence of Universal Digital Carrier (UDC); third party voice; and the presence of DSL. In the case of Loops served by digital Loop carrier, the email will provide the availability of spare feeder and distribution facilities that could be used to provision service to the Customer, including any spare facilities not connected to the Switch and Loop make-up for such spare facilities. After completion of the investigation, Qwest will load the information into the LFACS database, which will populate this Loop information into the fields in the Loop qualification tools.

9.2.2.9 Provisioning Options. Six (6) Provisioning options are available for Unbundled Loop elements. Charges for these Provisioning options vary depending on the type of Loop requested. Rates are contained in Exhibit A of this Agreement. Testing parameters are described below and in Qwest Technical Publication 77384.

9.2.2.9.1 Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Qwest will call CLEC to notify CLEC that the Qwest work has been completed.

9.2.2.9.1.1 For an existing end user, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. There is no associated circuit testing performed.

9.2.2.9.1.2 For new end user service, the Basic Installation option involves the COT and Field Technician (CST/NT) completing circuit wiring and performing the required performance tests to ensure the new circuit meets the required parameter limits. The test results are NOT provided to CLEC.

9.2.2.9.1.3 For basic installation of existing 2 / 4 wire analog Loops, Qwest provides a Quick Loop option that enables CLEC to receive the Quick Loop installation interval as set forth in Exhibit C. Quick Loop installation includes only a simple lift and lay procedure. Quick Loop is not available with cooperative testing, coordinated installation, or when unbundling from an IDLC to a copper alternative.

9.2.2.9.2 Basic Installation with Performance Testing. Basic Installation with Performance Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.2.1 For an existing end user, Basic Installation with Performance Testing is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting CLEC. The COT and Implementor/Tester perform the required performance tests to ensure that the new circuit meets required parameter limits.

9.2.2.9.2.2 The Qwest Implementor/Tester will read the test results to CLEC on close-out and email the performance test results within two (2) business days to a single, designated CLEC office email address.

9.2.2.9.2.3 For new end user service, the Basic Installation with Performance Testing option requires a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits. These test results are read to CLEC by the Qwest Implementor/Tester on close-out. Within two (2) business days, Qwest will email the performance test results to a single, designated CLEC office email address.

9.2.2.9.3 Coordinated Installation with Cooperative Testing. Coordinated installation with cooperative testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.3.1 For an existing end user, Coordinated Installation with Cooperative Testing is a "lift and lay" procedure with cooperative testing. The COT completes the installation in the Central Office and performs testing that CLEC requests. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test CLEC requests that is not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.2 For new end user service, Coordinated Installation with Cooperative Testing may require a dispatch of a technician to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure that the new circuit meets required parameter limits. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.3 The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.3.3(a) If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.3.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.3.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.4 Coordinated Installation without Cooperative Testing. Coordinated Installation without Cooperative Testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will

waive the nonrecurring charge for the installation option and the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.4.1 For an existing Unbundled Loop this Coordinated Installation without Cooperative Testing is a "lift and lay" procedure without a dispatch, that offers CLEC the ability to coordinate the conversion activity. The Qwest Implementor advises CLEC when the "lift and lay" procedure is complete.

9.2.2.9.4.2 For new Unbundled Loops, Qwest may dispatch a technician to terminate the new circuit at the end user premises. The Field Technician will not remain on the premises to perform the coordinated installation once the circuit is in place. The COT completes the installation in the Central Office, and the COT and Implementor/Tester complete the required performance tests to ensure that the new circuit meets required parameter limits. CLEC will not receive test results. When installation is complete, Qwest will notify CLEC.

9.2.2.9.5 Basic Installation with Cooperative Testing. Basic Installation with Cooperative Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.5.1 For an existing end user, Basic Installation with Cooperative Testing is a "lift and lay" procedure with Cooperative Testing on the Due Date. The COT "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC and Qwest will perform a Loop back acceptance test, accept the Loop, and exchange demarcation information.

9.2.2.9.5.2 For new end user service, Basic Installation with Cooperative Testing may require a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits.

9.2.2.9.5.2(a) The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.5.3 If Qwest fails to perform cooperative testing due to

Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.5.3.1 If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.5.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.5.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.6 Performance Testing. Qwest performs the following performance tests for various Loop types:

2-Wire and 4-Wire Analog Loops

No Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

2-Wire and 4-Wire Non-Loaded Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

Basic Rate ISDN and xDSL-I Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = $\leq$ 40 dB at 40 kHz

Automatic Number Identification (ANI) when dial-tone is present

DS1 Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

DS3 Capable Loops

Continuity Testing

ADSL Compatible Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = ≤ 41 dB at 196 kHz

Automatic Number Identification (ANI) when dial-tone is present

9.2.2.9.7 Project Coordinated Installation: A Project Coordinated Installation permits CLEC to obtain a coordinated installation for Unbundled Loops with or without LNP, where CLEC orders Unbundled DS1 Capable, Unbundled DS3 Capable or twenty-five (25) or more DS0 Unbundled Loops.

9.2.2.9.7.1 The date and time for the Project Coordinated Installation requires up-front planning and may need to be negotiated between Qwest and CLEC. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Considerations such as system down time, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Qwest will negotiate with CLEC for an agreed upon FDT, prior to issuing the Firm Order Confirmation (FOC). In special cases where CLEC is ordering Unbundled Loop with LNP, the FDT must be agreed upon, the interval to reach agreement will not exceed two (2) Days from receipt of an accurate LSR. In addition, standard intervals will apply.

9.2.2.9.7.2 CLEC shall request a Project Coordinated Installation by submitting a Local Service Request (LSR) and designating this order as a Project Coordinated Installation in the remarks section of the LSR form.

9.2.2.9.7.3 CLEC will incur additional charges for the Project Coordinated Installation dependent upon the coordinated time. The rates are based upon whether the request is within Qwest's normal business hours or Out Of Hours. Qwest normal business hours for Unbundled Loops are 8:00 a.m. to 5:00 p.m., Monday through Friday. The rates for coordinated installations are set forth in Exhibit A. Where LNP is included, see Section 10.2.5.4 for rate elements.

9.2.2.9.7.4 Qwest will schedule the appropriate number of

employees prior to the cut, normally not to exceed four employees, based upon information provided by CLEC. If the Project Coordinated Installation includes LNP, CLEC will also have appropriate personnel scheduled for the negotiated FDT. If CLEC's information is modified during the installation, and, as a result, non-scheduled employees are required, CLEC shall be charged a three (3) hour minimum callout charge per each additional non-scheduled employee. If the installation is either cancelled, or supplemented (supp) to change the Due Date, within twenty-four (24) hours of the negotiated FDT, CLEC will be charged a one person three (3) hour minimum charge. For Project Coordinated Installations with LNP, if the Coordinated Installation is cancelled due to a Qwest error or a new Due Date is requested by Qwest, within twenty-four (24) hours of the negotiated FDT, Qwest may be charged by CLEC one person three (3) hour minimum charge as set forth in Exhibit A.

9.2.2.9.7.5 If CLEC orders Project Coordinated Installation with LNP and in the event the LNP conversion is not successful, CLEC and Qwest agree to isolate and fix the problem in a timeframe acceptable to CLEC or the Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the Customer, CLEC may request the restoral of Qwest service for the ported Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Qwest. If Qwest is in error, no supplemental order or additional order will be required of CLEC.

9.2.2.9.7.6 If CLEC orders Project Coordinated Installation with LNP, Qwest shall ensure that any LNP order activity requested in conjunction with a Project Coordinated Installation shall be implemented in a manner that avoids interrupting service to the end user.

9.2.2.9.8 Intentionally Left Blank.

9.2.2.9.9 Intentionally Left Blank.

9.2.2.9.10 For loop installations requiring a Qwest technician dispatch, Qwest will note the demarcation location (for designed service circuits) and CLEC may access such information via CEMR. The applicable PCAT for Business Procedure contains additional information.

9.2.2.9.11 If at any time during the Provisioning process or during the first thirty (30) business days following Qwest's notification of completion, either Qwest or CLEC may request a joint meet at either the NID or Central Office to perform cooperative trouble isolation. If no trouble is found in Qwest's network, a Maintenance of Service Charge will apply pursuant to Exhibit A. If trouble is found in Qwest's network, CLEC will be credited the Maintenance of Service charge or CLEC's actual cost, whichever is less, pursuant to Section 12.3.4.4.

9.2.2.10 Multiplexing. Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. Except as specifically set forth in Section 9.2, CLEC may order multiplexing, including conversion from special access or private line circuits, for

Unbundled Loops under the rates, terms and conditions for multiplexing of Enhanced Extended Loop (EEL), in Section 9.23.3.9 of this Agreement. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.2.11 In order to properly maintain and modernize the network, Qwest may make necessary modifications and changes to Unbundled Loops, ancillary and Finished Services in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network Interoperability require advance notice pursuant to the Notices Section of this Agreement.

9.2.2.12 If there is a conflict between an end user(or its respective agent) and CLEC regarding the disconnection or Provisioning of Unbundled Loops, Qwest will advise the end user to contact CLEC, and Qwest will initiate contact with CLEC.

(a) Reserved for Future Use.

(b) Reserved for Future Use.

9.2.2.13 Facilities and lines Qwest furnishes on the premises of CLEC's end user up to and including the Loop Demarcation Point are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel to accommodate testing, inspection repair and maintenance of such facilities and lines. CLEC will not inhibit Qwest's employees and agents from entering said premises to test, inspect, repair and maintain such facilities and lines in connection with such purposes or, upon termination or cancellation of the Unbundled Loop service, to remove such facilities and lines. Such entry is restricted to testing, inspection, repair and maintenance of Qwest's property in that facility. Entry for any other purpose is subject to audit provisions in the Audit section of this Agreement.

9.2.2.14 Reserved for Future Use.

9.2.2.15 Reuse of Loop Facilities.

9.2.2.15.1 When an end user contacts Qwest with a request to convert their local service from CLEC to Qwest, Qwest will notify CLEC of the loss of the end user, and will disconnect the Loop Qwest provided to CLEC. Qwest will disconnect the Loop only where Qwest has obtained proper Proof of Authorization.

9.2.2.15.2 When CLEC contacts Qwest with a request to convert an end user from their current CLEC (old CLEC) to them (new CLEC), new CLEC is responsible for notifying old CLEC of the conversion. Qwest will disconnect the Loop Qwest provided old CLEC and, at new CLEC request, where technically compatible, will reuse the Loop for the service requested by new CLEC (e.g., resale service).

9.2.2.15.3 When CLEC contacts Qwest with a request to convert an end user from Qwest to CLEC, at CLEC request, Qwest will reuse the existing Loop facilities for the service requested by CLEC to the extent those facilities are

technically compatible with the service to be provided. Upon CLEC request, Qwest will condition the existing Loop in accordance with the rates set forth in Exhibit A.

9.2.2.15.4 Upon completion of the disconnection of the Loop, Qwest will send a Loss Notification report to the original competitive Carrier signifying completion of the loss.

9.2.2.15.5 In all loop reuse scenarios where the facility is re-used "AS IS", Qwest shall take all steps necessary to ensure all services being provided on the loop are transitioned to the new provider with minimal service interruption to the end user. This applies to both voice and data services.

9.2.3 Rate Elements

The following recurring and nonrecurring rates for Unbundled Loops are set forth in Exhibit A of this Agreement. Recurring charges vary based on CLEC selected installation options, conditioning, and extension technology.

9.2.3.1 2/4 Wire Analog Loop (Voice Grade) Recurring and Nonrecurring rates.

9.2.3.2 2/4 Wire Non-Loaded Loop Recurring and Nonrecurring rates.

9.2.3.3 DS1 and DS3 Capable Loop, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop Recurring and Nonrecurring rates.

9.2.3.3.1 DS0, DS1 and DS3 Capable Loop Conversion Nonrecurring rates associated with the conversion of special access or private lines to Unbundled Loops.

9.2.3.4 Extension Technology Recurring and Nonrecurring rates for Digital Capable Loops, including Basic Rate (BRI) ISDN and xDSL-I Capable Loops.

9.2.3.5 Conditioning Nonrecurring rates 2/4 wire non-loaded Loops, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop, as requested and approved by CLEC.

9.2.3.6 Miscellaneous Charges, as defined in Sections 4 and 9.1.12, may apply.

9.2.3.7 Out of Hours Coordinated Installations.

9.2.3.7.1 For purposes of service installation, Qwest's installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

9.2.3.7.2 Intentionally Left Blank.

9.2.3.7.3 Intentionally Left Blank.

9.2.3.7.4 Intentionally Left Blank.

9.2.3.7.5 For coordinated installations scheduled to commence Out of Hours, or rescheduled by CLEC to commence Out of Hours, CLEC will incur additional charges for the Out of Hours coordinated installation as set forth in Exhibit A.

9.2.4 Ordering Process

9.2.4.1 Unbundled Loops are ordered via an LSR. Ordering processes are contained in the Support Functions Section of this Agreement. Detailed ordering processes are found on the Qwest wholesale website.

9.2.4.2 Prior to placing orders on behalf of the end user, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization.

9.2.4.3 Based on the pre-order Loop make-up, CLEC may be able to determine if the circuit can meet the technical parameters for the specific service CLEC intends to offer.

9.2.4.3.1 Before submitting an order for a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop or xDSL-I capable Loop, CLEC should use one of Qwest's Loop make-up tools available via IMA-EDI, IMA-GUI, or the web-based application interface to obtain specific information about the Loop CLEC seeks to order. However, CLEC is entitled to submit an LSR regardless of whether it has utilized or in any way prequalified such loop using any of Qwest's available loop prequalification tools or any information or databases Qwest has made available to CLEC for purposes of obtaining loop qualification information.

9.2.4.3.1.1 Based on the Loop make up information provided through Qwest tools, CLEC may determine whether conditioning is required to provide the xDSL service it intends to offer. If Loop conditioning is required, CLEC may authorize Qwest to perform such Loop conditioning on its Local Service Request (LSR) by entering a "Y" in the SCA field of the LSR. If CLEC does not pre-approve Loop conditioning, Qwest will assume that CLEC has determined that Loop conditioning is not necessary to provide the xDSL service CLEC seeks to offer. If CLEC does not pre-approve conditioning and no conditioning is required to provision the request, the service request will flow through the provisioning process. If CLEC or Qwest determines that conditioning is necessary, and CLEC authorizes Qwest to perform the conditioning, Qwest will perform the conditioning. CLEC will be charged for the conditioning in accordance with the rates in Exhibit A, if applicable. If Qwest determines that conditioning is necessary and CLEC has not previously authorized Qwest to perform the conditioning on the LSR, Qwest will send CLEC a rejection notice indicating the need to obtain approval for conditioning. CLEC must submit a revised LSR before the conditioning work will commence. Once Qwest receives the revised LSR, the fifteen (15) business day conditioning interval will begin as described in Section 9.2.4.9.

9.2.4.3.1.2 For a 2/4 wire non-loaded Loop, ADSL compatible

Loop, ISDN capable Loop, xDSL-I capable Loop, or DS1 capable Loop Qwest will return a Firm Order Confirmation (FOC) to CLEC within seventy-two (72) hours from receipt of a valid and accurate LSR. Return of such FOC will indicate that Qwest has identified a Loop assignment. Such FOC will provide CLEC with a firm Due Date commitment. If appropriate facilities are not available to fill CLEC's order, a jeopardy notification will be issued.

9.2.4.3.1.2.1 If CLEC has pre-approved Loop conditioning, and conditioning is not necessary, Qwest will return the FOC with the standard interval identified in Exhibit C.

9.2.4.3.1.2.2 If CLEC has not pre-approved Loop conditioning and Qwest determines that the Loop contains load coils, Qwest will notify CLEC via a reject notification. CLEC must submit a new version of the LSR approving Loop conditioning. In this scenario, the Application Date will correspond to date the new version is received by Qwest.

9.2.4.3.1.2.3 Reserved for Future Use.

9.2.4.3.1.2.4 Reserved for Future Use.

9.2.4.3.2 Qwest will not reject any order for any 2/4 Wire non-loaded Loop based on dB loss or loop length, including but not limited to loop length contained in databases or records containing loop make-up information, loop length based on equivalent loop length as determined by a Mechanized Loop Test (MLT).

9.2.4.4 Installation intervals for all Unbundled Loops are defined in Exhibit C. The interval will start when Qwest receives a complete and accurate LSR. The LSR date is considered the start of the service interval if the order is received prior to 7:00 p.m. For service requests received after 7:00 p.m., the service interval will begin on the next business day.

9.2.4.4.1 When CLEC places an order for an Unbundled Loop with Qwest that is complete and accurate, Qwest will reply to CLEC with a Firm Order Confirmation within the time specified in Section 20. The Firm Order Confirmation will contain the Due Date that specifies the date on which Qwest will provision the Loop. Qwest will implement adequate processes and procedures to assure the accuracy of the commitment date. If Qwest must make changes to the commitment date, Qwest will promptly issue a jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also submit a new Firm Order Confirmation that will clearly identify the new Due Date.

9.2.4.5 Installation intervals for Unbundled Loops apply when Qwest has facilities or network capacity available.

9.2.4.6 Upon CLEC request, Qwest will convert special access or private line

circuits to Unbundled Loops, with or without multiplexing, provided the service originates at the CLEC Collocation in the Serving Wire Center. If multiplexing is not involved, then the Loop conversion ordering process applies. However, if the conversion includes multiplexing, then the ordering process associated with the conversion to EELs applies. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.4.7 Reserved for Future Use.

9.2.4.8 When ordering Unbundled Loops, CLEC is responsible for obtaining or providing facilities and equipment that are compatible with the service CLEC seeks to provide.

9.2.4.9 The installation interval for xDSL Loops depends on the need to condition the Loop.

9.2.4.9.1 When load coils and Bridged Taps do not exist, CLEC may request the standard Due Date interval, which will apply upon submission of a complete and accurate LSR.

9.2.4.9.2 When load coils and/or excessive Bridged Taps do exist, CLEC will request the minimum fifteen (15) business days desired Due Date. CLEC can determine the existence of load coils or Bridged Taps by using one of the Loop make-up tools. CLEC may pre-approve line conditioning on the LSR and, by doing so, CLEC agrees to pay any applicable conditioning charges. If CLEC did not request the fifteen (15) Day interval and Qwest determines that conditioning is required, then the fifteen (15) business day interval starts when the need for conditioning is identified and CLEC approves the conditioning charges.

9.2.4.10 Out of Hours Coordinated Installations.

9.2.4.10.1 For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Installations requested outside of these hours are considered to be Out of Hours Installations.

9.2.4.10.2 CLEC may request an Out of Hours Coordinated Installation outside of Qwest's standard installation hours.

9.2.4.10.3 To request Out of Hours Coordinated Installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an Out of Hours Coordinated Installation in the Remarks section of the LSR.

9.2.4.10.4 The date and time for Out of Hours Coordinated Installations may need to be negotiated between Qwest and CLEC because of system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same appointment times in the same Switch (Switch contention).

9.2.5 Maintenance and Repair

9.2.5.1 CLEC is responsible for its own end user base and will have the responsibility for resolution of any service trouble report(s) from its end users. CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the NID, the Loop Demarcation Point or any other accessible test point that is a Demarcation Point between Qwest's and CLEC's networks. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. For Unbundled Loops, each party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 9.2.5.1, 9.2.5.2 and 9.2.5.3.

9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the end user's side of the Loop Demarcation Point. If the trouble is on the end user's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the Maintenance of Service charge.

9.2.5.3 When CLEC elects not to perform trouble isolation and Qwest performs tests on the Unbundled Loop at CLEC's request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities. Maintenance and Repair processes are set forth in Section 12.3 of this Agreement. Maintenance of Service charges are set forth in Exhibit A.

9.2.5.3(a) Prior to closing out any trouble ticket, Qwest will contact CLEC and confirm with CLEC testing personnel that the trouble has been resolved or that there is no trouble on the line.

9.2.5.4 Qwest will maintain detailed records of trouble reports of CLEC-ordered Unbundled Loops comparing CLEC provided data with internal data, and evaluate such reports on at a minimum of a quarterly basis to determine the cause of Loop problems. Qwest will conduct a quarterly root cause analysis of problems associated with UNE Loops provided to CLECs by Qwest. Based on this analysis, Qwest will take corrective measure to fix persistent and recurrent problems, reporting to CLECs on the analysis and the process changes that are instituted implemented to fix the problems.

9.2.5.5 Qwest shall allow access to the NID for testing purposes where access at the Demarcation Point is not adequate to allow testing sufficient to isolate troubles; in the event that Qwest chooses not to allow such access, it shall waive any trouble isolation charges that may otherwise be applicable.

9.2.6. Spectrum Management

9.2.6.1 Qwest will provide 2/4 Wire non-loaded Loops, ADSL compatible Loops, ISDN capable Loops, xDSL-I capable Loops, DS1 capable Loops and DS3 capable Loops (collectively referred to in this Section 9.2.6 as "xDSL Loops") in a non-discriminatory manner to permit CLEC to provide Advanced Services to its End User Customer. Such Loops are defined herein and are in compliance with FCC requirements and guidelines recommended by the Network Reliability and

Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417.

9.2.6.2 When ordering xDSL Loops, CLEC will provide Qwest with appropriate information using NC/NCI codes, (as required by the FCC), to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. Qwest will treat such information provided by CLEC as confidential and proprietary information. CLEC also agrees to notify Qwest of any change in Advanced Services technology that results in a change in spectrum management class on the xDSL Loop. Qwest agrees CLEC need not provide the speed or power at which the newly deployed or changed technology will operate if the technology fits within a generic PSD mask. Qwest will only use this information for network spectrum management purposes and will not provide this information, either by individual CLEC or in the aggregate, to marketing personnel. Qwest agrees to provide CLECs with information concerning Qwest's spectrum management procedures and policies, the number of Loops using Advanced Services within a binder group, and the types of technologies used on those Loops.

9.2.6.2.1 CLEC information provided to Qwest pursuant to Section 9.2.6.2 shall be deemed Confidential Information and Qwest may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections of 9.2.6.2.

9.2.6.2.2 The Parties may disclose, on a need to know basis only, CLEC Confidential Information provided pursuant to Section 9.2.6.2, to legal personnel, if a legal issue arises, as well as to network and growth planning personnel responsible for spectrum management functions. In no case shall the aforementioned personnel who have access to such Confidential Information be involved in Qwest's retail marketing, sales or strategic planning.

9.2.6.3 If CLEC wishes to deploy new technology not yet designated with a PSD mask, Qwest and CLEC agree to work cooperatively to determine spectrum compatibility. Qwest and CLEC agree, as defined by the FCC, that technology is presumed acceptable for deployment when it complies with existing industry standards, is approved by a standards body or by the FCC or Commission, of if technology has been deployed elsewhere without a "significant degradation of service".

9.2.6.4 Qwest recognizes that the analog T1 service traditionally used within its network is a "known Disturber" as designated by the FCC. Qwest will place such T1s, by whomever employed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is Technically Feasible, replace its T1s with a technology that will eliminate undue interference problems. Qwest also agrees that any future "known Disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

9.2.6.5 If either Qwest or CLEC claims a service is significantly degrading the performance of other Advanced Services or traditional voice band services, then that Party must notify the causing Carrier and allow the causing Carrier a reasonable opportunity to correct the problem. Upon notification, the causing Carrier shall promptly take action to bring its facilities/technology into compliance with industry standards. Upon request, within forty-eight (48) hours, Qwest will provide CLEC with binder group information including cable, pair, Carrier and PSD class to allow CLEC to notify the

causing Carrier.

9.2.6.6 If CLEC is unable to isolate trouble to a specific pair within the binder group, Qwest, upon receipt of a trouble resolution request, will perform a main frame pair by pair analysis and provide results to CLEC within five (5) business days.

9.2.6.7 Reserved for Future Use.

9.2.6.8 Qwest will not have the authority to unilaterally resolve any dispute over spectral interference among Carriers. Qwest shall not disconnect Carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the interfering Carrier or Qwest is ordered to do so by the Commission or other authorized dispute resolution body. CLEC may submit any claims for resolution under Section 5.18 of this Agreement.

9.2.6.9 Where CLEC demonstrates to Qwest that it has deployed Central Office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other Customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other Customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this Agreement.

9.3 Subloop Unbundling

9.3.1 Description

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9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis, pursuant to Section 251 of the Act, to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access , pursuant to Section 251 of the Act, to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the

Central Office and the End User Customer's premises or MTE. Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 of the Act and other Applicable Law. This section does not address Dark Fiber Subloop which is addressed in Section 9.7.

9.3.1.1.1 Building terminals within or physically attached to a privately owned building in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms and conditions differ between MTE environments and non-MTE environments.

9.3.1.1.2 For any configuration not specifically addressed in this Agreement, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any Collocation or other Provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.

9.3.1.1.3 Any party may request, under any procedure provided for by this Agreement for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.

9.3.1.1.4 Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in Section 9.3.1.1.2 above only those requirements or intervals that are reasonably necessary.

9.3.1.1.4.1 MTE Terminals: Accessible terminals within a building in a MTE environment or accessible terminals physically attached to a building in a MTE environment. Qwest Premises located on real property that constitutes a campus environment, yet are not within or physically attached to a non-Qwest owned building, are not considered MTE Terminals.

9.3.1.1.4.2 Detached Terminals: All accessible terminals other than MTE Terminals.

9.3.1.2 Standard Subloops available.

a) Two-Wire/Four Wire Unbundled Distribution Loop

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b) DS1 Capable Unbundled Feeder Loop

c) Two-Wire/Four Wire Non-loaded Distribution Loop

d) Intrabuilding Cable Loop

9.3.1.3 Standard Subloop Access

9.3.1.3.1 Accessing Subloops in Detached Terminals: Subloop Unbundling is available after a CLEC requested Field Connection Point (FCP) has been installed within or adjacent to the Qwest accessible terminal. The FCP is a Demarcation Point connected to a terminal block from which Cross Connections are run to Qwest Subloop elements.

9.3.1.3.2 Accessing Subloops in MTE Terminals: Subloop Unbundling is available after CLEC has notified Qwest of its intention to Subloop unbundle in the MTE, during or after an inventory of CLEC's terminations has been created, and CLEC has constructed a cross-connect field at the building terminal.

9.3.1.3.2.1 Reserved for Future Use.

9.3.1.3.2.2 Reserved for Future Use.

9.3.1.4 Field Connection Point

9.3.1.4.1 Field Connection Point (FCP) is a Demarcation Point that allows CLEC to interconnect with Qwest outside of the Central Office location where it is Technically Feasible. The FCP interconnects CLEC facilities to a terminal block within the accessible terminal. The terminal block allows a technician to access and combine Unbundled Subloop elements. When a FCP is required, it must be in place before Subloop orders are processed.

9.3.1.4.2 Placement of a FCP within a Qwest Premises for the sole purpose of creating a cross-connect field to support Subloop unbundling constitutes a "Cross-Connect Collocation."

9.3.1.4.2.1 The terms, conditions, intervals and rates for Cross-Connect Collocation are found within section 9.3.

9.3.1.4.2.2 To the extent that CLEC places equipment in a Qwest Premises that requires power and or heat dissipation, such Collocation is governed by the Terms of Section 8 and does not constitute a Cross-Connect Collocation.

9.3.1.4.3 A FCP arrangement can be established either within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when Technically Feasible, CLEC may place the FCP in an

9.3.3.7.3 CLEC may cancel a request to construct an FCP or SPOI prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest as well as any costs necessary to restore the property to its original condition.

9.3.3.8 At no time shall either Party rearrange the other Party's facilities within the MTE or otherwise tamper with or damage the other Party's facilities within the MTE. This does not preclude normal rearrangement of wiring or jumpers necessary to connect inside wire or intrabuilding cable to CLEC facilities in the manner described in the MTE Access Protocol. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.4 Detached Terminal Subloop Access: Terms and Conditions

9.3.4.1 Except as to access at an MTE Terminal, access to unbundled Subloop elements at an accessible terminal must be made through a Field Connection Point (FCP) in conjunction with either a Cross-Connect Collocation or, if power and/or heat dissipation is required, a Remote Collocation.

9.3.4.2 To the extent that the accessible terminal does not have adequate capacity to house the network interface associated with the FCP, CLEC may opt to use Adjacent Collocation to the extent it is Technically Feasible. Such adjacent access shall comport with NEBS Level 1 safety standards

9.3.4.2.1 Reserved for Future Use.

9.3.4.3 Field Connection Point

9.3.4.3.1 Qwest is not required to build additional space for CLEC to access Subloop elements. When Technically Feasible, Qwest shall allow CLEC to construct its own structure adjacent to Qwest's accessible terminal. CLEC shall obtain any necessary authorizations or rights of way required (which may include obtaining access to Qwest rights of way, pursuant to section 10.8 of this Agreement) and shall coordinate its facility placement with Qwest, when placing their facilities adjacent to Qwest facilities. Obstacles that CLEC may encounter from cities, counties, electric power companies, property owners and similar third parties, when it seeks to interconnect its equipment at Subloop access points, will be the responsibility of CLEC to resolve with the municipality, utility, property owner or other third party.

9.3.4.3.2 The optimum point and method to access Subloop elements will be determined during the Field Connection Point process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security.

9.3.4.3.3 CLEC must identify the size and type of cable that will be terminated in the Qwest FCP location. Qwest will terminate the cable in the

Qwest accessible terminal if termination capacity is available. If termination capacity is not available, Qwest will expand the FDI at the request of CLEC if Technically Feasible, all reconfiguration costs to be borne by CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. It will be the responsibility of Qwest to seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision the Collocation. CLEC will be responsible for placing the cable from the Qwest FCP to its equipment. Qwest will perform all of the initial splicing at the FCP.

9.3.4.3.4 CLEC may cancel a Collocation associated with a FCP request prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest.

9.3.4.3.5 If the Parties are unable to reach an agreement on the design of the FCP through the Field Connection Point Process, the Parties may utilize the Dispute Resolution process pursuant to the Terms and Conditions Dispute Resolution Section. Alternatively, CLEC may seek arbitration under Section 252 of the Act with the Commission, wherein Qwest shall have the burden to demonstrate that there is insufficient space in the accessible terminal to accommodate the FCP, or that the requested Interconnection is not Technically Feasible.

9.3.4.4 At no time shall either Party rearrange the other Party's facilities within the accessible terminal or otherwise tamper with or damage the other Party's facilities. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.5. Ordering/Provisioning

9.3.5.1 All Subloop Types

9.3.5.1.1 CLEC may order Subloop elements through the Operational Support Systems described in Section 12.

9.3.5.1.2 CLEC shall identify Subloop elements by NC/NCI codes.

9.3.5.2 Additional Terms for Detached Terminal Subloop Access

9.3.5.2.1 CLEC may only submit orders for Subloop elements after the FCP is in place. The FCP shall be ordered pursuant to Section 9.3.5.5. CLEC will populate the LSR with the termination information provided at the completion of the FCP process.

9.3.5.2.2 Qwest shall dispatch a technician to run a jumper between its Subloop elements and CLEC's Subloop elements. CLEC shall not at any time

adjacent terminal. CLEC will have access to the equipment placed within the Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.

9.3.1.5 MTE Point of Interconnection (MTE-POI)

9.3.1.5.1 A MTE-POI is necessary when CLEC is obtaining access to the Distribution Loop or Intrabuilding Cable Loop from an MTE Terminal. CLEC must create the cross-connect field at the building terminal that will allow CLEC to connect its facilities to Qwest's Subloops. The Demarcation Point between CLEC and Qwest's facilities is the MTE-POI.

9.3.1.6 Once a state has determined that it is Technically Feasible to unbundle Subloops at a designated accessible terminal, Qwest shall either agree to unbundle at such access point or shall have the burden to demonstrate, pursuant to the dispute resolution provisions of this Agreement, that it is not Technically Feasible, or that sufficient space is not available to unbundle Subloop elements at such accessible terminal.

9.3.1.7 Qwest shall provide access to additional Subloop elements (e.g., copper feeder) to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.

9.3.2 Standard Subloops Available

9.3.2.1 Distribution Loops

9.3.2.1.1 Two-Wire/Four-Wire Unbundled Distribution Loop: a Qwest provided facility from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for local exchange-type services. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.2 Two-Wire/Four-Wire Non-Loaded Distribution Loop: a Qwest provided facility without load coils and excess Bridged Taps from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. When CLEC requests a Non-Loaded Unbundled Distribution Loop and there are none available, Qwest will contact CLEC to determine if CLEC wishes to have Qwest unload a Loop. If the response is affirmative, Qwest will dispatch a technician to "condition" the Distribution Loop by removing load coils and excess Bridged Taps (i.e., "unload" the Loop). CLEC may be charged the cable unloading and Bridged Taps removal nonrecurring charge in addition to the Unbundled Loop installation nonrecurring charge. If a Qwest technician is dispatched and no load coils or Bridged Taps are removed, the nonrecurring conditioning charge will not apply. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.3 Intrabuilding Cable Loop: a Qwest provided facility from the building terminal inside a MTE to the Demarcation Point at the End User Customer premises inside the same building. This Subloop element only applies

when Qwest owns the intrabuilding cable.

9.3.2.1.4 To the extent CLEC accesses Subloop in a campus environment from an accessible terminal that serves multiple buildings, CLEC can access these Subloops by ordering a Distribution Loop pursuant to either Section 9.3.2.1.1 or 9.3.2.1.2. A campus environment is one piece of property, owned by one person or entity, on which there are multiple buildings.

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9.3.2.2.1 Intentionally Left Blank

OPEN – Covad proposed counter

9.3.2.2 Feeder Loops

9.3.2.2.1 DS1 Capable Unbundled Feeder Loop is a digital transmission path that is provisioned from a Qwest Central Office network interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal. The DS1 Capable Unbundled Feeder Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s.

9.3.3 MTE Terminal Subloop Access: Terms and Conditions

9.3.3.1 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, as defined in Section 9.3, refers to creation of a cross connect field and does not constitute Collocation as defined in Section 8. The terms and conditions of Section 8 do not apply to Cross-Connect Collocation if required at or near an MTE.

9.3.3.2 To obtain such access, CLEC shall complete the "MTE-Access Ordering Process" set forth in Section 9.3.5.4.

9.3.3.3 The optimum point and method to access Subloop elements will be determined during the MTE Access Ordering Process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security. CLEC may access the MTE Terminal as a test access point.

9.3.3.4 CLEC will work with the MTE building owner to determine where to terminate its facilities within the MTE. CLEC will be responsible for all work associated with bringing its facilities into and terminating the facilities in the MTE. CLEC shall seek to work with the building owner to create space for such terminations without requiring Qwest to rearrange its facilities.

9.3.3.5 If there is space in the building for CLEC to enter the building and

terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space. In such circumstances, an inventory of CLEC's terminations within the MTE shall be input into Qwest's systems to support Subloop orders before Subloop orders are provisioned or in conjunction with the first Subloop order in the MTE. Qwest shall have five (5) calendar Days from receipt of a written request from CLEC, in addition to the interval set forth in Section 9.3.5.4.1, to input the inventory of CLEC's terminations into its systems. Qwest may seek an extended interval if the work cannot reasonably be completed within the stated interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain the extended interval. If CLEC submits a Subloop order before Qwest inputs the inventory into its systems, Qwest shall process the order in accord with Section 9.3.5.4.1.

9.3.3.6 If CLEC connects Qwest's Subloop element to CLEC's facilities using any temporary wiring or cut-over devices, CLEC shall remove any remaining temporary wiring or cut-over devices and install permanent wiring within ninety (90) calendar Days. All wiring arrangements, temporary and permanent, must adhere to the National Electric Code.

9.3.3.7 If there is no space for CLEC to place its building terminal or no accessible terminal from which CLEC can access such Subloop elements, and Qwest and CLEC are unable to negotiate a reconfigured Single Point of Interconnection (SPOI) to serve the MDU, Qwest will either rearrange facilities to make room for CLEC or construct a single point of access that is fully accessible to and suitable for CLEC. Qwest's obligation to construct a SPOI is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE In addition, Qwest shall have an obligation only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI. In such instances, CLEC shall pay Qwest a nonrecurring charge, which shall be ICB, based on the scope of the work required. If CLEC requests that a new SPOI be established, then CLEC shall pay Qwest a nonrecurring charge that shall be ICB, based on the scope of the work required. If the MTE terminal is hard wired in such a manner that a network Demarcation Point cannot be created, Qwest will rearrange the terminal to create a cross-connect field and Demarcation Point. Charges for such rearrangement shall be recovered through recurring termination charges.

9.3.3.7.1 If Qwest must rearrange its MTE Terminal to make space for CLEC, Qwest shall have forty-five (45) calendar Days from receipt of a written request from CLEC to complete the rearrangement. Qwest may seek an extended interval if the work cannot reasonably be completed within forty-five (45) calendar Days. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.3.7.2 If Qwest must construct a new detached terminal that is fully accessible to and suitable for CLEC, the interval for completion shall be negotiated between the Parties on an Individual Case Basis.

disconnect Qwest facilities or attempt to run a jumper between its Subloop elements and Qwest's Subloop elements without specific written authorization from Qwest.

9.3.5.2.3 Once the FCP is in place, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.3 Reserved for Future Use.

9.3.5.4 Additional Terms for MTE Terminal Subloop Access - MTE-Access Ordering Process

9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing, including via email, of its intention to provide access to Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar Days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership communicated to another CLEC at the same MTE, Qwest shall provide such notification to requesting CLEC within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the Customer side of the terminal, the preceding ten (10) Day period shall be reduced to five (5) calendar Days from Qwest's receipt of such claim.

9.3.5.4.2 If the MTE owner owns the facilities on the Customer side of the terminal, CLEC may obtain access to all facilities in the building in accordance with Section 9.5 concerning access to unbundled NIDs.

9.3.5.4.3 If Qwest owns the facilities on the Customer side of the terminal, and if CLEC requests space to enter the building and terminate its facilities and Qwest must rearrange facilities or construct new facilities to accommodate such access, CLEC shall notify Qwest. Upon receipt of such notification, the intervals set forth in Section 9.3.3 shall begin.

9.3.5.4.4 CLEC may only submit orders for Subloop elements after the facilities are rearranged and/or a new facility constructed, if either are necessary. CLEC will populate the LSR with the termination information provided by CLEC at the completion of the inventory process except when submitting LSRs during the creation of the inventory.

9.3.5.4.5 If CLEC orders Intrabuilding Cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI in accordance with the MTE Access Protocol. If CLEC ordered a Subloop type other than Intrabuilding Cable Loop, Qwest will dispatch a technician to run a jumper between CLECs Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI. CLEC, at its option, may request that Qwest run the jumper for Intrabuilding cable in MTEs when the inventory is done and a complete LSR has been submitted.

9.3.5.4.5.1 When CLEC accesses a MTE Terminal, it shall employ generally accepted best engineering practices in accordance with industry standards. CLEC shall clearly label the cross-connect wires it uses. CLEC wiring will be neatly dressed. When CLEC accesses Subloops in MTE Terminals, it shall adhere to Qwest's Standard MTE Terminal Access Protocol unless the Parties have negotiated a separate document for such Subloop access. If CLEC requests a MTE Terminal access protocol that is different from Qwest's Standard MTE Terminal Access Protocol, Qwest shall negotiate with CLEC promptly and in good faith toward that end.

9.3.5.4.5.2 Reserved for Future Use.

9.3.5.4.5.2.1 Reserved for Future Use.

9.3.5.4.5.2.2 Reserved for Future Use.

9.3.5.4.5.2.3 Reserved for Future Use.

9.3.5.4.5.2.4 Reserved for Future Use.

9.3.5.4.6 Once inventory is complete and, if necessary, the facilities are rearranged and or a new facility constructed and when Qwest runs the jumper, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.4.7 For access to Qwest's on-Premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

9.3.5.5 FCP Ordering Process

9.3.5.5.1 CLEC shall submit a Field Connection Point Request Form to Qwest along with its Collocation Application. The FCP Request Form shall be completed in its entirety.

9.3.5.5.2 After construction of the FCP and Collocation are complete, CLEC will be notified of its termination location, which will be used for ordering Subloops.

9.3.5.5.2.1 The following constitute the intervals for Provisioning Collocation associated with a FCP, which intervals shall begin upon completion of the FCP Request Form and its associated Collocation Application in their entirety:

9.3.5.5.2.1.1 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in Section 8.4.

9.3.5.5.2.1.2 A Cross-Connect Collocation in a detached terminal shall be provisioned within ninety (90) calendar Days from receipt of a written request by CLEC.

9.3.5.5.2.1.3 If Qwest denies a request for Cross-Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) calendar Days of CLECs receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Cross-Connect Collocation Application Date for determining RFS unless both Parties agree to a revised date.

9.3.5.5.2.1.4 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, CLEC can request testing of the FCP at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the Cross-Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the applicable charges.

9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.6 Rate Elements

9.3.6.1 All Subloop Types

9.3.6.1.1 Subloop Recurring Charge - CLEC will be charged a monthly recurring charge pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.1.2 Subloop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the Support Functions – Maintenance and Repair Section when trouble is reported but not found on the Qwest facility.

9.3.6.2 Reserved for Future Use.

9.3.6.3 Additional rates for Detached Terminal Subloop Access:

9.3.6.3.1 Cross-Connect Collocation Charge: CLEC shall pay the full nonrecurring charge for creation of the Cross-Connect Collocation set forth in Exhibit A upon submission of the Collocation Application. The FCP Request Form shall not be considered completed in its entirety until complete payment is submitted to Qwest.

9.3.6.3.2 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the rate elements set forth in Section 8.3.

9.3.6.3.3 Subloop Nonrecurring Jumper Charge: CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.4 Additional Rates for MTE Terminal Subloop Access

9.3.6.4.1 Subloop Nonrecurring Charge - CLEC will be charged a nonrecurring charge for the time and materials required for Qwest to complete the inventory of CLEC's facilities within the MTE such that Subloop orders can be submitted and processed.

9.3.6.4.2 Subloop Nonrecurring Jumper Charge – CLEC will be charged a nonrecurring basic installation charge when Qwest runs jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.7 Repair and Maintenance

9.3.7.1 Detached Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the accessible terminal and CLEC will maintain all of its facilities and equipment in the accessible terminal.

9.3.7.2 MTE Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the MTE and CLEC will maintain all of its facilities and equipment in the MTE.

9.4 Line Sharing

9.4.1 Description

Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing end user's analog voice-grade (POTS) service on a single copper Loop referred to herein as the "Shared Loop" or "Line Sharing", by using the frequency range above the voice band on the copper portion of the Loop. This frequency range will be referred to herein as the High Frequency Spectrum Network Element (HUNE). A POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous data transmission and POTS service. The POTS service must be provided to the

end user by Qwest. This section does not prohibit Line Splitting, which is addressed in Section 9.21.

9.4.1.1 To the extent additional line sharing technologies and transport mechanisms are specified by applicable FCC rules, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access. Qwest also will provide CLECs with network elements to transport data to and from Qwest remote terminals including unbundled Dark Fiber, DS1 capable Loop, and OC-N. Qwest will also provide CLECs with the ability to commingle their data with Qwest's pursuant to Section 9.20 (Unbundled Packet Switching).

9.4.1.2 Qwest shall not be required to provide Line Sharing as an Unbundled Network Element except as set forth below.

9.4.1.2.1 **Grandfathered Line Sharing Arrangements**. Any Line Sharing arrangement that had a Due Date on or before October 1, 2003 and was still in operation as of such date shall be "grandfathered" in accordance with the provisions of this subsection ("Grandfathered Line Sharing Arrangement"). For any such Grandfathered Line Sharing Arrangement, the rate in effect as of October 2, 2003 shall remain in effect unless modified by order, ruling or decision of the FCC. A Grandfathered Line Sharing Arrangement shall automatically terminate on the earlier to occur of: (i) the date on which the End User Customer served by such Grandfathered Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign or (ii) the date as of which such Grandfathered Line Sharing Arrangement is terminated or discontinued by order, ruling or decision of the FCC. In addition, CLEC may disconnect, or may convert to another Qwest product as is Technically Feasible, any Grandfathered Line Sharing Arrangement at any time.

9.4.1.2.2 **Three Year Transition Period**. CLEC may order Line Sharing arrangements during the period beginning on October 2, 2003 and ending on October 1, 2004 ("New Line Sharing Arrangement") in accordance with the provisions of this subsection. The Due Date for any New Line Sharing Arrangement may be no later than October 1, 2004, and CLEC may not order any New Line Sharing Arrangement after October 1, 2004. Any New Line Sharing Arrangement shall automatically terminate if, at any time after October 1, 2004, the End User Customer served by such New Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign. The nonrecurring charge for the installation of Line Sharing arrangements shall apply to any New Line Sharing arrangements. The monthly recurring charge for any New Line Sharing Arrangement shall apply as set forth below.

(a) During the period beginning on October 2, 2003 and ending on October 1, 2004, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be twenty-five (25) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(b) During the period beginning on October 2, 2004 and ending on October 1, 2005, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be fifty (50) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(c) During the period beginning on October 2, 2005 and ending on October 1, 2006, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be seventy-five (75) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.

(d) **Completion of Transition**. New Line Sharing Arrangements will no longer be available as of October 2, 2006. No later than October 2, 2006, CLEC must convert all New 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 New Line Sharing arrangement.

e) As of February 2, 2004, Qwest's Billing systems are not equipped to Bill the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above. Qwest will not commence Billing the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above until Qwest has provided CLEC with forty-five (45) Days notice, in accordance with Section 5.21. Until such notice has been given, and the forty-five (45) Day notice period has expired, Qwest will Bill a rate for New Line Sharing Arrangements equal to the rate in effect as of October 1, 2003, unless modified by order, ruling or decision of the FCC.

9.4.1.2.3 **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 be required to purchase the entire loop being disconnected to continue providing DSL service to such End User Customer.

9.4.1.2.4 **Successors and Assigns**. Line Sharing arrangements may be transferred or assigned by CLEC to another Carrier as set forth below.

9.4.1.2.4.1 **Grandfathered Line Sharing Arrangements.** Any Grandfathered Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier if the DSL service to CLEC's End User Customer is not canceled or discontinued in connection with such transfer or assignment. In such event, the monthly recurring rate in effect as of October 2, 2003 shall remain in effect with respect to such Grandfathered Line Sharing Arrangement until it is terminated or modified in accordance with the provisions of Section 9.4.1.2.1. Carrier will be billed the Transfer of Responsibility nonrecurring charge as provided in Exhibit A to transfer or assign Grandfathered Line Sharing Arrangements. Notwithstanding the foregoing, in the event the transfer or assignment of

any Grandfathered Line Sharing Arrangement involves: (i) cancellation or discontinuation of the DSL service to CLEC's End User Customer or (ii) re-termination of the End User Customer's DSL service, then (a) such Line Sharing arrangement shall no longer be subject to the grandfathering provisions of Section 9.4.1.2.1 and (b) such line shall be eligible for treatment as a New Line Sharing Arrangement pursuant to, and subject to the terms and conditions of, Section 9.4.1.2.2 (including, without limitation, the specified recurring and nonrecurring charges for New Line Sharing Arrangements and the October 1, 2004 deadline for establishing New Line Sharing Arrangements).

9.4.1.2.4.2 **New Line Sharing Arrangements**. Any New Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier provided that such transfer or assignment takes place before October 1, 2004. Carrier will be charged the Shared Loop nonrecurring charges as provided in Exhibit A to transfer or assign New Line Sharing Arrangements. Following transfer or assignment, the New Line Sharing Arrangement in question will be assessed the monthly recurring rates described in Sections 9.4.1.2.2 (a)-(c) above, and shall be subject to termination in accordance with Sections 9.4.1.2.3 and 9.4.1.2.4. If re-termination of a New Line Sharing arrangement is required to complete any such transfer or assignment, then the new Carrier will be assessed the nonrecurring rates for New Line Sharing Arrangements as specified in Section 9.4.1.2.2 above. No transfers or assignments of New Line Sharing Arrangements shall be allowed after October 1, 2004.

9.4.2 Terms and Conditions

9.4.2.1 General

9.4.2.1.1 To order the HUNE, CLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user as provided for in this Section, and the end user must have dial tone originating from a Qwest Switch in that Wire Center. CLEC must provide the end user with, and is responsible for, the installation of a Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.4.2.1.2 Reserved for Future Use.

9.4.2.1.3 CLEC may use the HUNE to provide any xDSL services that will not interfere with analog voiceband transmissions in accordance with FCC rules. Such services currently are 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 Line Sharing Deployment under applicable FCC rules.

9.4.2.1.4 CLEC may not order the HUNE on a given copper Loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the end user has requested a change of data

providers at which time Qwest shall perform the necessary work required to migrate the HUNE to the new data provider with minimal interruption to the end user's data and voice services.

9.4.2.1.5 CLEC may request and Qwest will provide, conditioning of Shared Loops to remove load coils and excess Bridged Taps, subject to the charges for Loop conditioning in Exhibit A. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the Loop. Qwest will perform requested conditioning, including de-loading and removal of excess Bridged Taps, unless Qwest demonstrates in advance that conditioning a 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 may make a preliminary determination if the Loop can meet the technical parameters applicable to the data service it intends to provide over the Loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop to the point that it is unacceptable to the End User Customer, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.4.2.1.6 Qwest will provide CLEC with access to the HUNE through POTS Splitters installed in Qwest Wire Centers. POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in this Section. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination.

9.4.2.1.7 Reserved for Future Use.

9.4.2.2 CLEC Collocation Area Splitter

9.4.2.2.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via the standard Collocation arrangements set forth in the Collocation Section, CLEC will either purchase the POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to taxes, shipping and handling. The POTS Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. CLEC will be responsible for installing and maintaining the POTS Splitters in its Collocation areas within Qwest Wire Centers.

9.4.2.2.2 CLEC may designate some or all of its existing TIE Cables for use in connection with Line Sharing. Qwest will perform any necessary TIE Cable reclassifications, frame re-stenciling, and related work for which it is responsible and that is required to provision Line Sharing. Charges will apply pursuant to Exhibit A of the Agreement.

9.4.2.2.3 Two (2) ITPs and two (2) TIE Cables will be needed to connect POTS Splitters to the Qwest network. One ITP will carry both voice and data

traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter located in CLEC's Collocation area. The voice and data traffic will be separated at the POTS Splitter. The data traffic will be routed to CLEC's network within its Collocation area. The voice traffic will be routed to the COSMIC™/MDF Switch termination, via the ICDF, using a second TIE Cable and a second ITP.

9.4.2.2.4 Interconnection Tie Pairs and TIE Cables. There are two (2) types of ITP arrangements for connecting the Qwest network to the CLEC provided Splitter, depending on whether CLEC elects to use an ICDF or direct connections.

9.4.2.2.4.1 CLEC may elect to use an ICDF. In this instance, one ITP carries the combined voice/data signal from the COSMIC™/MDF Loop termination to the ICDF and a second ITP carries the voice only signal from the ICDF to the COSMIC™/MDF Switch termination. For each Shared Loop, two pairs of the TIE cable must be used: one pair of the TIE Cable will carry the voice/data from the ICDF to the CLEC provided Splitter, and the second pair will carry the voice-only signal from the CLEC provided Splitter to the ICDF.

9.4.2.2.4.2 CLEC may elect to use direct connections between the CLEC-provided Splitter and the COSMIC™/MDF. In this instance, Qwest will provide one TIE Cable between each module of the COSMIC™/MDF and the CLEC-provided Splitter. One pair in the TIE Cable will carry the combined voice/data signal from the COSMIC™/MDF Loop termination to the CLEC-provided Splitter in CLEC's Collocation space. A second pair in the TIE Cable will carry the voice-only signal from the CLEC-provided Splitter to the Switch termination on the COSMIC™/MDF. These TIE Cables will be dedicated to CLEC's use, and, as a result, the full cost of the necessary Mechanized Engineering and Layout for Distributing Frame (MELD™) run, cable placement, and cable termination, and associated COSMIC™/MDF hardware to terminate a TIE Cable on each outside plant and Switch equipment module of the COSMIC™/MDF will be assessed to CLEC in accordance with Section 8 (Collocation). To minimize CLECs cost, to the extent feasible, Qwest shall consolidate CLECs requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest. Qwest will provide, for each Shared Loop, the TIE Cable pair assignments.

9.4.2.2.5 The Demarcation Points between Qwest's network and CLEC's network will be the place where the combined voice and data Loop is connected to the ICDF, or where CLEC chooses a direct connection to the COSMIC™/MDF, where the combined voice and data Loop originates from CLECs Collocation.

9.4.2.3 Common Area Splitter Collocation

9.4.2.3.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS Splitters will be installed in those Wire Centers in one of the following locations: (a) in a relay rack near CLEC's DS0 termination points ; (b) on an ICDF to the extent such a frame is available; or (c) at CLEC's direction, on the COSMIC™/MDF, where space is available on the COSMIC™/MDF and priced on an ICB basis, or in some other appropriate location such as an existing Qwest relay rack or bay. In the event that the option selected by CLEC is not available, Qwest may place CLEC's splitter in some other appropriate location such as an existing Qwest relay rack or bay. CLEC either may purchase POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to, taxes, shipping and handling, and any similar charges assessed on Qwest by vendors in connection with the purchase of POTS Splitters. The POTS splitters must meet the FCC requirements and NEBs Level 1 safety standards. If CLEC purchases the POTS splitter, Qwest will be responsible for installing the POTS Splitter shelf with cards as supplied, but CLEC will lease the POTS Splitters to Qwest at no cost. Qwest will not be responsible for shortages of POTS Splitters or Qwest's inability to obtain POTS Splitters from vendors, if acting as purchasing agent on behalf of CLEC. Qwest may install the POTS Splitter shelves of different CLECs in a single relay rack (bay) or frame.

9.4.2.3.1.1 CLEC has the option to maintain the POTS splitter cards or have Qwest perform this function. When CLEC elects to maintain the POTS splitter cards, CLEC will be responsible to troubleshoot and replace defective cards. Qwest will be responsible for troubleshooting and trouble isolation of circuit continuity issues up to the splitter card and from the splitter card to the DEMARC. CLEC will be responsible to add splitter cards as necessary to provision un-carded splitter shelf slots. CLEC will be responsible to clearly label the splitter shelf as CLEC maintained. Election to maintain the POTS splitter cards will be for all CLEC collocations in Qwest 14 state operating territory.

9.4.2.3.1.2 If CLEC elects to have Qwest perform the splitter card maintenance, CLEC will be responsible for inventory and supply of spare splitter cards in the event a defective card requires replacement or a cards needs to be added to provision an unused splitter card slot.

9.4.2.3.2 Two (2) ITPs and four (4) TIE Cables will be needed to connect the POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter. The voice and data traffic will be separated at the POTS Splitter, and the separated voice and data traffic will be routed to the ICDF via separate TIE Cables (i.e., the second and third TIE Cables). At the ICDF, the data traffic will be routed to CLEC's Collocation area via a fourth TIE Cable, and the voice traffic will be routed to the COSMIC™/MDF Switch termination, via a second ITP. CLEC can also elect a direct connect option pursuant to Section 8.3.1.11.2.

9.4.2.3.3 Qwest will provide the cabling used for TIE Cables between the POTS Splitter and the ICDF. The POTS Splitter Tie Cable Connection Charge

will apply.

9.4.2.3.4 The Demarcation Point between Qwest's network and CLEC's network will be at the place where the data Loop leaves the POTS Splitter on its way to CLEC's Collocated equipment, or at the ICDF, where the data Port is cabled to existing CLEC Collocation tie cable.

9.4.3 Line Sharing Deployment

9.4.3.1 New applications for installation of POTS Splitters will be processed in the manner outlined in the Collocation Section for Cageless or Common Collocation.

9.4.3.2 CLEC may submit applications for additional DSO TIE Cable terminations and/or reclassifications to support Line Sharing. Qwest will process any such applications for augmentation and/or reclassification of DSO TIE Cable terminations under intervals as outlined below in this Section.

9.4.3.3 Augmentation intervals will be thirty (30) Calendar Days, subject to the following terms and conditions identified below:

9.4.3.3.1 Intentionally Left Blank.

9.4.3.3.2 Intentionally Left Blank.

9.4.3.3.3 The interval for reclassification will be fifteen (15) Calendar Days, subject to the following terms and conditions. If requested reclassification engineering results in additional requirements for DSO TIE Cable termination or TIE Cable support, the interval will default to thirty (30) Calendar Days.

9.4.3.3.4 Intentionally Left Blank.

9.4.3.3.5 In the event CLEC, or Qwest acting as purchasing agent for CLEC, is unable to procure any equipment needed to complete all work required by applications submitted to Qwest by CLEC, including but not limited to, POTS Splitters or cabling, Qwest will install the subject equipment when it becomes available. If Qwest is acting as purchasing agent for CLEC and is unable to procure equipment to complete all work in a timely manner, CLEC may provide Qwest with the subject equipment. CLEC will be notified by Qwest of the required material on-site date for the affected Wire Center(s) and CLEC will have two (2) business days to determine if it will be able to provide the subject equipment in advance of the material on-site date. If CLEC does not notify Qwest in writing of its intent to provide the subject equipment within this two (2) business days period, or if the subject equipment is not provided in a timely manner, Qwest will install the subject equipment when available.

9.4.4 Rate Elements

9.4.4.1 Recurring Rates for Shared Loop

9.4.4.1.1 Shared Loop Charge - A monthly recurring charge for the use of the Shared Loop will apply.

9.4.4.1.2 OSS Charge - A monthly recurring charge to recover upgrades to Qwest Operational Support Systems required to accommodate Line Sharing will apply.

9.4.4.2 Nonrecurring Rates for the Shared Loop

9.4.4.2.1 Basic Installation Charge for Shared Loop – A nonrecurring charge for each Shared Loop installed will apply.

9.4.4.2.2 If CLEC requests conditioning of a Shared Loop, a nonrecurring conditioning charge specified in Exhibit A will apply for removal of load coils and excess Bridged Taps. If the conditioning significantly degrades the voice services on the Loop to the point it is unacceptable to the end user, CLEC shall pay the conditioning charge in Exhibit A to recondition the Loop.

9.4.4.3 Nonrecurring Rates for Tie Cable Reclassification

9.4.4.3.1 Reclassification Charge – A nonrecurring charge will apply, based on time and materials for reclassification of existing TIE cable capacity, by among other things, reclassification of existing TIE cables for Line Sharing, frame re-stenciling, and any other work performed between CLEC's Collocation and the intermediate distribution frame required to provision Line Sharing.

9.4.4.4 Nonrecurring Rates for Maintenance and Repair

9.4.4.4.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.4.4.4.2 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 Exhibit A.

9.4.4.5 Rates for Common Area Splitter Collocation

9.4.4.5.1 Splitter Shelf Charge – This charge recovers installation and ongoing maintenance associated with Splitter installation, bay installation, lighting costs, aerial support structures and grounding charge for Splitters either in a bay, on the IDF, or on the MDF/COSMIC™. These are both recurring and nonrecurring charges.

9.4.4.5.2 POTS Splitter Charge – A nonrecurring charge will apply for the cost of each POTS Splitter purchased by Qwest on behalf of CLEC. This charge will cover the cost of the POTS Splitter, plus any associated costs incurred by Qwest to order the POTS Splitter.

9.4.4.5.3 Engineering – A nonrecurring charge will apply for the planning and engineering associated with placing POTS Splitters in the Central Office, either in a bay, on the IDF, or on the MDF/COSMIC™.

9.4.4.6 POTS Splitter TIE Cable Connections Charge – A nonrecurring charge will apply for the cost of each TIE Cable connected to the POTS Splitters. This charge will cover both the TIE cables and associated blocks per one hundred (100) pair between the POTS Splitter and the intermediate distribution frame or Splitter bay.

9.4.4.7 The rates for each of the aforementioned Line Sharing rate elements are set forth in Exhibit A. Where such rates are interim, they will be subject to true up based on either mutually agreed to permanent rates or permanent rates established in a Line Sharing cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are set established by the Commission.

9.4.5 Ordering Process

9.4.5.1 Shared Loop

9.4.5.1.1 As a part of the pre-order process, CLEC can access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. However, use of any Qwest loop qualification tool is not required prior to placing an order for a Shared Loop. CLEC will determine, in its sole discretion, whether to order the HUNE across any specific copper Loop. Qwest and CLEC will work together to modify the Loop Information Tool to better support Line Sharing. CLEC shall accept the risk that the Loop selected may not be suitable for providing the type of xDSL service CLEC seeks to provide.

9.4.5.1.2 The appropriate Splitter Meet Points dedicated to the POTS 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 ordered by the Commission or further agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC™/MDF and ICDF.

9.4.5.1.3 Basic Installation "lift and lay" procedure will be used for all 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.

9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) and load coils on Shared Loops as part of basic installation. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC

DSLAM. Qwest will perform an ANI test to verify that the proper pair has been connected to CLEC's DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF.

9.4.5.1.4 Qwest will provision the Shared Loop within the standard unbundled Loop Provisioning interval as defined in Exhibit C.

9.4.5.1.5 CLEC shall not place initial orders for Shared Loops until all infrastructure work necessary to provision Line Sharing in a given Qwest Wire Center, including, but not limited to, POTS 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 Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

9.4.5.1.6 Prior to placing an LSR for Shared Loop, CLEC must obtain a Proof of Authorization from the End User Customer in accordance with the Proof of Authorization Section.

9.4.5.2 Common Area Splitter Collocation

9.4.5.2.1 This Section only applies to situations where CLEC orders placement of the Splitter in a common area.

9.4.5.2.2 New POTS Splitter shelves may be ordered via a single Collocation application form and quote preparation fee. Standard intervals as contained in Exhibit C will apply.

9.4.5.2.3 New POTS Splitter shelves may be ordered with an existing Collocation. CLEC must submit a new Collocation application form and the applicable fee to Qwest. Standard Cageless and/or Common Collocation intervals as contained in Exhibit C will apply.

9.4.5.3 TIE Cable Reclassification

9.4.5.3.1 To the extent CLEC has existing DSO TIE Cable terminations extending from an intermediate distribution frame to its Collocation space, CLEC may request that these existing DSO TIE Cable terminations be reclassified for use with Line Sharing. CLEC shall request such reclassification through the same process used to order new terminations.

9.4.6 Repair and Maintenance

9.4.6.1 Qwest will allow CLEC to access Shared Loops at the point where the combined voice and data Loop is cross-connected to the POTS Splitter. If CLEC elects the Common Area Splitter Maintenance option, CLEC may access all cross connect points on the ICDF at which CLEC's data circuits terminate.

9.4.6.2 Qwest will be responsible for repairing voice services provided over Shared Loops and the physical line between Network Interface Devices at end user

premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at end user premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end users. CLEC will be responsible for repairing data services provided on 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 POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.4.6.3 Qwest and CLEC will continue to develop repair and maintenance procedures for Line Sharing and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsServices/pcat/TABL1-0.html. In the interim, Qwest and CLEC agree that the following general principles will guide the repair and maintenance process for Line Sharing.

9.4.6.3.1 If an end user complains of a voice service problem that may be related to the use of a Shared Loop for data services, Qwest and CLEC will work together with the end user to solve the problem to the satisfaction of the end user. Qwest will not disconnect the data service provided to an end user over a Shared Loop without the written permission of CLEC unless the end user's voice service is so degraded that the end user cannot originate or receive voice grade calls and/or the end user authorizes Qwest to disconnect the data service. Qwest will notify CLEC whenever this occurs upon voice trouble ticket closure. If the trouble is isolated into the CLEC collocation arrangement, Qwest shall notify the CLEC when disconnecting the data service and immediately restore the data service once the CLEC notifies Qwest that the trouble has been cleared.

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

9.4.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess CLEC the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at its option, may require Qwest to pay a charge, equivalent to the Qwest TIC charge, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.4.6.3.4 When trouble reported by CLEC is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of CLEC on a case-by-case basis.

CLEC may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide CLEC with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, CLEC will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge.

9.4.6.3.5 Where Qwest has billed CLEC for Trouble Isolation Charges for a CLEC Trouble Report, Qwest will remove such Trouble Isolation Charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Trouble Isolation Charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and

- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and

- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and

- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and

- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

9.4.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.4.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing Shared Loops. This equipment must meet the requirements for Central Office equipment set by the FCC in its March 31, 1999 Order in CC Docket No. 98-147.

9.4.6.6 Qwest and CLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.4.7 Other

9.4.7.1 Reserved for Future Use.

9.5 Network Interface Device (NID)

9.5.1 Description

The Qwest NID is defined as any means of Interconnection of on-premises wiring and Qwest's distribution plant, such as a cross connect device used for that purpose. Specifically, the NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit at a premises. If CLEC seeks to access a NID as well as a Subloop connected to that NID, it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. Qwest shall permit CLEC to connect its own Loop facilities to on-premises wiring through Qwest's NID, or at any other technically feasible point. The NID carries with it all features, functions and capabilities of the facilities used to connect the Loop distribution plant to the Customer premises wiring, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the Customer premises wiring, it may not represent the Demarcation Point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the Customer's on-premises wiring against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the Customer's on-premises wiring to the end user's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

9.5.1.1 Simple NID - The modular NID is divided into two (2) components, one containing the over-voltage unit (protector) and the other containing the end user's on-premises inside wiring termination, and a modular plug which connects the inside wire to the distribution plant or dial tone source. The non-modular NID is a protector block with the inside wire terminated directly on the distribution facilities.

9.5.1.2 Smart NID – To the extent Qwest has deployed "Smart" devices in general meaning a terminating device that permits the service provider to isolate the Loop facility from the premises wiring for testing purposes, and such devices have spare functioning capacity not currently used by Qwest or any other provider, Qwest shall provide unbundled access to such devices. Qwest shall also continue to allow CLEC, at its option, to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future regardless of whether or not CLEC terminates its own distribution facility on the NID.

9.5.1.3 Multi-Tenant (MTE) NID - The MTE NID is divided into two (2) functional components: one containing the over-voltage unit (protector) and the other containing

the terminations of the on-premises inside wiring. Such devices contain the protectors for, and may be located externally or internally to the premises served.

9.5.2 Terms and Conditions

9.5.2.1 A CLEC can use the existing Qwest NID to terminate its drop if space permits, otherwise a new NID or other Technically Feasible Interconnection point is required. If CLEC installs its own NID, CLEC may connect its NID to the Qwest NID by placing a cross-connect between the two. When Provisioning a NID to NID connection, CLEC will isolate the Qwest facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Qwest will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facility based provider up to and including its NID, the Qwest facility currently in place, including the NID, will remain in place.

9.5.2.1.1 Qwest shall allow CLEC to connect its Loops directly to the NID field containing the terminations of the on-premises inside wiring not owned or controlled by Qwest, without restriction. Where Qwest does not own or control the on-premises inside wiring, CLEC and the landowner shall determine procedures for such access.

9.5.2.1.2 Qwest shall allow CLEC to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.

9.5.2.1.3 Pursuant to generally acceptable work practices, and provided the inside wire re-termination is required to meet service requirements of either Parties' End User Customer. Either Party may remove the inside wire from the NID and connect that wire to that Party's own NID.

9.5.2.1.4 CLEC may enter the subscriber access chamber or "End User Customer side" of "dual chamber" NID enclosures for the purpose of NID to NID connections.

9.5.2.1.5 Upon CLEC request, Qwest will make other rearrangements to the inside wire terminations or terminal enclosure. Charges will be assessed per section 9.5.3.4. No such charge shall be applicable if Qwest initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without a Customer's perceivable disruption in service. Qwest will not make any rearrangements of wiring that is provided by another Carrier that relocates the other Carrier's test access point without notifying the affected Carrier promptly after such rearrangement if CLEC has properly labeled its cross connect wires.

9.5.2.2 Qwest will retain sole ownership of the Qwest NID and its contents on Qwest's side. Qwest is not required to proactively conduct NID change-outs, on a wide scale basis. At a CLEC's request, Qwest will change the NID on an individual request basis by CLEC and charges will be assessed per section 9.5.3.5 except where Section 9.5.5.1 applies. Qwest is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Qwest NID, it shall employ generally accepted

best engineering practices and comply with industry standards should such standards exist when it physically connects its NID (or equivalent) to the Qwest NID and makes Cross Connections necessary to provide service. At MTE NIDs, CLEC shall clearly label the cross-connect wires it uses to provide service. Qwest shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Qwest NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the Customer's in-premises wiring. All services fed through a protector field in a Qwest NID that is attached to a building will interface on industry standard lugs or a binding post type of termination and then extend, via a Cross Connection, to the Customer's on-premises wiring.

9.5.2.4.1 Reserved for Future Use.

9.5.2.4.2 Reserved for Future Use.

9.5.2.4.3 Reserved for Future Use.

9.5.2.4.4 Reserved for Future Use.

9.5.2.5 If so requested by CLEC, Qwest shall allow CLEC to connect its Loops directly to the protector field at Qwest NIDs that have unused protectors and are not used by Qwest or any other Telecommunications Carrier to provide service to the premises. If a CLEC accesses the Qwest protector field it shall do so on the distribution side of the protector field only where spare protector capacity exists. In such cases, CLEC shall only access a Qwest NID protector field in cable increments appropriate to the NID. If twenty-five (25) or more metallic cable pairs are simultaneously terminated at the MTE NID, additions must be in increments of twenty-five (25) additional metallic pairs. In all cases, Telecommunications cables entering a Qwest NID must be terminated in compliance with FCC 88-57, section 315 of the National Electric Safety Code and section 800.30 of the National Electric Code. When CLEC removes Qwest facilities from the NID protector, it must terminate the spare Qwest Loops on protection devices that ensure that Qwest's facilities and the Customer's premises be protected from electrical surges. In such instances, CLEC must provide Qwest with written notice within 10 days that it had so disconnected the Qwest facilities from the protection device. CLECs will be liable for damages in situations where their technicians have failed to follow standard electrical protection and safety procedures. To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement.

9.5.2.6 Reserved for Future Use.

9.5.3 Rate Elements

9.5.3.1 If CLEC requests the current Simple NID to be replaced with a different Simple NID, pursuant to section 9.5.2.1, charges will be assessed on a time and materials basis with CLEC paying only for the portion of the change out that is specific

to and for the functionality that supports CLEC requirements.

9.5.3.2 Recurring rates for unbundled access to the protector field in a Qwest NID are contained in Exhibit A of this Agreement and apply pursuant to 9.5.2.5. As of the Effective Date of this Agreement, Qwest has not implemented charges for this recurring rate element, but reserves the right to assess such a charge in the future.

9.5.3.3 When a CLEC requests that Qwest perform the work to connect its NID to the Qwest NID, the costs associated with Qwest performing such work will be charged to CLEC on a time and materials basis.

9.5.3.4 Where Qwest makes 9.5.2.1.5 rearrangements to the inside wire terminations or terminal enclosure on CLEC request pursuant to Section 9.5.2.1.5, charges will be assessed on a time and materials basis.

9.5.3.5 CLEC will be billed on a time and materials basis for any change out Qwest performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change out that is specific to the CLEC request for additional capacity.

9.5.4 Ordering Process

9.5.4.1 Reserved for Future Use.

9.5.4.2 CLEC may access a MTE NID after determining that the terminal in question is a NID, per the process identified in 9.3. If the terminal is a NID and CLEC wishes to access the Customer field of the NID, no additional verification is needed by Qwest. CLEC shall tag their jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross-connect field other than to the Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within 10 business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal or disputing the claim of technical infeasibility pursuant to the dispute resolution provisions of this Agreement. No additional verification is needed by Qwest and CLEC shall tag their jumper wire.

9.5.4.3 Subject to the terms of 9.5.4.2, CLEC may perform a NID-to-NID connection, according to 9.5.2.3, and access the Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

9.5.5 Maintenance and Repair

9.5.5.1 If Qwest is dispatched to an end user's location on a maintenance issue and finds the NID to be defective, Qwest will replace the defective element or, if beyond repair, the entire device at no cost to CLEC. If the facilities and lines have been removed from the protector field or damaged by CLEC, CLEC will be responsible for all costs associated with returning the facilities and lines back to their original state. Charges for this work will be on a time and materials basis and billed directly to CLEC. Billing disputes will be resolved in accordance with the dispute resolution process

contained in this Agreement. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6 Unbundled Dedicated Interoffice Transport (UDIT)

Qwest shall provide access to Unbundled Dedicated Interoffice Transport (UDIT) in a non-discriminatory manner according to the following terms and conditions. The following services are not available under the terms of this Agreement:

a) Extended Unbundled Interoffice Transport (EUDIT);

b) OCn UDIT;

c) More than twelve (12) DS3 UDIT, for one carrier or its affiliates, per route;

d) UDIT as a part of a Meet-Point;

e) Remote Node/Remote Port/

f) SONET add/drop multiplexing; or

OPEN – Covad proposed; Qwest cannot agree

g) UDIT on routes where the Commission has found no CLEC impairment under Section 251 of the Act; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

9.6.1 Description

9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a Network Element of a single transmission path between Qwest End Office Switches, Serving Wire Centers or Tandem Switches in the same LATA and state. A UDIT can also provide a path between one (1) CLEC's Collocation in one (1) Qwest Wire Center and a different CLEC's Collocation in another Qwest Wire Center. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. UDIT is available in DS0 through DS3 bandwidths. CLEC can assign channels and transport its choice of voice or data. Specifications, interfaces and parameters are described in Qwest Technical Publication 77389.

9.6.1.2 An unbundled multiplexer is offered as an optional stand-alone element associated with UDIT. A 3/1 multiplexer provides CLEC with the ability to multiplex the DS3 44.736 Mbps signal to twenty-eight (28) DS1 1.544 Mbps channels. The 3/1 multiplexer, in conjunction with an ITP, provides a DS3 signal terminated at a Demarcation Point and twenty-eight (28) DS1 signals terminated at a Demarcation Point. A 1/0 multiplexer provides CLEC with the ability to multiplex the DS1 1.544 Mbps signal to twenty-four (24) DS0 64 Kbps channels. The 1/0 multiplexer provides a DS1 signal terminated at a Demarcation Point and twenty-four (24) DS0 signals terminated at

a Demarcation Point.

9.6.1.3 Intentionally Left Blank

9.6.1.4 Where unbundled DS3 is available as a UNE, Qwest is not required to provide, and CLEC shall not submit orders for, more than twelve (12) DS3 UDIT channels on a specific Wire Center to Wire Center route for which unbundled DS3 UDIT is available as an Unbundled Network Element.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has found no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has found no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

9.6.1.7 CLEC will not order services provided in this Section with High Capacity Loops. If CLEC wishes to order services provided in this Section with High Capacity Loops in the future, the parties will negotiate an amendment to this agreement incorporating the terms and conditions for ordering such services, including applicable Service Eligibility Criteria established by Applicable Law

9.6.1.8 All services provided in this Section are subject to the Ratcheting criteria as outlined in Section 9.1.1.4 of this Agreement.

9.6.2 Terms and Conditions

9.6.2.1 To the extent that CLEC is ordering access to a UNE Combination, and Cross Connections are necessary to combine UNEs, Qwest will perform requested and necessary Cross Connections between UNEs in the same manner that it would perform such Cross Connections for its End User Customers or for itself. When UDIT is combined or Commingled with high capacity loops, the circuit is subject to the Service Eligibility Criteria as stated in Section 9.1.1.5. If not ordered as a combination, CLEC is responsible for performing Cross Connections at its Collocation or other mutually determined Demarcation Point between UNEs and ancillary or Finished Services, and for transmission design work including regeneration requirements for such connections. Such Cross Connections will not be required of CLEC when CLEC orders a continuous dedicated transport element from one point to another. UDIT may be directly connected to Finished Services, except as prohibited by Existing Rules.

9.6.2.2 CLEC must order all multiplexing elements (if it chooses the multiplexing option) and regeneration requirements with its initial installation for the 3/1 multiplexer, including all 28 DS1s and the settings on the multiplexer cards. If options are not selected and identified on the order by CLEC, the order will be held until options are selected. For the 1/0 multiplexer, the low side channels may be ordered as needed. Low Side Channelization charges are assigned as channels are ordered. When Loops are ordered in combination with multiplexing, Qwest will provision Loops directly terminated to the multiplexer.

9.6.2.3 With the exception of combinations provided through the UNE Combinations Section 9.23, CLEC may utilize any form of Collocation at both ends of the UDIT . Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network. Cable distance limitations are based on ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

9.6.2.4 Intentionally Left Blank.

9.6.2.5 Intentionally Left Blank.

9.6.2.6 Intentionally Left Blank.

9.6.2.7 Intentionally Left Blank.

9.6.3 Rate Elements

9.6.3.1 DS1 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS1 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 1.544 Mbps termination at a DSX or DCS. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS1 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 1.544 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS1 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) Intentionally Left Blank.

9.6.3.2 DS3 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS3 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 44.736 Mbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS3 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides an interoffice transmission path of 44.736 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS3 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) DS3 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS3 service.

e) Intentionally Left Blank.

9.6.3.3 DS0 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS0 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 64 Kbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS0 Transport Facilities (Per Mile) Rate Element. This recurring rate

element provides a transmission path of 64 Kbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS0 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) DS0 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS0 service.

9.6.3.4 Intentionally Left Blank.

9.6.3.5 Intentionally Left Blank.

9.6.3.6 Low Side Channelization (LSC) Charge. A recurring charge for low side multiplexed channel cards and settings at each end of the DS0 UDIT.

9.6.3.7 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:

a) Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.

9.6.3.8 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:

a) Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.

c) Low Side Channelization (LSC). A recurring charge for low side multiplexed channel cards and settings plus a nonrecurring charge for each individual channelization Provisioning.

9.6.3.9 Rearrangement rates are contained in Exhibit A of this agreement.

9.6.3.10 Remote Node/Remote Port rates are contained in Exhibit A of this Agreement and include the following charges:

a) Recurring Remote Node Charge. The Remote Node at OC3, OC12 or OC48.

b) Recurring Remote Port Charge. A recurring charge for Remote Port card at DS1, DS3, OC3, OC12.

c) Nonrecurring Remote Port. One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

9.6.4 Ordering Process

9.6.4.1 Ordering processes and installation intervals are as follows:

9.6.4.1.1 UDIT is ordered via the Access Service Request (ASR) process. Ordering processes are contained in the Access to OSS Section of this Agreement.

9.6.4.1.2 Reserved for Future Use.

9.6.4.1.3 The interval will start when Qwest receives a complete and accurate Access Service Request (ASR). This date is considered the start of the installation interval if the order is received prior to 3:00 p.m. The installation interval will begin on the next business day for service requests received after 3:00 p.m. The installation intervals have been established and are set forth in Exhibit C, Section 2.0 of this Agreement.

9.6.4.1.4 Subsequent changes to the quantity of services on an existing order will require a revised order. Also, additional charges apply for the following modifications to existing orders unless the need for such change is caused by Qwest:

a) Service Date changes;

b) Partial cancellation;

c) Design change; and

d) Expedited order.

9.6.4.1.5 An order may be canceled any time up to and including the Service Date. Cancellation charges will apply except when:

a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Qwest that such Due Date will be, delayed ten (10) business days or longer; or

b) The original Due Date has been scheduled later than the expiration of the standard interval set forth in Exhibit C and CLEC cancels its order no later than ten (10) Days before such original Due Date.

9.6.4.1.6 Definitions of the most common critical dates that occur during the ordering and installation process are included in the Definitions Section of this Agreement.

9.6.4.2 UDIT is ordered with basic installation. Qwest will install the UDIT extending connections to CLEC Demarcation Point and will notify CLEC when the work activity is complete. UDIT will comply will technical specifications contained in Technical Publication 77389. Joint testing is available pursuant to the joint testing provisions contained in Section 8 of this Agreement.

9.6.4.3 UDIT 3/1 multiplexing is provisioned as a complete system with terminations at the Demarcation Point and all multiplexing cards. CLEC must order settings for all cards at the time of the multiplexing request.

9.6.4.4 For UDIT 1/0 multiplexing, the high side is fully provisioned with the order. The low side is provisioned when low side channels are ordered. Optional card settings are selected by CLEC at the time of the DS0 order.

9.6.4.5 Qwest will perform industry standard tests, set forth in Technical Publication 77389, when installing UDIT service.

9.6.4.6 Reserved for Future Use.

9.6.5 Maintenance and Repair

9.6.5.1 The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC Cross Connections will be repaired by CLEC and Qwest Cross Connections will be repaired by Qwest. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6.6 Rearrangement

9.6.6.1 CLEC can submit requests through the ASR process to move or rearrange UDIT terminations on CLEC's Demarcation Point or to change UDIT options. These rearrangements are available through a single Wire Center or dual Wire Center request. Single Wire Center rearrangements are limited to the change in options or movement of terminations within a single Wire Center. Dual Wire Center rearrangements are used to change options or movement of terminations in two (2) Wire Centers. Rearrangement is only available for in-place and working UDITs.

9.6.6.2 The rearrangement of terminations or option changes are completed as an "uncoordinated change" (basic request) and will be completed within the normal intervals outlined in Exhibit C. If CLEC desires a coordinated rearrangement of terminations or options changes, additional labor installation as identified in Exhibit A shall apply.

9.6.6.3 CLEC will submit an ASR with the rearrange USOC and appropriate termination information (e.g., CFA) or NC/NCI codes (Network Channel Codes/Network Channel Interface Codes).

9.7 Unbundled Dark Fiber

CLEC does not intend to order Unbundled Dark Fiber; however in the event CLEC wishes to order Unbundled Dark Fiber, the Parties will negotiate an appropriate amendment to this Agreement.

9.8 Shared Interoffice Transport

CLEC does not intend to order Shared Interoffice Transport; however in the event CLEC wishes to order Shared Interoffice Transport, the Parties will negotiate an appropriate amendment to this Agreement.

9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)

CLEC does not intend to order UCCRE; however in the event CLEC wishes to order UCCRE, the Parties will negotiate an appropriate amendment to this Agreement.

9.10 Local Tandem Switching

CLEC does not intend to order Local Tandem Switching; however in the event CLEC wishes to order Local Tandem Switching, the Parties will negotiate an appropriate amendment to this Agreement.

9.11 Local Switching

CLEC does not intend to order Local Switching; however in the event CLEC wishes to order Local Switching, the Parties will negotiate an appropriate amendment to this Agreement.

9.12 Customized Routing

CLEC does not intend to order Customized Routing; however in the event CLEC wishes to order Customized Routing, the Parties will negotiate an appropriate amendment to this Agreement.

9.13 Access to Signaling

CLEC does not intend to order Access to Signaling; however in the event CLEC wishes to order Access to Signaling, the Parties will negotiate an appropriate amendment to this Agreement.

9.14 AIN Services

CLEC does not intend to order AIN Services; however in the event CLEC wishes to order AIN Services, the Parties will negotiate an appropriate amendment to this Agreement.

9.15 Interconnection to Line Information Database (LIDB)

CLEC does not intend to order LIDB; however in the event CLEC wishes to order LIDB, the Parties will negotiate an appropriate amendment to this Agreement.

9.16 8XX Database Query Service

CLEC does not intend to order 8XX Database Query Service; however in the event CLEC wishes to order 8XX Database Query Service, the Parties will negotiate an appropriate amendment to this Agreement.

9.17 InterNetwork Calling Name (ICNAM)

CLEC does not intend to order ICNAM; however in the event CLEC wishes to order ICNAM, the Parties will negotiate an appropriate amendment to this Agreement.

9.18 Additional Unbundled Elements

CLEC may request non-discriminatory access to and, where appropriate, development of, additional UNEs not covered in this Agreement pursuant to the Bona Fide Request Process.

9.19 Construction Charges

Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a Network Element that satisfies the description of a UNE contained in this Agreement, that Network Element shall be deemed a UNE.

9.20 Unbundled Packet Switching

Packet Switching is no longer an Unbundled Network Element under existing rules.

9.21 UNE-P Line Splitting

CLEC intends to operate only as a DLEC and does not intend to operate as the voice provider CLEC as described in this Section 9.21. In the event that CLEC wishes to order voice services under this Section 9.21, the Parties will negotiate an amendment to this Agreement adding the appropriate sections of the SGAT.

9.21.1 Description

Line Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with a new or existing UNE-P by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. A POTS Splitter must be inserted into the UNE-P to accommodate establishment of the advanced data service. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.21.2 Terms and Conditions

OPEN – Covad proposed; Qwest cannot agree

If the Commission determines that Qwest is no longer required to provide UNE-P Combination services in a market area pursuant to Section 251 of the Act, CLEC shall not submit new orders for Line Splitting as of the date the Commission rules CLECs are no longer entitled to submit orders for unbundled switching. If, notwithstanding the Section 251 determination, Qwest is required to provide access to unbundled switching under Section 271 or applicable state law, then line splitting remains available in that market area. To the extent Qwest is no longer required to provide access to unbundled switching under any applicable law, and to the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.

9.21.2.1 General

9.21.2.1.1 The Customer of record will order the insertion of a POTS Splitter. Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.21.2.1.2 To order Line Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.21.2.1.3 CLEC/DLEC may provide any xDSL services that are compatible with CLEC UNE-P POTS service in accordance with ANSI T1.413 or IEEE 820 or other industry standards.

9.21.2.1.4 There may be only one DLEC at any given time that provides advanced data service on any given UNE-P.

9.21.2.1.5 The Customer of record will be able to request conditioning of the Unbundled Loop portion of the UNE-P. If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) shared Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop of the UNE-P to the point that it is unacceptable to CLEC, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.21.2.1.6 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Shared Loop Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination. For UNE-P Line Splitting, Qwest shall use the same number of Cross Connections and the same length of the tie pairs as it uses for Line Sharing.

9.21.2.1.7 Reserved for Future Use.

9.21.2.1.8 POTS Splitter Collocation requirements are covered in the Shared Loop Section of this Agreement.

9.21.3 Rate Elements

The following UNE-P Line Splitting rate elements are contained in Exhibit A of this Agreement.

9.21.3.1 Recurring Rates for UNE-P Line Splitting.

9.21.3.1.1 Interconnection TIE Pairs (ITP). A monthly recurring charge to recover the costs associated with the use of 2 ITPs, one for voice and one for voice/data.

9.21.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the UNE-P Loop.

9.21.3.2 Nonrecurring Rates for the UNE-P Line Splitting

9.21.3.2.1 Basic Installation Charge for UNE-P Line Splitting – A nonrecurring charge for each UNE-P Line Splitting installed will apply.

9.21.3.2.2 Charge for conditioning Loop associated with UNE-P – A nonrecurring charge for either conditioning the Loop by removing load coils and/or excess Bridged Taps; or reconditioning the line if necessary to assure the quality of the voice service on the UNE-P.

9.21.3.3 Nonrecurring Rates for Maintenance and Repair

9.21.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.21.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.

9.21.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.21.3.5 Where there are no Commission-approved interim or permanent rates for UNE-P Line Splitting, the current rates for Line Sharing will be used for Line Splitting. All such Line Splitting rates shall be deemed as interim, and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission for UNE-P Line Splitting. In the event interim rates for UNE-P Line Splitting are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true-up will be performed until mutually agreed upon permanent rates are established or permanent rates are established by the Commission for UNE-P Line Splitting.

9.21.4 Ordering Process

9.21.4.1 UNE-P Line Splitting

9.21.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific UNE-P associated Loop. Neither the CLEC/DLEC nor the Customer of Record are required to access loop characteristic information prior to placing an order.

9.21.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.21.4.1.3 Basic Installation "lift and lay" procedure will be used for all Line Splitting 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/DLEC's collocated equipment in the same Wire Center. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. When installation of Line Splitting

is in conjunction with the migration of service from another provider, every effort will be taken by Qwest to ensure that the End User's services, both voice and data, experience limited interruption.

9.21.4.1.4 The Customer of record shall not place orders for UNE-P Line Splitting until all work necessary to provision UNE-P Line Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.21.4.1.5 If a Line Splitting LSR is placed to change from Line Sharing to UNE-P Line Splitting or to change the voice provider in a UNE-P Line Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.21.4.1.6 The Customer of record shall submit the appropriate LSR's associated with establishing UNE-P and Line Splitting. A single LSR may be used to establish both the UNE-P and Line Splitting service at the same time.

9.21.5 Billing

9.21.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format, Billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for CLEC/DLEC review.

9.21.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Line Splitting rate elements.

9.21.6 Repair and Maintenance

9.21.6.1 Qwest will allow CLEC/DLEC to access UNE-P Line Splitting at the point where the combined voice and data Loop is cross-connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points document.

9.21.6.2 The Customer of record will be responsible for reporting to Qwest voice service troubles provided over UNE-P Line Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. CLEC/DLEC will be responsible for repairing data services provided on UNE-P Line Splitting. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.21.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for UNE-P Line Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsservices/pcat/index.html. In

the interim, Qwest and CLEC/DLEC agree that the following general principles will guide the repair and maintenance process for UNE-P Line Splitting.

9.21.6.3.1 If an end user complains of a voice service problem that may be related to the use of an UNE-P for data services, Qwest and CLEC/DLEC will work together with the end user to solve the problem to the satisfaction of the end user. Disconnection of the data service will only be done after Qwest has clearly determined that no trouble exists in the Qwest network or parts of the network maintained by Qwest (i.e.; Common Area Splitter Collocation where the problem is in the splitter). Should Qwest temporarily disconnect the data service in order to restore voice service caused by a problem in the data providers network, Qwest shall promptly restore the data service and complete the normal test process, including synchronization testing, to ensure both data and voice are working properly. This will be done within twenty-four (24) hours of notification by the customer of record that the problem in the data providers network has been corrected.

9.21.6.3.2 CLEC and DLEC are responsible for their respective end user base. CLEC/DLEC will have the responsibility for initiation and resolution of any service trouble report(s) initiated by their respective end users.

9.21.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on UNE-P Line Splitting in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC or CLEC's actual cost, whichever is less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.21.6.3.4 When trouble reported by the Customer of record is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of the Customer of record on a case-by-case basis. The Customer of record may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide the Customer of record with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, the Customer of record will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC/DLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge to the Customer of record.

9.21.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC/DLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC/DLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.21.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC/DLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing UNE-P Line Splitting. This equipment must meet the requirements for Central Office equipment set by the FCC.

9.21.6.6 Qwest, CLEC and DLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.21.7 Customer of Record and Authorized Agents

9.21.7.1 "Customer of record" is defined for purposes of this section as the CLEC that is the billed Customer for Line Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.21.7.2 and 9.21.7.3 to perform ordering and/or Maintenance and Repair functions.

9.21.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.21.7.3 The Customer of record shall hold Qwest harmless with regard to any harm to Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices through the Customer of record, including but not limited to user identifications, digital certificates and SecurID cards, that allow such person to access the records of the Customer of record unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

9.22 Reserved for Future Use

9.23 Unbundled Network Elements Combinations (UNE Combinations)

CLEC does not intend to order UNE Combinations; however in the event CLEC wishes to order UNE Combinations, the Parties will negotiate an appropriate amendment to this Agreement.

9.24 Loop Splitting

9.24.1 Description

Loop Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with voice over a new or existing Unbundled Loop by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.24.1.1 With regard to the current requirement that Loop Splitting be offered over an existing Unbundled Loop, Qwest acknowledges that there are ongoing industry discussions regarding the Provisioning of Loop Splitting over a new Unbundled Loop. If as a result of those discussions, a process is developed for Loop Splitting over a new Loop, Qwest will amend its Agreement to eliminate the limitation of Loop Splitting to existing Unbundled Loops. Requests for other Loop Splitting applications, including line splitting on resold lines, must be submitted through the Special Request Process (SRP).

9.24.2 Terms and Conditions

9.24.2.1 General

9.24.2.1.1 Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.24.2.1.2 To order Loop Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.24.2.1.3 There may only be one DLEC at any given time that provides advanced data service on any given Unbundled Loop.

9.24.2.1.4 If Loop Splitting is requested for an analog Loop, the Loop must be converted to a 2/4 wire non-loaded Loop or ADSL compatible Loop.

9.24.2.1.4.1 The Customer of record will be able to request conditioning of the Unbundled Loop pursuant to the charges contained in Exhibit A. Qwest will perform requested conditioning of Unbundled Loops to remove load coils and excess Bridged Taps, undertake a line move, and/or remove UDCs under the terms and conditions associated with Loop conditioning contained in Section 9.2 of this Agreement.

9.24.2.1.4.2 If requested conditioning significantly degrades the

existing service over the Unbundled Loop to the point that it is unacceptable to CLEC, Customer of record shall pay to convert back to an analog Loop.

9.24.2.1.5 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Line Sharing Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that points of termination are kept to a minimum. For Loop Splitting, Qwest shall use the same length of tie pairs as it uses for Line Sharing, except for the additional CLEC to CLEC connection, which is not required for Line Sharing.

9.24.2.1.6 POTS Splitter Collocation requirements are covered in the Line Sharing Section of this Agreement.

9.24.3 Rate Elements

The following Loop Splitting rate elements are contained in Exhibit A of this Agreement.

9.24.3.1 Recurring Rates for Loop Splitting.

9.24.3.1.1 Interconnection TIE Pairs (ITP)- A monthly recurring charge to recover the costs associated with the use of ITPs.

9.24.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the Unbundled Loop.

9.24.3.2 Nonrecurring Rates for the Loop Splitting

9.24.3.2.1 Basic Installation Charge for Loop Splitting – A nonrecurring charge for Loop Splitting installed will apply.

9.24.3.3 Nonrecurring Rates for Maintenance and Repair

9.24.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Loop Splitting in response to trouble tickets initiated by CLEC. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the Trouble Isolation Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC charge or CLEC's actual cost, whichever is

less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.24.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.

9.24.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.24.3.5 All of these rates are interim and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are established by the Commission.

9.24.4 Ordering Process

9.24.4.1 Loop Splitting

9.24.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific Unbundled Loop. However, neither CLEC/DLEC nor the Customer of record are required to access Loop characteristic information prior to placing an order.

9.24.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.24.4.1.3 Basic Installation "lift and lay" procedure will be used for all Loop Splitting 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/DLEC's collocated equipment in the same Wire Center.

9.24.4.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage), excessive bridged tap, and load coils as part of basic installation. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM.

9.24.4.1.3.2 Loop Splitting shall be provided in accordance with the technical specifications contained in Technical Publication 77384.

9.24.4.1.4 The Customer of record shall not place orders for Loop Splitting

until all work necessary to provision Loop Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.24.4.1.5 The Customer of record shall submit the appropriate LSR's associated with establishing Unbundled Loop and Loop Splitting.

9.24.4.1.6 If a Loop Splitting LSR is placed to change from Line Sharing to Loop Splitting or to change the voice provider in an existing Loop Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.24.5 Billing

9.24.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format.

9.24.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Loop Splitting rate elements.

9.24.6 Repair and Maintenance

9.24.6.1 Qwest will allow CLEC/DLEC to access Loop Splitting at the point where the combined voice and data Loop is cross connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points documents.

9.24.6.2 The Customer of record or its authorized agent will be responsible for reporting to Qwest service troubles provided over Loop Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.24.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for Loop Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website.

9.24.7 Customer of Record and Authorized Agents

9.24.7.1 "Customer of Record" is defined for the purposes of this section as the CLEC that is the billed Customer for Loop Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.24.7.2 and 9.24.7.3 to perform ordering and/or Maintenance and Repair functions.

9.24.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited

to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.24.7.3 The Customer of record shall hold Qwest harmless with regard to any harm Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that allow person to access the records of the Customer of record unless such access and security devices through the Customer of record were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

Section 10.0 - ANCILLARY SERVICES

10.1 Reserved for Future Use

10.2 Local Number Portability

CLEC does not intend to order Local Number Portability (LNP); however in the event CLEC wishes to order Local Number Portability (LNP), the Parties will negotiate an appropriate amendment to this Agreement.

10.3 911/E911 Service

CLEC does not intend to order 911/E911 Service; however in the event CLEC wishes to order 911/E911 Service, the Parties will negotiate an appropriate amendment to this Agreement.

10.4 White Pages Directory Listings

CLEC does not intend to order White Pages Directory Listings; however in the event CLEC wishes to order White Pages Directory Listings, the Parties will negotiate an appropriate amendment to this Agreement.

10.5 Directory Assistance

CLEC does not intend to order Directory Assistance; however in the event CLEC wishes to order Directory Assistance, the Parties will negotiate an appropriate amendment to this Agreement.

10.6 Directory Assistance List

CLEC does not intend to order Directory Assistance List; however in the event CLEC wishes to order Directory Assistance List, the Parties will negotiate an appropriate amendment to this Agreement.

10.7 Toll and Assistance Operator Services

CLEC does not intend to order Toll and Assistance Operator Services; however in the event CLEC wishes to order Toll and Assistance Operator Services, the Parties will negotiate an appropriate amendment to this Agreement.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

CLEC does not intend to order Access to Poles, Ducts, Conduits, and Rights of Way; however in the event CLEC wishes to order Access to Poles, Ducts, Conduits, and Rights of Way, the Parties will negotiate an appropriate amendment to this Agreement.

Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Parties' Telecommunications networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the Telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-879-7328. In cases of emergency, CLEC shall call 911 and 1-888-879-7328.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Qwest and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 Qwest and CLEC's employees, agents and vendors shall comply with Qwest Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction may result in denial of access for that individual and may constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar Days of a CLEC violation of this provision to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of this provision and the personnel involved,

2) identification of the safety regulation violated, and 3) date and location of such violation. CLEC will have five (5) calendar Days to remedy any such violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such violation of which it has received notice within such five (5) calendar Days following receipt of such notice, CLEC shall be denied unescorted access to the affected Premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest Premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this Agreement, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11 shall prevent CLEC, its employees or agents from performing modifications, alterations, additions or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises, Qwest equipment or Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, to Qwest Service Assurance (800-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. The compliant Party shall provide immediate notice of the non-compliant work activity to the non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. If such non-compliant work activities pose an immediate threat to the safety of the other Party's employees, interference with the performance of the other Party's service obligations, or pose an immediate threat to the physical integrity of the other Party's facilities, the compliant Party may perform such work and/or take action as is necessary to correct the condition at the non-compliant Party's expense. In the event the non-compliant Party disputes any action the compliant Party seeks to take or has taken pursuant to this provision, the non-compliant Party may pursue immediate resolution by expedited Dispute Resolution. If the non-compliant Party fails to correct any safety non-compliance within ten (10) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within ten (10) calendar Days of written notice of non-compliance, and if the non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, the compliant Party may pursue immediate resolution by expedited Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification may be asked to vacate the Premises and Qwest security

may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar Days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)

800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available seven (7) Days a week, twenty-four (24) hours a Day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) prior to gaining access into a Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel. On a monthly basis, Qwest will provide said list to CLEC.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-

976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.34.1 Uncollectable or unbillable revenues resulting from, but not confined to, Provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing such error or malicious acts, if such malicious acts could have reasonably been avoided.

11.34.2 Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending Operational Support Systems by unauthorized third parties that could have reasonably been avoided shall be the responsibility of the Party having administrative control of access to said Network Element or operational support system software.

11.34.3 Qwest shall be responsible for any direct uncollectible or unbillable revenues resulting from the unauthorized physical attachment to Loop facilities from the Main Distribution Frame up to and including the Network Interface Device, including clip-on fraud, if Qwest could have reasonably prevented such fraud.

11.34.4 To the extent that incremental costs are directly attributable to a revenue protection capability requested by CLEC, those costs will be borne by CLEC.

11.34.5 To the extent that either Party is liable to any toll provider for fraud and to the extent that either Party could have reasonably prevented such fraud, the Party who could have reasonably prevented such fraud must indemnify the other for any fraud due to compromise of its network (e.g., clip-on, missing information digits, missing toll restriction, etc.).

11.34.6 If Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction of CLEC, take reasonable action to mitigate the fraud where such action is possible.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven (7) Days a week/twenty-four (24) hours a Day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or *57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure

court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a twenty-four (24) hours a Day, seven (7) Days a week contact for processing such requests, should they occur.

Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

12.1 Description

12.1.1 Qwest has developed and shall continue to provide Operational Support System (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation and support, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of the Change Management Process (CMP) set forth in Section 12.2.6.

12.1.2 Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing functions. For those functions with a retail analogue, such as pre-ordering and ordering and Provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and Provisioning of Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order and Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards

Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines/standards shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre Ordering - Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to Customer Service Records (CSRs) for Qwest retail or resale End User Customers. The information will include Billing name, service address, Billing address, service and feature subscription, Directory Listing information, and long distance Carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 For End User Customer locations, facility availability, Loop qualification, including resale-DSL, and Loop make-up information, including, but not limited to, Loop length, presence of Bridged Taps, repeaters, and loading coils.

12.2.1.4.8 A list of valid available CFAs for Unbundled Loops.

12.2.1.4.9 A list of one to five (1-5) individual Meet Points or a range of Meet Points for shared Loops.

12.2.1.4.10 Design Layout Record (DLR) Query which provides the layout for the local portion of a circuit at a particular location where applicable.

12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use.

12.2.1.5.2 Reserved for Future Use.

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs

for use by CLEC Customer service representatives at a single CLEC location, CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.7 Facility Based EDI Listing Process -- Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines/standards in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CMP process to consider any suggestions made by CLEC to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all Provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours Provisioning services to CLEC on a non-discriminatory basis as it provides such Provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours Provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic Firm Order Confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest Due Date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual Firm Order Confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats

and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.

12.2.2 Maintenance and Repair

12.2.2.1 Qwest shall provide electronic interface gateways, including an Electronic Bonding interface and a GUI interface, for reviewing a Customer's trouble history at a specific location, conducting testing of a Customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

12.2.3 Interface Availability

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows as applicable.

12.2.4 Billing

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local Billing information. EDI is an established standard under the auspices of

the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of Telecommunications Billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

12.2.5.1 Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as Billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, Billing account number (BAN) and bill cycle.

12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given Day as captured or recorded by the network Switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in ATIS standard Electronic Message Interface (EMI) format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

a) Resale;

b) Unbundled Switch Port; and

c) UNE-P for POTS.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a Carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the End User Customer has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

a) Intentionally Left Blank;

b) Resale;

c) Unbundled Loop;

d) Unbundled Line Side Switch Port;

e) UNE-P for POTS;

f) Line Sharing;

g) UNE-P Line Splitting - Loss Report is provided only to the Customer of record; and

h) Loop Splitting - Loss Report is provided only to the Customer of record

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

a) Intentionally Left Blank;

b) Resale;

c) Unbundled Loop;

d) Unbundled Line Side Switch; and

e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use. Qwest will make accessible to CLEC through electronic means the transmission method/media types available for these mechanized records.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

a) SAG provides Address and Serving Central Office Information.

b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA Carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

12.2.6 Change Management

Qwest agrees to maintain a change management process, known as the Change Management Process (CMP), that is consistent with or exceeds industry guidelines, standards and practices to address Qwest's OSS, products and processes. The CMP shall include, but not be limited to, the following: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), CMP notifications, systems release life cycles, and communications; (ii) provide a forum for CLECs and Qwest to discuss and prioritize CRs, where applicable pursuant to Exhibit G; (iii) develop a mechanism to track and monitor CRs and CMP notifications; (iv) establish intervals where appropriate in the process; (v) processes by which CLEC impacts that result from changes to Qwest's OSS, products or processes can be promptly and effectively resolved; (vi) processes that are effective in maintaining the shortest timeline practicable for the receipt, development and implementation of all CRs; (vii) sufficient dedicated Qwest processes to address and resolve in a timely manner CRs and other issues that come before the CMP body; (viii) processes for OSS Interface testing; (ix) information that is clearly organized and readily accessible to CLECs, including the availability of web-based tools; (x) documentation provided by Qwest that is effective in enabling CLECs to build an electronic gateway; and (xi) a process for changing CMP that calls for collaboration among CLECs and Qwest and requires agreement by the CMP participants. Pursuant to the scope and procedures set forth in Exhibit G, Qwest will submit to CLECs through the CMP, among other things, modifications to existing products and product and technical documentation available to CLECs, introduction of new products available to CLECs, discontinuance of products available to CLECs, modifications to pre-ordering, ordering/Provisioning, maintenance/repair or Billing

processes, introduction of pre-ordering, ordering/Provisioning, Maintenance/Repair or Billing processes, discontinuance of pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, modifications to existing OSS interfaces, introduction of new OSS interfaces, and retirement of existing OSS interfaces. Qwest will maintain as part of CMP an escalation process so that CMP issues can be escalated to a Qwest representative authorized to make a final decision and a process for the timely resolution of disputes. The governing document for CMP, known as the "Change Management Process," is attached as Exhibit G (the "CMP Document"). The CMP Document (Exhibit G) is the subject of ongoing negotiations between Qwest and CLECs in the ongoing CMP redesign process. Not all of the sections of Exhibit G have been discussed or considered during the ongoing CMP redesign process, and the CMP Document will continue to be changed through those discussions. Exhibit G reflects the commitments Qwest has made regarding maintaining its CMP. and Qwest commits to implement agreements made in the CMP redesign process as soon as practicable after they are made. Following the completion of the CMP Document, Exhibit G will be subject to change through the CMP process, as set forth in the CMP Document. Qwest will maintain the most current version of the CMP Document on its wholesale website.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be implemented pursuant to the CMP set forth in Exhibit G.

12.2.6.3 Notwithstanding any other provisions in this Agreement, the CMP document attached as Exhibit G will be modified pursuant to the terms of Exhibit G, or the procedures of the redesign process and incorporated as part of the Agreement without requiring the execution or filing of any amendment to this Agreement.

12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces

12.2.7.1 Before CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces

Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with

CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLEC demonstrates the ability to generate correct functional transactions for enhancements not previously certified. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces

12.2.9.1 If using the GUI interface, CLEC will take reasonable efforts to train CLEC personnel on the GUI functions that CLEC will be using.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to controlled production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment ("SATE") – Qwest's stand-alone testing environment will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The SATE provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. SATE uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATE pre-order queries and orders are subjected to the same edits as production pre-order and order transactions. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating

with Qwest in Interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of valid data in Qwest production systems. All Interoperability pre-order queries and order transactions are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must make every effort to comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the EDI interface. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel where Technically Feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, where Technically Feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two (2) months after the implementation of the next release. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two (2) months after the next release implementation may continue certifying additional products and activities until two (2) months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the SATE or Interoperability environment before two (2) months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or Interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the Dispute Resolution procedures of this Agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of

common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.

12.2.9.9 Reserved for Future Use.

12.2.10 CLEC Support

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include, but is not limited to, contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation and CLEC Help Desk.

12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: Resale/POTS; UNE POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLEC is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site. Qwest will provide Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery

Recurring and nonrecurring OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any recurring or nonrecurring OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

12.3 Maintenance and Repair

12.3.1 Service Levels

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Qwest provides for itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner as Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

12.3.1.4 During the performance of Maintenance and Repair services, neither Party shall make disparaging remarks about the other Party. Neither Party shall provide information about its own products or services to End User Customers of the other Party during performance of maintenance and repair services; however, nothing in this Agreement shall be deemed to prohibit either Party from discussing its own products and services with End User Customers of the other Party seeking such information.

12.3.2 Branding

12.3.2.1 Qwest shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded Maintenance and Repair forms. Qwest may not unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

12.3.3 Service Interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring Carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring Carriers involved in its services; 3) violate any Applicable Law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party) shall promptly notify the Party causing the Impairment of Service (the "Impairing Party) of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the Impaired Party) shall promptly notify the Party causing the Impairment of Service (the Impairing Party) of the nature and location of the problem. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to CLEC as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, Point of Interface or such other test points as are identified in this Agreement or applicable Qwest publications. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is found to be on Qwest's side of the Demarcation Point, Qwest will credit CLEC a Maintenance of Service charge or CLEC's actual costs, whichever is less, pursuant to Section 12.3.4.4. If the trouble is on the End User Customer's side of the Demarcation Point, and the CLEC authorizes Qwest to repair trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC's request, a Maintenance of Service Charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the repeat Trouble Report submitted within the time frame as set forth in Section 12.3.4.4 for the same line or circuit, Maintenance of Service charges shall not apply.

12.3.4.4 Where Qwest has billed CLEC for Maintenance of Service charges for a CLEC Trouble Report, Qwest will remove such Maintenance of Service charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Maintenance of Service charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and
- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and
- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and

- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and

- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the End User Customer's Demarcation Point) for CLEC or its End User Customers.

12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

12.3.6.1 Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.2 Prior to Qwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Qwest's portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including Central Office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.

12.3.7 Work Center Interfaces

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective End User Customers with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End User Customers of CLEC shall be instructed to report all cases of trouble to CLEC. End User Customers of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain Proprietary Information such as Customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest

and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

12.3.10 Protective Maintenance

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Qwest shall provide notice of potentially CLEC Customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

12.3.11 Hours of Coverage

12.3.11.1 Qwest's repair operation is seven (7) Days a week, twenty-four (24) hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which

are those greater than three (3) troubles in a rolling thirty (30) Day period, pursuant to Section 12.2.2.1.

12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines and designed service circuits, Qwest is responsible for all Maintenance and Repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC Customer premises without prior CLEC authorization. For dispatch to the CLEC Customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the Electronic Bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

12.3.15 Intervals/Parity

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.16 Jeopardy Management

12.3.16.1 Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its End User Customer trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC may employ similar techniques in its centers.

12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported trouble, Qwest will inform CLEC of repair completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

12.3.19 End User Customer Interface Responsibilities

12.3.19.1 CLEC will be responsible for all interactions with its End User Customers including service call handling and notifying its End User Customers of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC End User Customers will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the Customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, Customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC Customers.

12.3.20 Repair Call Handling

12.3.20.1 Manually-reported repair calls by CLEC to Qwest will be answered with the same quality and speed as Qwest answers calls from its own End User Customers.

12.3.21 Single Point of Contact

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven (7) Days a week, twenty-four (24) hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major Switch maintenance activities off-hours, during certain "maintenance windows". Major Switch maintenance activities include Switch conversions, Switch generic upgrades and Switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 am Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., Mountain Time. Although Qwest normally does major Switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Reserved for Future Use.

12.3.23.4 Planned generic upgrades to Qwest Switches are included in the ICONN database, available to CLEC via Qwest's Web site.

12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one Switch and its replacement with another. Generic Switch software or hardware upgrades, the addition of Switch line and trunk connection hardware and the addition of capacity to a Switch do not constitute Switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the Switch Ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a Switch or frame conversion planned day of cut-over to the replacement frame(s) or Switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the Day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A Switch or frame conversion embargo is the time period that the Switch or frame Trunk Side facility connections are frozen to facilitate conversion from one Switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for Trunk Side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for Switch or frame Trunk Side facility augments to capacity or changes to Switch or frame Trunk Side facilities must be issued by CLEC with a Due Date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject Switch or frame Trunk Side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's Due Date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For Switch and Trunk Side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) Days before the Conversion Date.

12.3.24.4.3 For Switch and Trunk Side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) Days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old Switch or frame to the new Switch or frame, and sixty (60) Days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During Switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the Trunk Side of the Switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old Switch to the new Switch on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new Switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the

Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for Switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain Due Dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, Billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during Switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the Switch or frame conversion. LSRs of any kind issued during the Switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for Switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a Due Date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested Due Date, will be processed after the quiet period expires.

12.3.24.7.6 CLEC may request a Due Date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a Due Date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date until 12 noon Mountain Time the Day after the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency

orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic Switch software and hardware upgrades are not subject to the Switch conversion embargoes or quiet periods described above. If such generic Switch or software upgrades require significant activity related to translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during Switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing Switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such Switch hardware additions.

Section 13.0 - ACCESS TO TELEPHONE NUMBERS

CLEC does not intend to order Access to Telephone Numbers; however in the event CLEC wishes to order Access to Telephone Numbers, the Parties will negotiate an appropriate amendment to this Agreement.

Section 14.0 - LOCAL DIALING PARITY

CLEC does not Intend to order Local Dialing Parity; however in the event CLEC wishes to order Local Dialing Parity, the Parties will negotiate an appropriate amendment to this Agreement.

Section 15.0 - Qwest Dex

CLEC does not intend to order Qwest Dex; however in the event CLEC wishes to order Qwest Dex, the Parties will negotiate an appropriate amendment to this Agreement.

Section 16.0 - REFERRAL ANNOUNCEMENT

CLEC does not intend to order Referral Announcement; however in the event CLEC wishes to order Referral Announcement, the Parties will negotiate an appropriate amendment to this Agreement.

Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other interconnection agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the processing fee specified in Exhibit A of this Agreement. Qwest will refund one-half (1/2) of the processing fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of Interconnection or access;

17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar Days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) Day period that a BFR does not

qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) Day period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) Day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar Days, but in no case later than the end of such twenty-one (21) Day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar Days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a request for Interconnection, Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections 17.2.1 through 17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

17.15 Qwest will provide notice to CLECs of all BFRs which have been deployed or denied, provided, however, that identifying information such as the name of the requesting CLEC and the location of the request shall be removed. Qwest shall make available a topical list of the BFRs that it has received with CLECs under the Agreement or an Interconnection Agreement. The description of each item on that list shall be sufficient to allow CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of CLEC to provide sufficient details about the terms and conditions of any granted requests to allow CLEC to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this Agreement. CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to CLEC of the need therefore.

Section 18.0 - AUDIT PROCESS

18.1 Nothing in this Section 18 shall limit or expand the Audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the Audit provisions in this Section 18. For purposes of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of the books, records, and other documents used in providing services under this Agreement. The term "Audit" also applies to the investigation of company records, back office systems and databases pertaining to Loop information.

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such Audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two (2) Audits requested by each Party under this Agreement in any twelve (12) month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least twenty-four (24) months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the

reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the requesting Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the Billing to the requesting Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) Days after the Parties' receipt of the final Audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process; (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and Audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings

as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an Affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such Affiliate's disaggregated data, as required by reasonable needs of the Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

18.3.1 Either Party may request an Audit of the other's compliance with this Agreement's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting Party has provided to the other. Those Audits shall not take place more frequently than once in every three (3) years, unless cause is shown to support a specifically requested Audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this Section 18 that are not inconsistent herewith shall apply, except that in the case of these Audits, the Party to be audited may also request the use of an independent auditor.

Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to Unbundled Loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to Unbundled Loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to Unbundled Loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of End User Customers and without discrimination among the various Carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

Section 20.0 - SERVICE PERFORMANCE

Performance Indicator Definitions (PIDs), in their current form, are included in Exhibit B of this Agreement. Subsequent changes to these PIDs that are made by the Long Term PID Administration or the Commission shall be incorporated into Exhibit B by reference. Modifications of PIDs that apply to the Qwest Performance Assurance Plan (QPAP) shall be made in accordance with Section 16.0 of Exhibit K.

Section 21.0 - NETWORK STANDARDS

21.1 The Parties recognize that Qwest services and Network Elements have been purchased and deployed, over time, to Telcordia and Qwest technical standards. Specification of standards is built into the Qwest purchasing process, whereby vendors incorporate such standards into the equipment Qwest purchases. Qwest supplements generally held industry standards with Qwest Technical Publications.

21.2 The Parties recognize that equipment vendors may manufacture Telecommunications equipment that does not fully incorporate and may differ from industry standards at varying points in time (due to standards development processes and consensus) and either Party may have such equipment in place within its network. Except where otherwise explicitly stated within this Agreement, such equipment is acceptable to the Parties, provided said equipment does not pose a security, service or safety hazard to Persons or property.

21.3 Generally accepted and developed industry standards which the Parties agree to support include, but are not limited to:

21.3.1 Switching

GR-954-CORE LIDB

GR-2863-CORE AIN

GR-1428-CORE Toll Free Service

GR-1432-CORE TCAP

GR-317-CORE Call Control Using Integrated Services Digital User Part (ISDNUP)

GR-905-CORE ISUP

GR-1357-CORE Switched Fractional DS1

GR-1298-CORE AIN Switching System Generic Requirements

GR-1299-CORE AIN Service Control Point Adjunct Interface Generic Requirements

TR-NWT-001284 AIN 0.1 Switching System Generic Requirements

GR-905-CORE Common Channel Signaling Network Interface Specification

GR-1432-CORE CCS Network Interface Specification

Telcordia TR-TSY-000540, Issue 2R2

GR-305-CORE

GR-1429-CORE

GR-2863-CORE

FR-64 LATA LSSGR

GR-334-CORE Switched Access Service

TR-NWT-000335 Voice Grade Special Access Services

TR-TSY-000529 Public LSSGR

TR-NWT-000505 LSSGR Call Processing

FR-NWT-000271 OSSGR

TR-NWT-001156 OSSGR Subsystem

SR-TSY-001171 System Reliability Analysis

21.3.2 Transport

Telcordia FR-440

TR-NWT-000499 (TSGR) Transport Systems Generic Requirements

GR-820-CORE Generic Transmission Surveillance; DS1 and DS3 Performance

GR-253-CORE Synchronous Optical Network Systems (SONET)

TR-NWT-000507 Transmission

TR-NWT-000776 NID for ISDN Subscriber Access

TR-INS-000342 High Capacity Digital Special Access Service

ST-TEC-000051 & 52 Telecommunications Transmission Engineering Handbooks Volumes 1 & 2

ANSI T1.102-1993 Digital Hierarchy – Electrical Interface, Annex B.

21.3.3 Loops

TR-NWT-000057 Functional Criteria for Digital Loop Carrier Systems Issue 2

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

GR-253-CORE SONET Common Generic Criteria

TR-NWT-000303 Integrated Digital Loop Carrier System Generic Requirements

TR-TSY-000673 Operations Interface for an IDLC System

GR-303-CORE Issue 1 Integrated Digital Loop Carrier System Generic Requirements

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

TR-TSY-000008 Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch

TR-NWT-008 and 303

TA-TSY-000120 Subscriber Premises or Network Ground Wire

GR-49-CORE Generic Requirements for Outdoor Telephone Network Interface Requirements

TR-NWT-000239 Indoor Telephone Network Interfaces

TR-NWT-000937 Generic Requirements for Outdoor and Indoor Building Entrance

TR-NWT-000133 Generic Requirements for Network Inside Wiring

21.3.4 Local Number Portability

Number Portability Generic Switching and Signaling Requirements for Number Portability, Issue 1.00, February 12, 1996 (Editor – Lucent Technologies, Inc.);

Generic Requirements for SCP Application and GTT Function for Number Portability, Issue 0.95, Final Draft, September 4, 1996 (Editor – Ameritech Inc.);

Generic Operator Services Switching Requirements for Number Portability, Issue 1.00, Final Draft, April 12, 1996 (Editor – Nortel);

ATIS, TRQ No. 1, Technical Requirements for Number Portability Operator Services Switching Systems, April 1999;

ATIS, TRQ No. 2, Technical Requirements for Number Portability Switching Systems, April 1999;

ATIS, TRQ No. 3, Technical Requirements for Number Portability Database and Global Title Translation, April 1999;

FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Released July 2, 1996;

FCC First Memorandum Opinion and Order on Reconsideration; FCC 97-74; CC Docket 95-116, RM 8535; Released March 11, 1997.

FCC Second Report and Order, FCC 97-298; CC Docket 95-116, RM 8535; Released August 18, 1997.

21.4 The Parties will cooperate in the development of national standards for Interconnection elements as the competitive environment evolves. Recognizing that there are no current national standards for Interconnection Network Elements, Qwest has developed its own standards for some Network Elements, including:

Qwest Interconnection – Unbundled Loop #77384

Expanded Interconnection and Collocation for Private Line Transport and Switched Access Services - #77386

Unbundled Dedicated Interoffice Transport - #77389

Telecommunications Equipment Installation Guidelines - #77350.

21.5 Qwest Technical Publications have been developed to support service offerings, inform End User Customers and suppliers, and promote engineering consistency and deployment of developing technologies. Qwest provides all of its Technical Publications at no charge via website: http://www.qwest.com/techpub/.

Section 22.0 - SIGNATURE PAGE

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

(CLEC)	**Qwest Corporation**
_____	_____
Signature	Signature
_____	_____
Name Printed/Typed	Name Printed/Typed
_____	_____
Title	Title
_____	_____
Date	Date

Public Service Commission
State of North Dakota

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March 21, 2005

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Mary Rose Hughes
Perkins Coie, LLP
607 Fourteenth Street, N.W., Suite 800
Washington, DC 20005-2011

RE: DIECA Communications, Inc. d/b/a Covad Communications Company, Interconnection Arbitration Application, Case No. PU-05-165

Gentlemen:

On March 14, 2005, the Commission received a Petition for Arbitration from DIECA Communications, Inc. d/b/a Covad Communications Company to establish an interconnection agreement with Qwest Corporation. The purpose of this letter is to remind the parties of some of the requirements of the Commission's arbitration rules under N.D. Admin. Code Chapter 69-02-10.

N.D. Admin. Code § 69-02-10-08 requires that within fifteen days from the date the petition is filed, the party that requests arbitration must provide to the Commission the names and qualifications of at least two qualified neutral arbitrators that are acceptable to all parties to the negotiation. If the parties are unable to agree on the acceptability of arbitrators, each party must submit the names and qualifications of at least two arbitrators that would be acceptable to that party. Under N.D. Admin. Code § 69-02-10-10, the Commission must appoint an arbitrator within twenty days after the petition has been filed.

2 PU-05-165 Pages: 2
Letter to parties re arbitration rules
by Public Service Commission by Bill Binek
03/21/2005 CC: Comm Legal Illona, Pat, Annette . .

The Commission's rules require that the parties to the arbitration proceeding must contract directly with the arbitrator for the arbitration services and pay all costs and fees of the arbitrator and any outside consultants retained to assist the arbitrator. See N.D. Admin. Code § 69-02-10-12. The rules also require that the Commission will designate the court reporter for the proceeding, but the parties must pay directly to the court reporter the fees and costs of the court reporter including costs of transcripts. See N.D. Admin Code § 69-02-10-25.

N.D. Admin. Code § 69-02-10-14 requires the arbitrator to schedule a prehearing conference to be held no later than two hundred days from the date of making the request for negotiation. The purpose of the prehearing conference is to have discussions concerning a procedural schedule, areas of testimony, the scope and timing of discovery, and to identify, simplify and limit issues. The arbitrator must issue an order following the prehearing conference setting forth a procedural order for the proceeding and identifying the issues in dispute. N.D. Admin. Code § 69-02-10-15 requires the Commission to issue a notice of hearing within fifteen days after the prehearing conference.

Sincerely,

William W. Binek
Chief Counsel

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
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March 14, 2005

HAND-DELIVERED

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue,

RE: IN THE MATTER OF THE PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) PETITION OF DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH QUEST CORPORATION with Exhibits; and

2) Certificate of Service.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosures.
cc w/enc: Linda Miles, Qwest Corporation
John Devaney, Perkins, Coie, LLP
Mr. Gregory Diamond

1 PU-05-165 Pages: 292
Interconnection Arbitration Application
by DIECA Communications, Inc. by Pearce & Durick
03/14/2005 CC: Comm Legal Illona, Pat, Annette . .

ORIGINAL

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Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF	)	**Case No. _____**
DIECA COMMUNICATIONS, INC. D/B/A	)	
COVAD COMMUNICATIONS COMPANY	)	
FOR ARBITRATION OF AN	)	
INTERCONNECTION AGREEMENT WITH	)	
QUEST CORPORATION	)	

DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad") through its undersigned counsel, hereby petitions the North Dakota Public Service Commission ("Commission") to arbitrate, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "Act"), certain terms and conditions of a proposed Interconnection Agreement between Covad and Qwest Corporation ("Qwest") (hereafter, Covad and Qwest are collectively referred to as the "Parties") for the State of North Dakota.

A. Name, Address, and Telephone Number of the Petitioner and its Counsel

Petitioner's full name and its official business address are as follows:

DIECA Communications, Inc.
d/b/a Covad Communications Company
110 Rio Robles
San Jose, California 95134-1813

DIECA Communications, Inc. is a Virginia corporation. Covad is, and at all relevant times has been, a "local exchange carrier" ("LEC") under the Act.

The names, addresses, and contact numbers of Covad's representatives in this proceeding are as follows:

Patrick W. Durick
Pearce & Durick, PLLP
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502
(701) 223-2890
(701) 223-7865 Fax
pwd@pearce-durick.com

Gregory Diamond
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard

Denver, CO 80230
(720) 670-1069
(720) 670-3350 Fax
gdiamond@covad.com

B. Name, Address, and Telephone Number of the Other Party to the Negotiation and its Counsel

3. Qwest is a corporation organized and formed under the laws of the State of Colorado, having an office at 1801 California Street, Denver, Colorado 80202. Qwest provides local exchange and other services within its service territory in North Dakota. Qwest (in current name or as U S WEST Communications, Inc.) is, and at all relevant times has been, a "Regional Bell Operating Company" ("RBOC") and an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

4. The names, addresses, and contact numbers of Qwest's representatives in this proceeding are as follows:

Linda Miles
Qwest Corporation
1600 7th Ave
Room 3007
Seattle, Washington 98191
(206) 447-3890 (Tel)
(206) 345-0225 (Fax)

John Devaney
Mary Rose Hughes
Perkins Coie, LLP
607 Fourteenth Street, N.W., Suite 800
Washington, DC 20005-2011
(202) 628-6600 (Tel)
(202) 434-1690 (Fax)

C. Brief Summary of Negotiation History

5. The Parties have worked in good faith from language supplied by both Covad and Qwest to resolve the vast majority of issues raised during the negotiations. Notwithstanding these negotiations, Covad and Qwest have been unable to come to agreement on all terms, particularly certain terms relating to Qwest's continuing obligations to provide unbundled access to certain elements pursuant to section 271 of the Act and North Dakota law. The remaining issues that Covad understands to be unresolved between the Parties are addressed below in Section G – Unresolved Issues Submitted for Arbitration and Positions of the Parties.

6. A draft of the Interconnection Agreement ("Agreement") reflecting the Parties' negotiations to date is attached hereto as Exhibit A. Unless otherwise expressly marked in the Agreement as the proposal of one Party or another, agreed upon language is shown in normal type. Covad will continue to negotiate in good faith with Qwest to resolve disputed issues and will advise the Commission in the event arbitration, or arbitration on particular issues, is no longer necessary.

7. Covad requests that the Commission approve the Agreement between Covad and Qwest reflecting: (I) the language agreed to in Exhibit A, and (ii) the resolution in this arbitration proceeding of unresolved issues in accordance with the recommendations made by Covad below and in Exhibit A.

D. Date of Initial Request for Negotiation and Dates 135 days, 160 days, and Nine Months After that Date

8. Covad initiated negotiations by a letter dated January 31, 2003. The Parties have agreed to numerous extensions, agreeing that the final day for either party to seek arbitration before the North Dakota Public Service Commission would be March 14, 2005. Pursuant to

Section 252(b)(1), arbitration must be requested between the 135th day (February 17, 2005) and the 160th day (March 14, 2005) following the date negotiations were requested. The Parties agree this Petition is timely filed.

E. Issues Resolved by the Parties

9. The Parties have resolved the issues and negotiated contract language to govern the Parties' relationship with respect to most of the provisions set forth in Exhibit A. These negotiated portions of the Agreement are shown in normal type. To the extent Qwest asserts that any provisions remain in dispute, Covad reserves the right to present evidence and argument as to why those provisions were considered closed and why they should be resolved in the manner shown in Exhibit A.

F. Unresolved Issues Not Submitted for Arbitration

10. There are no unresolved issues that are not being submitted for arbitration. While other issues remain disputed by the Parties in other states, Covad has chosen not to raise those issues in North Dakota for business reasons.

G. Unresolved Issues Submitted for Arbitration and Positions of the Parties

ISSUE 1 (Section 4 Definition of "Unbundled Network Element," Sections 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.1.8, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6, 9.6.1.5.1 [and related 9.6.1.5], 9.6.1.6.1 [and related Section 9.6.1.6], and 9.21.2)

Issue: *Should the Parties' Agreement provide for access to network elements pursuant to Section 271 of the Telecommunications Act of 1996 and North Dakota law, as well as Section 251 of the Telecommunications Act of 1996?*

The Parties disagree with respect to Qwest's continuing obligations to provide certain network elements, including certain unbundled loops (including high capacity loops, line splitting arrangements, and subloop elements) and dedicated transport, after the FCC's recent

analysis in the *Triennial Review Order*. Covad maintains that the Federal Communication Commission's ("FCC") explicit direction was to continue the obligations of RBOCs to provide all network elements listed in the provisions of Section 271 of the Act outlining specific RBOC obligations to maintain authority to provide in-region interLATA service (the "271 Checklist" or "Checklist"). Qwest believes its obligations under Section 271, if any, are outside the Commission's jurisdiction.

Furthermore, Covad believes that Qwest continues to be obligated under North Dakota law to provide unbundled access to network elements pursuant §§49-21—02, 49-21-09 and 49-21-24.b N.D.C.C. Qwest argues this Commission's authority to regulate access to these facilities has been preempted by congressional and FCC action.

A. Section 271

This Commission can, and should, use its authority to enforce the unbundling requirements of Section 271 of the Act. The FCC made clear in the *Triennial Review Order* that Section 271 creates independent access obligations for the RBOCs:

> [W]e continue to believe that the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.

Triennial Review Order, ¶ 653.

> Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under Section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.

Triennial Review Order, ¶ 655.

Thus, there is no question that, regardless of the FCC's analysis of competitor

impairment and corresponding unbundling obligations under Section 251 for *ILECs*, as a RBOC, Qwest retains an independent statutory obligation under Section 271 of the Act to provide competitors with unbundled access to the network elements listed in the Section 271 checklist. Other states have begun enforcing section 271 unbundling obligations, and have denied RBOCs' attempts to discontinue unbundled offerings as a result of the *Triennial Review Order*. *See Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Pennsylvania Public Utility Commission Docket No. I-00030100, Reconsideration Order (May 27, 2004) at 4 (upholding a prior order determining that the *Triennial Review Order* relieved Verizon of its section 251 obligation to provide certain elements, but upholding its determination that access to those elements remained as a result of Verizon's section 271 long distance entry and state law). A copy of this state commission decision is attached hereto as Exhibit B.

Moreover, there is no question that these obligations include the provision of unbundled access to loops and dedicated transport under checklist item #4:

> Checklist items 4, 5, 6, and 10 separately impose access requirements regarding **loop**, **transport**, **switching**, and signaling, without mentioning section 251.

Triennial Review Order, ¶ 654 (emphasis added).

In addition, the Commission has independent authority to enforce these Section 271 RBOC obligations. This enforcement authority encompasses the authority to ensure that Qwest fulfills its statutory duties under Section 271, including its ongoing unbundling obligations. Furthermore, there can be no argument that the Commission's enforcement of Qwest's Section 271 checklist obligations would substantially prevent the implementation of any provision of the Act. Indeed, where state enforcement activities do not impair federal regulatory interests,

concurrent state enforcement activity is clearly authorized. *Florida Avocado Growers v. Paul,* 373 U.S. 132, 142, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963). Courts have long held that federal regulation of a particular field is not presumed to preempt state enforcement activity "in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *De Canas v. Bica,* 424 U.S. 351, 356, 96 S.Ct. 933, 936, 47 L.Ed.2d 43 (1976) (quoting *Florida Avocado Growers,* 373 U.S. at 142, 83 S.Ct. at 1217). The Act, however, hardly evinces an unmistakable indication of Congressional intent to preclude state enforcement of federal 271 obligations. Far from doing so, the Act expressly preserves a state role in the review of a RBOC's compliance with its Section 271 checklist obligations, and requires the FCC to consult with state commissions in reviewing a RBOC's Section 271 compliance. Thus, the Commission clearly has the authority to enforce Qwest's obligations to provide unbundled access to loops (including high capacity loops, line splitting arrangements and subloop elements) and dedicated transport under Section 271 checklist item #4.

The FCC did make clear in the *Triennial Review Order* that a different pricing standard applied to network elements required to be unbundled under Section 271 as opposed to network elements unbundled under Section 251 of the Act. Specifically, the FCC stated that "the appropriate inquiry for network elements required only under Section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in sections 201 and 202." *Triennial Review Order*, ¶ 656. In other words, according to the FCC, the *legal standard* under which pricing for Section 271 checklist items should be determined is a different *legal standard* than that applied to price Section 251 UNEs. Thus, "Section 271 requires RBOCs to provide unbundled access to elements not required to be

unbundled under Section 251, but does not *require* TELRIC pricing." *Triennial Review Order*, ¶ 659 (emphasis added).

Notably, in the *Triennial Review,* the FCC nowhere forbids the application of state commission pricing of network elements required to be unbundled under Section 271. Rather, the FCC merely states that unbundled access to Section 271 checklist items is not *required* to be priced pursuant to the particular forward-looking cost methodology specified in the FCC's rules implementing Section 252(d)(1) of the Act – namely, TELRIC, i.e., total element long run incremental cost. The FCC states that the appropriate legal standard to determine the correct price of Section 271 checklist items is found in Sections 201 and 202. However, nowhere does the FCC state these two different legal standards may not result in the same, or similar, rate-setting methodology.

Furthermore, the FCC does not preclude the use of forward-looking, long-run incremental cost methodologies *other than TELRIC,* such as TSLRIC (total service long run incremental cost), to establish the prices for access to Section 271 checklist items. As the FCC made clear when it adopted the TELRIC pricing methodology in its *Local Competition Order*, there are various methodologies for the determination of forward-looking, long-run incremental cost. *Local Competition Order,* FCC 96-325, ¶ 631. TELRIC describes only one variant, established by the FCC for setting UNE prices under Section 252(d)(1), derived from a family of cost methodologies consistent with forward-looking, long-run incremental cost principles. *See Local Competition Order,* FCC 96-325, at ¶¶ 683-685 (defining "three general approaches" to setting forward-looking costs). Thus, the FCC's *Triennial Review Order* does not preclude the use of a forward-looking, long-run incremental cost standard *other than TELRIC* in establishing prices consistent with Sections 201 and 202 of the Act.

B. State Law Unbundling Authority

The North Dakota Legislature has codified the promotion of local competition in telecommunication within the state.

> All persons providing telecommunications service within this state shall be common carriers and are hereby declared to be affected with a public interest and subject to regulation and general supervision by the commission. Among the purposes to be served by such regulation and supervision are:
>
> * * *
>
> 2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition.

§49-21-02, N.D.C.C. (emphasis added).

This law makes clear that the North Dakota Legislature actively vested in the Commission independent, state law authority to promote competition within the state of North Dakota, in addition to the authority delegated to it under the Act. In order to implement this policy, the North Dakota Code contains specific requirements that public utilities provide for the joint use of their plant and equipment, and allow physical connections with other telephone companies. *See* §§49-21-09 and 49-21-24.b, N.D.C.C..

This Commission therefore has the requisite authority and policy directives to require access to loops, including high capacity loops, line splitting arrangements and subloop arrangements, as well as dedicated transport, under its independent, state law authority.

This independent state law authority is not preempted by the FCC's recent *Triennial Review Order* or any other law or regulation. Nowhere does Section 251 of the Act evince any

general Congressional intent to preempt state laws or regulations providing for competitor access to unbundled network elements or interconnection with the ILEC. In fact, as recognized by the FCC in its *Triennial Review Order*, several provisions of the Act expressly indicate Congress' intent not to preempt such state regulation, and forbid the FCC from engaging in such preemption:

> Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in their review of interconnection agreements. Section 251(d)(3) of the 1996 Act preserves the states' authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations. Many states have exercised their authority under state law to add network elements to the national list.

Triennial Review Order, ¶ 191 (emphasis added).

As the FCC further acknowledges in the *Triennial Review Order*, Congress expressly declined to preempt states in the field of telecommunications regulation:

> We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act.

Triennial Review Order, ¶ 192.

In fact, the FCC only identified a narrow set of circumstances under which federal law would act to preempt state laws and rules providing for competitor access to ILEC facilities:

> Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 *and* do not "substantially prevent" the implementation of the federal regulatory regime....
>
> [W]e find that the most reasonable interpretation of Congress' intent in enacting sections 251 and 252 to be that state action, whether taken in the course of a rulemaking or during the review of an interconnection

> agreement, must be consistent with section 251 and must not "substantially prevent" its implementation.

Triennial Review Order, ¶¶ 192, 194.

Notably, in reaching these conclusions, the FCC was simply restating existing, well-known precedents governing the law of preemption. Specifically, the long-standing doctrine of federal conflict preemption provides for exactly the limited sort of federal preemption acknowledged by the FCC's *Triennial Review Order*. Courts have long held that state laws are preempted only to the extent that they actually conflict with federal law. As noted by the FCC's *Triennial Review Order*, such conflict exists where compliance with state law "stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress." *Triennial Review Orde*r, ¶ 192 n. 613 (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). Even more notably, in its *Triennial Review Order*, the FCC did not act to preempt any existing state law or regulation inconsistent with the FCC's rules, nor did it act to preclude the adoption of future state laws or regulations governing the access of competitors to ILEC facilities which are inconsistent with the FCC's rules. In fact, following the governing law set out in the Eighth Circuit's *Iowa Utilities Board I* decision, the FCC specifically recognized that state laws or regulations which are inconsistent with the FCC's unbundling rules are <u>not</u> *ipso facto* preempted:

> That portion of the Eighth Circuit's opinion reinforces the language of [Section 251(d)(3)], *i.e.*, that state interconnection and access regulations must "substantially prevent" the implementation of the federal regime to be precluded and that <u>"merely an inconsistency" between a state regulation and a Commission regulation was not sufficient for Commission preemption under section 251(d)(3)</u> (emphasis added).

*Triennial Review Orde*r, ¶ 192 n. 611 (citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 806).

In so doing, the FCC made clear that it was acting in conformance with the governing law set out in the *Iowa Utilities Board I* decision:

> We believe our decision properly balances the broad authority granted to the Commission by the 1996 Act with the role preserved for the states in section 251(d)(3) and is fully consistent with the Eighth Circuit's interpretation of that provision.

Id.

Thus, far from taking any specific action to preempt any state law or regulation governing competitor access to incumbent facilities, the FCC merely acted in the *Triennial Review Order* to restate the already-existing bounds on state action recognized under existing doctrines of conflict preemption. Furthermore, the FCC's *Triennial Review Order* recognized that "merely an inconsistency" between state rules providing for competitor access and federal unbundling rules would be insufficient to create such a conflict. Instead, consistent with existing doctrines of conflict preemption, the FCC recognized that the state laws would have to "substantially prevent implementation" of Section 251 in order to create conflict preemption.

Of course, the FCC's *Triennial Review Order* could not have concluded that all state rules unbundling network elements not required to be unbundled nationally by the FCC create conflict preemption. Had the FCC reached such a conclusion, the FCC would have rendered Section 251(d)(3)'s savings provisions a nullity, never operating to preserve any meaningful state law authority in any circumstance. Rather than reaching such a conclusion, the FCC created a process for parties to determine whether a "particular state unbundling obligation" requiring the unbundling of network elements not unbundled nationally by FCC rules creates a conflict with federal law. The *Triennial Review Order* invited parties to seek declaratory rulings from the FCC regarding individual state obligations. An invitation to seek declaratory ruling,

however, hardly amounts to preemption in itself – it merely creates a process for interested parties to establish in future proceedings before the FCC whether or not a particular state rule conflicts with federal law.

The FCC did give interested parties some indication of how it might rule on such petitions. Specifically, the FCC stated that it was "*unlikely*" that the FCC would refrain from finding conflict preemption where future state rules required "unbundling of network elements for which the Commission has either found no impairment ... or otherwise declined to require unbundling on a national basis." *Triennial Review Order*, ¶ 195. The FCC's statement, however, that such future rules were merely "*unlikely*" – as opposed to simply unable – to withstand conflict preemption leads to the inevitable conclusion that there are some circumstances in which the FCC would find that such future rules were not preempted. Moreover, with respect to state rules in existence at the time of the *Triennial Review Order*, the FCC's indications that it might find conflict preemption are even more muted. Specifically, the FCC merely stated that "in *at least some circumstances* existing state requirements will not be consistent with our new framework and may frustrate its implementation." *Triennial Review Order*, ¶ 195.

Thus, while the FCC's *Triennial Review Order* indicates that under some circumstances the FCC would find conflict preemption for state rules requiring the unbundling of network elements not unbundled nationally under federal law, the decision also indicates that in some circumstances the FCC would decline to find that such state rules substantially prevent implementation of Section 251. In fact, the FCC's decision gives some direction on the circumstances that would lead the FCC to decline a finding of conflict preemption for state rules unbundling network elements the FCC has declined to unbundle nationally. Specifically, in its

discussion of state law authority to unbundle network elements, the FCC states that "the availability of certain network elements may vary between geographic regions." *Triennial Review Order*, ¶ 196. Indeed, according to the FCC, such a granular "approach is required under *USTA*." *Triennial Review Order*, ¶ 196 (citing *USTA*, 290 F.3d at 427). Thus, if the requisite state-specific circumstances exist in a particular state, state rules unbundling network elements not required to be unbundled nationally are permissible in that state, and would not substantially prevent the implementation of Section 251.

In addition, state determinations to require the unbundling of elements also subject to the unbundling requirements of Section 271 of the Act, such as switching, dedicated transport and loops, could not, as a matter of law, be subject to preemption analysis. The inclusion of these requirements in the Act clearly indicates that, far from frustrating the implementation of the Act, these unbundling requirements are critical components of the Act.

While Covad believes preemption of North Dakota law mandating unbundling is unlikely, it is also irrelevant. This Commission should exercise its authority as it is delineated by North Dakota statute, irrespective of preemption analysis, as the adjudication of the constitutionality of legislative enactments is generally beyond the jurisdiction of administrative agencies. *Johnson, Administrator of Veterans' Affairs, et. al. v. Robison,* 415 U.S. 361, 368; 94 S. Ct. 1160, 1166; 39 L.Ed. 2d 389, 398 (1974).

It should also be noted, however, that Qwest has not yet sought to remove the elements requested by Covad from its Statement of Generally Available Terms (SGAT) in North Dakota. Under this Commission's rules, Qwest must continue to provide access to these elements on the rates, terms and conditions contained in Qwest's SGAT unless and until Qwest is granted permission to remove them. As a result, Covad is not asking for access to any new essential

facilities; it is merely asking this Commission to confirm that elements listed in Qwest's North Dakota SGAT remain available. Should Qwest wish to implement its proposals in this arbitration, it would be required to initiate a proceeding to reclassify the elements.

Consistent with the discussion above, Covad has proposed language maintaining access to network elements that may, in the future, no longer be available pursuant to Section 251 of the Act, but must nevertheless remain available pursuant to Section 271 of the Act and North Dakota law.

H. Proposed Schedule for Implementing Terms and Conditions Imposed in the Arbitration

11. Covad proposes that terms and conditions imposed in the arbitration take effect immediately upon their approval by the Commission.

I. Recommendation as to What Information Other Parties to the Negotiation Should Provide

12. Covad does not anticipate the need for discovery in this matter, but reserves its right to seek such information as may become necessary for an adequate development of the record pertinent to the determination of the issue presented for resolution by the Commission.

REQUEST FOR RELIEF

WHEREFORE, Covad respectfully requests that the Commission grant the following relief:

Arbitrate the unresolved issues between Covad and Qwest;

Issue an order directing the Parties to submit an Agreement reflecting: (I) the agreed upon language in Exhibit A and (ii) the resolution in this arbitration

proceeding of the unresolved issues in accordance with the recommendations made by Covad herein and in Exhibit A;

Retain jurisdiction of this arbitration until the Parties have submitted an Agreement for approval by the Commission in accordance with section 252(e) of the Act;

Further retain jurisdiction of this arbitration and the Parties hereto until Qwest has complied with all implementation time frames specified in the arbitrated Agreement and has fully implemented the Agreement; and

Take such other and further actions as it deems necessary and appropriate.

Respectfully submitted, this 14th day of March, 2005.

DIECA COMMUNICATIONS, INC.,
D/B/A COVAD COMMUNICATIONS COMPANY

By: _____

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CERTIFICATE OF SERVICE

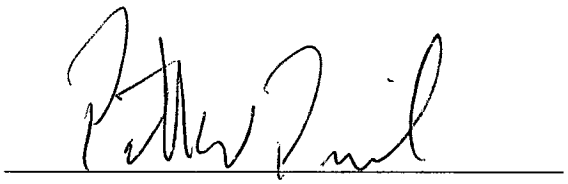
I hereby certify that on this 14th day of March, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Linda Miles
Qwest Corporation
1600 7th Ave
Room 3007
Seattle, Washington 98191
(206) 345-0225 (Fax)

✓ U.S. Mail
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (Fax)
_____ Email

John Devaney
Mary Rose Hughes
Perkins Coie, LLP
607 Fourteenth Street, N.W., Suite 800
Washington, DC 20005-2011
(202) 434-1690 (Fax)

✓ U.S. Mail
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (Fax)
_____ Email



PETITION OF DIECA COMMUNICATIONS, INC., D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION

EXHIBIT A

Draft Interconnection Agreement

One copy delivered separately to the North Dakota Public Service Commission

Exhibit A
North Dakota*

New			Recurring	Recurring, Per Mile	Non-Recurring	Notes: REC	REC per Mile	NRC
6.0 Resale - Intentionally Left Blank								
7.0 Interconnection - Intentionally Left Blank								
8.0 Collocation								
8.1 All Collocation								
8.1.1 Planning and Engineering Fees								
8.1.1.1 Intentionally Left Blank								
8.1.1.2 Cable Augment Quote Preparation Fee					$1,488.56			C
8.1.2 Entrance Facility								
8.1.2.1 Standard Shared, per Fiber			$6.02		$659.96	C		C
8.1.2.2 Cross Connect, per Fiber			$6.18		$774.12	C		C
8.1.2.3 Express, per Cable			$96.45		$9,641.86	C		C
8.1.3 Cable Splicing								
8.1.3.1 Fiber, per Set-Up					$506.81			C
8.1.3.2 Per Fiber Spliced					$38.24			C
8.1.4 Power Usage								
8.1.4.1 Power Plant								
8.1.4.1.1 Less Than 60 Amps			$12.51			C		
8.1.4.1.2 Greater Than or Equal to 60 Amps			$9.75			C		
8.1.4.2 Power Usage								
8.1.4.2.1 Less Than or Equal To 60 Amps, per Amp			$1.98			C		
8.1.4.2.2 Greater Than 60 Amps, per Amp			$3.97			C		
8.1.5 AC Power Feed								
8.1.5.1 Backup AC Power Feed, per Amp, per Month								
8.1.5.1.1 120 V			$20.12			C		
8.1.5.1.2 208 V, Single Phase			$34.87			C		
8.1.5.1.3 208 V, Three Phase			$60.32			C		
8.1.5.1.4 240 V, Single Phase			$40.23			C		
8.1.5.1.5 240 V, Three Phase			$69.60			C		
8.1.5.1.6 480 V, Three Phase			$139.20			C		
8.1.5.2 Backup AC Power Feed, per Foot, per Month								
8.1.5.2.1 20 Amp, Single Phase			$0.0119		$8.04	C		C
8.1.5.2.2 20 Amp, Three Phase			$0.0148		$9.97	C		C
8.1.5.2.3 30 Amp, Single Phase			$0.0128		$8.67	C		C
8.1.5.2.4 30 Amp, Three Phase			$0.0176		$11.91	C		C
8.1.5.2.5 40 Amp, Single Phase			$0.0151		$10.20	C		C
8.1.5.2.6 40 Amp, Three Phase			$0.0208		$14.04	C		C
8.1.5.2.7 50 Amp, Single Phase			$0.0179		$12.10	C		C
8.1.5.2.8 50 Amp, Three Phase			$0.0250		$16.89	C		C
8.1.5.2.9 60 Amp, Single Phase			$0.0203		$13.68	C		C
8.1.5.2.10 60 Amp, Three Phase			$0.0288		$19.44	C		C
8.1.5.2.11 100 Amp, Single Phase			$0.0251		$16.94	C		C
8.1.5.2.12 100 Amp, Three Phase			$0.0392		$26.45	C		C
8.1.6 Inspector Labor, per Half Hour								
8.1.6.1 Regular Hours Rate					$34.37			C
8.1.6.2 After Hours Rate, minimum 3 Hours					$44.70			C
8.1.7 Channel Regeneration								
8.1.7.1 DS1			$0.00		$0.00	C		C
8.1.7.2 DS3			$0.00		$0.00	C		C
8.1.8 Collocation Terminations								
8.1.8.1 Shared Access								
8.1.8.1.1 DS0								
8.1.8.1.1.1 Cable Placement, per 100 Pair Block			$0.1980		$225.69	C		C
8.1.8.1.1.2 Cable Placement, per Termination			$0.0079		$9.03	C		C
8.1.8.1.1.3 Cable, per 100 Pair Block			$0.2931		$334.21	C		C
8.1.8.1.1.4 Cable, per Termination			$0.0059		$6.68	C		C
8.1.8.1.1.5 Blocks, per 100 Pair Block			$0.5075		$578.65	C		C
8.1.8.1.1.6 Blocks, per Termination			$0.0102		$11.57	C		C
8.1.8.1.1.7 Block Placement, per 100 Pair Block			$0.2083		$237.53	C		C

Exhibit A
North Dakota*

				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
			8.1.8.1.1.8 Block Placement, per Termination	$0.0042		$4.75	C		C
		8.1.8.1.2	DS1						
			8.1.8.1.2.1 Cable Placement, per 28 DS1s	$0.5802		$391.80	C		C
			8.1.8.1.2.2 Cable Placement, per Termination	$0.0624		$42.13	C		C
			8.1.8.1.2.3 Cable, per 28 DS1s	$0.5713		$385.79	C		C
			8.1.8.1.2.4 Cable, per Termination	$0.0614		$41.48	C		C
			8.1.8.1.2.5 Panel, per 28 DS1s	$0.3918		$264.56	C		C
			8.1.8.1.2.6 Panel, per Termination	$0.0470		$31.77	C		C
			8.1.8.1.2.7 Placement Panel, per 28 DS1s	$0.1195		$80.69	C		C
			8.1.8.1.2.8 Placement Panel, per Termination	$0.0128		$8.68	C		C
		8.1.8.1.3	DS3						
			8.1.8.1.3.1 Cable Placement, per Termination	$0.2147		$144.97	C		C
			8.1.8.1.3.2 Cable, per Termination	$0.3689		$249.13	C		C
			8.1.8.1.3.3 Panel / Connector, per Termination	$0.3750		$253.21	C		C
			8.1.8.1.3.4 Panel / Connector Placement, per Termination	$0.0289		$19.49	C		C
		8.1.8.1.4	Fiber Termination						
			8.1.8.1.4.1 Terminations, per 12 Fibers	$28.32		$1,637.87	C		C
			8.1.8.1.4.2 Cable Racking for Fiber Terminations - Dedicated, First 12 Fibers	$2.30		$1,551.41	C		C
			8.1.8.1.4.3 Connector, Each Additional, if Applicable	$0.66		$445.37	C		C
			8.1.8.1.4.4 Cable Racking - Shared, per 12 Fibers	$27.96			C		
		8.1.8.1.5	Direct Connect			ICB			C 3
	8.1.9	Security Charges							
		8.1.9.1	Access Card, per Employee, per Card	$0.93			C		
		8.1.9.2	Card Access per Employee, per Office	$9.05			C		
	8.1.10	Composite Clock / Central Office Synchronization							
		8.1.10.1	Synchronization – Composite Clock, per Port	$8.48			C		
	8.1.11	Intentionally Left Blank							
	8.1.12	Space Availability Charge				$365.21			C
	8.1.13	Collocation Space Reservation Fee				The charge will be 25% of Nonrecurring Fee			
	8.1.14	Collocation Space Option Administration Fee				$1,198.04			C
	8.1.15	Collocation Space Option Fee, per Square Foot		$2.00			C		
	8.1.16	Viewing Available Space (prior to quote acceptance)				$150.00			1
8.2	**Virtual Collocation**								
	8.2.1	Planning and Engineering Fees							
		8.2.1.1	Quote Preparation Fee, per Collocation			$4,539.46			C 6
	8.2.2	Maintenance Labor, per Half Hour							
		8.2.2.1	Regular Hours Rate			$31.39			C
		8.2.2.2	After Hours Rate			$42.20			C
	8.2.3	Training Labor, per Half Hour							
		8.2.3.1	Regular Hours Rate			$31.39			C
	8.2.4	Bay Space							
		8.2.4.1	Equipment Bay, per Shelf	$4.37			C		
	8.2.5	Engineering Labor, per Half Hour							
		8.2.5.1	Regular Hours Rate			$35.64			C
		8.2.5.2	After Hours Rate			$46.85			C
	8.2.6	Installation Labor, per Half Hour							
		8.2.6.1	Regular Hours Rate			$34.37			C
		8.2.6.2	After Hours Rate			$44.70			C

Exhibit A
North Dakota*

				Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.2.7	Rent								
	8.2.7.1	Floor Space Lease, per Square Foot		$3.02			C		
8.2.8	Intentionally Left Blank								
8.2.9	-48 Volt DC Power Cable								
	8.2.9.1	20 Amp Feed		$6.42		$4,334.96	C		C
	8.2.9.2	30 Amp Feed		$7.31		$4,935.66	C		C
	8.2.9.3	40 Amp Feed		$8.83		$5,961.10	C		C
	8.2.9.4	60 Amp Feed		$15.63		$10,557.33	C		C
	8.2.9.5	100 Amp Feed		$26.37		$17,806.34	C		C
	8.2.9.6	200 Amp Feed		$49.09		$33,146.31	C		C
	8.2.9.7	300 Amp Feed		$77.19		$52,120.67	C		C
	8.2.9.8	400 Amp Feed		$109.60		$74,004.44	C		C
8.3	**Cageless Physical Collocation**								
8.3.1	Planning and Engineering Fees								
	8.3.1.1	Quote Preparation Fee, per Collocation Ordered				$4,539.46			C 6
8.3.2	Space Construction and Site Preparation								
	8.3.2.1	Site Preparation				ICB			C 3
	8.3.2.2	2 Bays		$31.31		$21,147.27	C		C
	8.3.2.3	Intentionally Left Blank							
	8.3.2.4	Intentionally Left Blank							
	8.3.2.5	Each Additional Bay, per Bay		$3.72		$2,512.64	C		C
	8.3.2.6	Adjustment for Single Bay, Change to Standard Design		($3.72)		($2,512.98)	C		C
	8.3.2.7	DC Power Cable							
		8.3.2.7.1	-48 Volt DC Power Cable						
			8.3.2.7.1.1 20 Amp Feed	$6.42		$4,334.96	C		C
			8.3.2.7.1.2 30 Amp Feed	$7.31		$4,935.66	C		C
			8.3.2.7.1.3 40 Amp Feed	$8.83		$5,961.10	C		C
			8.3.2.7.1.4 60 Amp Feed	$15.63		$10,557.33	C		C
			8.3.2.7.1.5 100 Amp Feed	$26.37		$17,806.34	C		C
			8.3.2.7.1.6 200 Amp Feed	$49.09		$33,146.31	C		C
			8.3.2.7.1.7 300 Amp Feed	$77.19		$52,120.67	C		C
			8.3.2.7.1.8 400 Amp Feed	$109.60		$74,004.44	C		C
8.3.3	Floor Space Lease, per Square Foot			$3.02			C		
8.4	**Caged Physical Collocation**								
8.4.1	Planning and Engineering Fees								
	8.4.1.1	Quote Preparation Fee, per Collocation				$4,539.46			C 6
8.4.2	Space Construction and Site Preparation								
	8.4.2.1	Site Preparation Fee				ICB			C 3
	8.4.2.2	Intentionally Left Blank							
	8.4.2.3	Intentionally Left Blank							
	8.4.2.4	Space Construction							
		8.4.2.4.1	Cage: Up to 100 Sq. Ft.	$54.43		$36,755.70	C		C
		8.4.2.4.2	Cage: 101 to 200 Sq. Ft.	$48.32		$32,629.55	C		C
		8.4.2.4.3	Cage: 201 to 300 Sq. Ft.	$59.60		$40,246.31	C		C
		8.4.2.4.4	Cage: 301 to 400 Sq. Ft.	$62.44		$42,159.89	C		C
	8.4.2.5	Intentionally Left Blank							
	8.4.2.6	DC Power Cable							
		8.4.2.6.1	-48 Volt DC Power Cable						
			8.4.2.6.1.1 20 Amp Feed	$6.42		$4,334.96	C		C
			8.4.2.6.1.2 30 Amp Feed	$7.31		$4,935.66	C		C
			8.4.2.6.1.3 40 Amp Feed	$8.83		$5,961.10	C		C
			8.4.2.6.1.4 60 Amp Feed	$15.63		$10,557.33	C		C
			8.4.2.6.1.5 100 Amp Feed	$26.37		$17,806.34	C		C
			8.4.2.6.1.6 200 Amp Feed	$49.09		$33,146.31	C		C
			8.4.2.6.1.7 300 Amp Feed	$77.19		$52,120.67	C		C
			8.4.2.6.1.8 400 Amp Feed	$109.60		$74,004.44	C		C

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.4.3	Space Construction - Fencing Credit							
	8.4.3.1	Cage: Up to 100 Sq. Ft.	($8.18)		($5,521.00)	C		C
	8.4.3.2	Cage: 101 to 200 Sq. Ft.	($10.19)		($6,883.87)	C		C
	8.4.3.3	Cage: 201 to 300 Sq. Ft.	($11.45)		($7,732.18)	C		C
	8.4.3.4	Cage: 301 to 400 Sq. Ft.	($12.65)		($8,538.78)	C		C
8.4.4	Floor Space Lease, per Square Foot		$3.02			C		
8.4.5	Intentionally Left Blank							
8.4.6	Intentionally Left Blank				-			
8.4.7	Intentionally Left Blank							
8.4.8	Grounding							
	8.4.8.1	2/0 AWG, per Foot	$0.0137		$9.26	C		C
	8.4.8.2	1/0 AWG, per Foot	$0.0241		$16.30	C		C
	8.4.8.3	4/0 AWG, per Foot	$0.0284		$19.18	C		C
	8.4.8.4	350 kcmil, per Foot	$0.0367		$24.75	C		C
	8.4.8.5	500 kcmil, per Foot	$0.0424		$28.65	C		C
	8.4.8.6	750 kcmil, per Foot	$0.0647		$43.67	C		C
8.5	**Adjacent Collocation**				ICB			C 3
8.6	**Remote Collocation**							
8.6.1	Physical & Virtual Remote Collocation							
	8.6.1.1	Space, per Standard Mounting Unit	$0.44		$719.98	C		C
	8.6.1.2	FDI Terminations, per 25 Pair	$0.26		$524.62	C		C
	8.6.1.3	Power Usage						
		8.6.1.3.1 Less Than or Equal To 60 Amps, per Amp	$1.98			C		
	8.6.1.4	Quote Preparation Fee			$1,151.71			C
8.6.2	Adjacent Remote Collocation							
	8.6.2.1	Adjacent Remote Collocation (New)			ICB			C 3
	8.6.2.2	Adjacent Remote Collocation (Existing)						
		8.6.2.2.1 Space, per Standard Mounting Unit	$0.44		$719.98	C		C
		8.6.2.2.2 FDI Terminations, per 25 Pair	$0.26		$524.62	C		C
		8.6.2.2.3 Power Usage						
		8.6.2.2.3.1 Less Than or Equal To 60 Amps, per Amp	$1.98			C		
		8.6.2.2.4 Quote Preparation Fee			$1,151.71			C
8.6.3	Additional Virtual Remote Collocation Elements							
	8.6.3.1	Flat Charge, per Job			$40.40			C
	8.6.3.2	Engineering Labor, per Half Hour			$35.99			C
	8.6.3.3	Maintenance Labor, per Half Hour			$33.43			C
	8.6.3.4	Installation Labor, per Half Hour			$33.43			C
	8.6.3.5	Training, per Half Hour			$33.43			C
8.7	**CLEC-to-CLEC**							
8.7.1	Design, Engineering & Installation, Mechanized - No Cables							
	8.7.1.1	Fiber Flat Charge			$1,334.85			C
	8.7.1.2	Flat Charge			$687.23			C
8.7.2	Cable Racking							
	8.7.2.1	DS0, per Foot, per Cable	$0.15606			C		
	8.7.2.2	DS1, per Foot, per Cable	$0.16909			C		
	8.7.2.3	DS3, per Foot, per Cable	$0.13891			C		
	8.7.2.4	Fiber, per Foot, per Fiber	$1.26758			C		
8.7.3	Virtual Connections (if Applicable Connections Only; No Cables)							
	8.7.3.1	DS0, per 100 Connections			$210.31			C
	8.7.3.2	DS1, per 28 Connections			$99.04			C
	8.7.3.3	DS3, per 1 Connection			$6.38			C
	8.7.3.4	Fiber Connections						
		8.7.3.4.1 Fiber, per Set-Up			$506.81			C
		8.7.3.4.2 Per Fiber Spliced			$38.24			C

Exhibit A
North Dakota*

		Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
8.7.4	Cable Hole (if Applicable)			$483.48			C
8.7.5	CLEC to CLEC Cross-Connection			$204.36			C
8.8	**Interconnection Distribution Frame (ICDF) Collocation**			ICB			C 3
8.9	**Application to Request Cancellation**			QPF, Prorated Job Costs			C
8.10	**Microwave Entrance Facility**			Under Development			
8.11	**Intentionally Left Blank**						
8.12	**Intentionally Left Blank**						
8.13	**DC Power Reduction**						
8.13.1	Quote Preparation Fee			$761.34			C
8.13.2	Power Reduction Less Than 60 Amps			$534.95			C
8.13.3	Power Reduction Equal To 60 Amps			$764.81			C
8.13.4	Power Reduction Greater Than 60 Amps			$968.64			C
8.13.5	Power On / Off			$671.96			C
8.13.6	Battery Distribution Fuse Board (BDFB) Rent	$68.21			C		
8.14	**Collocation Transfer of Responsibility**						
8.14.1	Interconnection Facility Options - Wireline and Wireless Local Interconnection Service Trunks						
8.14.1.1	Per Trunk Group			$33.26			1
8.14.1.2	Per Facility Circuit			$33.26			1
8.14.2	Transfer of Responsibility Assessment Fee			$1,058.00			1
8.14.3	Netrwork System Administration Fee			$1,663.00			1
8.14.4	Unbundled Loop, per Circuit			$33.26			1
8.14.5	Sub-Loop, and Shared Distribution Loop, per Circuit			$33.26			1
8.14.6	Line Sharing and Line Splitting, per Circuit			$33.26			1
8.14.7	Unbundled Dedicated Interoffice Transport, per Circuit			$33.26			1
8.14.8	Enhanced Extended Loop / Loop MUX Combination, per Circuit			$33.26			1
8.14.9	Loop Splitting, per Circuit			$33.26			1
8.14.10	Unbundled Dark Fiber, per Circuit			$33.26			1
8.15	**Collocation Available Inventory**						
8.15.1	Standard Sites						
8.15.1.1	Removal of Terminations						
8.15.1.1.1	DSO (per 100)			ICB			3
8.15.1.1.2	DS1 (per termination)			ICB			3
8.15.1.1.3	DS3 (per termination)			ICB			3
8.15.1.1.4	OCN (per 12 fibers)			ICB			3
8.15.1.2	Quote Preparation Fee						
8.15.1.2.1	Caged Collocation			$4,626.54			A, 6
8.15.1.2.2	Cageless Collocation			$4,981.81			A, 6
8.15.2	Special Sites						
8.15.2.1	Special Site Assessment Fee			$1,058.00			4
8.15.2.2	Network Systems Assessment Fee			$1,663.00			4
8.15.2.3	Site Survey			$150.00			4
8.15.3	Re-usable Elements			ICB			3
8.16	**Collocation Decommissioning**						
8.16.1	Additional Labor Other – Basic			$28.90			1
8.16.2	Additional Labor Other – Overtime			$38.60			1
8.16.3	Additional Labor Other – Premium			$48.31			1
8.16.4	Additional Dispatch			$88.10			1
8.17	**Joint Testing**						
8.17.1	Virtual Collocation Maintenance Charge (price contains a one hour set up fee)			$40.96			1
8.17.2	Per half-hour test time fee at the Virtual Collocation Charge			$20.48			1
9.0	**Unbundled Network Elements (UNEs)**						
9.1	**Interconnection Tie Pairs (ITP) – Per Termination**						
9.1.1	DS0						
9.1.1.1	2-Wire	$0.00			C		
9.1.1.2	4-Wire	$0.79			C		

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.1.2	DS1		$1.47			C		
9.1.3	DS3		$17.46			C		
9.2	**Unbundled Loops**							
9.2.1	Analog Loops				See 9.2.4			
	9.2.1.1	2-Wire Voice Grade Loop						
		9.2.1.1.1 Zone 1	$14.53			C		
		9.2.1.1.2 Zone 2	$24.49			C		
		9.2.1.1.3 Zone 3	$55.47			C		
	9.2.1.2	Intentionally Left Blank						
	9.2.1.3	4-Wire Voice Grade Loop						
		9.2.1.3.1 Zone 1	$28.54			C		
		9.2.1.3.2 Zone 2	$48.11			C		
		9.2.1.3.3 Zone 3	$108.99			C		
	9.2.1.4	Intentionally Left Blank						
	9.2.1.5	Unbundled Loop Grooming (2-Wire)	$0.00			C		
	9.2.1.6	Unbundled Loop Grooming (4-Wire)	$0.00			C		
9.2.2	Nonloaded Loops				See 9.2.4			
	9.2.2.1	2-Wire Nonloaded Loop						
		9.2.2.1.1 Zone 1	$14.53			C		
		9.2.2.1.2 Zone 2	$24.49			C		
		9.2.2.1.3 Zone 3	$55.47			C		
	9.2.2.2	Intentionally Left Blank						
	9.2.2.3	4-Wire Nonloaded Loop						
		9.2.2.3.1 Zone 1	$28.54			C		
		9.2.2.3.2 Zone 2	$48.11			C		
		9.2.2.3.3 Zone 3	$108.99			C		
	9.2.2.4	Cable Unloading / Bridge Tap Removal			No Charge at this Time			C
9.2.3	Digital Capable Loops							
	9.2.3.1	Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop			See 9.2.4			
		9.2.3.1.1 Zone 1	$14.53			C		
		9.2.3.1.2 Zone 2	$24.49			C		
		9.2.3.1.3 Zone 3	$55.47			C		
	9.2.3.2	Intentionally Left Blank						
	9.2.3.3	DS1 Capable Loop			See 9.2.5			
		9.2.3.3.1 Zone 1	$74.88			C		
		9.2.3.3.2 Zone 2	$78.63			C		
		9.2.3.3.3 Zone 3	$83.57			C		
	9.2.3.4	DS3 Capable Loop			See 9.2.6			
		9.2.3.4.1 Zone 1	$748.54			C		
		9.2.3.4.2 Zone 2	$953.76			C		
		9.2.3.4.3 Zone 3	$1,009.89			C		
	9.2.3.5	Intentionally Left Blank						
	9.2.3.6	2-Wire Extension Technology	$4.75			C		
	8.2.3.7	2-Wire Extension Technology Grooming	$1.61			C		
9.2.4	Loop Installation Charges for 2 & 4-Wire Analog / Nonloaded, ISDN BRI Capable, xDSL - I Capable, and ADSL Compatible Loop where conditioning is not required.		See 9.2.1 & 9.2.2					
	9.2.4.1	Basic Installation						
		9.2.4.1.1 First			$55.27			C
		9.2.4.1.2 Each Additional			$48.77			C
	9.2.4.2	Basic Installation with Performance Testing						

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
		9.2.4.2.1 First			$142.10			C
		9.2.4.2.2 Each Additional			$86.24			C
	9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.4.3.1 First			$171.87			C
		9.2.4.3.2 Each Additional			$94.09			C
	9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.4.4.1 First			$59.81			C
		9.2.4.4.2 Each Additional			$53.32			C
	9.2.4.5	Basic Installation with Cooperative Testing						
		9.2.4.5.1 First			$142.10			C
		9.2.4.5.2 Each Additional			$94.09			C
9.2.5	DS1 Loop Installation Charges		See 9.2.3.3					
	9.2.5.1	Basic Installation						
		9.2.5.1.1 First			$124.61			C
		9.2.5.1.2 Each Additional			$78.01			C
	9.2.5.2	Basic Installation with Performance Testing						
		9.2.5.2.1 First			$207.62			C
		9.2.5.2.2 Each Additional			$146.05			C
	9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.5.3.1 First			$248.42			C
		9.2.5.3.2 Each Additional			$146.04			C
	9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.5.4.1 First			$115.22			C
		9.2.5.4.2 Each Additional			$83.36			C
	9.2.5.5	Basic Installation with Cooperative Testing						
		9.2.5.5.1 First			$212.82			C
		9.2.5.5.2 Each Additional			$146.40			C
9.2.6	DS3 Loop Installation Charges		See 9.2.3.4					
	9.2.6.1	Basic Installation						
		9.2.6.1.1 First			$124.61			C
		9.2.6.1.2 Each Additional			$78.01			C
	9.2.6.2	Basic Installation with Performance Testing						
		9.2.6.2.1 First			$207.61			C
		9.2.6.2.2 Each Additional			$146.05			C
	9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
		9.2.6.3.1 First			$248.42			C
		9.2.6.3.2 Each Additional			$146.05			C
	9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
		9.2.6.4.1 First			$173.22			C
		9.2.6.4.2 Each Additional			$122.68			C
	9.2.6.5	Basic Installation with Cooperative Testing						
		9.2.6.5.1 First			$212.82			C
		9.2.6.5.2 Each Additional			$146.40			C
9.2.7	Intentionally Left Blank							
9.2.8	Private Line to Unbundled Loop Conversion				$37.47			C
9.3	**Subloop**							
9.3.1	2-Wire Distribution Loop (Applies to both Analog and Nonloaded Loops)							8
	9.3.1.1 First Loop				$64.83			C

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.3.1.2	Each Additional				$17.69			C
9.3.1.3	First & Each Additional 2-Wire Distribution Loop							
9.3.1.3.1	Zone 1		$9.60			C		
9.3.1.3.2	Zone 2		$15.44			C		
9.3.1.3.3	Zone 3		$20.88			C		
9.3.2	Intentionally Left Blank							
9.3.3	Intra Building Cable		$0.53			C		
9.3.3.1	No Dispatch, First				$35.85			C
9.3.3.2	No Dispatch, Each Additional				$14.93			C
9.3.3.3	Dispatch, First				$75.58			C
9.3.3.4	Dispatch, Each Additional				$25.14			C
9.3.4	Feeder Loop							
9.3.4.1	DS1 Capable Feeder Loop							
9.3.4.1.1	First Loop				$191.97			C
9.3.4.1.2	Each Additional				$142.32			C
9.3.4.1.3	First & Each Additional DS1 Capable Feeder Loop							
9.3.4.1.3.1	Zone 1		$66.33			C		
9.3.4.1.3.2	Zone 2		$70.07			C		
9.3.4.1.3.3	Zone 3		$75.01			C		
9.3.5	MTE Terminal Subloop Access							
9.3.5.1	Subloop MTE - POI Site Inventory, per Request				$113.17			C
9.3.5.2	MTE - POI Rearrangement of Facilities				ICB			C 3
9.3.5.3	MTE - POI Construction of New SPOI		ICB			C 3		
9.3.6	Intentionally Left Blank							
9.3.7	Field Connection Point (FCP)							
9.3.7.1	Feasibility Fee / Quote Preparation Fee				$1,107.09			C
9.3.7.2	FCP Reclassification				$427.17			C
9.3.8	Intentionally Left Blank							
9.3.9	Intentionally Left Blank							
9.3.10	Intentionally Left Blank							
9.3.11	Intentionally Left Blank							
9.3.12	Construction Fee		ICB		ICB	C		C 3
9.4	**Shared Services**							
9.4.1	Shared Loop, per Loop		$5.00		$34.24	C		C
9.4.2	Line Splitting							
9.4.2.1	Basic Installation Charge for Line Splitting				$34.24			B
9.4.3	Loop Splitting							
9.4.3.1	Basic Installation Charge for Loop Splitting				$34.24			C
9.4.4	OSS, per Line, per Month		$3.33			C		
9.4.5	Reclassification Charge				ICB			C 3
9.4.6	Splitter Shelf Charge		$4.96		$541.39	C		C
9.4.7	Splitter TIE Cable Connections							
9.4.7.1	Splitter in the Common Area - Data to 410 Block		$4.31		$2,909.32	C		C
9.4.7.2	Splitter in the Common Area - Data Direct to CLEC		$4.57		$3,084.48	C		C
9.4.7.3	Splitter on the IDF - Data to 410 Block		$1.34		$903.30	C		C
9.4.7.4	Splitter on the IDF - Data Direct to CLEC		$2.60		$1,756.45	C		C
9.4.7.5	Splitter on the MDF - Data to 410 Block		$1.38		$932.51	C		C
9.4.7.6	Splitter on the MDF - Data Direct to CLEC		$3.08		$2,079.88	C		C
9.4.8	Engineering				$1,429.90			C
9.5	**Network Interface Device (NID)**		$0.00		$52.98	C		C

Exhibit A
North Dakota*

			Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.6	**Unbundled Dedicated Interoffice Transport (UDIT)**							
9.6.1	DS0 UDIT *(Recurring Fixed & per Mile)*				$173.02			C
	9.6.1.1	Over 0 to 8 Miles	$26.09	$0.09		C	C	
	9.6.1.2	Over 8 to 25 Miles	$26.09	$0.09		C	C	
	9.6.1.3	Over 25 to 50 Miles	$26.09	$0.11		C	C	
	9.6.1.4	Over 50 Miles	$25.60	$0.11		C	C	
9.6.2	DS1 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.2.1	Over 0 to 8 Miles	$34.12	$3.25		C	C	
	9.6.2.2	Over 8 to 25 Miles	$34.95	$3.28		C	C	
	9.6.2.3	Over 25 to 50 Miles	$36.80	$1.86		C	C	
	9.6.2.4	Over 50 Miles	$35.44	$0.79		C	C	
9.6.3	DS3 UDIT *(Recurring Fixed & per Mile)*				$208.29			C
	9.6.3.1	Over 0 to 8 Miles	$421.97	$5.87		C	C	
	9.6.3.2	Over 8 to 25 Miles	$421.97	$5.87		C	C	
	9.6.3.3	Over 25 to 50 Miles	$421.97	$5.87		C	C	
	9.6.3.4	Over 50 Miles	$420.30	$24.40		C	C	
9.6.4	Intentionally Left Blank							
9.6.5	Intentionally Left Blank							
9.6.6	Intentionally Left Blank							
9.6.7	UDIT DS0 Channel Performance							
	9.6.7.1	DS0 Low Side Channelization	$12.56			C		
	9.6.7.2	DS1 to DS0 Low Side Channelization	$8.41		$184.43	C		C
9.6.8	Multiplexing							
	9.6.8.1	DS1 to DS0	$273.18		$197.38	C		C
	9.6.8.2	DS3 to DS1	$300.35		$1,662.65	C		C
9.6.9	Intentionally Left Blank							
9.6.10	Intentionally Left Blank							
9.6.11	UDIT Rearrangement							
	9.6.11.1	DS0 Single Office			$183.55			C
	9.6.11.2	DS0 Dual Office			$248.25			C
	9.6.11.3	High Capacity Single Office			$248.25			C
	9.6.11.4	High Capacity Dual Office			$277.03			C
9.7	**Unbundled Dark Fiber (UDF) - Intentionally Left Blank**							
9.8	**Shared Transport - Intentionally Left Blank**		$0.001823			C		
9.9	**Unbundled Customer Controlled Rearrangement Element (UCCRE) - Intentionally Left Blank**							
9.10	**Intentionally Left Blank**							
9.11	**Local Switching - Intentionally Left Blank**							
9.12	**Customized Routing - Intentionally Left Blank**							
9.13	**Intentionally Left Blank**							
9.14	**Intentionally Left Blank**							
9.15	**Intentionally Left Blank**							
9.16	**Intentionally Left Blank**							
9.17	**Intentionally Left Blank**							
9.18	**Intentionally Left Blank**							
9.19	**Construction Charges**		ICB		ICB	C		C 3

Exhibit A
North Dakota*

		Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
9.20	**Miscellaneous Charges**						
9.20.1	Additional Engineering, per Half Hour or fraction thereof						
9.20.1.1	Additional Engineering – Basic			$30.03			C
9.20.1.2	Additional Engineering – Overtime			$37.14			C
9.20.2	Additional Labor Installation, per Half Hour or fraction thereof						
9.20.2.1	Additional Labor Installation – Overtime			$8.54			C
9.20.2.2	Additional Labor Installation – Premium			$17.08			C
9.20.3	Additional Labor Other, per Half Hour or fraction thereof						
9.20.3.1	Additional Labor Other – Basic			$26.18			C
9.20.3.2	Additional Labor Other – Overtime			$34.96			C
9.20.3.3	Additional Labor Other – Premium			$43.76			C
9.20.4	Testing and Maintenance, per Half Hour or fraction thereof						
9.20.4.1	Testing and Maintenance – Basic			$27.81			C
9.20.4.2	Testing and Maintenance – Overtime			$37.14			C
9.20.4.3	Testing and Maintenance – Premium			$46.48			C
9.20.5	Maintenance of Service, per Half Hour or fraction thereof						
9.20.5.1	Maintenance of Service – Basic			$26.18			C
9.20.5.2	Maintenance of Service – Overtime			$34.96			C
9.20.5.3	Maintenance of Service – Premium			$43.76			C
9.20.6	Additional Cooperative Acceptance Testing, per Half Hour or fraction thereof						
9.20.6.1	Additional Cooperative Acceptance Testing – Basic			$27.81			C
9.20.6.2	Additional Cooperative Acceptance Testing – Overtime			$37.14			C
9.20.6.3	Additional Cooperative Acceptance Testing – Premium			$46.48			C
9.20.7	Nonscheduled Cooperative Testing, per Half Hour or fraction thereof						
9.20.7.1	Nonscheduled Cooperative Testing - Basic			$27.81			C
9.20.7.2	Nonscheduled Cooperative Testing - Overtime			$37.14			C
9.20.7.3	Nonscheduled Cooperative Testing - Premium			$46.48			C
9.20.8	Nonscheduled Manual Testing, per Half Hour or fraction thereof						
9.20.8.1	Nonscheduled Manual Testing – Basic			$27.81			C
9.20.8.2	Nonscheduled Manual Testing – Overtime			$37.14			C
9.20.8.3	Nonscheduled Manual Testing – Premium			$46.48			C
9.20.9	Cooperative Scheduled Testing						
9.20.9.1	Cooperative Scheduled Testing - Loss	$0.08			C 5		
9.20.9.2	Cooperative Scheduled Testing - C Message Noise	$0.08			C 5		
9.20.9.3	Cooperative Scheduled Testing - Balance	$0.33			C 5		
9.20.9.4	Cooperative Scheduled Testing - Gain Slope	$0.08			C 5		
9.20.9.5	Cooperative Scheduled Testing - C Notched Noise	$0.08			C 5		
9.20.10	Manual Scheduled Testing						
9.20.10.1	Manual Scheduled Testing - Loss	$0.17			C 5		
9.20.10.2	Manual Scheduled Testing - C Message Noise	$0.17			C 5		
9.20.10.3	Manual Scheduled Testing - Balance	$0.67			C 5		
9.20.10.4	Manual Scheduled Testing - Gain Slope	$0.17			C 5		
9.20.10.5	Manual Scheduled Testing - C Notched Noise	$0.17			C 5		
9.20.11	Additional Dispatch			$79.80			C
9.20.12	Date Change			$9.81			C
9.20.13	Design Change			$69.90			C
9.20.14	Expedite Charge			ICB			C 3
9.20.15	Cancellation Charge			ICB			C 3
9.21	**Channel Regeneration**						
9.21.1	DS1	$0.00		$0.00	C		C
9.21.2	DS3	$0.00		$0.00	C		C
9.22	**Intentionally Left Blank**						
9.23	**UNE Combinations - Intentionally Left Blank**						
10.0	**Ancillary Services - Intentionally Left Blank**						
12.0	**Operational Support Systems**						

Exhibit A
North Dakota*

		Recurring	Recurring, Per Mile	Non-Recurring	REC	REC per Mile	NRC
12.1	Development and Enhancements, per Order			No charge at this time			C
12.2	Ongoing Maintenance, per Order			No charge at this time			C
12.3	Daily Usage Record File, per Record	$0.0003926			C		
12.4	Trouble Isolation Charges			See 9.20			
17.0	**Bona Fide Request Process**						
17.1	Processing Fee			$1,897.30			C

NOTES:

Unless otherwise indicated, all rates are pursuant to North Dakota Public Service Commission dockets:

A: U S WEST and AT&T Interconnection Agreement approved by the North Dakota Public Utilities Commission in Docket Number PU-453-96-497, effective June 23, 1997.

B: 271 Compliance Investigation Docket Number PU-314-97-193, Order on Group 2 Checklist Items dated 10/15/01.

C: Cost Docket Case No. PU-2342-01-296 effective 12/29/04.

[1] Rate not addressed in cost docket (estimated TELRIC)

[2] Market-based rates contained in the Stipulation and Settlement Agreement in Case No. PU-2342-01-296.

[3] ICB, Individual Case Basis pricing.

[4] Rates per FCC Guidelines. Pole Attachment & Innerduct Occupancy rates revised in 9/17/04 Exhibit A to reflect newly calculated rates.

[5] Rates not applicable to UNE Elements. See Qwest's North Dakota Access Service Catalog

[6] The preliminary QPF costs are included in the Caged, and Cageless space construction charges. The engineering and planning charges are also included in the caged and cageless quote preparation fees. Upon completion of the collocation construction, the quote preparation fee (QPF) will be credited to the final space construction charge for the collocation job. The credit will apply to whichever QPF is applied. This exhibit currently lists multiple QPFs based on what has been proposed on the cost docket and what was approved in the AT&T interconnection agreement. CLEC may choose either QPF at this time.

[7] Intentionally Left Blank

[8] When distribution is purchased only for the purpose of campus wire, no recurring or nonrecurring charges will be assessed. This does not include collocation charges or FCP placement.

[9] Intentionally Left Blank

[10] Intentionally Left Blank

[11] All technically feasible Vertical Switch Features are available with compatible unbundled switch ports. No monthly recurring charge applies for Basic Vertical Switch Features. Only Basic Vertical Features with non-recurring charges are listed. Non-recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity.

[12] A Special Request is a request by the customer to perform something that is technically feasible but the process and pricing are not yet in place.

PETITION OF DIECA COMMUNICATIONS, INC., D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION

EXHIBIT B

***Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Pennsylvania Public Utility Commission Docket No. I-00030100, Reconsideration Order (May 27, 2004)**

PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Article I. Harrisburg PA 17105-3265

Public Meeting held May 27, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market

Docket No. I-00030100

Section 1.01

Section 1.02 RECONSIDERATION ORDER

BY THE COMMISSION:

Before the Commission is Verizon Pennsylvania Inc.'s (Verizon's) Petition for Reconsideration of that section of our December 18, 2003 Order (*December Order*) that addresses the continuing obligations of Verizon to provide competitors with access to its local circuit switching. In that Order, we found on the record before us no compelling justification to petition the Federal Communications Commission (FCC) for a waiver of its "no impairment"

finding for local switching in the enterprise market. Verizon takes no issue with this finding. We further stated, however, that pursuant to our *Global Order* and 47 U.S.C. § 271(c)(2)(B)(vi) Verizon has a continuing obligation to provide requesting carriers with access to its local circuit switching at the rates contained in Verizon's Tariff 216. It is this continuing obligation section of the *December Order* to which Verizon's petition is directed. We will grant-in-part and deny-in-part the petition.

Factual and Procedural Background

In 1996, Congress adopted a national policy of promoting local telephone competition through the enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *amending* the Communications Act of 1934, *codified at* 47 U.S.C. §§151, *et seq.* (Act). The Act relies upon the dual regulatory efforts of the FCC and its counterpart in each of the states, including the Commission, to foster competition in local telecommunications markets. *See generally Verizon Communications Inc. v. Trinko*, 124 S. Ct. 872, 881-883 (2004) (discussing regulatory structure of the Act). The goals of the Act are accomplished in part through the imposition of particular access obligations upon incumbent local exchange carriers, like Verizon, and Regional Bell Operating Companies (BOCs), also including Verizon. Relevant access obligations are set forth in 47 U.S.C. §§ 251©)(3) and 271(c)(2)(B)(vi), respectively. Additional relevant obligations may also be imposed by state law on a state-specific basis. 47 U.S.C. § 251(d)(3) (preserving state access regulations).

In 1999, in order to promote competition in local markets, we ordered Verizon to provide the Unbundled Network Element Platform (UNE-P) to competitors for service to business customers with total billed revenue from local services and intraLATA toll services at or below $80,000 annually. *Global* Order at 85-92. UNE-P was defined to be "a combination of all network elements required to provide local service to an end user. It contains, at a minimum, the loop, switch port, switch usage, and transport elements." *Id.* at 85. The obligation to provide UNE-P was imposed through December 31, 2003, after which time Verizon was invited to demonstrate to the Commission that the obligation should no longer be imposed. *Id.* at 90. Our *December Order* at 14 observed the continuation of the *Global Order*

obligation. Concurrently, the *December Order* at 16 cautioned Verizon's competitors against assuming that this state law obligation would continue indefinitely.

In 2001, the FCC granted Verizon's request for authorization to provide in-region, interLATA services in Pennsylvania. *Pennsylvania 271 Order*. Authorization was granted as in the public interest because, in part, this Commission had put into place and was actively providing oversight of Verizon's performance assurance plan (PAP), which provided the FCC with assurance the local market would remain open. *Pennsylvania 271 Order* at 127. The PAP measures, among other things, aspects of Verizon's UNE-P performance.

In 2003, the FCC issued an order relieving Verizon of its obligation under 47 U.S.C. § 251©) to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops, except where a state commission petitions the FCC for waiver and waiver is granted. *Triennial Review Orde*r (or *TRO*) at ¶¶ 451-458; 47 C.F.R. § 51.319(d)(3). Absent switching, there is no UNE-P by definition. After review of the record in this proceeding, we decided not to petition the FCC for waiver. *December Order*. Since § 251©) does not presently impose upon Verizon an obligation to provide carriers with access to local circuit switching for service to end-user customers using DS1 capacity and above loops, the availability of UNE-P under § 251©) for service to such customers has been eliminated.

The FCC's *Triennial Review Order* was challenged by various petitioners, including this Commission, in the United States Court of Appeals for the District of Columbia. The case was argued January 28, 2004. On March 2, 2004, the court decided, among other things, that the Commission's challenge to the preemptive scope of the *TRO* was not ripe because the FCC "has not taken any view on any attempted state unbundling order." *U.S.T.A. v. F.C.C.*, 359 F.3d 554, 594 (D.C. Cir. 2004). The court also denied petitions for review of the FCC's determination regarding the unbundling of enterprise switches. *Id.* at 586-587. Regarding § 271, the court decided that there was "nothing unreasonable in the [FCC's] decision to confine TELRIC pricing to instances where it has found impairment [under § 251]." *Id.* at 589. The court also decided that the FCC was not unreasonable in deciding that any duty to combine network elements under

§ 251 does not apply to § 271 unbundling obligations. *Id.* The court distinguished its holding, however, from the separate question of whether the FCC's decision not to require combinations under § 271 satisfies the general nondiscrimination requirement of § 202. *Id.* at 590.

Our *December Order* distinguishes Verizon's distinct access obligations stemming from the *Global Order* (an exercise of our independent state law authority), the *Pennsylvania 271 Order* (memorializing federal requirements imposed on Verizon as a condition of entry into the long distance market pursuant to 47 U.S.C. § 271), and the *Triennial Review Order* (establishing minimum federal requirements pursuant to 47 U.S.C. § 251©)). We recognized the FCC had relieved Verizon of the relevant obligation under § 251, but correspondingly recognized the continuation of the relevant access obligations under state law and, to an extent, under § 271.

On January 2, 2004, Verizon filed a Petition for Reconsideration of our *December Order*. Verizon challenges the lawfulness of that section of the *December Order* which recognized Verizon's continuing obligation to provide access to UNE-P under state law. Verizon also seeks clarification of our position on the rate at which carriers can obtain access to local switching under § 271. On January 21, 2004, we granted the petition pending consideration on the merits.

An answer to the petition was filed by the Pennsylvania Carrier's Coalition (PCC). A joint answer was filed by ARC Networks, Inc. d/b/a InfoHighway Communications Corp. and Metropolitan Telecommunications Corporation of PA (collectively ARC). A third answer was filed by MCI WorldCom Network Services, Inc. (MCI).

Verizon moved to strike MCI's answer. MCI answered Verizon's Motion to Strike.

Further, on April 16, 2004, before the FCC, Verizon filed an Emergency Request for Declaratory Ruling and Preemption. Verizon's filing urges the FCC to issue a declaratory ruling that the *December Order*—to the extent that it requires Verizon to continue to provide unbundled access to its local switching serving the enterprise market at TELRIC prices—is inconsistent with, and therefore preempted by, federal law. *In the Matter of Verizon Pennsylvania Inc. Petition for Declaratory Ruling and Order Preempting the Pennsylvania Public Utility Commission's Order Directing Verizon Pennsylvania Inc. To Provide Unbundled*

Access to Its Enterprise Switches, File No. _____, Emergency Request for Declaratory Ruling and Preemption (filed April 16, 2004).

Position of the Parties

Verizon's position is that the *December Order*:

> appears to suggest (1) that Verizon PA has a separate and continuing additional unbundling obligation under the Commission's *Global Order* to provide unbundled switching and UNE-P to enterprise customers—a conclusion directly at odds with the 1996 Act, binding case law, and the FCC's express conclusions; and (2) that the TELRIC rates that apply to network elements unbundled pursuant to section 251 of the 1996 Act must also be applied to network elements unbundled pursuant only to section 271—an assumption expressly and unambiguously rejected by the FCC, which has controlling authority over this question.

Petition at 1. "Simply put, a state conclusion that 'yes, an ILEC is required to unbundle' actually and directly conflicts with the federal conclusion that 'no, the ILEC does not have to unbundle.'" *Id.* at 9. Thus, Verizon argues that the Commission's reading of the *Global Order* as imposing a continuing obligation to provide access to local switching directly conflicts with the FCC's national finding of non-impairment for enterprise switching, a finding made pursuant to § 251(d)(2). *Id.* Further, Verizon argues that any continuing access obligation imposed by § 271 does not require TELRIC pricing, rather Verizon is permitted to price access at a "market-based" rate. *Id.* at 12-13.

In support, Verizon cites a variety of authorities and theories. Verizon's petition cites: 47 U.S.C. § 251(d)(2) (requiring FCC to determine which network elements should be made available for purposes of § 251©)(3)); 47 U.S.C. § 252©)(1) (requiring state commissions to resolve arbitration disputes consistent with regulations prescribed by the FCC pursuant to § 251); *USTA v. FCC*, 290 F.3d 415, 417-18 (D.C. Cir. 2002) (opining that § 251 requires Verizon to unbundled its network elements on terms prescribed by the FCC); *TRO* ¶ 186 (stating that the FCC has responsibility for establishing a framework to implement the unbundling requirements

of § 251(d)(2)); *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 371, 378 n. 6, 387 n. 10 (1999) (for the assertion that state-specific unbundling requirements that do not mirror FCC requirements impede competition and are prohibited by the Act); *TRO* ¶¶ 187, 192, 195 (requiring state commissions to amend and alter state-specific decisions to conform to the FCC's unbundling rules); Brief for Respondents at 92-93, *U.S.T.A. v. F.C.C.*, No. 00-1012 (D.C. Cir., filed Dec. 13, 2003) (explaining FCC view that a FCC decision not to require an ILEC to unbundled a particular element reflects a "balance" struck by the agency and that any state rule that struck a different balance would conflict with federal law, thereby warranting preemption); and, *TRO* ¶ 72 (stating that FCC must interpret the Act's "impair" standard as requiring the FCC to determine the elements that "should or should not be unbundled").

Verizon also cites *TRO* ¶ 655, n. 1990 (declining to require BOCs, pursuant to § 271, to combine network elements that no longer are required to be unbundled under § 251); *TRO* ¶ 659 (concluding that § 271 requires BOCs to provide unbundled access to elements not required to be unbundled under § 251, "but does not require TELRIC pricing"); *TRO* ¶¶ 663 (discussing pricing of unbundled access pursuant to § 271 and deciding that the pricing methodology applicable to elements accessed pursuant to § 271 is the "basic just, reasonable, and nondiscriminatory rate standard of [47 U.S.C. §§ 201, 202] that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate service) the Communications Act."); *TRO* ¶¶ 659, 662-64 (further discussing pricing and enforcement); *Proceeding by the Dept of Telecoms. and Energy on its own Motion to Implement the Requirements of the F.C.C.'s Triennial Review Order Regarding Switching for Large Business Customers Served by High-Capacity Loops*, D.T.E. 03-59, Order (issued Nov. 25, 2003) at 19 (holding that market prices that are subject to the disciplining effects of competitive forces are presumptively just and reasonable and that Verizon's pricing under § 271 would be subject to competitive forces).

PCC's position is that the *December Order* is consistent with federal law and that Verizon's Petition "fails miserably under the Commission's long-established standards for reconsideration." PCC Answer at 2. "The bottom line is that this Commission is free and should continue its current policies originally established in the *Global Order* until a party, including

Verizon, convinces this Commission that the policies should be changed." *Id.* at 4. Further, PCC argues that the FCC has not exercised exclusive jurisdiction over Verizon's § 271 obligations and notes Verizon's agreement to unbundle its network as a condition of providing in-region, interLATA service. *Id.* at 12, 20.

ARC's position, like PCC's, is that the Commission "clearly has the authority to take the actions it took in the [*December Order*], and the conclusions the Commission reached in the [*December Order*] are fully consistent with the 1996 Act." ARC Answer at 3. "Section 251(d)(3) does not preclude states from modifying the federal unbundling regime, as Verizon suggests, but rather, it bars only measures that require incumbents to violate the Act or preclude competitors from using elements to provide competing services." *Id.* at 5. "[T]he Act does not demand that state rules mirror exactly the FCC's regulations. Section 251(d)(3) of the Act clearly contemplates that the states will co-administer Section 251's market-opening mechanisms." *Id.* at 6. Regarding § 271 pricing, ARC notes that the *December Order* does not require TELRIC pricing, rather, the Commission held that Tariff No. 216 rates satisfy the "just and reasonable" pricing standard for § 271 elements, especially given the fact that the FCC has determined in the course of Verizon's § 271 proceeding that the Tariff No. 216 rates are just and reasonable. *Id.* at 8-9.

MCI's position on the merits of the *December Order* is substantially the same as the positions taken by PCC and ARC. The distinguishing feature of MCI's Answer is that MCI did not participate in the development of the factual record in this CLEC-initiated investigation, but now argues that this proceeding is not the place for Verizon to challenge the Commission's *Global Order* decision because many CLECs interested in the preservation of the *Global Order* requirements are not on this Docket's service list. MCI Answer at 1-2. MCI argues that Verizon's Petition broadens the scope of this proceeding by challenging the viability of the *Global Order* requirements generally. MCI accepts that Verizon has a procedural right to make such a challenge, but argues that "[i]f Verizon disagrees that the *Global Order* creates a continuing obligation, it should petition the Commission separately, but should not use this proceeding to make such a monumental change in the current legal landscape in Pennsylvania." *Id.* at 3.

In opposition to Verizon's Petition, opponents' citations include *TRO* ¶¶ 191-93, 653, 662, 665; the FCC's *USTA* Brief at 90-91; 47 U.S.C. §§ 152(b), 251(d)(3), 252(e)(3), 253(b), 254(I), 261(b)&©), 153(41), 601©), and 706©); *Verizon Communications Inc. v. Trinko, supra*; *Application of Verizon Pa. Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pa., supra.*

Analysis

Whether the Commission Will Consider the Merits of Verizon's Petition

The Commission will only address reconsideration requests that raise new and novel arguments, not previously heard, or considerations that appear to have been overlooked or not addressed by the Commission. *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982). Thus, reconsideration petitions that raise the same questions as raised previously are improper.

In this case, we will consider the merits of Verizon's Petition in order to address the guidance and clarifications of the Act and *Triennial Review Order* provided by the federal courts and the FCC since issuance of our *December Order*.

Whether the Commission Will Consider the Merits of MCI's Answer

The section of the *December Order* that is challenged by Verizon's Petition for Reconsideration merely reminded Verizon and the CLECs of the continuing obligations of the *Global Order*, absent further proceedings. Preemption arguments made by the parties in this proceeding had prompted our decision to be clear on the point of whether we viewed the *Global Order* requirements as remaining intact. We specifically stated: "Given the lack of record development and the uncertainty as to an actual conflict, as well as our open and unanswered invitation to [Verizon] to demonstrate that the *Global Order* requirement can be retired, we will not change the *status quo* vis-à-vis access at this time." *December Order* at 15. Similarly, we left the Tariff No. 216 pricing in place. *Id.* at 16.

We continue to believe it was beneficial to the competitive markets to be clear on the status of the *Global Order*. We also note recent support for our position. The D.C. Circuit has decided that the concern we expressed in December about the preemptive effect of the *Triennial Review Order* was premature. *U.S.T.A. v. F.C.C.*, 359 F.3d at 594. Further, the FCC recently

observed that uncertainty can be harmful to telephone consumers. Letter of FCC Commissioners to Verizon President & CEO Ivan Seidenberg, dated March 31, 2004, available at http://www.fcc.gov/commissioners/letters/triennial_review/verizon.pdf (stating "telephone consumers are served best by ending this uncertainty and getting back to business"). These actions favor our decision to maintain the status quo pending formal proceedings.

Formal proceedings initiated to address the issue of whether we should amend the *Global Order* would provide all interested parties with notice and an opportunity to be heard as well as assure development of an adequate record. See 66 Pa.C.S. §§ 501(a), 703(g). Because of this, we will simply apply 52 Pa. Code § 1.2©), which permits a liberal construction of our formal proceeding rules when necessary and appropriate, to allow consideration of MCI's Answer. Therefore, Verizon's Motion to Strike MCI's Answer to Verizon's Petition for Reconsideration will be denied.

Consideration of the Merits of Verizon's Petition for Reconsideration

We grant the petition in part to clarify our position on the pricing of network elements unbundled pursuant to § 271. Contrary to Verizon's suggested interpretation, the *December Order* does not mandate that TELRIC pricing be used to price such network elements. Rather, as observed by ARC, the order merely provides that existing Tariff No. 216 rates be used at present because they are currently in effect and fall within the range of a just and reasonable price. Verizon remains free to exercise all of its rights to propose the establishment of new just and reasonable prices applicable to § 271 network elements.

Since the *Triennial Review Order* did not fully flesh out all the processes, procedures and requirements associated with Verizon's § 271 access obligations, we recognize that it remains unclear as to where and how Verizon's "just and reasonable" rate for access in a particular state (since § 271 is granted on a state-by-state basis) is established and/or disclosed to the requesting carrier. Our review of the *TRO*, the D.C. Circuit's opinion, and even the FCC's brief in the *USTA* litigation, has not provided any clarity on this point. However, given that the Tariff No. 216 is filed with the Commission, the Commission's existing procedures for tariff changes, namely 66 Pa. C.S. §§ 1301 and 1308, are available to be used if Verizon seeks to establish new non-TELRIC rates for enterprise switching. Meanwhile, the uncertainty again supports our

observation that the Tariff No. 216 rates are currently in effect and should be used until a new rate is properly established.

We deny the remaining portion of the petition. We are not persuaded that maintaining the status quo vis-à-vis the *Global Order* requirements is improper. We continue to believe that absent further proceedings, which Verizon is free to initiate, Verizon has a separate and continuing additional unbundling obligation under the *Global Order* to provide unbundled switching and UNE-P to enterprise customers. Support for our view is found in multiple sources, specifically including 47 U.S.C. § 251(d)(3) (preserving state access requirements); and, *U.S.T.A. v. F.C.C.*, 359 F.3d at 594 (holding that our challenge to the preemptive scope of the *TRO* is not ripe because the general prediction voiced in *TRO* ¶ 195 does not constitute final agency action). In particular, the *Global Order* provides that the availability of UNE-P for enterprise customers would not be indefinite and that Verizon may request its termination after December 31, 2003. Verizon has yet to avail itself of this opportunity.

Furthermore, even if the *Global Order* requirements are deemed to be preempted (and no court has so determined), there is support for finding a continuing access obligation in § 271's requirement that Verizon provide access to its local switching. Presently, no FCC decision has relieved Verizon from its ongoing § 271 obligations in Pennsylvania, or fully defined what those obligations are in the wake of the *Triennial Review Order*. We conclude that there is no firm basis for this Commission to unilaterally sanction removal of a § 271 element from Verizon's offerings in Pennsylvania under the present state of FCC orders. If Verizon believes that its § 271 obligations in Pennsylvania have changed, it should put that issue to the FCC. Upon FCC approval of Verizon's position, modifications of relevant offerings would then be appropriate.

We also note that Verizon may not have to offer such switching in combination under § 271 by virtue of § 251, but it has not been decided whether Verizon must combine the switching with other elements under another legal theory. See *U.S.T.A. v. F.C.C.*, 359 F.3d at 590; *Verizon v. Trinko*, 124 S. Ct. at 882-83 (holding that Verizon may subject itself to state commission oversight under a performance assurance plan). We do not imply a viewpoint on the merits of alternative legal theories, rather, we make these observations to explain why we maintain the status quo in the absence of a fully developed record on the issues raised in Verizon's instant Petition for Reconsideration.

Our action in this regard is without prejudice to Verizon's right to seek further administrative relief, and we invite Verizon to initiate appropriate formal proceedings to address the preemption and pricing issues raised in its Petition for Reconsideration; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration of our Order entered December 18, 2003, filed by Verizon Pennsylvania Inc. on January 2, 2004, and granted pending review and consideration of the merits by Order entered January 21, 2004, is hereby granted-in-part and denied-in-part consistent with the discussion contained in the body of this Order.

2. That Verizon's Motion to Strike the Answer of MCI to Verizon's Petition for Reconsideration is denied.

3. That this record shall be marked closed.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 27, 2004

ORDER ENTERED: May 28, 2004

PETITION OF DIECA COMMUNICATIONS, INC., D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION

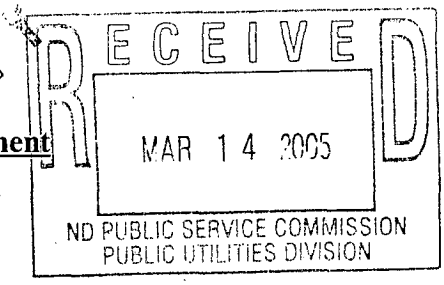


EXHIBIT A

Draft Interconnection Agreement

One copy delivered separately to the North Dakota Public Service Commission

NORTH DAKOTA DRAFT – 3-10-05

AGREEMENT FOR TERMS AND CONDITIONS FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES, AND RESALE OF TELECOMMUNICATIONS SERVICES PROVIDED BY

QWEST CORPORATION

FOR

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY

IN THE STATE OF NORTH DAKOTA

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Section 1.0 - GENERAL TERMS

1.1 This Agreement for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("CLEC"), a Virginia corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 Intentionally Left Blank.

1.3 This Agreement sets forth the terms, conditions and pricing under which Qwest will provide to CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of North Dakota, for purposes of providing local Telecommunications Services.

1.4 Intentionally Left Blank.

1.5 Intentionally Left Blank.

1.6 Intentionally Left Blank.

1.7 Once this Agreement is approved , any amendment to the Agreement by the Parties will be accomplished through Section 252 of the Act. This Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services,

access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in the SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the Change Management Process (CMP). CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and Billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options unless the Commission orders otherwise.

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, and CLEC wishes to purchase such new product prior to execution of an Amendment with different terms and conditions, CLEC agrees to abide by the terms and conditions defined by Qwest for such new product on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 CLEC may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, contained in an existing Interconnection Agreement or SGAT, Qwest may require CLEC to accept Legitimately Related provisions to ensure that the opted into provision retains the context set forth in the Interconnection Agreement or this Agreement. The expiration date of the Interconnection Agreement from which the opted into provision was selected or the expiration date specified in the SGAT respectively, whichever is closer to the present date, shall be considered Legitimately Related. In all other instances, Qwest bears the burden of establishing that an Interconnection Agreement or SGAT provision is Legitimately Related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are Legitimately Related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are Legitimately Related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not Legitimately Related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.2.1 Nothing in this Agreement shall preclude CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such provision or agreement itself resulted from an opting in by CLEC that is a party to it.

1.8.3 If Qwest has identified additional provisions that Qwest believes are Legitimately Related and has specified provisions in the proposed amendment to which those provisions are not Legitimately Related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are Legitimately Related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) Days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the

complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, 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 metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorneys' fees and costs in prosecuting/defending the action. However, if either Party is found by the Commission to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorneys' fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission

Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successor) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation

thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of Telecommunications industry administrative or technical standards.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as of October 3, 2003 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendancy of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be resolved by the arbitrator(s) during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendancy of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.2.1 In addition to, but not in limitation of, 2.2 above, nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the FCC's decision and rules adopted in ***In the Matter of 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 and 98-147, FCC 03-36, ***Report and Order and Order on Remand and Further Notice of Proposed Rulemaking***, nor rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same (Decision(s)). Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decision should be changed, vacated, dismissed, stayed or modified.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between this Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates terms and conditions of this Agreement shall prevail.

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Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. The Parties shall complete Qwest's "New Customer Questionnaire," as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New Customer Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain Billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new New Customer Questionnaire; however, CLEC will update its New Customer Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this Agreement, which may include an amendment pursuant to Section 1.7.1.

3.3 Intentionally Left Blank.

3.4 Intentionally Left Blank.

Section 4.0 - DEFINITIONS

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a Switch used to connect End Office Switches to interexchange Carrier Switches. Qwest's Access Tandem Switches are also used to

connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline Telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video Telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

"Applicable Law" means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and Interconnection for Telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in Switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification" or "ALI" is the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information

(including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Number Identification" or "ANI" is the Billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit Switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to End User Customers which provides the End User Customer with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such End User Customer to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

"Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User Customer and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter

which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Carrier Liaison Committee" or "CLC" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a Switch used to provide Telecommunications Services, including, but not limited to:

> "End Office Switches" which are used to terminate End User Customer station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and
>
> "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be considered Tandem Office Switch(es) to the extent such Switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch. A fact-based consideration by the Commission of geography should be used to classify any Switch on a prospective basis.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record Billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Centrex" shall have the meaning set forth in Section 6.2.2.9.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the Billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the State Regulatory Commission or Board with jurisdiction for the services provided pursuant to this Agreement. In the State of North Dakota, "Commission" means the North Dakota Public Service Commission.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, Customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User

Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data" means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Data Local Exchange Carrier" or "DLEC" is a CLEC interconnecting primarily for purposes of transporting data.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between Qwest Wire Centers, Qwest End Office Switches, and Qwest Tandem Switches to which CLEC is granted exclusive use. The path may operate at DS-1 or DS-3 transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated Cross Connection of Digital Signal Level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with Cross Connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of

requirements on the "component" DCS. In locations where automated Cross Connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a Switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay, or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

> "ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.
>
> "HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.
>
> "HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.
>
> "IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network

Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the loop and optimize the line rate for a given line quality.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Section 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Lists" shall have the meaning set forth in Section 10.6.1.1.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 5.2.1.

"Electronic Bonding" is a real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National

standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

"Enhanced Services" means any service offered over Common Carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve End User Customer interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Section 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access" (IntraLATA Toll) as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the Agreement shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the Local Calling Area as determined by the Commission.

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually-agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail Customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the Provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Individual Case Basis" or "ICB" shall have the meaning set forth in Exhibit I.

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"Integrated Digital Loop Carrier" means a subscriber Loop Carrier system, which integrates multiple voice channels within the Switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When CLEC signs and delivers a copy of this Agreement to Qwest pursuant to the notice provision of the Agreement, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(e) of the Act.

"Interexchange Carrier" or "IXC" means a Carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately Related" terms and conditions are those rates, terms, and conditions that relate solely to the individual Interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other Interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular Interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXCs to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP" shall have the meaning set forth in Section 10.2.1.1.

"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and Billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying Carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the technician performs work on a business Day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply when the technician performs work on either a Sunday or Qwest recognized holiday. These charges may be assessed by either Qwest or CLEC in accordance with 12.3.4.4.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one Carrier's responsibility for service begins and the other Carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" means an Interconnection between two (2) networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the Billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the Carrier in the call routing process immediately preceding the terminating Carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for Maintenance and Repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element (including all of its features, functions and capabilities) that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Section 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"Non-Qualifying Service" is a service that is not a Qualifying Service.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the basic numbering plan for the Telecommunications networks located in the United States as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit Switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and Billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the Billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility Provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where Technically Feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User Customers, its Affiliates or to any other party.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and IntraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or

similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop Concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

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

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7, including out of hours coordination.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider.

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Qualifying Service" is a Telecommunications Service that competes with a Telecommunications Service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, Local Exchange Service, such as plain old telephone service (POTS), and Access Services, such as Digital Subscriber Line services and high-capacity circuits. Services used solely as an input for CLEC to provide retail interexchange or information services are not Qualifying Services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center, and 2) the corresponding geographic area which is associated with one or more particular NPA-NNX codes which have been assigned to a LEC or its provision of

Telephone Exchange Service.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes, but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the Central Office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for Provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Premises" means all Qwest Premises, other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User Customer and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital Loop Carriers, fiber hubs, DSLAMs, etc.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call

processing services.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

1) Message Transfer Part (MTP), which provides functions for basic routing of signaling messages between signaling points;

2) Signaling Connection Control Part (SCCP), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;

3) Integrated Services Digital Network User Part (ISUP), which provides for transfer of call setup signaling information between signaling points; and

4) Transaction Capabilities Application Part (TCAP), which provides for transfer of non-circuit related information between signaling points.

"Signaling Transfer Point" or "STP" means a Packet Switch that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common channel Signaling (CCS) messages.

"Special Request Process" or "SRP" shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two (2) copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all Loop lengths, model Loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the Loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or "SATE" shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Technically Feasible." Interconnection, access to unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services,

except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary Transaction Sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trouble Reports" means trouble reports received via MEDIACC, CEMR, or reported to one of Qwest's call or repair centers, and managed and tracked within Qwest's repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

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"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, for which unbundled access is required under section 271 of the Act or applicable state law, or for which unbundled

access is provided under this Agreement. ~~Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.~~

~~"Unbundled Network Element Platform" or "UNE-P" is a combination of Unbundled Network Elements as set forth in Section 9.23.~~

~~"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network as required by the FCC, the Commission or this Agreement.~~

~~"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.~~

~~"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.~~

~~"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.~~

~~"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.~~

~~"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.~~

~~"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.~~

~~Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.~~

Section 5.0 - TERMS AND CONDITIONS

5.1 General Provisions

5.1.1 Intentionally Left Blank.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1 If such impairment is material and poses an immediate threat to the safety of either Party's employees, Customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other Party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates the provision or refuse to provide the same type of service if it reasonably appears that the particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstituted as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other Party shall provide written notice within five (5) calendar Days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar Days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar Days of written notice, or if such non-compliance

cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its End User Customers and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services and Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and order of the Federal Communications Commission and orders of the Commission.

5.2 Term of Agreement

5.2.1 This Agreement shall become effective on the date of Commission Approval. This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire on [to be filled in by CD&S].

5.2.2 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 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the term, or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to

the conclusion of the term if CLEC so chooses.

5.3 Proof of Authorization

5.3.1 Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all Applicable Laws and rules and shall be subject to any penalties contained therein.

5.4 Payment

5.4.1 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.

5.4.1.1 Qwest may send bills to CLEC or CLEC may send bills to Qwest, [redacted]erbilled ("Backbill(s)"), as follows:

5.4.1.1.1 Except as provided in Section 5.4.1.1.5 below, for erroneous failure to bill or underbilling of any charges incurred by the billed Party under this Agreement, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120) Days prior to the Backbill Date. For the purposes of this Section 5.4.1.1, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the Billing cycle in which the Billed Party used such service; or

5.4.1.1.2 For failure to bill or underbilling where data exchange with third party Carriers is required, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120)Days prior to the Backbill Date; or

5.4.1.1.3 Where Qwest or CLEC is required by regulatory agencies, arbitrators, courts, or legislatures to implement new pricing structures, Qwest may submit to CLEC, or CLEC may submit to Qwest, up to one hundred twenty (120) Days after the later of the implementation date required in the regulatory action, the date of the final, non-appealable arbitration or order, or the effective date of the legislation or Tariff (each such date hereinafter referred to as a "Governmental Requirement Date"), a Backbill for charges incurred by CLEC, or incurred by Qwest, as a result of, and since the applicable Governmental Requirement Date; or

5.4.1.1.4 Qwest and CLEC will exert commercially reasonable efforts

not to send Backbills from their Billing systems outside the time periods defined in Section 5.4.1.1.1 through 5.4.1.1.3, above. In any event, except as provided in Section 5.4.1.1.5 below, neither CLEC nor Qwest will be liable for charges contained in Backbills that are sent outside the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3.

5.4.1.1.5 The Billing Party may send Backbills outside of the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3, but otherwise subject to the limitations in this Agreement applicable to Billing disputes, for charges incurred by the billed Party where the failure to bill or underbilling is caused solely by the acts, failure or refusal to act, errors or omissions of the billed Party, and the billed Party shall be liable for such Backbilled charges. Where such failure to bill or underbilling is caused in part by the billed Party and in part by the Billing Party, the Parties may agree upon other time periods for Backbilling.

5.4.2 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 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. 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.

5.4.3 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 5.4.4 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 reconnect charge set forth in Exhibit A required to reconnect each resold 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 will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. The 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.

5.4.4 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. To the extent that either Party disputes any charges or monthly billing pursuant to this Section 5.4.4, the Party's withholding of such disputed charges pursuant to this Section 5.4.4 shall not constitute a default under Section 5.13 until such dispute is resolved. Nothing in this Section shall be construed to restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall be subject to the time limits set forth in Section 5.18.5.

5.4.4.1 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.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, 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.

5.4.4.3 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 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or Commission rules.

5.4.5 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 this Section 5.4 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 of undisputed amounts 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 if allowed by the applicable Commission regulations, 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 ([redacted]) calendar [redacted]ys after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission 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.

5.4.7 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 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 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 Customers to make other arrangements for such non-paid services.

5.5 Taxes

5.5.1 Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this A[redacted]ment 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.

5.6 Insurance

5.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding $10[redacted], that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the $10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than $1[redacted] each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than $1,000,000 each occurrence and $2,000,000 general aggregate limit.

5.6.1.3 Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than $1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount [redacted] excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is $11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the Premises or Remote Premises.

5.6.2 Each Party will initially provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificates upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar Days prior written notice of cancellation of,

material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by the other Party; and (4) acknowledge severability of interest/cross liability coverage.

5.7 Force Majeure

5.7.1 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.

5.8 Limitation of Liability

5.8.1 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. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.

5.8.2 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. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

5.8.3 Intentionally Left Blank.

5.8.4 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.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 Intentionally Left Blank.

5.9 Indemnity

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

5.9.1.1 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.

5.9.1.2 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 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.

5.9.1.3 Reserved for Future Use.

5.9.1.4 For purposes of Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS Splitter: "End User Customer" means the DSL provider's End User Customer for claims relating to DSL and the voice service provider's End User Customer for claims relating to voice service.

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 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.

5.9.2.2 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.

5.9.2.3 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.

5.10 Intellectual Property

5.10.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to Telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or

services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than [redacted] CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause End User Customers to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes End User Customer confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective Owners. The Parties shall comply with all Applicable Law governing Marks worldwide

and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

5.11 Warranties

5.11.1 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 [redacted] HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

5.12 Assignment

5.12.1 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.

5.12.2 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) Days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission'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. Qwest will provide notice to CLEC after all required state and federal approvals for the transfer have been issued. 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.

5.12.3 Nothing in this section is intended to restrict CLEC's rights to opt into interconnection agreements under § 252 of the Act.

5.13 Default

5.13.1 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.

5.14 Disclaimer of Agency

5.14.1 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.

5.15 Severability

5.15.1 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.

5.16 Nondisclosure

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market

data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party shall from that time forward, treat such information as Proprietary Information. To the extent permitted by Applicable Law, either Party may disclose to the other proprietary or confidential customer, technical or business information.

5.16.2 Upon request by the disclosing Pearty, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. Each Party shall use the other Party's Proprietary Information only in connection with this Agreement and in accordance with Applicable Law, including but not limited to, 47 U.S.C. § 222. In accordance with Section 222 of the Act, when either Party receives or obtains Proprietary Information from the other Party for purposes of providing any Telecommunications Services, that Party shall use such information only for such purpose, and shall not use such information for its own marketing efforts. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. Violations of these obligations shall subject a Party's employees to disciplinary action up to and including termination of employment. If either Party loses, or makes an unauthorized disclosure of, the other Party's Proprietary Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

b) is or becomes publicly known through no wrongful act of the receiving Party; or

c) is rightfully received from a third Person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such

information; or

d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; or

f) is approved for release by written authorization of the disclosing Party; or

g) is required to be disclosed by the receiving Party pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 Forecasts provided by either Party to the other Party shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to Qwest's legal personnel in connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which CLEC provided it to Qwest under this Agreement, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Upon the specific order of the Commission, Qwest may provide the forecast information that CLEC has made available to Qwest under this Agreement, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to CLEC involved, in order to allow it to prosecute such procedures to their completion.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

5.17 Survival

5.17.1 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.

5.18 Dispute Resolution

5.18.1 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 5.18 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or

to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite [redacted] from a court, before, during or after the pendancy of any arbitration proceeding brought pursuant to this [redacted] once a [redacted] is reached [redacted] arbitrator, such [redacted] shall [redacted].

5.18.2 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 [redacted] designate a [redacted] 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 [redacted] by [redacted] lawyer, but [redacted] representatives, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. [redacted] may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for purposes [redacted] 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.

5.18.3 If the vice-presidential level representatives or the [redacted] representative with authority to make commitments have not reached a resolution of the [redacted] 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 representative or representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request [redacted] ing the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request [redacted]. 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 [redacted] panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the [redacted] current commercial [redacted] or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 5.18. 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, [redacted] 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 [redacted] share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver, Colorado metropolitan area or [redacted] another mutually agreeable location. 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). The Party [redacted] ary of the commission of [redacted] eight (48) hours of the determination to arbitrate.

5.18.3.1 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 5.18.3.1, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 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.

5.18.3.3 Arbitrator's Decision

5.18.3.3.1 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.

5.18.3.3.2 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.

5.18.3.4 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 5.16 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.

5.18.4 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.

5.18.5 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. No Dispute relating to bills submitted by either Party to the other Party may be brought more than one hundred twenty (120) Days after the date of the bill(s) at issue.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 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.

5.18.8 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.

5.19 Controlling Law

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

5.20 Responsibility for Environmental Contamination

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the Work Locations or (ii) the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement or equipment placement activities undertaken by CLEC, which are not in accordance with Technical Publication 77350, that result in the release of respirable asbestos from asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

5.21 Notices

5.21.1 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 below:

Qwest Corporation
Director - Interconnection Compliance
1801 California Street, Suite 2410
Denver, CO 80202
Phone: 303-965-3028
Fax: 303-896-7077
Email: 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:

Covad Communications
Mr. Jim Kirkland
Senior Vice President and Senior Counsel
110 Rio Robles
San Jose, CA 95134-1813
Phone: (408)952-6400
Fax: (408)952-7539
Email: kirkland@covad.com

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 5.21.

5.22 Responsibility of Each Party

5.22.1 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.

5.23 No Third Party Beneficiaries

5.23.1 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.

5.24 Reserved for Future Use

5.24.1 Reserved for Future Use.

5.25 Publicity

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

5.26 Executed in Counterparts

5.26.1 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.

5.27 Compliance

5.27.1 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.

5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

5.29 Cooperation

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, Provisioning and Billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

5.30 Amendments

5.30.1 Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar Days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

5.30.2 Intentionally Left Blank.

5.30.3 The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Agreement may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

5.31 Entire Agreement

5.31.1 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.

5.32 Intentionally Left Blank

5.33 None of the terms and conditions contained herein shall be construed, interpreted or applied to limit or in any way impede the full and complete execution upon, or enforceability of, any separate or independent agreement entered into by the Parties relating to the purchase of services or other network components that are not required to be included under this Agreement or any other agreement that must be filed pursuant to Section 252 of the Act. Any separate or independent agreement entered into by the Parties that creates a filing obligation pursuant to Section 252 must be filed as an interconnection agreement with the appropriate state commissions(s). The Parties enter into this Agreement without waiving any current or future legal rights and without prejudicing any position either Party may take on issues before state or federal regulatory or legislative bodies or courts of competent jurisdiction.

Section 6.0 – RESALE

This agreement does not include resale or resale commingling. In the event CLEC wishes to order resale or resale commingling, the Parties will negotiate an amendment to this agreement, subject to Applicable Law.

Section 7.0 - INTERCONNECTION

CLEC does not intend to order Interconnection; however in the event CLEC wishes to order Interconnection, the Parties will negotiate an appropriate amendment to this Agreement.

Section 8.0 – COLLOCATION

8.1 Description

8.1.1 Collocation allows for the placing of equipment by CLEC at Qwest's Premises, where Technically Feasible and space is legitimately available, that is necessary for accessing Unbundled Network Elements (UNEs), ancillary services or Interconnection. Collocation includes the leasing to CLEC of physical space in Qwest Premises, as well as the resources necessary for the operation and economical use of

collocated equipment, such as the use by CLEC of power; heating, ventilation and air conditioning (HVAC); and cabling in Qwest's Premises. Collocation also allows CLEC to access Interconnection Distribution Frames (ICDF) for the purpose of accessing and combining Unbundled Network Elements and accessing ancillary services. There are currently eight (8) standard types of Collocation available pursuant to this Agreement – Virtual, Caged Physical, Shared Caged Physical, Cageless Physical, Interconnection Distribution Frame, Adjacent Collocation, Common Area Splitter Collocation, and Remote Collocation. Other types of Collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of Collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this Agreement. Nothing in this Agreement shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the Parties or ordered by the state Commission or any other competent authority

8.1.1.1 Virtual Collocation -- A Virtual Collocation arrangement requires CLEC to purchase and deliver to Qwest CLEC's own equipment for Qwest to install, repair, and maintain in Qwest's Premises. CLEC does not have physical access to its virtually collocated equipment in the Qwest Premises.

8.1.1.2 Caged Physical Collocation -- allows CLEC to lease caged floor space for placement of its equipment within Qwest's Premises for the purpose of interconnecting with Qwest Finished Services or accessing Unbundled Network Elements. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within the cage.

8.1.1.3 Cageless Physical Collocation -- is a non-caged area within a Qwest Premises. Qwest shall provide such space in an efficient manner that minimizes the time and costs. In Wire Centers, space will be made available in single frame bay increments. Qwest shall provide space, where available, in existing Qwest line ups, under existing cable racking and ironwork, where there is existing HVAC and proximately available power supplies, subject to the reservation guidelines set forth in Section 8.2.1.16. In Wire Centers, the current minimum square footage is nine (9) square feet per bay, however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly. Space will be provided utilizing industry standard equipment bay configurations in which CLEC can place and maintain its own equipment. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within CLEC's leased Collocation space. CLEC may elect to share its Cageless Collocation space (e.g. sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, provisioning, repairing, maintaining, and billing for equipment, cross-connects, and services in its Collocation space.

8.1.1.4 Shared Caged Physical Collocation -- allows two (2) or more CLECs to share or sublease a single Collocation enclosure. Under Shared Physical Collocation, one (1) CLEC obtains a Caged Physical Collocation arrangement from Qwest pursuant to this Agreement or an approved Interconnection agreement, and another CLEC, pursuant to the terms of its

Agreement or approved Interconnection agreement, may share use of that space, in accordance to terms and conditions of a sublease agreement between the two (2) CLECs. Shared Collocation may also be established through joint Application by CLECs in which Qwest will have a separate Billing relationship with each applicant and will look to each collocating CLEC for payment of its proportionate share of the charges relating to the Collocation space. Qwest will prorate the charge for site conditioning and preparation undertaken by Qwest to construct the Shared Collocation cage or condition the space for Collocation use, regardless of how many Carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating CLEC (and billed directly to each such CLEC) based on the percentage of the total space utilized by that CLEC as per the Collocation Application. Qwest shall not place unreasonable restrictions on CLEC's use of a Collocation cage, such as limiting CLEC's ability to contract with other CLECs to share CLEC's Collocation cage in a sublease-type arrangement. In addition, if two (2) or more CLECs who have Interconnection agreements with Qwest utilize a Shared Collocation arrangement, Qwest shall permit each CLEC to order UNEs to and provision service from that Shared Collocation space, regardless of which CLEC was the original collocator, directly from Qwest. Qwest shall make Shared Collocation space available in single-bay increments or their equivalent.

8.1.1.5 Interconnection Distribution Frame (ICDF) Collocation – is offered for the purpose of facilitating CLEC's combining of Unbundled Network Elements and ancillary services. Under ICDF Collocation, CLEC need not collocate equipment in the Qwest Wire Center. With ICDF Collocation, CLEC will have access to the Qwest Wire Center and an ICDF to combine UNEs and ancillary services. The ICDF connects through tie cables to various points within the Wire Center (e.g., MDF, COSMIC™ or DSX, etc.) providing CLEC with access to UNEs and ancillary services.

8.1.1.5.1 The ICDF is a distribution frame shared by multiple providers. If CLEC desires a dedicated distribution frame for the purpose of facilitating CLEC's combination of UNEs and ancillary services, CLEC may do so through the placement of a CLEC-owned Cross Connection device collocated in the Qwest Wire Center through either Caged or Cageless Physical Collocation.

8.1.1.6 Adjacent Collocation – is available in those instances where space is legitimately exhausted in a particular Qwest Premises to accommodate Physical Collocation. Qwest shall make space available in adjacent controlled environmental vaults, controlled environmental huts, or similar structures to the extent Technically Feasible. Qwest shall permit CLEC to construct or otherwise procure such an adjacent structure on property owned, leased or otherwise controlled by Qwest, subject only to applicable OSHA, EPA, federal, state, and local safety and maintenance requirements. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval, which approval may not be unreasonably withheld or delayed. Qwest must provide power and Physical Collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other Physical Collocation arrangement. Qwest must permit CLEC to place its own equipment, including,

but not limited to, copper cables, coaxial cables, fiber cables, and Telecommunications equipment, in adjacent facilities constructed by Qwest, by CLEC itself, or a third party.

8.1.1.7 Common Area Splitter Collocation – See Section 9.4 for a description.

8.1.1.8 Remote Collocation – allows CLEC to collocate equipment in or adjacent to a Qwest Remote Premises. The terms for Remote Collocation are set forth more fully in Section 8.2.7 and 8.4.6.

8.1.1.8.1 With respect to Cross Connections for access to Subloop elements in multi-tenant environments (MTE), and field connection points (FCP), the provisions concerning Subloop access and intervals are contained in Section 9.3. This type of access and Cross Connection is not Collocation.

8.1.2 Collocation – Available Inventory

8.1.2.1 Collocation Available Inventory provides the terms and conditions under which (1) CLEC can purchase returned Collocation sites and elements ("Qwest Postings") and (2) CLEC may post CLEC controlled sites that are available for a Transfer Of Responsibility ("CLEC Postings"). Available sites will be posted on the "Collocation Classified" web site: http://www.qwest.com/cgi-bin/wholesale/collocation.cgi.

8.1.2.1.1 Qwest Postings: Collocation sites available on the Qwest Available Inventory list may be totally or partially completed before being returned to Qwest inventory. Both caged and cageless sites will be offered on the inventory list. Sites will be offered "AS IS, WHERE IS."

8.1.2.1.2 CLEC Postings: Available sites listed in the "CLEC Postings" section of the Collocation Classifieds are eligible for Transfer to an assuming CLEC with or without working circuits as described in the Collocation Transfer of Responsibility Product offering.

8.1.2.1.3 The "Collocation Classified" web site refers to a tool used by CLEC and Qwest to post listings of available collocation sites. The site contains Qwest Postings and CLEC Postings.

8.1.3 Collocation – Joint Testing

8.1.3.1 Qwest's Joint Testing at the Interconnection Distribution Frame (ICDF) allows a CLEC to request Qwest to participate in Joint Testing of CLEC terminations at the ICDF once CLEC's equipment has been placed in CLEC's Collocation.

8.1.4 Collocation – DC Power Reduction

8.1.4.1 Qwest's Power Reduction Procedure offers CLEC the option to

reduce power on an existing feed. It allows a CLEC to reserve a fuse or breaker position on the power board or Battery Distribution Fuse Bay (BDFB) when reducing a multiple feed to zero. CLEC's payment of the Monthly Power Maintenance charge will provide an option to hold the existing power cabling and fus[redacted]sition for the CLEC's future power augment requests as described in Section 8.2.11.6 below.

8.1.5 Collocation – Cancellation of Collocation Application

8.1.5.1 Cancellation of Collocation Request. CLEC may cancel a Collocation request prior to the completion of the request by Qwest. CLEC does so by submitting a written request by certified mail to the Qwest account manager. CLEC shall be responsible for payment of all costs incurred by Qwest up to the point when the cancellation is received.

8.1.5.1.1 Cancellation is available for all Collocation sites under a particular Billing Authorization Number (BAN) for which the CLEC has NOT received notification of completion from Qwest. A Cancellation will only occur upon request by the canceling CLEC.

8.1.5.2 Cancellation is offered for all types of Collocation.

8.1.5.3 A request for Cancellation is irrevocable once Qwest has accepted the application.

8.1.6 Collocation – D[redacted]ommissioning of Collocation Space

8.1.6.1 Decommissioning refers to the deactivation of a Collocation site occupied by CLEC and removal of CLEC equipment there from.

8.1.6.2 Decommissioning is offered for all types of Collocation.

8.1.6.3 A request for Decommissioning is irrevocable once Qwest accepts the application.

8.1.7 Collocation – Transfer of Responsibility

8.1.7.1 Transfer of Responsibility refers to the transfer of a Collocation site to an assuming CLEC or from a vacating CLEC subject to the conditions set forth herein. A Transfer of Responsibility Collocation site is identified via the vacating CLEC's 11 character CLLI™ code.

8.1.7.2 Transfer of Responsibility is offered for Caged Physical, Cageless Physical, Shared Caged and Virtual Collocation.

8.1.7.3 All other types of Collocation to be transferred will be handled on an Individual Case Basis (ICB) by contacting the appropriate Qwest Wholesale Project Manager (WPM).

8.1.7.4 There are two types of Transfer of Responsibility:

8.1.7.4.1 Transfer of Responsibility without working circuits – there are no active terminations (e.g., Digital Signal Level 0 (DS0), Digital Signal Level 1 (DS1)) for the Collocation site to be transferred.

8.1.7.4.2 Transfer of Responsibility with working circuits – active terminations (e.g., DS0, DS1) are associated with the Collocation site to be transferred.

8.1.7.5 Transfer of Responsibility with working circuits is offered if only administrative changes are required and the transfer does not involve translations activity that need to be processed in conjunction with the transfer. If the CLEC's transfer plans allow for the completion of the Transfer of Responsibility prior to the translation activity, then the transfer request would be permissible within the product offering.

8.1.7.6 A request for Transfer of Responsibility is irrevocable upon one hundred percent (100%) payment by the assuming CLEC of the nonrecurring Collocation transfer charges reflected on the quote.

8.2 Terms and Conditions

8.2.1 Terms and Conditions - All Collocation

8.2.1.1 Qwest shall provide Collocation on rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall provide Collocation in accordance with all applicable federal and state laws.

8.2.1.1.1 In accordance with the FCC rules regarding combinations of Unbundled Network Elements and Commingling of facilities and services which are addressed in Sections 9.1 and 9.23, Qwest will not Commingleservices or Network Elements that are offered to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

~~8.2.1.1.1.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.~~

~~8.2.1.1.1.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.~~

~~8.2.1.2 Collocation of Switching Equipment. CLEC may collocate any equipment that is necessary for Interconnection or access to Unbundled Network Elements.~~

~~8.2.1.2.1 Digital Subscriber Line Access Multiplexers (DSLAMS) always meet this legal standard.~~

~~8.2.1.2.2 Asynchronous Transfer Mode (ATM) or Packet Switching equipment also meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL or VoDSL. Equipment used predominantly to support DSLAMs and ATMs, such as routers and concentrators, as well as testing and network management equipment also meet this legal standard. Before any equipment that includes switching functionality is installed, CLEC must provide a written inventory to Qwest of all switching equipment and how it will be used for Interconnection or access to Unbundled Network Elements. Once CLEC establishes that it will use a certain type of equipment for Interconnection or access to Unbundled Network Elements, Qwest will allow future Collocations of similar equipment without requesting a written justification unless and until Qwest can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Qwest will complete the Collocation within the appropriate interval unless granted relief by the Commission.~~

~~8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Local Exchange Service.~~

~~8.2.1.2.4 Except as provided for in Sections 8.2.1.2.1 through 8.2.1.2.3 above, CLEC may not collocate equipment that is not necessary for Interconnection or access to Unbundled Network Elements.~~

~~8.2.1.3 CLEC must identify what transmission and Cross Connection equipment will be installed and the vendor technical specifications of such equipment so that Qwest may verify the appropriate power, floor loading, heat release, environmental particulate level, HVAC, and tie cables to CLEC-provided Cross Connection device.~~

~~8.2.1.4 Demarcation Points for Unbundled Network Elements (UNEs) and ancillary services. The Demarcation Point for Unbundled Network Elements~~

~~and ancillary services is that physical point where Qwest shall terminate its Unbundled Network Elements and ancillary services for access by CLEC. There are two (2) standard Demarcation Points where Unbundled Network Elements and ancillary services may be delivered to CLEC. CLEC shall specify its choice of standard Demarcation Points for its access to UNEs and ancillary services. One available Demarcation Point is at CLEC-provided Cross Connection equipment in CLEC's Physical or Virtual Collocation space. Alternatively, the Demarcation Point can be at an Interconnection Distribution Frame (ICDF) or may be established at a location jointly agreed to by CLEC and Qwest. To the extent CLEC selects a Demarcation Point outside of its collocated space, CLEC shall provide and Qwest shall install the tie cables from CLEC's collocated equipment to the Demarcation Point. Alternatively, Qwest shall provide and install these tie cables, at CLEC's expense. CLEC shall be provided with access to all test access points on the ICDF or at the first test point in the Qwest network at which CLEC's cables terminate on the ICDF or on the MDF in offices where there is no ICDF.~~

~~8.2.1.5 Qwest will provide a connection between Unbundled Network Elements and ancillary services and a Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). The Demarcation Point shall be:~~

~~a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation space; or~~

~~b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or~~

~~c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF;~~

~~d) at a direct connection point of termination as described in Section 8.3.1.11.2; or~~

~~e) at another Demarcation Point mutually agreed [redacted] by the Parties.~~

~~8.2.1.6 CLEC may purchase Qwest's finished Private Line or Switched Access Services via applicable Tariff terms and conditions. These services will be terminated at the Demarcation Point.~~

~~8.2.1.7 For Caged and Cageless Physical Collocation, Shared Caged Physical Collocation and Virtual Collocation, CLEC must lease space for the placement of CLEC's equipment within Qwest's Premises. Qwest will provide the structure that is necessary in support of Collocation including physical space, a cage (for Caged Physical Collocation), required cabling between equipment and other associated hardware.~~

~~8.2.1.8 All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards. Qwest shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements~~

Qwest imposes on its own equipment located on its Premises. Applicable documents are available via the PCAT.

8.2.1.9 Space Availability Report -- Upon request by CLEC, Qwest will submit to a requesting CLEC within ten (10) calendar Days of CLEC's request, a report for each requested Premises, that includes:

a) available Collocation space in a particular Qwest Premises (including new collocation space as well as available inventory collocation space);

b) number of collocators;

c) any modifications in the use of the space since the last report;

d) measures that Qwest is taking to make additional space available for Collocation;

e) whether sufficient power is available to meet the specific CLEC request;

f) number of CLECs in queue at the Premises, if any;

g) whether the Wire Center is equipped with DS3 capability; and

h) the number and description of Qwest and its Affiliates and CLEC reservations of space.

8.2.1.9.1 A Space Availability Report Charge in Exhibit A will apply to each Space Availability Report requested by CLEC and shall apply on per Premises basis.

8.2.1.9.2 Inventory Report – Remote Premises. The locations of the Remote Premises (e.g., Feeder Distribution Interfaces, "FDI") and the Customer addresses served by each Remote Premises are available to CLECs through the Raw Loop Data Tool. Remote Premises with Digital Loop Carrier and Pair Gain equipment will be provided on the web site in the ICONN database. (ICONN is available through the Qwest web site located at http://www.qwest.com/iconn.). If CLEC is unable to determine the information it seeks regarding Remote Premises after using such database tools, Qwest will provide CLEC with a report that contains the information. The Parties agree that a charge may apply to such report, based on time and material, unless the database information is inaccurate or unusable for the Remote Premises then no charge would apply. Qwest will provide CLEC access to relevant plats, maps, engineering records and other data in accordance with Section 10.8.2.4. In addition, CLEC can request a copy of Qwest's distribution area map associated with the Remote Premises, with a charge for time and material.

8.2.1.10 Collocation is offered on a first-come, first-served basis. Requests for Collocation may be denied due to technical infeasibility and/or the

~~legitimate lack of sufficient space in a Qwest Premises for placement of CLEC's equipment. If Qwest determines that the amount of space requested by CLEC for Caged Physical Collocation is not available, but a lesser amount of space is available, that lesser amount of space will be offered to CLEC for Caged Physical Collocation. Alternatively, CLEC will be offered Cageless Physical Collocation (single frame bay increments), or Virtual Collocation as an alternative to Caged Physical Collocation. In the event the original Collocation request is not available due to lack of sufficient space, and CLEC did not specify an alternative form of Collocation on the original order form, CLEC will be required to submit a new order for CLEC's preferred alternative Collocation arrangement. If CLEC identifies alternate choices for Collocation on its original Collocation request, Qwest will determine the feasibility of the next preferred option in the event CLEC's first choice is not available. To the extent possible, Qwest shall make contiguous space available to CLEC when it seeks to expand its existing Collocation space. Where adjoining space is not available, Qwest will engineer a route for CLEC to provide facilities between the non-adjoining CLEC Collocation spaces as part of the Collocation order. When planning renovations of existing facilities or constructing or leasing new facilities, Qwest shall take into account projected demand for Collocation of equipment. In rendering its determination as to whether space is available to fulfill a CLEC request for new collocation, collocation augment or Available Inventory Collocation, Qwest will review the application to determine whether there is new, vacated, returned or abandoned space, offered "as is" or modified, that may fill the CLEC's requirement.~~

~~8.2.1.10.1 Space Denial Queue – Qwest will maintain a list of denied Collocation requests, in order of the date of receipt (Space Denial Queue), for each Premises where Qwest has exhausted Collocation space. A separate queue will be maintained for each Premises. When space becomes available in a Premises in which a queue has developed, Qwest will inform CLECs in the queue that space for Collocation has become available. If there is insufficient space to accommodate all CLECs in queue, Qwest shall notify CLECs of the availability of space in accordance with CLEC's position in the queue. CLEC must respond within fifteen (15) calendar Days of receipt of notification from Qwest with a new Collocation Application. If CLEC does not provide a Collocation Application within fifteen (15) calendar Days of receipt of notification, or if CLEC responds that it no longer requires the Collocation space, CLEC shall be removed from the queue and the available space shall be offered to the next CLEC in the queue. If the space made available to a CLEC in the queue is not sufficient to meet such CLEC's needs, such CLEC may deny the space that becomes available and keep its position in the queue.~~

~~8.2.1.11 If Qwest denies a request for Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to tour the entire Premises escorted by Qwest personnel within fourteen (14) calendar Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed floor plans for the Premises with CLEC during the tour, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest~~

and CLEC may present their arguments to the Commission. In addition, if after the fact, it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Collocation Application Date for determining RFS unless both Parties agree to a revised date.

8.2.1.12 Qwest shall submit to the Commission, subject to any protective order as the Commission may deem necessary, detailed floor plans or diagrams of any Premises where Qwest claims that Physical Collocation is not practical because of space limitations.

8.2.1.13 Qwest will maintain a publicly available document, posted for viewing on the Internet, (http://www.qwest.com/wholesale/notices/collo/spaceavail.html) indicating all Premises that are full, and will update this document within ten (10) calendar Days of the date at which a Premises runs out of physical space and will update the document within ten (10) calendar Days of the date that space becomes available. In addition, the publicly available document shall include, based on information Qwest develops through the Space Availability Report process, the Reservation Process, or the Feasibility Study Process:

a) Number of CLECs in queue at the Premises, if any;

b) Premises that have not been equipped with DS3 capability;

c) Estimated date for completion of power equipment additions that will lift the restriction of Collocation at the Premises; and

d) Address of the Remote Premises that have been inventoried for Remote Collocation, and if the Remote Premises cannot accommodate Collocation.

Notwithstanding the foregoing, the Qwest web site will list and update within the ten (10) Day period, all Wire Centers that are full, whether or not there has been a CLEC requested Space Availability Report.

8.2.1.14 Reclamation and Reconditioning of Space

8.2.1.14.1 Reclamation of Space -- Reclamation of space is performed by Qwest removing unused, obsolete Qwest equipment to make space for equipment use. The cost of removal of the obsolete unused equipment shall be borne by Qwest.

8.2.1.14.1.1 If CLEC issues a forecast or reservation for Collocation, Qwest shall use its best judgement to determine whether it would be appropriate to reclaim space and or equipment to meet expected Collocation requirements.

8.2.1.14.1.2 If CLEC issues a Collocation Application and unused, obsolete equipment must be removed to provide the requested Collocation, Qwest will affirmatively remove such unused, obsolete equipment as necessary to fulfill the Collocation

request within the applicable interval set forth in section 8.4.

8.2.1.14.2 Reconditioning of Space -- Reconditioning of space is the remodeling of space for equipment use, such as, but not limited to, adding HVAC. The Collocation feasibility study will identify whether reconditioning of space is available and necessary to meet CLEC needs for Collocation. If requested by CLEC, Qwest will assess the cost of such reconditioning, provide a quote to CLEC for the costs, and upon Acceptance of quote by CLEC, perform the necessary work to recondition the space. For reconditioned space, CLEC is responsible for prorated charges based on the amount of space requested.

8.2.1.15 Intentionally left blank.

8.2.1.16 Qwest may retain a limited amount of floor space for its own specific future uses, provided, however, that neither Qwest nor any of its Affiliates may reserve space for future use on terms more favorable than those that apply to CLEC's reservation of Collocation space for CLEC's own future use. Qwest shall relinquish any space held for future use before denying a request for Virtual Collocation on the grounds of space limitations, unless Qwest proves to the Commission that Virtual Collocation at that point is not Technically Feasible.

8.2.1.17 In addition to the requirements of Section 8.2.1.8, all Collocation installation and structures shall meet applicable earthquake safety rating requirements comparable to and to the same extent that Qwest installations and structures meet earthquake rating requirements as contained in the Network Equipment Building System (NEBS) - BR GR-63-CORE document. A list of Qwest Premises and the applicable related earthquake ratings is available for review on the Qwest website at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.2.1.18 Qwest will review the security requirements, issue keys, ID cards and explain the access control processes to CLEC. Applicable documents are contained in the Collocation PCAT and are titled "Qwest Premises Access. The access control process includes but is not limited to the requirement that all CLEC approved personnel are subject to trespass violations if they are found outside of designated areas and approved areas and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) or if they provide access to unauthorized individuals. Likewise, Qwest personnel are subject to trespass violations if they are found to be wrongfully inside CLEC physical caged collocated areas or if they wrongfully provide access to unauthorized individuals.

8.2.1.18.1 Qwest will take all reasonable measures to insure that CLEC equipment collocated in Qwest Premises is afforded physical security at parity with Qwest's similarly situated equipment. Should an event occur within a Qwest Premises that suggests vandalism, theft of, or other tampering with CLEC's equipment, Qwest will, at CLEC's request, vigorously and thoroughly investigate the situation. CLEC shall cooperate in the investigation as requested by Qwest. Qwest will keep CLEC apprised of the progress of any investigations, and report any conclusions

in a timely manner. Qwest will take all reasonable action, consistent with standard Qwest procedures, to deter, to the extent possible, further tampering, vandalism or theft of CLEC equipment.

8.2.1.18.2 Qwest shall have fifteen (15) calendar days to remedy any legitimate safety violation identified by CLEC.

8.2.1.19 Qwest shall provide access to CLEC's collocated equipment, authorized CLEC testing points as described in Section 8.2.1.18 above, existing eyewash stations, bathrooms, and drinking water within the Premises on a twenty-four (24) hours per day, seven (7) Days per week basis for CLEC personnel and its designated agents. Such access shall be permitted without requiring either a security escort of any kind or delaying CLEC's employees entry into Qwest Premises. Qwest shall provide CLEC with access to other basic facilities, including parking, where available on a first-come, first-served basis.

8.2.1.20 CLEC shall be restricted to corridors, stairways, and elevators that provide direct access to CLEC's space, or to the nearest restroom facility from CLEC's designated space and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) and such direct access will be outlined during CLEC's orientation meeting. Access shall not be permitted to any other portion of the building.

8.2.1.21 Nothing herein shall be construed to limit CLEC's ability to obtain more than one form of Collocation (i.e., Virtual, Caged, Shared and Cageless Physical Collocation or [redacted]Collocation) in a single Premises, provided space is available.

8.2.1.22 Termination of Collocation Arrangement.

8.2.1.22.1 Collocation Cancellation. The canceling CLEC may only submit a Cancellation Application if a Collocation quote has been accepted and the initial payment has been paid. The collocation Cancellation may only be initiated if the Collocation job is in progress and not yet complete.

8.2.1.22.1.1 Intentionally Left Blank

8.2.1.22.1.2 Qwest will stop work on a job in progress upon receipt and acceptance by Qwest of a valid Cancellation Application.

8.2.1.22.1.3 Based on when the Cancellation Application is received by Qwest, the completion status of the Collocation job and the determination of the amount paid to Qwest, the following will occur: Qwest will cancel the Collocation job in progress, conduct an inventory, and issue a final revised quote setting forth the amount due or the appropriate adjustments. The revised final quote will be issued within 30 calendar days of Qwest's acceptance of the Cancellation Application.

8.2.1.22.1.4 The Quote Preparation Fee (QPF) for the original Collocation Request must be paid, if the job is cancelled.

8.2.1.22.1.5 Intentionally left blank.

8.2.1.22.1.6 In the event Splitter Collocation with the BAN of the collocation site is to be canceled, such Splitter Collocation will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.1.7 In the event that CLEC has requested Direct CLEC-to-CLEC with the BAN of the collocation site to be cancelled, such Direct CLEC-to-CLEC will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.2 Collocation Decommissioning.

8.2.1.22.2.1 A Collocation site will be considered eligible for decommissioning at any time after the site is built-out and accepted by CLEC.

8.2.1.22.2.2 Qwest requests the vacating CLEC remove equipment prior to submitting a Decommissioning Request. If CLEC does not remove its equipment within thirty (30) calendar days from Qwest's acceptance of the Decommissioning Application, Qwest will send a notification stating the equipment is considered abandoned.

8.2.1.22.2.2.1 Upon receiving notification of abandonment from Qwest, CLEC will have fifteen (15) calendar days to notify Qwest that the equipment is not abandoned and remove the equipment, unless CLEC receives authorization from Qwest to extend the removal date.

8.2.1.22.2.2.2 In the case of Virtual Collocation, Qwest will automatically remove all equipment within ninety (90) calendar days from receipt of the Decommissioning Request.

8.2.1.22.2.2.3.1 Qwest will negotiate with CLEC for the pick up of the equipment.

8.2.1.22.2.2.3.2 For Virtual Collocation, there will be no cost for the removal of CLEC equipment.

8.2.1.22.2.3 Prior to submitting a Decommissioning Request, financial obligations with respect to the collocation site to be decommissioned must be current, with the exception of formally disputed charges.

8.2.1.22.2.3.1 CLEC financial obligations include payment of 100% of all non-recurring quoted charges and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.1.22.2.4 CLEC must disconnect all services from the Collocation site to be decommissioned prior to submitting the Decommissioning Request. Services to be disconnected by CLEC include, but are not limited to: Unbundled Network Elements (UNE), administrative lines, finished services, and line sharing services. Services will need to be disconnected via Access Service Request (ASR)/Local Service Request (LSR). If CLEC does not disconnect services, all charges with respect to such site will continue to accrue and the Decommissioning Application will be rejected.

8.2.1.22.2.4.1 Prior to disconnecting the circuits associated with the Collocation site CLEC must notify, in writing, all current affected End User Customers of the discontinuation of service.

8.2.1.22.2.4.2 CLEC must submit an e-mail notification attached to the Decommissioning Request representing to Qwest that all End User Customers have been properly notified. Failure to include such representation will result in the rejection of the Decommissioning Request.

8.2.1.22.2.5 When submitting a Decommissioning Request for a Collocation site that also has a Direct CLEC-to-CLEC arrangement:

8.2.1.22.2.5.1 Qwest requires that the Direct CLEC-to-CLEC Connection be disconnected at the same time that Qwest performs the decommissioning.

8.2.1.22.2.5.2 The CLEC submitting the Decommissioning Request must:

8.2.1.22.2.5.2.1 Submit a Letter of Authorization (LOA) signed by both the vacating CLEC and partnering CLEC that authorizes Qwest to disconnect the installed Direct CLEC-to-CLEC cabling.

8.2.1.22.2.5.2.2 If a copy of the required Letter of Authorization is not attached to the Decommissioning Request; the application will be rejected as incomplete.

8.2.1.22.2.6 Vacating CLEC will be eligible for a potential refund

for all elements defined as either reusable or reimbursable at the time of decommissioning, if and when acquired by another CLEC. An inventory will be completed by Qwest and furnished to CLEC within ninety (90) calendar days of the Collocation Decommission Application acceptance identifying the reimbursable and re-useable elements and the potential credit. If CLEC, reasonably and in good faith, disputes the total amount of the credit identified, Qwest will promptly evaluate CLEC's dispute and provide an updated credit amount, if it agrees with CLEC, or an explanation for the credit amount, if it disagrees with CLEC.

8.2.1.22.2.6.1 Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to collocation site, i.e. Express Fiber Entrances)These elements will be eligible for a potential refund for up to one (1) year after the date of decommissioning.

8.2.1.22.2.6.2 Reusable elements include Qwest inventoried components (e.g. cage, bays, HVAC, cable racking) to provision the original Collocation site. These elements will be available for a potential refund for up to three (3) years after decommissioning.

8.2.1.22.2.6.3 Upon assumption of the collocation space by an assuming CLEC, Qwest will issue the applicable credit within thirty (30) days to the vacating CLEC.

8.2.1.22.3 Collocation Transfer of Responsibility.

8.2.1.22.3.1 A Collocation site is considered eligible for Transfer of Responsibility only after Qwest completes the site build-out and the vacating CLEC has accepted the site.

8.2.1.22.3.2 The assuming CLEC is required to have an Interconnection Agreement with Qwest prior to the original CLEC submitting a Transfer of Responsibility request. Assuming CLEC will need to amend any previously-existing Interconnection Agreement prior to submitting a Transfer of Responsibility request if it does not contain the Terms and Conditions and rate elements for the services that will be transferred.

8.2.1.22.3.2.1 If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with 11 U.S.C. Section 365.

8.2.1.22.3.3 Both vacating and assuming CLEC's

~~Interconnection Agreements with Qwest must contain finalized terms and conditions associated with the Transfer of Responsibility of a Collocation site and all associated services.~~

~~8.2.1.22.3.4 The Collocation site referenced in the Transfer of Responsibility request generally will be transferred "as is" and in its entirety. This includes, but is not limited to, entrance facilities (from the Point of Interface (POI) utility hole), Splitters, cables, and working circuits (if applicable). Terms and conditions pertaining to the transfer of equipment between the vacating and assuming CLECs will be the responsibility of the vacating and assuming CLECs.~~

~~8.2.1.22.3.5 The assuming CLEC will provide the information Qwest will need to update the following items: Customer Name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), Customer address, phone number, billing and contact information, and contract number. The 11 character CLEC CLLI™ code will remain the same. The Transfer of Responsibility request may not include translations work for associated working circuits.~~

~~8.2.1.22.3.5(a) The Transfer of Responsibility request is available if there are no space requests pending by a CLEC or Qwest that could be satisfied by the space that CLEC seeks to transfer, or if the vacating and assuming CLEC were affiliate corporate entities prior to the proposed transfer, or the transfer is due to a bankruptcy court order. Collocation Transfer of Responsibility is not available if another CLEC and/or Qwest are in waiting queue for available space within the requested Central Office.~~

~~8.2.1.22.3.6 The negotiation of the transfer terms and conditions between the vacating CLEC and the assuming CLEC is the responsibility of those two Parties. Qwest will only manage the database and records transfer.~~

~~8.2.1.22.3.7 Qwest is not responsible for the physical condition of the CLEC's equipment, with the exception of equipment associated with a Virtual Collocation site, as set forth in CLECs' Interconnection Agreement.~~

~~8.2.1.22.3.8 If a CLEC submits a Transfer of Responsibility request for a site that has a related Splitter Collocation associated with it, the Splitter Collocation will be transferred as part of the Transfer of Responsibility.~~

~~8.2.1.22.3.9 Submission of new connect, change, and disconnect orders will be restricted from quote acceptance until the transfer of the working circuits is complete. If new connect,~~

~~change, and disconnect orders need to be submitted between quote acceptance and the completion of the transfer, it will be handled on an ICB and could affect the Ready for Service (RFS) date.~~

~~8.2.1.22.3.10 Submission of Collocation augment orders will be restricted from the time that the Application for Transfer of Responsibility has been validated until the assuming CLEC has accepted the quote for the Transfer of Responsibility.~~

~~8.2.1.22.3.11 All work in progress related to the Collocation site and/or associated working circuits (if applicable) must either be completed or cancelled by vacating CLEC prior to quote acceptance.~~

~~8.2.1.22.3.12 If vacating CLEC does not lease another physical Collocation site at the specified Central Office at the time of the Transfer of Responsibility request, then vacating CLEC must relinquish security access to the building.~~

~~8.2.1.22.3.13 CLEC's obligations:~~

~~8.2.1.22.3.13.1 Prior to submitting a Transfer of Responsibility request, vacating CLEC's financial obligations to Qwest with respect to the Collocation site to be transferred must be met, with the exception of formally disputed charges. The vacating CLEC's financial obligations will include payment of one hundred percent (100%) of all undisputed nonrecurring charges and all undisputed recurring charges for the specific Collocation space that are more than 30 days past due.~~

~~8.2.1.22.3.13.2 Prior to submitting a Transfer of Responsibility request, the assuming CLEC's financial obligations to Qwest must be in good standing.~~

~~8.2.1.22.3.13.3 Prior to submitting a Transfer of Responsibility (without working circuits) request, vacating CLEC must ensure that no live circuits exist at the Collocation site to be transferred.~~

~~8.2.1.22.3.13.4 Prior to transferring a Collocation site with working circuits, vacating CLEC must notify, in writing, all of its current end-users and service customers that utilize its Transfer of Responsibility Collocation site equipment or facilities of the transfer of service to the assuming CLEC, unless vacating CLEC has a waiver from the FCC.~~

8.2.1.22.3.13.5 Vacating and/or assuming CLEC will be responsible for submitting Local Service Request (LSR) orders for Unbundled Loops, Enhanced Extended Loops (EELs), Line Sharing, and Line Splitting. Orders to transfer Local Interconnection Service (LIS) trunks and ancillary services (e.g., SS7, 911, Operator Services) with no translation activity, as well as Dark Fiber, Private Line, and Access circuits, will be processed based on the information provided in the Transfer of Responsibility Spreadsheet found in the Product Prerequisite section of the Collocation General PCAT.

8.2.1.22.3.13.6 Assuming CLEC is responsible for Directory Assistance (DA), Operator Services (OS), Directory Listings (DL), Busy Line Verify/Busy Line Interrupt (BLV/BLI), and 911 changes, if applicable. Any additional SS7 changes will need to be made after the transfer is complete.

8.2.1.22.3.14 Required documentation:

8.2.1.22.3.14.1 Transfer of Responsibility Application Form.

8.2.1.22.3.14.2. Vacating CLEC must send Qwest an e-mail notification (if the transfer includes working circuits), along with the Transfer of Responsibility Application, representing to Qwest that all of its end-users and service customers have been properly notified (refer to section 2.14.4). An exception is if the CLEC has a waiver from the FCC, which would then need to be included with the Transfer of Responsibility request.

8.2.1.22.3.14.3 Vacating and assuming CLEC must provide Qwest, along with the Transfer of Responsibility Application, a signed Qwest Transfer Authorization Agreement. Required information on the Qwest Transfer Authorization Agreement: Qwest Central Office Name, applicable CLLI™ codes, Collocation BAN numbers, and charges (as provided by Qwest) for the transfer of the Collocation site.

8.2.1.22.3.14.4 If there are working circuits associated with the Collocation site to be transferred, the vacating or assuming CLEC must complete the Transfer of Responsibility Spreadsheet and submit it along with the Transfer of Responsibility Application.

8.2.1.22.3.14.5 If Collocation site being transferred has a CLEC-to-CLEC (Direct) arrangement, then the CLEC

~~submitting the Transfer of Responsibility must submit a Letter of Authorization (LOA), along with the Transfer of Responsibility Application, signed by both the vacating CLEC and the CLEC partner authorizing the transfer of the CLEC-to-CLEC service to the assuming CLEC. A separate LOA is required, as a condition precedent, for each separate CLEC-to-CLEC relationship with respect to the facility that is the subject matter of the Transfer of [redacted].~~

~~8.2.1.22.3.14.6 Once Collocation site transfer is complete the vacating CLEC, assuming CLEC, and Qwest are all required to sign the Qwest Services Transfer Agreement.~~

~~8.2.1.23 Qwest shall design and engineer the most efficient route and cable racking for the connection between CLEC's equipment in its collocated spaces to the collocated equipment of another CLEC located in the same Qwest Premises; or to CLEC's own contiguous and non-contiguous Collocation space. The most efficient route generally will be over existing cable racking, to the extent Technically Feasible, but to determine the most efficient route and cable racking, Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection. CLEC shall have access to the designated route and construct such connection, using copper, coax, optical fiber facilities, or any other Technically Feasible method utilizing a vendor of CLEC's own choosing. CLEC may place its own fiber, coax, copper cable, or any other Technically Feasible connecting facilities outside of the actual Physical Collocation space, subject only to reasonable NEBS Level 1 safety limitations using the route specified by Qwest. CLEC may perform such Interconnections at the ICDF, if desired. CLEC may interconnect its network as described herein to any other collocating Carrier, to any collocated Affiliate of CLEC, to any end users premises, and may interconnect CLEC's own collocated space and/or equipment (e.g., CLEC's Physical Collocation and CLEC's Virtual Collocation on the same Premises). CLEC-to-CLEC Connections shall be ordered either as part of an Application for Collocation under Section 8.4, or separately from a Collocation Application in accordance with Section 8.4.7. CLEC-to-CLEC Cross Connections at an ICDF are available, as follows:~~

~~8.2.1.23.1 CLEC-to-CLEC Cross Connections at the ICDF:~~

~~8.2.1.23.1.1 CLEC-to-CLEC Cross Connection (COCC-X) is defined as CLEC's capability to order a Cross Connection from it's Collocation in a Qwest Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Qwest Premises at the ICDF.~~

~~8.2.1.23.1.2 Qwest will provide the capability to combine these separate Collocations through an Interconnection Distribution Frame (ICDF). This is accomplished by the use of CLECs' Connecting Facility Assignment (CFA) terminations~~

residing at an ICDF. Also, ICDF Cross Connections must terminate on the same ICDF at the same service rate level.

8.2.1.23.1.3 If CLEC has its own Dedicated ICDF, CLEC is responsible for ordering tie cables to the common ICDF frame/bay where the other CLEC resides. These tie cables would be ordered through the existing Collocation Application form.

8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration may be required, depending on the distance parameters of the combination.

8.2.1.23.1.5 If two (2) CLECs are involved, one CLEC acts as the "ordering" CLEC. The ordering CLEC identifies both connection CFA's on the ASR. CLEC requests service order activity by using the standard ASR forms. These forms are agreed upon nationally at the OBF (Ordering and Billing Forum). Refer to the DMP (Document Management Platform)/Carrier/Carrier Centers/"A"/"ASOG" for copies of all forms including definitions of the fields. CLEC is responsible for obtaining these forms. Qwest must not reproduce copies for its Customers, as this is a copyright violation. The standard industry forms for CLEC-to-CLEC Cross Connections (COCC-X) are: Access Service Request (ASR), Special Access (SPE) and Additional Circuit Information (ACI).

8.2.1.24 Qwest will provide CLEC the same connection to the network as Qwest uses for provision of services to Qwest end users. The direct connection to Qwest's network is provided to CLEC through direct use of Qwest's existing Cross Connection network. CLEC and Qwest will share the same distributing frames for similar types and speeds of equipment, where Technically Feasible and space permitting.

8.2.1.25 CLEC terminations will be placed on the appropriate Qwest Cross Connection frames using standard engineering principles. CLEC terminations will share frame space with Qwest terminations on Qwest frames without a requirement for an intermediate device.

8.2.1.26 If CLEC disagrees with the selection of the Qwest Cross Connection frame, CLEC may request a tour of the Qwest Premises to determine if Cross Connection frame alternatives exist, and may request use of an alternative frame or an alternative arrangement, such as direct connections from CLEC's Collocation space to the MDF or COSMIC™ frame.

8.2.1.27 Conversions of the various Collocation arrangements (e.g., Virtual to Physical) will be considered on an Individual Case Basis. However, conversions from Virtual Collocation to Cageless Physical Collocation, where the conversion only involves an administrative and Billing change, and the virtually

collocated equipment is located in a space where Cageless Physical Collocation is available, shall be completed in thirty (30) calendar Days. CLEC must pay all associated conversion charges.

8.2.1.27.1 Qwest will maintain and repair the POTS splitter shelf assembly. If CLEC has Physical Caged or Cageless collocation, CLEC will have the option to perform maintenance and repair of the POTS splitter cards. Election of this option requires CLEC to perform all maintenance associated with the splitter cards including troubleshooting, repair and replacement of cards. CLEC will also be responsible to supply and inventory spare cards including adding new cards to provision un-carded splitter shelf slots. Election of splitter cards maintenance requires CLEC to maintain the splitter cards in all of its common area splitter collocation sites in Qwest's 14 state operating territory. If Qwest maintains the splitter cards, CLEC will not be permitted to remove or replace splitter cards and will only be allowed access for the purposes of troubleshooting and assisting in the isolation of reported troubles to the splitter cards or to add additional card capacity to an existing shelf. Splitter shelves and associated cabling will continue to be installed and maintained by Qwest; such charges are detailed in the Line Sharing section of Exhibit A.

8.2.1.28 Qwest shall permit CLEC to construct or subcontract the construction and build-out of Physical Collocation arrangements with CLEC employees or CLEC-selected contractors approved by Qwest. Such CLEC construction of Physical Collocation arrangements are for within CLEC's physical space including the cage, if appropriate, frames, and cable racking, and also outside CLEC's physical space, CLEC may install the tie cables, blocks, and terminations on the ICDF or for CLEC-to-CLEC connections. Qwest approval of CLEC contractors involves security access arrangements and shall not be unreasonably withheld. CLEC is not required to use Qwest or Qwest contracted personnel for the engineering and installation of CLEC's collocated equipment. Approval by Qwest of CLEC's employees, vendors or subcontractors shall be based on the same criteria that Qwest uses in approving contractors for its own purposes. Such approval shall not be unreasonably withheld.

8.2.1.29 Qwest will provide CLEC with written notification at least five (5) business days before any scheduled non-emergency AC or DC power work or power related activities in the collocated facility that may cause a power disruption to CLEC equipment located in the Qwest facility, service outage, or otherwise may disrupt service provided by CLEC to its end user customers. This does not include notification of routine power testing or power installation work not expected to cause a power disruption, service outage or other service disruption. Qwest will use diligent efforts to notify CLEC by the Abnormal Condition Report (ACR) of: (a) general power outages as soon as Qwest becomes aware that an outage is to take place or has occurred and (b) any emergency power disruption that would impact CLEC equipment no later than thirty (30) minutes after such activity commences. Finally, Qwest shall immediately notify CLEC by ACR if an alarm condition exists with respect to the monitoring of power that poses a material risk to the continued operation of CLEC equipment.

8.2.1.30 Qwest will inform CLEC of Central Office construction work of Qwest, its employees or any independent contractors retained by it that could affect CLEC's collocated equipment or services offered by CLEC out of that Central Office. Such construction work is that which takes place in or around CLEC's collocation space, work in the space over or around a CLEC's collocation space (e.g., ladder racking work) or collocated equipment, or any work in adjacent areas that will generate dust, debris or falling objects that might impact CLEC's collocation space or collocated equipment. Daily routine equipment work shall be performed in the Central Office without notification to CLEC.

8.2.1.31 Qwest shall provide continuity testing for new, existing or augmented collocation space at any time the CLEC requests such testing.

8.2.1.32 All equipment or property of CLEC not removed from the Qwest Premises within thirty (30) days after (i) the vacation or abandonment thereof, (ii) the breach of any of the terms of Collocation, or (iii) the termination of this Agreement for any cause whatsoever, shall conclusively be deemed to have been abandoned, transferred, deeded, and assigned by CLEC to Qwest and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest without notice to CLEC and without obligation to account therefor, and CLEC shall reimburse Qwest for all reasonable expenses incurred in connection with the storage or disposition of such equipment or property. The provisions regarding abandoned equipment where CLEC has submitted a Decommissioning Application, are set forth in the Decommissioning Section.

8.2.2 Terms and Conditions - Virtual Collocation

8.2.2.1 Qwest is responsible for installing, maintaining, and repairing virtually collocated equipment for the purpose of Interconnection or to access UNEs, ancillary and Finished Services. When providing Virtual Collocation, Qwest shall install, maintain, and repair collocated equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest.

8.2.2.2 CLEC will not have physical access to the virtually collocated equipment in the Qwest Premises. However, CLEC will have physical access to the Demarcation Point in the Qwest Premises.

8.2.2.3 CLEC will be responsible for obtaining and providing to Qwest administrative codes (e.g., common language codes) for all equipment provided by CLEC and installed in Qwest Premises.

8.2.2.4 CLEC shall ensure that upon receipt of CLEC's virtually collocated equipment by Qwest, all warranties and access to ongoing technical support are passed through to Qwest at CLEC's expense. CLEC shall advise the manufacturer and seller of the virtually collocated equipment that CLEC's equipment will be possessed, installed and maintained by Qwest.

8.2.2.5 CLEC's virtually collocated equipment must comply with Telcordia Network Equipment Building System (NEBS) Level 1 safety standards and any statutory (local, state or federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. CLEC shall provide Qwest interface specifications (e.g., electrical, functional, physical and software) of CLEC's virtually collocated equipment. Such safety and engineering standards shall apply to CLEC equipment only to the degree that they apply to Qwest equipment located in Qwest's Premises.

8.2.2.6 CLEC must specify all software options and associated plug-ins for its virtually collocated equipment.

8.2.2.7 CLEC will be responsible for payment of Qwest's initial direct training charges associated with training Qwest employees for the maintenance, operation and installation of CLEC's virtually collocated equipment when such equipment is different than the standard equipment used by Qwest in that Premises. This includes per diem charges (i.e., expenses based upon effective Qwest labor agreements), travel and lodging incurred by Qwest employees attending a vendor-provided training course.

8.2.2.8 CLEC will be responsible for payment of reasonable charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment in accordance with this Agreement, unless otherwise agreed by the Parties. Notwithstanding the foregoing, CLEC shall not be responsible for any costs or charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment where such costs or charges result from Qwest's fault or negligence.

8.2.3 Terms and Conditions - Caged and Cageless Physical Collocation

8.2.3.1 Qwest shall provide Caged and Cageless Physical Collocation (including Shared Caged Collocation) to CLEC for access to UNEs and ancillary services and Interconnection, except that Qwest may provide Virtual Collocation if Qwest demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act.

8.2.3.2 Physical Collocation is offered in Premises on a space-available, first-come, first-served basis.

8.2.3.3 Reserved for Future Use.

8.2.3.4 Qwest will design the floor space in the most efficient manner possible within each Premises that will constitute CLEC's leased space. CLEC will, in accordance with the other terms and conditions of this Section, have access to its leased space.

8.2.3.5 When Qwest constructs the collocated space, Qwest will ensure that the necessary construction work (e.g., racking, ducting and caging for Caged Physical Collocation) is performed pursuant to Qwest Technical Publication 77350, including all construction of CLEC's leased physical space and the riser

from the vault to the leased physical space.

8.2.3.6 CLEC owns or leases and is responsible for the installation, Maintenance and Repair of its equipment located within the physically collocated space leased from Qwest.

8.2.3.7 Qwest shall permit CLEC to commence installation of its equipment prior to completion of Qwest's work on the remaining Collocation infrastructure, at no additional charge to CLEC. Such "early access" date will be negotiated by Qwest and CLEC on a site specific basis. In order to obtain early access, CLEC must pay eighty (80) percent of the remaining fifty (50) percent of the quoted nonrecurring charges before early access is granted, leaving a holdback of ten (10) percent of the originally quoted nonrecurring charges. All appropriate (i.e. space and cable racking) recurring charges will begin on a negotiated date. The enclosure for Caged Physical Collocation must be complete before early access is granted. Such early access by CLEC shall not interfere with the work remaining to be performed by Qwest.

8.2.3.8 Upon completion of the construction of the Collocation project, Qwest will work cooperatively with CLEC in matters of joint testing and maintenance.

8.2.3.9 If, during installation, Qwest determines CLEC activities or equipment do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work until the situation is remedied. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLECs equipment fails to meet. If such conditions pose an immediate threat to the safety of Qwest employees, interfere with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission, a court of competent jurisdiction or pursuant to Section 5.18 of this Agreement

8.2.3.10 All equipment placed will be subject to random safety audits conducted by Qwest. These audits will determine whether the equipment meets the NEBS Level 1 safety standards required by this Agreement. CLEC will be notified of the results of this audit. If, at any time, pursuant to a random audit or otherwise, Qwest determines that the equipment or the installation does not meet the NEBS standards described in Section 8.2.1.8, CLEC will be responsible for the costs associated with the removal, modification to, or installation of the

equipment to bring it into compliance. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC, and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC's equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If CLEC fails to correct any non-compliance within fifteen (15) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct any non-compliance as soon as reasonably possible, Qwest may pursue immediate resolution by the Commission or a court of competent jurisdiction. If there is an immediate threat to the safety of Qwest employees, or an immediate threat to the physical integrity of the conduit system, cable facilities, or other equipment in the Premises, Qwest may perform such work and/or take such action as is necessary to correct the condition at CLEC's expense.

8.2.3.11 Qwest shall provide basic telephone service with a connection jack at the request of CLEC for Caged and Cageless Physical Collocation. Upon CLEC's request, this service shall be available per standard Qwest business service Provisioning processes and rates. CLEC may have access to telephone service provided by Qwest at any ICDF location where test access may be required. CLEC shall share these lines for circuit testing only and may use them only for such purpose.

8.2.3.12 For Caged Physical Collocation, CLEC's leased floor space will be separated from other CLECs and Qwest space through a cage enclosure. Qwest will construct the cage enclosure or CLEC may choose from Qwest approved contractors or may use another v[redacted]f CLEC's own choosing, subject to Qwest's approval which may not be unreasonably withheld, to [redacted]struct the cage enclosure. All CLEC equipment placed will meet NEBS Level 1 safety standards, and will comply with any local, state, or federal regulatory requir[redacted]nts in effect at the time of equipment installation or that subsequently become effective.

8.2.3.13 For Cageless Physical Collocation in a Wire Center, the minimum square footage is nine (9) square feet per bay (however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly). Requests for multiple bay space will be provided in adjacent bays where possible. CLEC may elect to share its Cageless Collocation space (e.g., sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, Provisioning, repairing, maintaining, and Billing for equipment, cross-connects, and services in its Collocation space. When contiguous space is not available, bays may be commingled with other CLECs' equipment bays. CLEC may request, through the Qwest Space Reclamation Policy, a price quote to rearrange Qwest equipment to provide CLEC with adjacent space.

8.2.4 Transmission Facility Access to Collocation Space

8.2.4.1 For Virtual or Physical Collocation, CLEC may select from four (4) optional methods for facility access to its Collocation space. They include: 1) fiber entrance facilities, 2) purchasing private line or Access Services, 3) Unbundled Network Elements; and 4) microwave entrance facilities. Other Entrance Facility technologies may be requested through the BFR process.

8.2.4.2 Collocation Fiber Entrance Facilities. Qwest offers three (3) Fiber Collocation Entrance Facility options – Standard Fiber Entrance Facility, Cross-Connect Fiber Entrance Facility, and Express Fiber Entrance Facilities. These options apply to Caged and Cageless Physical Collocation and Virtual Collocation. Fiber Entrance Facilities provide the connectivity between CLEC's collocated equipment within the Qwest Wire Center and a Collocation Point of Interconnection (C-POI) outside the Qwest Wire Center where CLEC shall terminate its fiber-optic facility, except the Express Fiber Entrance Facilities.

8.2.4.3 CLEC is responsible for providing its own fiber facilities to the C-POI outside Qwest's Wire Center. Qwest will extend the fiber cable from the C-POI to a Fiber Distribution Panel (FDP). Additional fiber, conduit and associated riser structure will then be provided by Qwest from the FDP to continue the run to CLEC's leased Collocation space (Caged or Cageless Physical Collocation) or CLEC's equipment (Virtual Collocation). The Qwest provided facility from the C-POI to the leased Collocation space (Physical Collocation) or CLEC equipment (Virtual Collocation) shall be considered the Collocation Fiber Entrance Facility. The preceding provisions do not apply to Express Fiber Entrance Facility which provides that CLEC fiber will be pulled to CLEC Collocation equipment without splices or termination on an FDP.

8.2.4.3.1 Standard Fiber Entrance Facility – The standard fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to the C-POI and CLEC's Collocation space in increments of 12 fibers. CLEC's fiber cable is spliced into a Qwest-provided shared fiber entrance cable that consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable shall be terminated on a Fiber Distribution Panel (FDP). A 12 fiber Interconnection cable is placed between CLEC's Collocation space and the FDP. The FDP provides Qwest with test access and a connection point between the transport fiber and CLEC's Interconnection cable.

8.2.4.3.2 Cross-Connect Fiber Entrance Facility – The cross-connect fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to a C-[redacted]OI and multiple locations within the Qwest Wire Center. CLEC's fiber cable is spliced into a Qwest provided shared fiber entrance cable in 12 fiber increments. The Qwest fiber cable consists of six [redacted]ing 12 fibers each for a 72 fib[redacted]. The 72 fiber cable terminates in a fiber distribution panel. This fiber distributi[redacted]s test access and flexibility for Cross Connecti[redacted] to a second fiber distribution panel. Fiber Interconnection cables in 4 and 12 fiber options connect the second fiber distribution panel and equipment locations in the Qwest Wire Center. This option has the ability to serve multiple locations or pieces [redacted]t within the Qwest Wire Center. This option provides maximum flexibility in distributing fibers

within the Wire Center and readily supports Virtual and Cageless Physical Collocation and multiple CLEC locations in the office. This option also supports transitions from one form of Collocation to another.

8.2.4.3.3 Express Fiber Entrance Facility – Qwest will place CLEC-provided fiber cable from the C-POI directly to CLEC's Collocation space. The fiber cable placed in the Wire Center must meet NEBS Level 1 fire rating requirements. If CLEC provided cable does not meet NEBS Level 1 fire rating requirements then a transition splice will occur in the cable vault to insure that the cable within the Qwest Wire Center meets requirements. This option will not be available if there is only one conduit with two (2) unused innerducts (one (1) for emergency restoral and one (1) for a shared entrance cable).

8.2.4.4 [redacted]st will designate the location of the C-POI for Virtual, Caged Physical or Cageless Physical Collocation arrangements.

8.2.4.5 The Collocation entrance facility is assumed to be fiber optic cable and meets industry standards (GR. 20 Core). Metallic sheath cable is not considered a standard Collocation entrance facility. Requests for non-standard entrances will be considered through the BFR process described in the Bona Fide Request Process Section of this Agreement. All costs and Provisioning intervals for non-standard entrances will be developed on an Individual Case Basis.

8.2.4.6 Qwest shall provide an Interconnection point or points, physically accessible by both Qwest and CLEC, at which the fiber optic cable carrying CLEC's circuits can enter Qwest's Wire Center, provided that Qwest shall designate Interconnection points as close as reasonably possible to its Premises. [redacted]st shall offer at least two (2) such Interconnecti[redacted]ts at each Qwest Wire Center when at least two (2) entry points pre-exist and duct space is available. Qwest will not initiate construction of a s[redacted], separate Collocation entrance facility solely for Collocation. If Qwest requires the construction of a new Collocation entrance facility for its own use, then the needs of CLEC will also be taken into consideration.

8.2.4.7 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase Qwest Tariffed or cataloged Private Line or Switched Access Services.

8.2.4.8 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase unbundled dedicated interoffice transport.

8.2.4.9 Microwave Entrance Facilities. Qwest offers Microwave Entrance Facilities on Premises owned or controlled by Qwest, to access CLEC transmission equipment collocated on or inside the Qwest Premises. The rooftop, duct, conduit and riser cable space for Microwave Entrance Facilities is available on a first-come, first-served basis where Technically Feasible. CLEC may place its microwave antenna on a Qwest owned or controlled existing tower, building or supporting structure, where space is available, or CLEC may construct such tower or supporting structure, if necessary and if there is sufficient

~~space and the building structure is not jeopardized. Such microwave equipment will be limited to that which is necessary for Interconnection to Qwest's network or access to Qwest's Unbundled Network Elements.~~

~~8.2.4.9.1 Qwest will jointly coordinate and plan with CLEC for the placement and location of the microwave equipment on a non-penetrating roof mount, or an existing tower or supporting structure on the exterior of a Qwest Premises. The method of placing CLEC microwave equipment shall be mutually agreed upon. Tower space or building roof space that allows for unobstructed line-of-sight will be provided by Qwest where Technically Feasible. A weather proof cable entry hatch or an existing wave-guide hatch or other suitable entrance into the building is required. If space is available, CLEC may use an existing cable entry hatch or a new cable entry hatch will need to be constructed. The cable entry hatch charges are on a per Port used basis.~~

~~8.2.4.9.2 CLEC can perform the determination of line-of-sight feasibility or CLEC can request Qwest perform the line-of-sight feasibility. CLEC will submit a microwave Entrance Facility application for each antenna arrangement and each Qwest Premises requested. A site visit will include appropriate Qwest and CLEC personnel for the purpose of determining whether an unobstructed line-of-sight is Technically Feasible and structural analysis of the building. The site visit will take place within fifteen (15) calendar after receipt by Qwest of the CLEC's microwave Entrance Facility application, unless the CLEC requests a later date. If CLEC performs the structural analysis and line-of-sight feasibility, it shall submit a response regarding its analysis to Qwest and Qwest will only bill for an escort fee per site requested. If either Party disputes the technical feasibility, space availability, or other conditions proposed by Qwest, the Parties will promptly petition the Commission for resolution of the dispute.~~

~~8.2.4.9.3 If Qwest performs the feasibility analysis, a response will be provided to CLEC within thirty (30) calendar Days of the site visit with the structural analysis and line-of-sight feasibility. If the site visit determines that unobstructed line-of-sight and placement of the microwave equipment are not Technically Feasible, CLEC will be billed only for the site visit. If the site visit determines that the placement of microwave equipment is Technically Feasible, Qwest will provide a quote for the microwave Entrance Facility with the quote for the submitted Collocation Application. If CLEC does not submit a Collocation Application for the Premises within thirty (30) Days following the completion of the line-of-sight and structural feasibility analysis or CLEC subsequently cancels the Collocation Application, CLEC will be billed for the site visit.~~

~~8.2.4.9.4 CLEC must obtain all necessary variances, licenses, approvals and authorizations from governmental agencies with jurisdiction, such as use permits, building permits, FCC licenses and FAA approval, if required, to construct, operate and maintain the CLEC facilities. If Qwest's assistance is required in order for CLEC to obtain necessary licenses or permits, Qwest will not unreasonably withhold such~~

assistance. CLEC will pay all expenses associated with that assistance on a time and materials basis.

8.2.4.9.5 CLEC is responsible for the engineering, purchasing, supplying, installing, maintaining, repairing and servicing of its microwave specific equipment. CLEC shall provide the cable from the Radio Frequency (RF) equipment to the building cable entry hatch. However, CLEC is not permitted to penetrate the building exterior wall or roof. Qwest will do all building penetration and Qwest will install the coaxial cable or wave-guide/transmission facility from the cable entry hatch to CLEC's Collocation space within the interval as set forth in Section 8.4 for the type of Collocation requested by CLEC. CLEC facilities shall not physically, electronically, or inductively interfere with the existing Qwest or other CLECs' equipment. Each transmitter individually and all transmitters collectively, for Qwest, Qwest Affiliates and CLECs, at a given location shall comply with appropriate federal, state, and local regulations governing the safe levels of RF radiation.

8.2.4.9.6 Upon expiration or termination, CLEC shall return the antenna space to its original condition. CLEC shall repair any damages caused by removal of its microwave equipment, or by the use, operation or placement of its microwave equipment on the Premises. If CLEC performs the foregoing, Qwest shall impose no charges on CLEC for such work. In the event the CLEC fails to remove its microwave equipment, CLEC shall be liable to Qwest for all reasonable costs of removal, restoration of the property, storage, and transportation to CLEC of such microwave equipment incurred by Qwest.

8.2.5 Terms and Conditions – ICDF Collocation

8.2.5.1 Interconnection Distribution Frame (ICDF) Collocation is available if CLEC has not obtained Caged or Cageless Physical Collocation, but requires access to the Qwest Wire Center for combining Unbundled Network Elements, Finished Services, including local Interconnection trunks, and ancillary services. ICDF Collocation provides CLEC with access to the Interconnection Distribution Frame, where Qwest will terminate the Unbundled Network Elements, Finished Service and ancillary services ordered by CLEC. CLEC may combine such services by running a jumper on the ICDF, in accordance with Section 8.2.5.3. CLEC access to the ICDF will be on the same terms and conditions described for other types of Collocation in this Section. There are multiple frames that could be used for ICDF Collocation including, but not limited to, the following: a) existing Interconnection Distribution Frame (ICDF); b) existing DSX panels for DS-1 and DS-3 services; c) new Interconnection Distribution Frame; d) existing toll frame; e) fiber distribution panel; and, f) existing intermediate frame. CLEC requested combinations at the ICDF must be in accordance with Sections 9.1 and 9.23. Qwest provided combinations in accordance with Sections 9.1 and 9.23.3.7 are not provided by Qwest in CLEC's ICDF Collocation space.

8.2.5.2 All Qwest terminations on the Interconnection Distribution Frame

will be given a frame address. Qwest will establish and maintain frame address records for Qwest terminations. Qwest will maintain assignment records for each Unbundled Network Element and ancillary service ordered by CLEC that is terminated on the Interconnection Distribution Frame. Qwest will provide CLEC with the frame assignments for each Unbundled Network Element and ancillary service terminated on the ICDF.

8.2.5.3 CLEC will be required to place the jumper connection between frame addresses to connect Unbundled Loops, ancillary and Finished Services. CLEC will be required to maintain the records for CLEC-provided jumpers.

8.2.5.4 Reserved for Future Use.

8.2.6 Terms and Conditions - Adjacent Collocation and Adjacent Remote Collocation

8.2.6.1 CLEC may request Adjacent Collocation and Adjacent Remote Collocation in an existing Qwest controlled environmental vault, controlled environmental hut, or similar structures on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises, to the extent Technically Feasible. Adjacent Collocation in an existing structure shall be ordered as Physical Collocation.

8.2.6.1.1 Alternatively, if no such structure described above exists, CLEC may choose to construct or procure a structure to place on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval. Qwest will review the building and property plans for the new structure within thirty (30) calendar Days.

8.2.6.1.2 CLEC shall own such structure, subject to a reasonable ground space lease. If CLEC terminates its Adjacent Collocation space, Qwest shall have the right of first refusal to such structure under terms to be mutually agreed upon by the Parties. In the event Qwest declines to take the structure or terms cannot be agreed upon, CLEC may transfer such structure to another CLEC for use for Interconnection and or access to UNEs. Transfer to another CLEC shall be subject to Qwest's approval, which approval shall not be unreasonably withheld. If no transfer of ownership occurs, CLEC is responsible for removal of the structure and returning the property to its original condition.

8.2.6.2 Qwest shall provide written authorization for use of Qwest's property to CLEC or CLEC's contractor, to the extent that Qwest owns or controls such property, to assist CLEC in obtaining any building permits or other approvals that may be necessary to construct the facility. CLEC is responsible for construction of the structure or procurement of an existing structure. CLEC is responsible for meeting all state and municipal building and zoning requirements.

8.2.6.3 Qwest will provide power and all other Physical Collocation

services and facilities.

8.2.6.4 Upon request, Qwest will evaluate all parking or other spaces outside the Qwest Premises on Qwest property that can be reasonably made available to CLEC for Adjacent Collocation. Qwest will retain a reasonable amount of parking space for Qwest technicians or other vehicles, including CLEC's. Space below a hoisting area will not be relinquished for Collocation space.

8.2.6.5 If Physical Collocation space becomes available in a previously exhausted Qwest structure, Qwest shall not require CLEC to move, or prohibit CLEC from moving its Collocation arrangement into the Qwest structure. Instead, Qwest shall continue to allow CLEC to collocate in any adjacent controlled environmental vault, controlled environmental hut, or similar structure.

8.2.7 Terms and Conditions – Remote Collocation

8.2.7.1 Remote Collocation allows CLEC to collocate in a Qwest Remote Premises that is located remotely from a Qwest Wire Center building property. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

8.2.7.2 The terms and conditions for Virtual or Physical Collocation shall apply to Remote Collocation as appropriate to the specific Remote Premises structure and subject to technical feasibility (e.g., Section 8.2.3.11 and Section 8.2.4 would not apply), or if appropriate, Adjacent Collocation as set forth above. Space will be offered in increments appropriate to the Remote Premises structure (i.e., shelf, relay rack, etc.).

8.2.8 Terms and Conditions – Available Inventory

8.2.8.1 The offering of a Collocation site from the Qwest Available Inventory list shall be limited to the offering of a specified site in Qwest's control to CLEC that either: (i) has a commission-approved Interconnection Agreement covering the specific type of Collocation to be obtained or (ii) is currently in negotiations with Qwest for such an Agreement. CLEC obtaining a Collocation site from the Qwest Available Inventory must not have any undisputed overdue financial obligations (i.e. more than thirty (30) days past due) owed to Qwest. Formally disputed charges will be treated as an exception.

8.2.8.2 The assuming CLEC for all Qwest posted sites will be required to pay a minimum of six (6) months of Space Construction and Floor Space Lease recurring charges should the CLEC terminate its rights of occupancy prior to six (6) months of occupancy.

8.2.8.3 Standard Sites

8.2.8.3.1 Qwest Postings: Collocation sites available in the Qwest Postings may be partially or fully completed before being returned to

Qwest inventory. Both caged and cageless sites will be offered in the Qwest Collocation Postings section. Sites will be offered under the terms and conditions set forth in CLEC's Interconnection Agreement. In its Collocation application for such a site, CLEC may request to add to or complete the Collocation site to the CLEC's specifications. In CLEC Collocation application for such a site, CLEC may also request that Qwest reduce cable terminations. CLEC will be charged for the removal of such cable terminations.

8.2.8.3.2 All services that were previously connected to the Collocation (e.g. Unbundled Network Elements, CLEC to CLEC connections, administrative lines, Finished Services, Line Splitting and Line Sharing, etc.) will be disconnected before the site is listed on the "Qwest Postings" section of the Collocation Classifieds. Power, Grounding for caged sites and Entrance Facilities are also disconnected prior to a site being posted. Qwest shall inventory all Reusable and Reimbursable Elements and list them in the Qwest Postings. Shared resources including HVAC and racking will not be listed in the Qwest postings. When other Collocation space is not available, Qwest reserves the right to remove Qwest postings from the Available Inventory web site to satisfy CLEC Applications for Collocation, for Qwest space requirement needs, or for CLEC Collocation augments to existing sites. Qwest shall not use the Qwest Postings as a basis to claim exhaust (space, power, terminations, etc.) in any Qwest Premises.

8.2.8.3.3 Qwest will provide CLEC with a feasibility study within ten (10) Calendar Days after receipt of the application. Qwest will provide CLEC with a quote within twenty-five (25) Calendar Days after providing the feasibility study. Price quotes will be honored for thirty (30) Calendar Days from the date the quote is provided and the associated space is reserved during such period, pending CLEC's acceptance of the quoted charges.

8.2.8.3.4 CLEC must pay the initial fifty percent (50%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receiving the quote. If the payment is not received by Qwest within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4 Special Sites:

8.2.8.4.1 Qwest may elect to offer Collocation sites returned through Chapter 7 bankruptcy or abandonment. These sites "Special Sites" will not be decommissioned and may be offered with Electronic Equipment (Equipment), Equipment Racks, Cages, DC power, Grounding and Terminations. These Special Sites will be posted in the Qwest Available Inventory posting under "Unverified sites with equipment".

8.2.8.4.2 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Calendar Days after receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receipt of the quote. If Qwest does not receive the payment within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4.3 Upon receipt of the full payment for the quoted nonrecurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that the CLEC requires Qwest to install Augments (additional services) to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.

8.2.8.4.4 For Special Sites; IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT QWEST IS SELLING EQUIPMENT THAT IS CLASSIFIED AS "USED" OR "SURPLUS" EQUIPMENT ON AN "AS IS, WHERE IS" BASIS. CLEC UNDERSTANDS AND AGREES THAT ALL EQUIPMENT IS, CONVEYED (I) IN AN "AS IS" "WHERE IS" CONDITION WITH ALL FAULTS, LATENT AND PATENT AND (II) ALL EQUIPMENT IS CONVEYED WITHOUT ANY QWEST WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED BY A PARTICULAR COURSE OF DEALING.

8.2.8.4.4.1 All software and software license agreements for any Equipment conveyed as part of a Special Site shall be the sole responsibility of the assuming CLEC.

8.2.8.4.4.2 CLEC hereby warrants and certifies that its handling, scrap, destruction or other disposition of any Equipment conveyed as part of a Special Site shall conform and comply with the following.

a) All applicable federal, state, county and municipal laws, statutes, regulations, and codes regulating hazardous wastes, materials or substances, including, but not limited to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.); the Resource Conservation and

Recovery Act (RCRA) (42 U.S.C. 6901 et seq.); Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 et seq.); Occupational Safety and Health Act (OSHA) (29 U.S.C. 651 et seq.); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq.); and any successor acts thereto or the regulations promulgated thereunder and any applicable International laws and regulations;

b) Environmental rules and regulations governing environmental impacts associated with the production and or recovery of precious metals, scrap metals and material processing and or residual material disposition whether hazardous or non-hazardous as defined by governing laws and or applicable laws and are the sole responsibility of the CLEC; and

c)All hazardous waste, hazardous material, hazardous substances or solid waste manifests relating to the shipping, receiving, disposal or final disposition of the Equipment shall not reference, list or otherwise indicate on the manifest that Qwest is the generator, arranger, transporter, owner or otherwise the party that owns, controls, manages, handles, stores, generates or otherwise uses the Equipment. On any required hazardous waste, hazardous material, hazardous substances or solid waste manifest relating to the shipping, receiving, disposal or final disposition of the Equipment, the CLEC shall be listed as the generator, arranger and owner of the materials.

d) The CLEC shall comply with the applicable Qwest Technical Publications as defined in the CLEC's Interconnection Agreement when removing any equipment from a Special Site.

8.2.8.5 CLEC Posting: Sites listed in the "CLEC Postings" section are eligible for Transfer Of Responsibility to an assuming CLEC. Sites may be offered with or without working circuits. The terms and conditions for the Transfer of Responsibility shall be in accordance with the Transfer of Responsibility Product offering.

8.2.9 Terms and Conditions – Joint Testing

8.2.9.1 Qwest will only test between the CLEC Collocation and the ICDF (or the first test point, i.e., the Demarcation Point between Qwest's and CLEC's network) once CLEC equipment is in place. Joint Testing is available for those terminations that are affected on a New/Change/Augment Collocation Application or which are in service for an existing collocation arrangement.

8.2.9.2 For New/Change/Augment collocation applications, Joint Testing

~~will be available from the time of your installation and for a period up to sixty (60) calendar Days past the actual scheduled Ready For Service (RFS) date. Joint Testing will be completed within ninety (90) calendar days of the actual RFS date. CLEC must specify the type of test to be performed with Qwest presence on the Joint Testing at the ICDF Application or the New/Change/Augment Collocation Application form. Joint testing also will be available for existing collocation arrangements if CLEC provides a good faith reasonable demonstrating that joint testing is necessary. Testing on an existing collocation arrangement will be requested on a Joint Testing at ICDF application.~~

~~8.2.9.3 CLEC must provide contact information on the application for Qwest to arrange the Joint Testing date. Collocation application forms are located in the Ordering section of Collocation General Information at: http://www.qwest.com/wholesale/pcat/collocation.html#order.~~

~~8.2.9.4 Qwest will acknowledge acceptance of your application within ten (10) calendar days of an accepted New/Change/or Augment Collocation Application or Joint Testing at the ICDF Application.~~

~~8.2.9.5 CLEC will be required to provide the installation administration (e.g. Methods of Procedures (MOPs) and Implementation Notifications (CNs)) in a manner that is consistent with other policies for all Qwest Collocation product offerings. Refer to Qwest's Technical Publication 77350 located in the Product Description section of Collocation General information at: http://www.qwest.com/wholesale/pcat/collocation.html#prod for procedures.~~

~~8.2.9.6 CLEC will provide test gear for CLEC technicians and Qwest will provide test gear for Qwest's technicians to operate. Qwest employees will assist CLEC in conducting continuity tests on terminations at the ICDF. Qwest employees will not operate CLEC test gear~~

~~8.2.9.7 If an error rate of more than 2% is determined to exist on the terminations identified for testing and being tested during the scheduled joint testing period, and the errors are identified as Qwest errors, Qwest will not charge for this Joint Testing ordered by CLEC. However, if there are less than 2% errors found or if the errors are facility errors and CLEC provided the facilities, Qwest will charge for the Joint Testing (i.e. one (1) pair is counted as two (2) terminations and errors are counted as one (1) termination basis).~~

~~8.2.9.8 If CLEC wants additional testing not identified on CLEC application, CLEC will need to complete a new Joint Testing at the ICDF Application.~~

~~8.2.9.9 If CLEC requests charges be waived because Qwest errors are found during testing, Qwest may request access to CLEC Collocation space to identify if the facility cabling sequence is correct, per applicable standards. CLEC agreement to such access will not be unreasonably withheld and will be given in all circumstances in which a waiver of charges is requested. CLEC may view Qwest facility cabling at the ICDF to identify cable sequence. If the errors are validated as Qwest errors, the charges are waived. Otherwise, Qwest will charge~~

for the test.

8.2.9.10 If errors are found during the Joint Test, Qwest will only provide tools and materials for the repair of Qwest-network faults. If errors are facility errors and CLEC provided the facilities, CLEC will be responsible for the replacement or repair of those facilities.

8.2.9.11 Qwest will only provide tools and materials for the repair of Qwest-network faults.

8.2.10 Terms and Conditions – Security

8.2.10.1 Intentionally Left blank.

8.2.10.2 Intentionally Left blank.

8.2.10.3 CLEC shall have the right to perform equipment modifications within an existing Caged Physical Collocation arrangement without first obtaining permission from Qwest, provided that such modifications can be accomplished in a way as to isolate the Qwest network from any potential harm. Equipment modifications to all other existing Collocations will require a Method of Procedure (MOP) per Qwest Technical Publication 77350.

8.2.10.4 Qwest shall provide to CLEC a list of CLEC employees and the designated Premises to which they have access on a monthly basis to confirm appropriate billing and access information for security purposes.

8.2.11 Terms and Conditions – DC Power Reduction

8.2.11.1 If a CLEC wishes to reduce its amount of power and will not require it for future use, Qwest will process the request as a standard augment order and not as a DC Power Reduction request.

8.2.11.2 Applications for DC Power Reduction may be submitted only for collocation sites that have been previously accepted by the CLEC. Power reductions to sites under construction or for sites not previously accepted by the CLEC, will follow standard change or augment procedures and rates.

8.2.11.3 Before submitting a power reduction application, CLEC's financial obligations with respect to the collocation site must be current, with the exception of formally disputed charges. CLEC's financial obligations include payment of one hundred percent (100%) of all undisputed non-recurring quoted charges for the collocation site and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.11.4 Collocation applications for new, change and augment requests

must be submitted t[redacted] the form provided by Qwest at www.qwest.co./wholesale/pcat/collocation.html.apform. The CPMC will notify the CLEC of any deficiencies in the application within ten (10) days of receipt. A nonrefundable Quote Preparation Fee (QPF) in the amount reflected in Exhibit A of this Agreement must be submitted with the application.

8.2.11.5 A walk through will be performed prior to quote preparation to determine the amount of work required to perform the power reduction.

8.2.11.6 When eliminating a secondary feed, CLEC may purchase the option to have the power cable and fuse position held for its future use. CLEC will be required to pay a monthly Power Maintenance Charge until such time as CLEC notifies Qwest that it wishes either to reenergize the feed or to discontinue the option. In instances where a shortage of fuse position is imminent, Qwest reserves the right to notify CLEC of the need to exercise its option or relinquish the fuse position to Qwest. Upon receipt of such notification, CLEC will have the option of energizing the secondary feed to at least 20 amps or returning the fuse position to Qwest within thirty (30) days of receipt of the notification.

8.2.11.7 CLEC assumes all res[redacted]sibility for outages and/or impacts to CLEC-provided service and equipment due to the reduction in DC Power. CLEC shall be notified at least 48 hours in advance of the time and date of the power reduction and given the opportunity to observe the actual reduction procedure from within the Central Office spaces to which CLEC normally has access.

8.2.11.8 Restoration of the desired power is contingent upon desired power and fuse position availability.

8.3 Rate Elements

Rate elements for Collocation are included in Exhibit A.

8.3.1 Rate Elements - All Collocation

8.3.1.1 Qwest will recover Collocation costs through both recurring and nonrecurring charges. The charges are determined by the scope of work to be performed based on the information provided by CLEC on the Collocation Order Form. A quote is then developed by Qwest for the work to be performed.

8.3.1.2 The following elements as specified in Exhibit A of this Agreement are used to develop a price quote in support of Collocation:

8.3.1.3 Quote Preparation Fee. A non-refundable charge for the work required to verify space and develop a price quote for the total costs to CLEC for its Collocation request. Qwest will assess a QPF when it delivers a Collocation quote to CLEC. Once the quote is delivered, the QPF becomes a non-refundable charge for the work required to verify the space and develop a price quote for the total costs to CLEC for its Collocation request. The QPF shall also apply to all new Collocations and Collocation Cabling Augments. Upon

~~completion of a new Caged or Cageless Collocation, the QPF shall be credited against the final non-recurring charges for the Collocation.~~

~~8.3.1.3.1 A Collocation Cable Augment QPF is specified in Exhibit A. A Collocation Cable Augment is an augment to existing termination cables which are the transmission facilities purchased by CLEC for the purpose of accessing UNEs within the collocated Central Office premises. In order to qualify as a cable augment, the following criteria must be satisfied:~~

- ~~Augment terminations must originate and terminate in the same Central Office.~~
- ~~Augment terminations must originate from the same collocation site location as the existing terminations.~~
- ~~Augment terminations must terminate on the same frame as existing terminations.~~
- ~~Augment terminations must be of the same transmission facility type as existing terminations (i.e., copper or fiber).~~
- ~~Augment terminations must be of the same signal level as existing terminations (DS0, DS1, DS3, fiber).~~

~~The Collocation Cable Augment QPF is a non-recurring rate element and separate from other non-recurring costs associated with the quote. Because this rate element is not part of a space construction fee, it will not be credited to the other non-recurring costs upon acceptance of the quote. The Collocation Cable Augment QPF rate element shall be the only rate element under which Qwest will recover non-recurring costs associated with the development of the Collocation Cable Augment quote.~~

~~8.3.1.3.2 Intentionally Left blank.~~

~~8.3.1.3.3 Intentionally Left blank.~~

~~8.3.1.3.4 Where CLEC disputes the accuracy or validity of a quote provided by Qwest, and Qwest agrees that the quote was incorrect, Qwest shall revise the quote and promptly provide it to CLEC.~~

~~8.3.1.3.5 Where CLEC disputes in good faith the accuracy or validity of a quote provided by Qwest, CLEC shall not be required to pay any charges incurred by Qwest prior to delivery of the quote if the CLEC determines that it will not accept the quote.~~

~~8.3.1.4 Collocation Entrance Facility Charge. Provides for the fiber optic cable (in increments of 12 fibers) from the C-POI utilizing Qwest owned, conventional single mode type of fiber optic cable to the collocated equipment~~

~~(for Virtual Collocation) or to the leased space (for Caged or Cageless Physical Collocation). The Collocation entrance facility includes manhole, conduit/innerduct, placement of conduit/innerduct, fiber cable, fiber placement, splice case, a splice frame, fiber distribution panel, and relay rack. Charges apply per fiber pair. Express Fiber Entrance Facility does not include fiber cable, splice case, a splice frame or fiber distribution panel. Microwave Entrance Facility charges are addressed in 8.3.1.17.~~

~~8.3.1.5 Cable Splicing Charge. Represents the labor and equipment to perform a subsequent splice to CLEC provided fiber optic cable after the initial installation splice. Includes per-setup and per-fiber-spliced rate elements.~~

~~8.3.1.6 -48 Volt DC Power Usage Charge. Provides -48 volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Usage Charge contains two components: (i) the capacity of the power plant available for CLEC's use, and (ii) the DC power used. The -48 Volt DC Power Usage Charge is specified in Exhibit A and applies to the quantity of -48 volt capacity specified by CLEC in its order. The minimum initial DC power order is twenty (20) amps. CLEC may, thereafter, augment or reduce DC power in increments of one (1) amp beyond the initial twenty (20) amp minimum, but CLEC may not reduce DC power below the twenty (20) amp minimum.~~

~~8.3.1.7 AC Power Feed. Recovers the cost of providing for the engineering and installation of wire, conduit and support, breakers and miscellaneous electrical equipment necessary to provide the AC power, with generator backup, to CLEC's space. The AC Power feed is optional. The AC Power Feed is available with single or triple phase options. The AC Power Feed is rated on a per foot and per ampere basis.~~

~~8.3.1.8 Inspector Labor Charge. Provides for Qwest qualified personnel, acting as an inspector, when CLEC requires access to the C-POI after the initial installation. A call-out of an inspector after business hours is subject to a minimum charge of three hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' Qwest employee (or contract employee) is required to go 'on-shift' on behalf of CLEC.~~

~~8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2 (EICT). Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".~~

~~8.3.1.10 Interconnection Tie Pairs (ITP) are described in the UNE Section, and apply for each Unbundled Network Element, ancillary service or Interconnection service delivered to CLEC. The ITP provides the connection~~

between the Unbundled Network Element, ancillary service or Interconnection service and the Demarcation Point. Qwest will charge CLEC for ITPs pursuant to Exhibit A.

8.3.1.11 Collocation Terminations. Terminations are purchased by CLEC for the purpose of accessing Unbundled Network Elements. These terminations may be requested in Shared Access and Direct Connection Configurations.

8.3.1.11.1 Shared Access

8.3.1.11.1.1 In a Shared Access configuration, there are multiple frames that could be designated as an ICDF or appropriate Demarcation Point including, but not limited to, the following:

a) Existing Interconnection Distributing Frame (ICDF)

b) Existing DSX Panels for DS1 and DS3 services

c) New Interconnection Distributing Frame

d) Existing Toll Frame

e) Fiber Distribution Panel

f) Existing Intermediate Frame

8.3.1.11.1.2 The ICDF is the test access point. It would not be uncommon to find multiple service providers, including Qwest, on the ICDF at any one time. This element includes Qwest's provided termination blocks, installation labor between CLEC collocated equipment and the appropriate cross connect device. Cabling is also required and may be provided by CLEC or at their request, Qwest will provide cabling at an additional charge. When Qwest provides the cabling, Collocation Block Termination rates will apply as contained in Exhibit A of this Agreement. When CLEC provides the cabling, Collocation Termination rates, on a per termination basis, will apply as contained in Exhibit A of this Agreement. When CLEC provides and installs the tie cables, blocks and terminations on the ICDF, no Collocation Termination rates will apply.

8.3.1.11.2 Direct Connection

8.3.1.11.2.1 Direct Connection provides an uninterrupted path from the Collocation space to an existing frame. This option will guarantee that there will not be an ICDF. The connection will be designed from the Collocation space to the same frame that Qwest uses to connect to that specific service. For example, if CLEC wants to connect directly from their Collocation space to a 911 router, the infrastructure for the 911 trunks will terminate in a

~~DS1 bay location with the 911-router circuits. There are several options for the location of the Demarcation Point. CLEC will select their desired option via the supplemental Direct Connection (DC-POT) With Collocation Form DS0000000. If CLEC chooses a demarcation inside the Collocation space, the collocator should order and install the termination equipment itself. Demarcation equipment must be noted on the order form so that a CLLI code and unique tie cable assignments can be generated for systems flow through. If CLEC chooses a demarcation outside its Collocation space, Qwest will maintain and inventory this device. Direct terminations may be ordered where frame space is available. If frame space is exhausted the terminations may need to be made at another frame. Upon completion of the pre-Provisioning of the Direct Connection, CLEC will receive an Alternate Point of Termination (APOT) form so that they may order Finished Services and UNEs. CLEC will be responsible for augmenting terminations as required. The Direct Connection APOT information must be provided on the ASR or LSR to insure that the services are designed to the dedicated path.~~

~~8.3.1.11.2.2 CLEC's termination point will require a CLLI code (e.g., Frame Number) and the dedicated tie pairs will require a unique name to enable automatic assignment through TIRKS™ and SWITCH™ via Carrier Facilities Address (CFA) methods.~~

~~8.3.1.11.2.3 If CLEC wishes to arrange terminations on a 2-wire POTS level cross-connect device of the modular type, i.e. COSMIC™ Hardware, standard engineering principles will apply. Provisioning intervals and costs will be customized and determined on an Individual Case Basis (ICB). A five (5) year forecast including terminations per quantities will be required. MELD™ runs will be required for the initial COSMIC™ plan and each subsequent block addition. To minimize CLEC's cost, to the extent feasible, Qwest shall consolidate CLEC's requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest, Minimum installation requires at least one (1) block for every two (2) outside plant modules. A one half (½) shelf of block capacity must be reserved for future block space.~~

~~8.3.1.11.2.4 Requests for terminations at a DSO, DS1, DS3 and optical level (non-POTS) may also be made directly to the respective frame or panel (i.e. toll frame, DSX, FDP, etc.). Direct Connections to these frames do not require MELD™ runs and short jumper engineering principals, as with the COSMIC™ frame. However these connections will require coordination between Qwest and CLEC to ensure that the cable is terminated in an existing frame with the service that CLEC is wishing to connect with. Direct Connection is ordered via the supplemental~~

~~Collocation order form, Direct Connection (DC-POT) With Collocation F[redacted]. Timing, pricing and feasibility will be determined on the basis of a specific, in-depth building analysis. Direct Connections are available where available frame space permits. If frame space is exhausted, terminations may need to be made at another frame. Space availability will be determined during the feasibility request phase of the order. Rates for Direct Connection Terminations will be on an ICB basis using rates defined in Exhibit A.~~

~~8.3.1.11.3 Terminations must be purchased in the following increments: DS0 in [redacted] in increments of [redacted] (1); and DS3 in increments of one (1) coaxial cable or fiber pair.~~

~~8.3.1.12 Security Charge. This charge applies to the keys/card and card readers, required for CLEC access to the Qwest Premises for the purpose of Collocation. Charges are assessed per CLEC employee, per card, per Premises on a monthly basis.~~

~~8.3.1.13 Composite Clock/Central Office Synchronization. Recovers the cost of providing composite clock and/[redacted] synchronization signals traceable to a stratum one source. CLEC must determine the synchronization requirements for CLEC's equipment and notify Qwest of these requirements when ordering the clock signals. Central Office Synchronization is required for Virtual Collocation involving digital services or connections. Synchronization may be required for analog services. Central Office Synchronization is available where Qwest Central Offices are equipped with Building Integrated Timing Supply (BITS). The rate is applied on a per Port basis in accordance with Exhibit A.~~

~~8.3.1.14 -48 Volt DC Power Cable Charge. Provides for the transmission of -48 volt DC [redacted] is fused at one hundred twenty-five percent (125%) of request. It includes engineering, furnishing and installing the main distribution bay power breaker, associated power cable, cable rack and local power bay to the closest power distribution bay. It also includes the power cable (feeders) A and B from the local power distribution bay to the leased physical space (for Caged or Cageless Physical Collocation) or to the collocated equipment (for Virtual Collocation). It is charged per foot, per A and B feeder.~~

~~8.3.1.15 Space Availability Report Charge – Recovers the cost of preparing a Space Availability Report in accordance with Section 8.2.1.9.1.~~

~~8.3.1.16 CLEC-to-CLEC Connection Charge. Recovers the cost of order processing, design and engineering. Additional charges will be assessed for Virtual Collocation connections and cable holes, if applicable. There will be recurring charges for cable racking.~~

~~8.3.1.17 Microwave Entrance Facility – The charges for Microwave Entrance Facility include the recurring and nonrecurring charges associated with the preliminary rooftop engineering and survey analysis, Premises structural~~

analysis and line-of-sight feasibility, if [redacted]st; space rental for the rooftop and existing antenna support structure, cable racking, cable, building penetration for cable entry, and other work as required.

8.3.2 Rate Elements - Virtual Collocation

The following rate elements, as specified in Exhibit A, apply uniquely to Virtual Collocation.

8.3.2.1 Maintenance Labor. Provides for the labor necessary for repair of out of service and/or service-affecting conditions and preventative maintenance of CLEC virtually collocated equipment. CLEC is responsible for ordering maintenance spares. Qwest will perform maintenance and/or repair work upon receipt of the replacement maintenance spare and/or equipment from CLEC. A call-out of a maintenance technician after busi[redacted]ss hours is subject to a minimum charge of three (3) hours.

8.3.2.2 Training Labor. Provides for the training of Qwest personnel on a metropolitan service area basis provided by the vendor of CLEC's virtually collocated equipment when that equipment is different from Qwest-provided equipment. Qwest will require three (3) Qwest employees to be trained per metropolitan service area in which CLEC's virtually collocated equi[redacted]t is located. If, by an act of Qwest, trained employees are relocated, retired, or are no longer available, Qwest will not require CLEC to provide training for additional Qwest employees for the same virtually collocated equipment in the same metropolitan area. Where more than one (1) CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs so selecting.

8.3.2.3 Equipment Bay. Provides mounting space for CLEC virtually collocated equipment. Each bay includes the seven (7) foot bay, its installation, and all necessary environmental s[redacted] space for the fuse panel and air gaps necessary for heat dissipation is limited to 78 inches. The m[redacted]nthly rate is applied per shelf. CLEC may r[redacted]st use of alternate bay heights of 9 foot and 11 foot 6 inches, which will be considered on an Individual Case Basis. No Equipment Bay Charge is assessed if CLEC provides its own equipment bay.

8.3.2.4 Engineering Labor. Provides the planning and engineering of CLEC virtually collocated equipment at the time of installation, change or removal.

8.3.2.5 Installation Labor. Provides for the installation, change or removal of CLEC virtually collocated equipment.

8.3.2.6 Floor Space Lease. Required for Virtual Collocation only in the instance where CLEC provides its own equipment bay. This rate element provides the monthly lease for the space occupied by the CLEC-provided equi[redacted]y taxes and base operating cost without [redacted]lt

DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises areas surrounding the CLEC-provided equipment bay and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the CLEC-provided equipment bay.

8.3.3 Rate Elements - Physical Collocation

8.3.3.1 Space Construction and Site Preparation. Includes the material and labor to construct and prepare the space, including all support structure, cable racking and lighting required to set up the space. It also includes air conditioning (to support CLEC loads specified), lighting (not to exceed 2 watts per square foot), and convenience outlets (3 per Caged or Cageless Collocation or number required by building code) and the cost associated with space engineering. If a new line-up is established for Cageless Collocation, an AC power outlet will be provided at every other bay in the line-up. Cageless bays placed in existing line-ups will use the existing outlets. For Caged Collocation, it includes a nine foot high cage enclosure. CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval, which may not be unreasonably withheld, to construct the space, including the cage in the case of Caged Collocation, in accordance with NEBS Level 1 safety requirements. Pricing for the Space Construction and Site Preparation is described in Exhibit A. In the case of Shared Collocation, Qwest may not increase the cost of site preparation or nonrecurring charges above the TELRIC cost for Provisioning such a cage of similar dimensions and material to a single collocating Party, and Qwest must prorate the charge for site conditioning and preparation by determining the total charge for site preparation and allocating that charge to CLEC based on the percentage of the total space used by CLEC. Qwest must in all cases of shared space Collocation allocate space preparation, conditioning, security measures and other Collocation charges on a pro-rated basis to ensure that the charges paid by CLEC as a percentage of the total overall space preparation and conditioning expenses do not exceed the percentage of the total Collocation space used by CLEC.

8.3.3.2 Floor Space Lease. Provides the monthly lease for the leased physical space, property taxes and base operating cost without -48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); a pro-rata share of biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises common areas surrounding the leased physical space and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the cage enclosure, as applicable.

8.3.3.3 Intentionally Left Blank.

8.3.3.4 Collocation Grounding Charge. Used to connect the Premises common ground to CLEC equipment. Recurring and nonrecurring charges are assessed per foot to CLEC's equipment.

8.3.4 Rate Elements - ICDF Collocation

8.3.4.1 The charges for ICDF Collocation are the nonrecurring and recurring charges associated with the Unbundled Network Elements or ancillary services ordered by CLEC, the cost of extending the Unbundled Network Elements or ancillary services to the Demarcation Point, which are recovered through the ITP charges described in the UNE Section, and the Security charge, described in this Section.

8.3.5 Rate Elements – Adjacent Collocation

8.3.5.1 The charges for Adjacent Collocation will be developed on an Individual Case Basis, except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined, depending on the specific needs of CLEC and the unique nature of the available adjacent space (e.g., existing structure or new structure to be constructed).

8.3.6 Rate Elements – Remote Collocation and Adjacent Remote Collocation

8.3.6.1 The charges for Remote Collocation will be developed on an Individual Case Basis except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined.

8.3.7 Rate Elements – CLEC-to-CLEC Connections

8.3.7.1 The charges for CLEC-to-CLEC Connections are addressed in Section 8.3.1.16.

8.3.8 Rate Elements – Collocation Cancellation

8.3.8.1 Qwest will not charge for the cancellation service except as specifically provided in the terms and conditions for Collocation Cancellation.

8.3.9 Rate Elements – Collocation Decommissioning

8.3.9.1 Qwest will not charge for the decommissioning service except as specifically provided in the terms and conditions for Collocation Decommissioning unless equipment has been abandoned or the Collocation space has not been returned to turnover condition.

8.3.9.2 Miscellaneous labor hourly charges as defined in the attached

Exhibit A will apply if Qwest is required to remove equipment or to restore the collocation space to turnover condition.

8.3.9.3 [redacted] charges, will apply for unmanned offices, as defined in the attached Exhibit A.

8.3.10 Rate Elements – Transfer of Responsibility

8.3.10.1 Vacating CLEC will not incur charges for the transfer of the Collocation site.

8.3.10.2 Assuming CLEC's quote will reflect the following nonrecurring charges associated with the transfer of the Collocation site: Assessment Fee, payable regardless of whether the quote is accepted, and Network Systems Administrative Fee.

8.3.10.3 Nonrecurring charge for processing Interconnection circuits.

8.3.11 Rate Elements – Available Inventory

8.3.11.1 Pricing for sites listed within the Qwest Available Inventory list will be provided on a site-specific basis. Pricing shall be in accordance with the Interconnection Agreement of the assuming CLEC. Vacating CLEC's may receive a potential refund from sale of available/discounted sites based on outstanding Nonrecurring charges, amounts for reimbursable elements and transfer fees.

8.3.11.2 The following items are charged to a CLEC purchasing a "Standard site" from the Qwest Available Inventory List. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before work begins.

8.3.11.2.1 Quote Preparation Fee (QPF) - Found in CLEC's existing Interconnection Agreement for a each specific type of Collocation site.

8.3.11.2.2 Reusable Elements are those Qwest inventoried components used to provision the Collocation site. The quote will be for all components used to install the Collocation space. These elements include Qwest inventoried components (i.e. cage, bays, HVAC, cable racking) to provision the original Collocation site.

8.3.11.2.2.1 Nonrecurring Collocation Rate Elements that are reused, will be available at a 50% discount to an assuming CLEC.

8.3.11.2.3 Reimbursable Elements are those which are not subject to a discount to the assuming CLEC. This includes any reusable termination cabling that is part of the available site. Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run

from vault directly to Collocation site, i.e. Express Fiber Entrances).

8.3.11.3 Special Site Rates: The following items are charged to an assuming CLEC for a Special Site from the Qwest Postings. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before Qwest begins work.

8.3.11.3.1 Site Survey Fee: A non-refundable site survey fee for a formal site survey visit with the CLEC per Exhibit A. Payment is to be submitted in conjunction with the Collocation Application for a Special Site.

8.3.11.3.2 [redacted]n Fee (QPF). The QPF for Special Sites will be a flat rate fee per Exhibit A. If the assuming CLEC requires Augments (additional services) to the existing site the QPF will revert to the rate defined in the CLEC's Interconnection Agreement.

8.3.11.3.3 Non recurring Collocation Rate Elements: Include all Reusable elements defined above, DC Power, grounding and terminations. Special sites will be offered at a flat 50% [redacted]t to an assuming CLEC based on the rates in its current Interconnection Agreement. Augments (additional services) or changes to the sites will not be [redacted] will be charged at the rates as defined in the CLEC's Exhibit A of their Interconnect Agreement or Exhibit A of this document, payable in full prior to commencement of work.

8.3.11.3.4 Network Assessment Fee for transfer of existing circuits to the assuming CLEC per Exhibit A.

8.3.11.3.5 Any Equipment contained in the site will be conveyed at a $0.00 charge.

8.3.11.4 Recurring charges f[redacted]ts and Services will be charged at rates listed in the assuming CLEC's Exhibit A of their Interconnection A[redacted]t without a discount.

8.3.12 Rate Elements – Joint Testing

8.3.12.1 The Joint Testing Nonrecurring Charge is specified in Exhibit A of this Agreement. The rate is a minimum of one (1) hour per Joint Testing request at the Virtual Collocation maintenance rate and a per thirty minute charge at the same rate for any time exceeding the first hour. Qwest identified trouble during the ninety (90) calendar Day period for New/Change/Augment collocations, following the acceptance of the collocation site, will be corrected by Qwest at no additional charge. Qwest identified trouble for existing collocation sites will also be corrected at no additional charge.

8.3.12.2 Qwest will not charge a Quote Preparation Fee (QPF) for Joint Testing.

8.3.13 Rate Elements – DC Power Reduction

8.3.13.1 Collocation charges will be based upon the information provided to Qwest by CLEC on the Collocation Application Form. Below is an example of additional charges that are unique to a Power Reduction Request and will be provided to CLEC via a quote:

8.3.13.1.1 Based on this evaluation of work provided in the quote, the rates provided in Exhibit A to this Amendment will apply. One QPF per application/per collocation site will be charged. When multiple feeds at the same collocation space are reduced or eliminated, CLEC will pay one QPF. Other nonrecurring and recurring charges may apply as reflected in CLEC's Interconnection Agreement. If the quote contemplates the performance of work not included in rates identified in Exhibit A of this Amendment, such charges shall be identified in the quote.

8.3.13.1.2 Qwest will provide CLEC a quote for additional nonrecurring charges associated with the Power Reduction Procedure based upon the rates provided in Exhibit A. All quoted nonrecurring charges must be paid within thirty (30) days from the quote. Such payment constitutes CLEC's quote acceptance and authorizes Qwest to perform the work to effect the requested power reduction. All rates and charges identified in the quote will be based on those rates in the Agreement and Exhibit A of this Amendment. If appropriate rates and charges are not available from those sources, Qwest will use tariffs or other rate sources as a basis for preparing the quote.

8.3.13.1.3 Billing to CLEC for initial power value at the collocation site will be modified to reflect the reduced amount upon receipt of payment of the quoted charges and will be made effective back to the date of acceptance of the Power Reduction Application by the CPMC.

8.3.13.1.4 Recurring billing for the Power Maintenance Charge will terminate on the day CLEC energizes the feed or returns the fuse position to Qwest.

8.3.13.2 Nonrecurring Charges

8.3.13.2.1 QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the Power Reduction request. It covers the project, order and support management associated with the administrative functions of processing the request.

8.3.13.2.2 Power Reduction Charge: Includes costs associated with reducing the fuse/breaker size. Rates are categorized in this manner based upon the work involved and power distribution point (e.g., BDFB or power board) and are set forth in Exhibit A of CLEC's Interconnection Agreement. Where additional work is needed, such as rewiring the power lead at the power source (or some cases may require relocation of the feed), rates will be calculated on an Individual Case Basis (ICB) basis.

These rates will be provided to CLEC on the quote prior to work beginning.

8.3.13.2.3 Power Restoration Charge (assessed if power is restored): ICB Charge associated with restoring the power cable to the power source and is contingent upon whether the desired power and fuse position is available. Qwest will evaluate work required to perform the Power Restoration request and provide CLEC a quote utilizing standard power element charges (for example, DC power usage, labor, and cabling charges) included in Exhibit A of CLEC's Interconnection Agreement.

8.3.13.3 Recurring Charge

8.3.13.3.1 Power Maintenance Charge: Monthly recurring charge associated with option to hold the power infrastructure from a secondary feed in place for potential CLEC requests.

8.4 Ordering

8.4.1 Ordering - All Collocation

8.4.1.1 CLEC must complete the requirements in the Implementation Schedule Section of this Agreement before submitting a Collocation Application Form to Qwest.

8.4.1.2 Any material changes, modifications or additional engineering (Material Changes) requested by CLEC, subsequent to its original Collocation order, as to the type and quantity of equipment or other aspects of the original Collocation order, must be submitted with a revised Collocation Application. For purposes of this section, Material Changes are changes that would significantly impair Qwest's ability to provision the requested Collocation within the applicable intervals if the changes are provisioned with the original Collocation order and would require Qwest to incur financial penalties under the terms of this Agreement or other Applicable Law. Qwest shall determine the additional time required to comply with CLEC's request for Material Changes (Additional Time), and CLEC shall have the option of (a) having the request for Material Changes implemented with the original Collocation order (within the original Provisioning intervals) as extended by the Additional Time; or (b) having Qwest process and provision the request as a subsequent construction activity or augmentation to the original Collocation order. Any nonmaterial changes, modifications, or additional engineering requested by CLEC, subsequent to its original Collocation order, may be submitted with a revised Collocation Application or otherwise communicated to Qwest and shall be implemented with the original Collocation order within the original applicable intervals.

8.4.1.3 There are three (3) primary steps in the ordering of Collocation – 1) Forecasting, 2) Application, and 3) Acceptance of Quote.

8.4.1.4 CLEC shall submit an annual forecast, updated at the end of each quarter, of its future Collocation requirements. The quarterly forecast shall be reviewed by CLEC and the Qwest account team. CLEC forecast shall be considered accurate for purposes of Collocation intervals if the subsequent

~~Collocation Application correctly identifies a) and e) below, and b) and c) below are within twenty percent (20%) of the forecast. If at the time the Application is made the forecasted type of Collocation is not available, CLEC may specify a different type of Collocation without affecting the Collocation intervals. The forecast shall include, for each Qwest premises, the following:~~

~~a) Identification of the Qwest Premises;~~

~~b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;~~

~~c) Power requirements;~~

~~d) Heat Dissipation (optional);~~

~~e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, ICDF, Virtual, etc.);~~

~~f) Intentionally Left Blank.~~

~~g) Entrance Facility Type (e.g., Express Fiber, Private Line);~~

~~h) Type and Quantity of Terminations (optional); and~~

~~i) Month or Quarter during or after which CLEC expects to submit its Collocation Application.~~

~~8.4.1.4.1 The following terms shall apply to the forecasting process:~~

~~a) CLEC forecasts shall be provided as detailed in Section 8.4.1.4;~~

~~b) CLEC forecasts shall be confidential information and Qwest may not distribute, disclose or reveal, in any form, CLEC forecasts other than as allowed and described in Sections 5.16.9.1 and 5.16.9.2.~~

~~c) Reserved for Future Use.~~

~~d) Reserved for Future Use.~~

~~8.4.1.5 CLEC shall submit a Collocation Application to order Collocation at a particular Qwest Premises. A Collocation Application shall be considered complete, if it contains:~~

~~a) Identification of the Qwest Premises;~~

~~b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;~~

~~c) Power requirements;~~

d) Heat Dissipation;

e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, Virtual, etc.);

f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality i.e., Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the Application, how this equipment is necessary for access to UNEs or Interconnection. High level equipment interface or connectivity schematic for equipment that is not on the approved equipment list or has not been used by CLEC for a similar purpose before, must also accompany this Application. CLEC using approved equipment found at www.qwest.com/wholesale/pcat/collocation.html need not comply with this provision);

g) Entrance Facility Type;

h) Type and Quantity of Terminations;

i) If desired, an alternate form of Collocation if first choice is not available; and

j) Billing Contact.

8.4.1.5.1 Parties will work cooperatively to ensure the accuracy of the Collocation Application. If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days after receipt of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.1.6 Acceptance – After receipt of a Collocation Quote Form from Qwest, CLEC shall formally accept the quote from Qwest to continue the processing of the Collocation Application. A Collocation Acceptance shall be considered complete, if it contains:

a) Signed Notification of Acceptance; and

b) Payment of fifty percent (50%) of quoted charges.

8.4.1.6.1 CLEC shall have the option of viewing the available space prior to quote acceptance, at the rate set forth in Exhibit A.

8.4.1.7 Collocation Space Reservation – allows CLEC to reserve space and identify, to the extent available, infrastructure incidental to that space such as power, HVAC, in a Qwest Premises for up to one (1) year for transmission

~~equipment (ATM, Packet Switching, DSLAM), three (3) years for circuit switching equipment, and five (5) years for power equipment. CLEC may reserve space in a particular Qwest Premises through the Collocation Space Reservation Application Form. Requests for contiguous space will be honored, if available.~~

~~8.4.1.7.1 Collocation Space Reservation Application – Upon receipt of the Collocation Space Reservation Application Form, Qwest will provide space feasibility within ten (10) calendar Days.~~

~~8.4.1.7.2 Collocation Space Reservation Quotation – If space is available, Qwest will provide a specific price quote based on the requested Collocation requirements described on the Collocation Space Reservation Application Form. The quote and a Billing invoice for twenty-five percent (25%) payment of nonrecurring charges will be sent to CLEC within twenty-five (25) calendar Days from the Collocation Space Reservation Application receipt.~~

~~8.4.1.7.2.1 Collocation Space Reservation Acceptance CLEC must electronically submit Acceptance or non-Acceptance of the quote within seven (7) calendar Days of receipt of the quotation. If CLEC submits the Acceptance between eight (8) and thirty (30) calendar Days of receipt of the quotation, Qwest will honor the reservation upon receipt of the payment only if Qwest does not receive a competing request for the same space from another CLEC. Qwest will not honor reservations if CLEC submits the Acceptance more than thirty (30) calendar Days after receipt of the quotation.~~

~~8.4.1.7.3 Upon receipt of the twenty-five percent (25%) payment, Qwest will reserve the space on behalf of CLEC in accordance with the Application and take the necessary steps to ensure the availability of power, HVAC and other components reflected on the application for reservation. Qwest will hold the reservation for the applicable reservation period after the twenty-five percent (25%) payment. This payment will be applied to the subsequent Collocation Application.~~

~~8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. Upon notification of the cancellation, Qwest will refund a prorated portion of the twenty-five percent (25%) payment as follows:~~

~~a) Cancellation notification within ninety (90) calendar Days from receipt of wire transfer, seventy five percent (75%) of the initial down payment will be returned to CLEC.~~

~~b) Cancellation notification within ninety-one (91) and one hundred and eighty (180) calendar Days from receipt of wire transfer, fifty percent (50%) of the initial down payment will be returned to CLEC.~~

~~c) Cancellation notification within one hundred and~~

eighty-one (181) and two hundred and seventy (270) calendar Days from receipt of wire transfer, twenty-five percent (25%) of the initial down payment will be returned to CLEC.

d) Cancellation notification after two hundred and seventy (270) calendar Days from receipt of wire transfer, zero percent (0%) of the initial down payment will be returned to CLEC.

8.4.1.8 Collocation Space Option

8.4.1.8.1 CLEC, Qwest, and Qwest Affiliates may Option space in Qwest Wire Center Premises in accordance with the terms of this Section 8.4.1.8 for the following equipment and time periods:

a) Transmission equipment – one (1) year

b) Circuit switching equipment – three (3) years

c) Power plants –five (5) years

8.4.1.8.2 Optioned space is offered to CLECs for Caged, Cageless, and Virtual Collocation. To promote fairness and prevent warehousing, the following limits apply:

a) The Party requesting the Option may specify the amount of space to be Optioned but not a specific location within the Wire Center, unless CLEC requests an Option for bay space adjacent to existing cageless lineups. CLEC may also request space be contiguous to its existing Collocation space.

b) A requesting CLEC may Option one (1) Collocation space per Wire Center.

c) The maximum amount of space per Wire Center to be Optioned is:

- 200 square feet for Caged Collocation

- 4 bays for Cageless and Virtual Collocation

8.4.1.8.3 The Collocation Space Option Application form will be processed upon receipt of a properly completed request. Such form shall be considered properly completed if it contains identifying information of CLEC, the applicable Qwest Premises, the amount of Collocation space sought, the type of Collocation (Caged, Cageless, Virtual) and the type of equipment (from the categories identified in Section 8.4.1.8.1) for which the option is being sought. CLEC must have met all past and present undisputed financial obligations to Qwest at the time of receipt of the Collocation Space Option Application form, Qwest will confirm in writing, within ten (10) calendar Days, the availability of, and price quote (the "Option Fee") for the Optioned space. If space is not available, Qwest will deny the

request.

8.4.1.8.4 CLEC must electronically submit Acceptance with full payment of the nonrecurring portion of the Option Fee, or acknowledge non-Acceptance of the quoted Option Fee, within seven (7) calendar Days of receipt of the quotation. When Qwest takes an Option on space for itself, Qwest shall impute an amount equal to the Option Fee to the appropriate operations for which the Option Space applies. The Option quote expires seven (7) calendar Days after delivery to CLEC.

8.4.1.8.5 Upon receipt of Acceptance and full payment of the nonrecurring portion of the Option Fee, Qwest will Option the space on behalf of CLEC including the contiguous space requests if available (or itself if appropriate) and the Option time frame will begin. The prioritization of Optioning will be based upon the date and time of the Acceptance. The earlier in time an Acceptance is received by Qwest, the higher in priority is such Option. The Option is limited to space only and does not include other elements required to provision the Collocation.

8.4.1.8.6 In order for an Option request to avoid expiration, CLEC must:

a) Submit a Collocation Application during the Option time frame; or

b) The Option may be renewed if a Collocation Space Option Application is received at least ten (10) calendar Days prior to the expiration of the term of the existing Option. The priority of a renewed Option is determined by the date CLEC accepts the quote from Qwest on CLEC's renewal application.

8.4.1.8.7 First Right of Refusal – If Qwest receives a valid Collocation Application (CLEC A is the requesting Party) for a Qwest Wire Center in which all available space has been occupied or Optioned, the following provisions for First Right of Refusal will apply:

8.4.1.8.7.1 All Qwest out of space reporting requirements apply to the Collocation Application (Sections 8.2.1.11 and 8.2.1.12). In addition, Qwest will provide CLEC A with Option space information (e.g., Caged and Cageless Optioned space) that may fulfill the requirements of CLEC A's Collocation Application. At CLEC A's request, Qwest will initiate the Option Enforcement Notice process by notifying the Option Party or Parities with the most recent space Option(s) that meets the requirements of CLEC A's Collocation Application.

8.4.1.8.7.2 The Option Enforcement Notice serves as notification to the Option Party that Qwest is in possession of a valid Collocation Application, and calls for the Option Party to exercise their Right of First Refusal, or relinquish their space Option. The Option Party may exercise it's Right of First Refusal

by submitting either a Collocation Application as set forth in Section 8.4.1.5, or by submitting the Collocation Space Reservation Application set forth in Section 8.4.1.7, within ten (10) calendar Days of receipt of the Option Enforcement Notice. This process continues for all Optioned space until all Optioned space is exercised or Optioned space is relinquished (affirmatively by CLEC or upon expiration of the notice period, whichever is earlier) to fulfill the Collocation Application. Once Optioned space has been relinquished for use to fulfill the Collocation Application, the standard ordering terms and conditions for Collocation shall apply.

8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLEC require the use of CLEC's contiguous space. Upon notification, CLEC will have ten (10) calendar days to indicate its intent to submit a Collocation Application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.

8.4.1.8.7.4 The rate elements for the Collocation Space Option are comprised of the following:

a) Space Option Administration Fee is a nonrecurring fee for all Collocation Space Option requests and covers the processing of application, feasibility, common space engineering, records management, and administration of the First Right of Refusal process.

b) Space Option Fee is a monthly recurring fee that will be charged based upon the amount of space being optioned, at two dollars ($2.00) per square foot per month.

8.4.1.8.8 In the event that the Option Party proceeds with a Collocation Application for optioned space, all payments made pursuant to Section 8.4.1.8.7.4(b) above shall be applied to such Application.

8.4.1.9 The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs.

8.4.2 Ordering - Virtual Collocation

8.4.2.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days of receipt of a complete Application. As part of the

~~feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.~~

~~8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.~~

~~8.4.2.2 Quotation -- If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar Days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing virtually collocated equipment, will be processed and provisioned within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's Acceptance of the quoted charges.~~

~~8.4.2.3 Acceptance -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.~~

~~8.4.2.4 Interval -- The interval for Virtual Collocation shall vary depending upon four factors -- 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7; 2) whether CLEC provides its Acceptance within seven (7) calendar Days receipt of the quotation; 3) whether CLEC delivers its collocated equipment to Qwest in a timely manner, which shall mean within fifty-three (53) calendar Days of the receipt of the complete Collocation Application; and 4) whether the Application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no instance shall any such interval exceed thirty (30) calendar Days. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.~~

~~8.4.2.4.1 Forecasted Applications with Timely Acceptance -- If an Application is included in CLEC's forecast at least sixty ([redacted]) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall~~

~~complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment.~~

~~8.4.2.4.2 Forecasted Applications with Late Acceptance – If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.~~

~~8.4.2.4.3 Unforecasted Applications with Timely Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.~~

~~8.4.2.4.4 Unforecasted Applications with Late Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.~~

~~8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted Collocation Application may~~

require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.3 through 8.4.2.4.4 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.2.4.6 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. – If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to ensure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application. If not withstanding these efforts, Qwest is unable to meet the interval and cannot reach agreement with CLEC for an extended interval. Qwest may seek a waiver from the Commission to obtain an extended interval.

8.4.3 Ordering - Caged and Cageless Physical Collocation

8.4.3.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.3.2 Quotation -- If Collocation entrance facilities and space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty

~~(30) calendar Days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's Acceptance of the quoted charges.~~

~~8.4.3.3 Acceptance – Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.~~

~~8.4.3.4 Interval – The interval for Physical Collocation shall vary depending upon two (2) factors – 1) whether CLEC provides its Acceptance within seven (7) calendar Days of receipt of the quotation; and, 2) whether the Application requires major infrastructure additions or modifications. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.~~

> ~~8.4.3.4.1 Applications with Timely Acceptance – If CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application.~~
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> ~~8.4.3.4.2 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.~~
>
> ~~8.4.3.4.3 Reserved for Future Use.~~
>
> ~~8.4.3.4.4 Reserved for Future Use.~~
>
> ~~8.4.3.4.5 Reserved for Future Use.~~
>
> ~~8.4.3.4.6 Intervals for Major Infrastructure Modifications (Unforecasted) An Unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC power plant, standby generators, heating, venting or air conditioning equipment. The installation intervals in Sections 8.4.3.4.1 through 8.4.3.4.2 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the Collocation Arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and~~

the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.4 Ordering - Interconnection Distribution Frame (ICDF) Collocation

8.4.4.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's terminations within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities. The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by [redacted], DS1 and [redacted] capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.4.2 Quotation -- If space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of receipt of the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.4.3 Acceptance -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and [redacted] Qwest will begin.

8.4.4.4 Interval – The interval for ICDF Collocation shall vary depending upon whether CLEC provides its Acceptance within seven (7) calendar Days of the quotation and was forecasted or unforecasted. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.4.4.1 Reserved for Future Use.

8.4.4.4.2 Reserved for Future Use.

8.4.4.4.3 Applications with Timely Acceptance – If CLEC provides

a complete Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of an unforecasted Collocation arrangement within ninety (90) calendar Days or, forty-five (45) calendar Days for a forecasted Collocation arrangement of the receipt of the complete Collocation Application. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.4.4.4 Applications with Late Acceptance – If CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days if its unforecasted, or forty-five (45) calendar Days, if it's a forecasted Collocation arrangement, of the receipt of the complete Collocation Acceptance. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

8.4.5 Ordering – Adjacent Collocation

8.4.5.1 If space for Physical Collocation in a particular Qwest Premises is not available at the time of CLEC's request, CLEC may request Qwest to conduct a feasibility study for Adjacent Collocation for that Premises site. Qwest recommends that Qwest and CLEC conduct a joint site visit of such Premises to determine if suitable arrangements can be provided on Qwest's property. Qwest will make available, within ten (10) business days, drawings of the Qwest physical structures above and below ground for the requested Adjacent Collocation site.

8.4.5.2 If a new structure is to be constructed, the interval shall be developed on an Individual Case Basis, to account for the granting of permits or ROW, if required, the provision of Collocation services by Qwest, in accordance with CLEC's Application, and the construction by CLEC of the adjacent structure. If CLEC disputes the interval proposed by Qwest, Qwest must promptly petition the Commission for approval of such disputed interval.

8.4.5.3 If Adjacent Collocation is provided within an existing Qwest Premises, the ordering procedures and intervals for Physical Collocation shall apply.

8.4.6 Ordering – Remote Collocation and Adjacent Remote Collocation

8.4.6.1 The ordering procedures and intervals for Physical Collocation or Virtual Collocation shall apply to Remote Collocation, and to Adjacent Remote Collocation provided within an existing Qwest Premises, except Sections 8.4.3.4.3 and 8.4.3.4.4. Remote Collocation and Adjacent Remote Collocation are ordered using the Remote Collocation Application Form.

8.4.6.2 If space for Physical Collocation or Virtual Collocation in a particular Qwest Remote Premises is not available at the time of CLEC's request, CLEC may order Adjacent Remote Collocation using the ordering procedures described above for Adjacent Collocation in Sections 8.4.5.1 and 8.4.5.2.

8.4.7 Ordering – CLEC to CLEC Connections

8.4.7.1 Upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j). Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of CLEC's copper, coax, or fiber optic cable, or any other Technically Feasible method used to interconnect CLEC's collocated equipment that is in separate locations in the same Qwest Premises, or to another CLEC's equipment in the same Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.7.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.7.2 Quotation -- If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route to CLEC with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a feasibility and quote to CLEC no later than ten (10) calendar Days of receipt of the Collocation Application. CLEC-to-CLEC Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.7.3 Acceptance -- There are two (2) forms of Acceptance for CLEC-to-CLEC Connections:

8.4.7.3.1 CLEC-to-CLEC connections with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its Acceptance. Upon receipt of a complete Collocation Acceptance, CLEC may begin placement of its copper, coax, or fiber cables along the Qwest designated cable rack route. Recurring charges will begin with CLEC Acceptance.

8.4.7.3.2 CLEC-to-CLEC Connections using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.7.4 Interval – Pursuant to Section 8.4.7.3.2, the construction interval for CLEC-to-CLEC Connections requiring the construction of new cable rack by Qwest shall be within sixty (60) calendar Days of the receipt by Qwest of the complete Collocation Acceptance. If CLEC submits its Acceptance more than

thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.7.5 A CLEC need not utilize the CLEC to CLEC connection process or the collocation application process to connect two contiguous collocation spaces leased by that CLEC that are adjacent to each other; provided that there is existing cable racking that the CLEC can use.

8.4.8 Ordering – Direct Connections

8.4.8.1 Application – Where Direct Connection is requested in a Wire Center where CLEC already has established Collocation, upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j), Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of copper, coax, or fiber optic cable, or any other Technically Feasible method, used for Direct Connection (as described in Section 8.3.1.11.2). The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.8.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.8.2 Quotation – If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a quote to CLEC no later than ten (10) calendar Days after receipt of a complet[redacted]. Direct Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.8.3 Acceptance – There are two (2) forms of Acceptance for Direct Connection:

8.4.8.3.1 Direct Connection with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its acceptance notification.

8.4.8.3.2 Direct Connection using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.8.4 Interval – The construction interval for Direct Connections shall be dependent upon whether the Direct Connection is to the COSMIC™ frame requiring a MELD™ and or if new cable racking is required.

8.4.8.4.1 If CLEC provides a complete Acceptance within thirty (30) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Direct Connection above the DS0 level where no new cable racking is required within thirty (30) calendar Days of the receipt of the complete Collocation Acceptance. If Direct Connection is required at the DS0 level, to the COSMIC™, or if new cable racking needs to be installed, Qwest will provision the direct trunking within sixty (60) calendar Days of the receipt of the complete Collocation Acceptance.

8.4.9 Ordering – Collocation Cancellation, Decommission and Transfer of Responsibility Form

8.4.9.1 Cancellation requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.1.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.1.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.1.3 Qwest will follow its standard Cancellation order validation procedures, providing acknowledgment of acceptance or rejection within one business day of receipt of a valid and complete Application.

8.4.9.2 Decommissioning requires submission of a "Cancellation, Decommission, and Change of Responsibility Application Form".

8.4.9.2.1 The Application form is located on the Qwest web site at: http://www.qwest.com/wholesale/pact/collocation.html.

8.4.9.2.2 The Application must be submitted to colo@qwest.com and rfsmet@qwest.com

8.4.9.2.3 Qwest will notify CLEC within one (1) business day if the prerequisites have been met. Qwest will validate the order within two (2)business days from receipt of the application.

8.4.9.3 The Transfer of Responsibility process requires submission of the Transfer of Responsibility Application Form containing information for both the vacating and the assuming CLEC.

8.4.9.3.1 The Transfer of Responsibility Application Form can be found on Qwest's web site at: http://www.qwest.com/wholesale/pcat/collocation.html.

8.4.9.3.2 The Transfer of Responsibility request should be submitted

to colo@qwest.com and rfsmet@qwest.com simultaneously.

8.4.10 Ordering – Available Inventory

8.4.10.1 CLEC must submit a "Qwest Collocation Application Form (new, change or augment)" on the Qwest web at: http://www.qwest.com/wholesale/pcat/collocation.html

8.4.10.2 The "submit" date for the Collocation Available Inventory request will commence on the date that the Wholesale Project Manager (WPM) notifies the Collocati[redacted]ject Management Center (CPMC) that all prerequisites for this request to have been met.

8.4.10.3 Qwest will process the Available Inventory Request pursuant to the Collocation Intervals contained in this Agreement.

8.4.10.3.1. Special Site interval will be forty-five (45) Calendar Days from the receipt of payment.

8.4.10.4 For purposes of first-come, first-served determination of availability, priority will be defined by the date and time the complete application is received by rfsmet@qwest.com.

8.4.10.5 CLECs should[redacted]it an alternative option when requesting an available site by populating the "Second Choice" and/or "Third Choice" tabs included on the Qwest Collocati[redacted]tion Form. This will prevent the possible cancellation of the submitted application in the event that the first choice is no longer available.

8.4.11 Ordering – Joint Testing

8.4.11.1 Qwest will accept a request to provide Joint Testing for up to sixty (60) calendar days past scheduled RFS. CLEC is required to submit a request for Joint Testing by checking the Joint Testing box on the New, Change or Augment Collocation Application Form or by sending in the separate Joint Testing Application Form.

8.4.11.2 Applications should be sent to rfsmet@qwest.com. Upon receipt of a complete Application Form, Qwest will contact CLEC to set up a testing time based upon the scheduled RFS.

8.4.12 Ordering – DC Power Reduction

8.4.12.1 CLEC should submit the "Collocation Application for New, Augment or Change" and indicate specific power feeds to be reduced (e.g., eliminate or reduce multiple f[redacted]r reduce main feed from 60 to 20 amps). Under the "type of request" category CLEC should indicate

that this is an Augment.

8.5 Billing

8.5.1 Billing - All Collocation

8.5.1.1 Upon completion of the Collocation construction activities and payment of the remaining nonrecurring balance, Qwest will provide CLEC a completion package that will initiate the recurring Collocation charges. Once this completion package has been signed by CLEC and Qwest, and Qwest has received the final fifty percent (50%) balance, Qwest will activate CLEC transport services and/or UNEs or ancillary services coincident with completion of the Collocation.

8.5.1.2 In the event Qwest has completed all associated construction activities and CLEC has not completed its associated activities (e.g., delivering fiber to the C-POI, or providing the equipment cables for connecting to the Interconnection Distribution Frame), Qwest will bill an adjusted amount of the remaining nonrecurring balance, close the job, and begin Billing the monthly recurring rent charge. In those instances where the job is delayed due to CLEC not having its fiber to the POI, Qwest will request the balance due minus the dollar amount specific to this work activity, and begin Billing the monthly recurring rent charge. Once CLEC has completed fiber placement, CLEC can request Qwest to return and complete the splicing activity at the rate reflected in this Agreement. In the case of missing equipment cables, CLEC will be responsible for installing the cables if not delivered at job completion. The installation activity must be conducted by a Qwest approved vendor and follow the designated racking route. Final test and turn-up will be performed under the Maintenance and Repair process contained herein.

8.5.1.3 Should Qwest fail to activate CLEC equipment or services, CLEC MRCs for such equipment or services will be credited on a monthly pro-rata basis until the equipment or services ordered are fully usable.

8.5.2 Billing - Virtual Collocation

8.5.2.1 Virtual Collocation will be considered complete when the Premises is Ready for Service (RFS). Cooperative testing between CLEC and Qwest may be negotiated and performed to ensure continuity and acceptable transmission parameters in the facility and equipment.

8.5.3 Billing - Caged and Cageless Physical Collocation

8.5.3.1 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charges, Qwest will schedule with CLEC, a walk through of the space. During this joint walk through, Qwest will turn over access to the space and provide security access for the Premises. Upon completion of the Acceptance walk through, CLEC will be provided the Caged or Cageless

Physical Collocation completion package. The monthly Billing for leased space, DC Power, Entrance Facility, and other associated monthly charges will commence with CLEC sign off on the completion of the physical space. CLEC may then proceed with the installation of its equipment in the Collocation space, unless early access has been arranged pursuant to Section 8.2.3.7. If Qwest, despite its best efforts, including notification through the contact number on the Collocation Application, is unable to schedule the walk through with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the monthly recurring charges.

8.5.4 Billing – Transfer of Responsibility

8.5.4.1 Vacating CLEC is obligated to pay all recurring charges associated with the Collocation until Qwest completes the Transfer of Responsibility request. When the RFS date is met, Qwest will begin to bill the assuming CLEC for all recurring billing, charges based on the CLEC's Interconnection Agreement, and cease the recurring billing for the vacating CLEC.

8.5.4.2 Assuming CLEC will be responsible for the monthly charges for the working circuits and charges for the transfer of the working circuits agreed to be transferred as part of the Transfer of Responsibility request (if applicable).

8.6 Maintenance and Repair

8.6.1 Virtual Collocation

8.6.1.1 Maintenance Labor, Inspector Labor, Engineering Labor and Equipment Labor business hours are considered [redacted] Friday, 8:00 am to 5:00 pm (local time) and after business hours are after 5:00 pm and before 8:00 am (local time), Monday through Friday, all day Saturday, Sunday and holidays.

8.6.1.2 Installation and maintenance of CLEC's virtually collocated equipment will be performed by Qwest or a Qwest authorized vendor.

8.6.1.3 Upon failure of CLEC's virtually collocated equipment, Qwest will promptly notify CLEC of such failure and the corrective action that is needed. [redacted] repair such equipment within the same time period and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest. CLEC is responsible for transportation and delivery of maintenance spares to Qwest at the Premises housing the failed equipment. CLEC is responsible for purchasing and maintaining a supply of spares.

8.6.2 Physical Collocation

8.6.2.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's leased space.

8.6.3 Interconnection Distribution Frame Collocation

8.6.3.1 CLEC is responsible for using industry accepted practices for its terminations. Additionally, CLEC is responsible for having tools for such operations. Qwest is responsible for the overall repair and maintenance of the frame; including horizontal and vertical mounting positions, cable raceways, rings, and troughs, and general housekeeping of the frame.

8.6.4 Adjacent Collocation and Adjacent Remote Collocation

8.6.4.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's Adjacent Collocation and Adjacent Remote Collocation space.

8.6.5 Reserved for Future Use

SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

9.1 General Terms

OPEN - Covad proposed; Qwest cannot agree

9.1.1 Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations. Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) or Section 271 of the Act, or other Applicable Laws. Failure to list a Section 251, Section 271 or state-mandated UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. UNE's shall only be obtained for the provision of Qualifying Services. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A. If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest

and make alternative service arrangements.

9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services, for the commingling of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications services pursuant to Applicable Law.

9.1.1.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with access services or other Non-Qualifying services. All variations of Commingling of services that include a high capacity loop, which may include multiplexing or any other means by which this combination is achieved, and transport facility or service are subject to the Service Eligibility Criteria in Section 9.1.1.5.

9.1.1.2.1 Work performed by Qwest to Commingle services at CLEC's request or to provide services that are not subject to standard provisioning intervals will not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled facility or service. Provisioning intervals applicable to services included in a requested Commingled facility or service will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs [redacted] and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

9.1.1.3 Qwest will not Commingle services or Network Elements that are required to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

9.1.1.3.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

9.1.1.3.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities [redacted]st's Tariffs are available f[redacted].

9.1.1.4 **Ratcheting** - To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of the UNEs or UNE Combinations involved.

9.1.1.4.1 Intentionally Left Blank.

9.1.1.4.2 Intentionally Left Blank.

9.1.1.4.3 To the extent a multiplexer is included in a [redacted] circuit then: (1) the multiplexer will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs, or (2) in all [redacted] situations the multiplexer will be ordered and billed pursuant to the appropriate Tariff

9.1.1.5 **Service Eligibility Criteria** - With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport (High Capacity EELs), there are additional eligibility criteria that do not apply to other UNEs. CLEC can not order any EELs without an EEL amendment. This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs. Upon request by CLEC, and to the extent required by Applicable Law, the parties will negotiate an amendment to this Agreement that will enable CLEC to order EELs subject to any service eligibility criteria established by Applicable Law.

OPEN – Covad proposed deletion; Qwest cannot agree; Covad counter below

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.

a) OCn Loops;

b) Feeder Subloops;

c) DS3 Loops in excess of two (2) DS3 Loops per End User Customer location;

d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center);

e) OCn UDIT

f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 circuits per route;

g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P);

h) Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P;

i) Packet Switching;

j) UDIT and UDF as a part of a Meet-Point arrangement;,billed entrance facility;

k) Remote Node/Remote Port

l) Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section9.4.1.2;

m) Fiber to the Home, in accordance with Section 9.2.1.2;

n) Operator Services and Directory Assistance. except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;

o) Unbundled Switching at [redacted]1 capacity, pursuant to a transition process described in Section 9.11.2.0;

p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;

q) SONET add/drop multiplexing; and

r) Non-copper distribution Subloop unless required to access Qwest owned inside wire at an MTE.

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

OPEN – Qwest proposed; Covad cannot agree; Covad counter below

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to [redacted] Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed [redacted] Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, absent an agreement to the contrary [redacted] for such UNEs and services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.

9.1.1.8 Intentionally Left Blank.

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any

~~construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.~~

~~9.1.2.1.1 Upon receipt of an LSR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities (either "as is" or modified via conditioning or incremental facility work that fits the criteria for the service requested or is otherwise required by the Existing Rules) exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.~~

~~9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.~~

~~9.1.2.1.2.1 Qwest will also perform routine modifications to existing loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers, including, but not limited to, rearrangement or splicing of cable (including rearrangement of existing pairs to include fiber hub counts and rearrangement of existing pairs to extend the line), adding a doubler or repeater, adding and/or rearranging an equipment case, adding a smart jack, installing a repeater shelf, adding a line card, and deploying a new multiplexer or reconfiguring an existing multiplexer. Rates for such modifications are included in Exhibit A. For DS1 capable loops, this Section is effective immediately. For all other loop facilities, this Section will be effective July 2, 2004.~~

~~9.1.2.1.2.2 Qwest will also perform routine modifications to existing Dark Fiber loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers (including the work done on Dark Fiber to provision lit capacity to End User Customers). Rates for such modifications are included in Exhibit A. This Section is effective July 2, 2004. To the extent such modifications constitute a construction of Special Access services, pursuant to retail construction provisions of Special Access or stand-alone construction Tariffs, the terms and conditions of such Tariffs will apply to CLEC. The provisions of this Section shall not be construed to require Qwest to provide unbundled access to a Fiber-to-the-Home loop when Qwest deploys such a loop to a End User Customer premises.~~

~~9.1.2.1.2.3 Qwest performs routine, day-to-day work activities while managing its network. Activities such as accessing~~

[redacted] bucket trucks to reach aerial cable do not comprise network modifications. Rather these activities are performed by Qwest to effectuate network modifications.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering [redacted], Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a [redacted] order to change the Due Date to a later date.

9.1.2.1.3.2 Qwest will send CLEC a jeopardy clearly stating there is a lack of available facilities and the order will be delayed. In the event Qwest notifies CLEC that facilities [redacted] available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall send a new FOC to the CLEC identifying for the CLEC a new Due Date. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this section.

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

9.1.2.1.5 Intentionally Left Blank.

9.1.3 Reserved for Future Use.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Loop Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other Central Office Demarcation Point. The ITP is ordered in conjunction with a UNE. The charges for the ITP are contained in Exhibit A. The ITP may be ordered per termination. The Demarcation Point shall be:

a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation Space; or

b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or

c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF; or

d) if CLEC elects to use a direct connection from its Collocation space to the distribution frame serving a particular element, at the distribution frame; or

e) at another Central Office Demarcation Point mutually-agreed to by the Parties.

OPEN - Covad proposed; Qwest cannot agree

9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271 et seq. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Qwest provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this Section 9.1.6 are contained in Exhibit A to this Agreement.

9.1.6.1 When elements are provisioned by Qwest on an individual element basis (whether or not such elements are combined by CLEC with other elements provided by Qwest or CLEC):

a) Qwest will perform testing necessary or reasonably requested by

CLEC, to determine that such UNE is capable of meeting the technical parameters established for each UNE.

b) Pursuant to Section 12.3, Qwest will repair and maintain such elements to ensure that they continue to meet the technical parameters established for each UNE. CLEC is responsible for the end-to-end transmission and circuit functionality testing for UNE Combinations created by CLEC.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to assist in determining end-to-end transmission and circuit functionality of such UNE.

9.1.6.2 When elements are provisioned by Qwest in combination:

a) Qwest will perform testing necessary or reasonably requested by CLEC to determine that such combination and each UNE included in such combination is capable of meeting the technical parameters of the combination.

b) Pursuant to Section 12.3, Qwest will repair and maintain such combination and each UNE included in such combination to ensure that they continue to meet the technical parameters of the combination.

c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to determine end-to-end transmission and circuit functionality of such combination.

9.1.7 Installation intervals for Unbundled Network Elements are contained in Exhibit C.

9.1.8 Maintenance and Repair is described herein. The repair center contact telephone numbers are provided in the Maintenance and Repair PCAT, which is located on the Qwest Web site.

9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC.

9.1.9.1 Qwest shall provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Qwest provides such disclosures on an Internet web site.

9.1.10 Intentionally Left Blank.

9.1.11 Exhibit A of this Agreement contains the rates for Unbundled Network

Elements.

9.1.12 Miscellaneous Charges are defined in Section 4.40 (a). Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in Exhibit A. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges. Rates for Miscellaneous Charges are contained in Exhibit A. Unless otherwise provided for in this Agreement, no additional charges will apply.

9.1.13 Intentionally Left Blank.

9.1.14 Intentionally Left Blank.

9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper Subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site (www.qwest.com/disclosures); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.

9.2 Unbundled Loops

9.2.1 Description

The Unbundled Loop is defined as a transmission facility between a distribution frame (or its equivalent) in a Qwest Central Office and the Loop Demarcation Point at an End User Customer's premises. The Unbundled Loop includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, Dark Fiber, attached electronics and line conditioning. As used in this Agreement, "attached electronics" means any electronics necessary to provide the requested transmission path, including electronics added through incremental facilities work, but does not include multiplexing equipment, such as Digital Subscriber Line Access Multiplexers, used for the provision of Advanced Services. The Unbundled Loop includes DS0, DS1, and DS3 Loops. Qwest will not provide Unbundled OCn Loops or features and functionalities of OCn Loops.

9.2.1.1 "Loop Demarcation Point" – For purposes of this section, Loop Demarcation Point is the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, owner or landlord ownership of facilities begins.

9.2.1.2 **FTTH Loops.** For purposes of this Section, a Fiber-to-the-Home ("FTTH") loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's premises.

9.2.1.2.1 FTTH New Builds. Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's premises that had not previously been served by any loop facility prior to October 2, 2003.

9.2.1.2.2 FTTH Overbuilds. Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH loop parallel to, or in replacement of, an existing copper loop facility:

9.2.1.2.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's premises after deploying the FTTH loop to such premises and (ii) upon request to provide access to s[redacted]rk Element. Not withstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 9.2.1.2.2 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 9.2.1.2.3 below.

9.2.1.2.2.2 In the event Qwest, in accordance with the provisions of Section 9.2.1.2.3 below, retires the existing copper loop connected to the End User Customer's premises, Qwest shall provide access, as an Unbundled Network Element over the FTTH l[redacted], to a 64 k[redacted]s transmission path [redacted]le of voice grade service.

9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) [redacted] notice of such planned replacement on its website (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified. Such notices shall be in addition to any applicable state Commission requirements.

9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replace[redacted] like c[redacted]r facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.

9.2.1.2.3.2 When Qwest retires Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition of current working facilities to the new working facilities so that service interruption is held to a minimum.

OPEN – Covad proposed; Qwest cannot agree

9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location, Qwest will not provide, and CLEC shall not submit orders for,location pursuant to Section 251 of the Act, Qwest will provide access to DS1, DS3, or Dark Fiber Loops, as appropriate, to such specific End User Customer locations.such loops pursuant to Section 271 of the Act and applicable state law. Qwest will maintain on its website a separate listing for DS1, DS3, and Dark Fiber Loops for those End User Customer premises for which the Commission has so found.found non-impairment under Section 251 of the Act. In the event CLEC has DS1, DS3, or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for other service.any records changes, or alternate services, as required by applicable state law, and requested by Qwest. If such alternative arrangements are not in place within sixty (60) Daysdays of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with the Qwest Special Access Tariff.Section 9.1.1.7 above.

OPEN – Covad proposed; Qwest cannot agree

9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide pursuant to Section 251 of the Act, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location. Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7 above.

9.2.1.5 Hybrid Loops – A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

9.2.1.5.1 Packet Switching Facilities, Features, Functions and Capabilities – CLEC will not order packet switching under this Agreement.

9.2.1.5.2 Broadband Services – When CLEC seeks access to a

Hybrid Loop for the provision of broadband services, Qwest shall provide CLEC with nondiscriminatory access to the time division multiplexing (TDM) features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between Qwest's Central Office and an End User Customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information. Qwest will not engage in any practice, policy or procedure that has the effect of disrupting or degrading access to TDM-based features, functions, and capabilities of hybrid loops for serving end users.

9.2.1.5.3 Narrowband Services – When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

a) Provide nondiscriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology, allowing CLEC to obtain access to UNE loops comprised of the feeder, distribution, the attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer's premises and the Central Office; or

b) Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis if Qwest has not removed such loop facilities, and they remain functional.

9.2.2 Terms and Conditions

9.2.2.1 Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops, (unbundled from local switching and transport) of substantially the same quality as the Loop that Qwest uses to provide service to its own end users. For Unbundled Loops that have a retail analogue, Qwest will provide these Unbundled Loops in substantially the same time and manner as Qwest provides to its own end users. Unbundled Loops shall be provisioned in accordance with Exhibit C and the performance metrics set forth in Section 20 and with a minimum of service disruption.

9.2.2.1.1 Use of the word "capable" to describe Loops in Section 9.2 means that Qwest assures that, upon delivery to CLEC, the Loop meets the technical standards associated with the specified Network Channel/Network Channel Interface codes, as contained in the relevant technical publications and industry standards, and is in good working condition. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.2 Use of the word "compatible" to describe Loops in Section 9.2 means that, upon delivery to CLEC, the Unbundled Loop complies with technical parameters of the specified Network Channel/Network Channel Interface codes as specified in the relevant technical publications and industry standards, and is in good working condition. Qwest makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer premises equipment. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.3 If Qwest uses Integrated Digital Loop Carrier (IDLC) systems to provide the Local Loop, Qwest will first attempt, to the extent possible, to make alternate arrangements such as Line and Station Transfers (LST), to permit CLEC to obtain a contiguous copper Unbundled Loop. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. If no such facilities are available, Qwest will make every feasible effort to provision Unbundled Loops over IDLC in order to provide the Unbundled Loop for CLEC. All such attempts will be made and completed within the standard interval specified in Exhibit C and at the rates specified in Exhibit A for the type of Local Loop ordered by CLEC.

9.2.2.1.3.1 CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of available copper facilities, pursuant to the procedures set forth in Section 9.2.2.8 and its subsections. Qwest may provide mediated access to such information once the information has been provided to CLEC in the same manner as it is provided to any Qwest employee. Qwest may recover any reasonable costs it incurs to provide such mediated access in the same manner as it recovers other OSS transition costs under the Commission's orders.

9.2.2.2 Analog (Voice Grade) Unbundled Loops. Analog (voice grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local exchange type services. For the two-wire configuration, CLEC must specify the signaling option. The actual Loop facilities may utilize various technologies or combinations of technologies. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

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9.2.2.2.2 If there are state service quality rules in effect at the time

CLEC requests an Analog Unbundled Loop Qwest will provide an Analog Unbundled Loop that meets the state technical standards. If necessary to meet the state standards, Qwest will, at no cost to CLEC, remove load coils and excess Bridged Taps from the Loop in accordance with the requirements of the specific technical standard.

9.2.2.3 Digital Capable Loops – DS1 and DS3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops. Unbundled digital loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including, but not limited to, metallic wire, metallic wire based digital Loop carrier, and fiber optic fed digital carrier systems. Qwest will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. Digital Loops may use a single or multiple transmission technologies. DC continuity does not apply to digital capable loops. If conditioning is required for BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops or xDSL-I Capable Loops, then CLEC shall be charged for such conditioning, if applicable, as set forth in Exhibit A, if it authorized Qwest to perform such conditioning. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.3.1 If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) the BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. Qwest will perform line moves from digital loop carrier or UDCs to an available spare copper loop or removal of UDCs 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. If applied by Qwest, the interim charge for UDC removal or line move will be no more than the conditioning charge contained in Exhibit A until permanent rates are approved by the Commission. These charges for UDC removal or line moves will not be assessed to CLEC unless Qwest tariffs filed with the Commission allowing charges for its retail customers for the same work. Qwest will notify CLEC through CMP prior to implementing any charges for UDC removal or line moves.

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9.2.2.3.3 If CLEC orders a 2/4 wire non-loaded or ADSL compatible Unbundled Loop for a Customer served by a digital Loop carrier system Qwest will conduct an assignment process which considers the potential for a line move to alternative spare copper facility.

If no copper facility capable of supporting the requested service is available, Qwest will hold the order pending availability of facilities as set forth in Section 9.1.2.1.3.2.

9.2.2.4 Non-Loaded Loops. CLEC may request that Qwest provide a non-loaded Unbundled Loop. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide. CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary. If CLEC has not pre-approved conditioning, Qwest will obtain CLEC's consent prior to undertaking any conditioning efforts. Upon CLEC pre-approval or approval of conditioning, and only if conditioning is necessary, Qwest will dispatch a technician to perform line move or condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded Loop. Qwest's FOC will not reflect the loop conditioning interval until such time that Qwest determines conditioning is the only available solution for providing the loop. CLEC will be charged the nonrecurring conditioning charge (i.e., cable unloading and Bridged Taps removal), if applicable, in addition to the Unbundled Loop installation nonrecurring charge.

9.2.2.4.1 In the event that Qwest seeks to begin charging for conditioning, where Qwest fails to meet a Due Date for performing Loop conditioning, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the Unbundled Loop involved within three (3) months of such Due Date. Where Qwest does not perform conditioning in accord with the standards applicable under this Agreement, and such performance causes the due date to be missed, CLEC shall be entitled to a waiver of all non-recurring charges associated with the installation of the loop. Any credit to which CLEC is entitled under this provision will be automatically credited by Qwest to CLEC's bill within sixty (60) calendar Days.

9.2.2.5 When CLEC requests a Basic Rate ISDN capable or an xDSL-I capable Loop, Qwest will dispatch a technician, if necessary, to provide Extension Technology that takes into account for example: the additional regenerator placement, Central Office powering, Mid-Span repeaters, if required, BRITE cards in order to provision the Basic Rate ISDN capable and xDSL-I capable Loop. Extension Technology may be required in order to bring the circuit to the specifications necessary to accommodate the requested service. If the Circuit Design requires Extension Technology, to bring it up to the design standards, contained in Technical Publication 77384 will be provided by Qwest, at no charge. Extension Technology can also be requested by CLEC to meet their specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Qwest will provide the requested Extension Technology and will charge CLEC. Qwest will provision ISDN (BRI) Capable and xDSL-I capable Loops using the specifications in the Technical Publication 77384. CLEC will be charged an Extension Technology recurring charge in addition to the Unbundled Loop recurring charge, if applicable, as specified in Exhibit A of this Agreement. The ISDN Capable Loop may also

require conditioning (e.g., removal of load Coils or Bridged Taps) pursuant to Exhibit A.

9.2.2.6 For DS1 or DS3 capable Loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. Prior to delivery, Qwest will test to ensure circuit continuity from the demarcation point in the Central Office to the NID. Qwest will perform a loop back test when a Network Interface Unit (NIU) is in place. In addition, CLEC will have access to these terminations for testing purposes.

9.2.2.6.1 DS1 capable Loops provide a transmission path between a Central Office network interface at a DS1 panel or equivalent in a Qwest serving Central Office and the network interface at the end user location. DS1 capable Loops transport bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s. DS1 capable Loops shall meet the design requirements specified in Technical Publication 77384 (Unbundled Loops) and 77375 (DS1). Cable unloading and bridge tap removal that may be required as part of the provisioning of DS-1 Capable Loops are included as a part of routine network modifications. Other functions of routine network modifications are described in Section 9.1.2.1.2 and its subsections.

9.2.2.6.2 DS3 capable Loops provide a transmission path between a Qwest Central Office network interface and an equivalent network interface at an end user location. DS3 capable Loops transport bi-directional DS3 signals with a nominal transmission rate of 44.736 Mbit/s. DS3 capable Loops shall meet the design requirements specified in Technical Publications 77384 (Unbundled Loop) and 77324 (DS3).

9.2.2.7 Intentionally Left Blank

9.2.2.8 Loop Qualification Tools. Qwest offers five (5) Loop qualification tools: the ADSL Loop Qualification Tool, Raw Loop Data Tool, POTS Conversion tool, Unbundled Loop Tool, MegaBit Qualification Tool, and ISDN Qualification Tool. These and any future Loop qualification tools Qwest develops will provide CLEC access to Loop qualification information in a nondiscriminatory manner and will provide CLEC the same Loop qualification information available to Qwest. CLEC may request an audit of Qwest's company records, back-office systems and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

9.2.2.8.1 ADSL Loop Qualification Tool. CLEC may use the ADSL Loop Qualification tool to pre-qualify the requested circuit utilizing the existing telephone number or address to determine whether it meets ADSL specifications. The qualification process screens the circuit for compliance with the design requirements specified in Technical Publication 77384.

9.2.2.8.2 Raw Loop Data Tools. Qwest offers two (2) types of Raw Loop Data Tool. If CLEC has a digital certificate, CLEC may access the Wire Center Raw Loop Data Tool via: http://ecom.qwest.com.

9.2.2.8.2.1 The Wire Center Raw Loop Data Tool functions and capabilities are described in the PCAT.

9.2.2.8.2.2 The Wire Center Raw Loop Data Tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, and pair gain type.

9.2.2.8.2.3 CLEC may also access the IMA Raw Loop Data Tool for Loop-specific information. The IMA Raw Loop Data Tool may be accessed through IMA-GUI or IMA-EDI. This tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, number of loads, and pair gain type.

9.2.2.8.3 POTS Conversion to Unbundled Loop Tool. The POTS Conversion to Unbundled Loop Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool informs CLEC whether the facility is copper or pair gain and whether there are loads on the Loop.

9.2.2.8.4 MegaBit Qualification Tool. The MegaBit Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool provides a "yes/no" answer regarding the Loop's ability to support Qwest DSL (formerly MegaBit) service. If the MegaBit Qualification Tool returns a "no" answer, it provides a brief explanation.

9.2.2.8.5 ISDN Qualification Tool. The ISDN Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool permits CLEC to view information on multiple lines and will inform CLEC of the number of lines found. If an ISDN capable Loop is found, the tool identifies the facility and, if applicable, pair gain.

9.2.2.8.6 If the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if CLEC identifies any inaccuracy in the information returned from the Loop qualification tools, and provides Qwest with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Qwest will perform a manual search of the company's records, back office systems and databases where Loop information resides. Qwest will provide CLEC via email, the Loop information identified during the manual search within forty-eight (48) hours of Qwest's receipt of CLEC's request for manual search. The email will contain the following Loop make-up information: composition of the Loop material; location and type of pair gain devices; the existence of any terminals such as remote terminals or digital Loop terminals; Bridged Tap and load coils; Loop length; wire gauge. Effective December 8, 2006, the email will also contain Loop make-up data showing the

presence of Universal Digital Carrier (UDC); third party voice; and the presence of DSL. In the case of Loops served by digital Loop carrier, the email will provide the availability of spare feeder and distribution facilities that could be used to provision service to the Customer, including any spare facilities not connected to the Switch and Loop make-up for such spare facilities. After completion of the investigation, Qwest will load the information into the LFACS database, which will populate this Loop information into the fields in the Loop qualification tools.

9.2.2.9 Provisioning Options. Six (6) Provisioning options are available for Unbundled Loop elements. Charges for these Provisioning options vary depending on the type of Loop requested. Rates are contained in Exhibit A of this Agreement. Testing parameters are described below and in Qwest Technical Publication 77384.

9.2.2.9.1 Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Qwest will call CLEC to notify CLEC that the Qwest work has been completed.

9.2.2.9.1.1 For an existing end user, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. There is no associated circuit testing performed.

9.2.2.9.1.2 For new end user service, the Basic Installation option involves the COT and Field Technician (CST/NT) completing circuit wiring and performing the required performance tests to ensure the new circuit meets the required parameter limits. The test results are NOT provided to CLEC.

9.2.2.9.1.3 For basic installation of existing 2 / 4 wire analog Loops, Qwest provides a Quick Loop option that enables CLEC to receive the Quick Loop installation interval as set forth in Exhibit C. Quick Loop installation includes only a simple lift and lay procedure. Quick Loop is not available with cooperative testing, coordinated installation, or when unbundling from an IDLC to a copper alternative.

9.2.2.9.2 Basic Installation with Performance Testing. Basic Installation with Performance Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.2.1 For an existing end user, Basic Installation with Performance Testing is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting CLEC. The COT and Implementor/Tester perform the required performance tests to ensure that the new circuit meets required parameter limits.

9.2.2.9.2.2 The Qwest Implementor/Tester will read the test results to CLEC on close-out and email the performance test results within two (2) business days to a single, designated CLEC office email address.

9.2.2.9.2.3 For new end user service, the Basic Installation with Performance Testing option requires a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits. These test results are read to CLEC by the Qwest Implementor/Tester on close-out. Within two (2) business days, Qwest will email the performance test results to a single, designated CLEC office email address.

9.2.2.9.3 Coordinated Installation with Cooperative Testing. Coordinated installation with cooperative testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.3.1 For an existing end user, Coordinated Installation with Cooperative Testing is a "lift and lay" procedure with cooperative testing. The COT completes the installation in the Central Office and performs testing that CLEC requests. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test CLEC requests that is not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.2 For new end user service, Coordinated Installation with Cooperative Testing may require a dispatch of a technician to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure that the new circuit meets required parameter limits. Upon completion of Qwest performance testing,

~~the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test not defined in the Qwest Technical Publication 77384.~~

~~9.2.2.9.3.3 The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.~~

~~9.2.2.9.3.3(a) If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.~~

~~9.2.2.9.3.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:~~

~~9.2.2.9.3.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.~~

~~9.2.2.9.4 Coordinated Installation without Cooperative Testing. Coordinated Installation without Cooperative Testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option and the Parties will attempt to set a new appointment time on the same day and, if unable to do so,~~

[redacted] with a new Due Date.

9.2.2.[redacted].1 For an existing [redacted] Loop this Coordinated Installation without Cooperative Testing is a "lift and lay" procedure without a dispatch, that [redacted]rs CLEC the ability to coordinate the conversion activity. The Qwest Implementor advises CLEC when the "lift and lay" procedure is complete.

9.2.2.9.4.2 For new Unbundled Loops, Qwest may dispatch a technician to terminate the new circuit at the end user premises. The Field Technician will not remain on the premises to perform the coordinated installation once the circuit is in place. The COT completes the installation in the Central Office, and the COT and Implementor/Tester complete the required performance tests to ensure that the new circuit meets required parameter limits. CLEC will not receive test results. When installation is complete, Qwest will notify CLEC.

9.2.2.9.5 Basic Installation with Cooperative Testing. Basic Installation with Cooperative Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.5.1 For an existing end user, Basic Installation with [redacted]rative Testing is a "lift and lay" procedure with Cooperative Testing on the Due Date. The COT "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC and Qwest will perform a Loop back acceptance test, accept the Loop, and exchange demarcation [redacted]information.

9.2.2.9.5.2 For new end user service, Basic Installation with Cooperative Testing may require a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits.

9.2.2.9.5.2(a) The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.5.3 If Qwest fails to perform cooperative testing due

to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.5.3.1 If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.5.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.5.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.6 Performance Testing. Qwest performs the following performance tests for various Loop types:

2-Wire and 4-Wire Analog Loops

No Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

2-Wire and 4-Wire Non-Loaded Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

Basic Rate ISDN and xDSL-I Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

~~Insertion Loss = ≤ 40 dB at 40 kHz~~

~~Automatic Number Identification (ANI) when dial-tone is present~~

~~DS1 Capable Loops~~

~~No Load Coils, Opens, Grounds, Shorts, or Foreign Volts~~

~~[redacted]s~~

~~Continuity Testing~~

~~ADSL Compatible Loops~~

~~No Load Coils, Opens, Grounds, Shorts, or Foreign Volts~~

~~Insertion Loss = ≤ 41 dB at 196 kHz~~

~~Automatic Number Identification (ANI) when dial-tone is present~~

~~9.2.2.9.7 Project Coordinated Installation: A Project Coordinated Installation permits CLEC to obtain a coordinated installation for Unbundled Loops with or without LNP, where CLEC orders Unbundled [redacted] twenty-five (25) or [redacted] Unbundled Loops.~~

~~9.2.2.9.7.1 The date and time for the Project Coordinated Installation requires up-front planning and may need to be negotiated between Qwest and CLEC. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Considerations such as system down time, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Qwest will negotiate with CLEC for an agreed upon FDT, prior to issuing the Firm Order Confirmation (FOC). In special cases where CLEC is ordering Unbundled Loop with LNP, the FDT must be agreed upon, the interval to reach agreement will not exceed two (2) Days from receipt of an accurate LSR. In addition, standard intervals will apply.~~

~~9.2.2.9.7.2 CLEC shall request a Project Coordinated Installation by submitting a Local Service Request (LSR) and designating this order as a Project Coordinated Installation in the remarks section of the LSR form.~~

~~9.2.2.9.7.3 CLEC will incur additional charges for the Project Coordinated Installation dependent upon the coordinated time. The rates are based upon whether the request is within Qwest's normal business hours or Out Of Hours. Qwest normal~~

~~business hours for Unbundled Loops are 8:00 a.m. to 5:00 p.m., Monday through Friday. The rates for coordinated installations are set forth in Exhibit A. Where LNP is included, see Section 10.2.5.4 for rate elements.~~

~~9.2.2.9.7.4 Qwest will schedule the appropriate number of employees prior to the cut, normally not to exceed four employees, based upon information provided by CLEC. If the Project Coordinated Installation includes LNP, CLEC will also have appropriate personnel scheduled for the negotiated FDT. If CLEC's information is modified during the installation, and, as a result, non-scheduled employees are required, CLEC shall be charged a three (3) hour minimum callout charge per each additional non-scheduled employee. If the installation is either cancelled, or supplemented (supp) to change the Due Date, within twenty-four (24) hours of the negotiated FDT, CLEC will be charged a one person three (3) hour minimum charge. For Project Coordinated Installations with LNP, if the Coordinated Installation is cancelled due to a Qwest error or a new Due Date is requested by Qwest, within twenty-four (24) hours of the negotiated FDT, Qwest may be charged by CLEC one person three (3) hour minimum charge as set forth in Exhibit A.~~

~~9.2.2.9.7.5 If CLEC orders Project Coordinated Installation with LNP and in the event the LNP conversion is not successful, CLEC and Qwest agree to isolate and fix the problem in a timeframe acceptable to CLEC or the Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the Customer, CLEC may request the restoral of Qwest service for the ported Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Qwest. If Qwest is in error, no supplemental order or additional order will be required of CLEC.~~

~~9.2.2.9.7.6 If CLEC orders Project Coordinated Installation with LNP, Qwest shall ensure that any LNP order activity requested in conjunction with a Project Coordinated Installation shall be implemented in a manner that avoids interrupting service to the end user.~~

~~9.2.2.9.8 Intentionally Left Blank.~~

~~9.2.2.9.9 Intentionally Left Blank.~~

~~9.2.2.9.10 For loop installations requiring a Qwest technician dispatch, Qwest will note the demarcation location (for designed service circuits) and CLEC may access such information via CEMR. The applicable PCAT for Business Procedure contains additional information.~~

~~9.2.2.9.11 If at any time during the Provisioning process or during the~~

first thirty (30) business days following Qwest's notification of completion, either Qwest or CLEC may request a joint meet at either the NID or Central Office to perform cooperative trouble isolation. If no trouble is found in Qwest's network, a Maintenance of Service Charge will apply pursuant to Exhibit A. If trouble is found in Qwest's network, CLEC will be credited the Maintenance of Service charge or CLEC's actual cost, whichever is less, pursuant to Section 12.3.4.4.

9.2.2.10 Multiplexing. Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. Except as specifically set forth in Section 9.2, CLEC may order multiplexing, including conversion from special access or private line circuits, for Unbundled Loops under the rates, terms and conditions for multiplexing of Enhanced Extended Loop (EEL), in Section 9.23.3.9 of this Agreement. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.2.11 In order to properly maintain and modernize the network, Qwest may make necessary modifications and changes to Unbundled Loops, ancillary and Finished Services in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network Interoperability require advance notice pursuant to the Notices Section of this Agreement.

9.2.2.12 If there is a conflict between an end user(or its respective agent) and CLEC regarding the disconnection or Provisioning of Unbundled Loops, Qwest will advise the end user to contact CLEC, and Qwest will initiate contact with CLEC.

(a) Reserved for Future Use.

(b) Reserved for Future Use.

9.2.2.13 Facilities and lines Qwest furnishes on the premises of CLEC's end user up to and including the Demarcation Point are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel to accommodate testing, inspection repair and maintenance of such facilities and lines. CLEC will not inhibit Qwest's employees and agents from entering said premises to test, inspect, repair and maintain such facilities and lines in connection with such purposes or, upon termination or cancellation of the Unbundled Loop service, to remove such facilities and lines. Such entry is restricted to testing, inspection, repair and maintenance of Qwest's property in that facility. Entry for any other purpose is subject to audit provisions in the Audit section of this Agreement.

9.2.2.14 Reserved for Future Use.

9.2.2.15 Reuse of Loop Facilities.

9.2.2.15.1 When an end user contacts Qwest with a request to

convert their local service from CLEC to Qwest, Qwest will notify CLEC of the loss of the end user, and will disconnect the Loop Qwest provided to CLEC. Qwest will disconnect the Loop only where Qwest has obtained proper Proof of Authorization.

9.2.2.15.2 When CLEC contacts Qwest with a request to convert an end user from their current CLEC (old CLEC) to them (new CLEC), new CLEC is responsible for notifying old CLEC of the conversion. Qwest will disconnect the Loop Qwest provided old CLEC and, at new CLEC request, where technically compatible, will reuse the Loop for the service requested by new CLEC (e.g., resale service).

9.2.2.15.3 When CLEC contacts Qwest with a request to convert an end user from Qwest to CLEC, at CLEC request, Qwest will reuse the existing Loop facilities for the service requested by CLEC to the extent those facilities are technically compatible with the service to be provided. Upon CLEC request, Qwest will condition the existing Loop in accordance with the rates set forth in Exhibit A.

9.2.2.15.4 Upon completion of the disconnection of the Loop, Qwest will send a Loss Notification report to the original competitive Carrier signifying completion of the loss.

9.2.2.15.5 In all loop reuse scenarios where the facility is re-used "AS IS", Qwest shall take all steps necessary to ensure all services being provided on the loop are transitioned to the new provider with minimal service interruption to the end user. This applies to both voice and data services.

9.2.3 Rate Elements

The following recurring and nonrecurring rates for Unbundled Loops are set forth in Exhibit A of this Agreement. Recurring charges vary based on CLEC selected installation options, conditioning, and extension technology.

9.2.3.1 2/4 Wire Analog Loop (Voice Grade) Recurring and Nonrecurring rates.

9.2.3.2 2/4 Wire Non-Loaded Loop Recurring and Nonrecurring rates.

9.2.3.3 DS1 and DS3 Capable Loop, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop Recurring and Nonrecurring rates.

9.2.3.3.1 DS0, DS1 and DS3 Capable Loop Conversion Nonrecurring rates associated with the conversion of special access or private lines to Unbundled Loops.

9.2.3.4 Extension Technology Recurring and Nonrecurring rates for Digital Capable Loops, including Basic Rate (BRI) ISDN and xDSL-I Capable Loops.

9.2.3.5 Conditioning Nonrecurring rates 2/4 wire non-loaded Loops, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loops, as requested and approved by CLEC.

9.2.3.6 Miscellaneous Charges, as defined in Sections 4 and 9.1.12, may apply.

9.2.3.7 Out of Hours Coordinated Installations.

9.2.3.7.1 For purposes of service installation, Qwest's installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

9.2.3.7.2 Intentionally Left Blank.

9.2.3.7.3 Intentionally Left Blank.

9.2.3.7.4 Intentionally Left Blank.

9.2.3.7.5 For coordinated installations scheduled to commence Out of Hours, or rescheduled by CLEC to commence Out of Hours, CLEC will incur additional charges for the Out of Hours coordinated installation as set forth in Exhibit A.

9.2.4 Ordering Process

9.2.4.1 Unbundled Loops are ordered via an LSR. Ordering processes are contained in the Support Functions Section of this Agreement. Detailed ordering processes are found on the Qwest wholesale website.

9.2.4.2 Prior to placing orders on behalf of the end user, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization.

9.2.4.3 Based on the pre-order Loop make-up, CLEC may be able to determine if the circuit can meet the technical parameters for the specific service CLEC intends to offer.

9.2.4.3.1 Before submitting an order for a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop or xDSL-I capable Loop, CLEC should use one of Qwest's Loop make-up tools available via IMA-EDI, IMA-GUI, or the web-based application interface to obtain specific information about the Loop CLEC seeks to order. However, CLEC is entitled to submit an LSR regardless of whether it has utilized or in any way prequalified such loop using any of Qwest's available loop prequalification tools or any information or databases Qwest has made available to CLEC for purposes of obtaining loop qualification information.

9.2.4.3.1.1 Based on the Loop make up information provided through Qwest tools, CLEC may determine whether conditioning is required to provide the xDSL service it intends to offer. If Loop conditioning is required, CLEC may authorize Qwest to perform such Loop conditioning on its Local Service Request

~~(LSR) by entering a "Y" in the SCA field of the LSR. If CLEC does not pre-approve Loop conditioning, Qwest will assume that CLEC has determined that Loop conditioning is not necessary to provide the xDSL service CLEC seeks to offer. If CLEC does not pre-approve conditioning and no conditioning is required to provision the request, the service request will flow through the provisioning process. If CLEC or Qwest determines that conditioning is necessary, and CLEC authorizes Qwest to perform the conditioning, Qwest will perform the conditioning. CLEC will be charged for the conditioning in accordance with the rates in Exhibit A, if applicable. If Qwest determines that conditioning is necessary and CLEC has not previously authorized Qwest to perform the conditioning on the LSR, Qwest will send CLEC a rejection notice indicating the need to obtain approval for conditioning. CLEC must submit a revised LSR before the conditioning work will commence. Once Qwest receives the revised LSR, the fifteen (15) business day conditioning interval will begin as described in Section 9.2.4.9.~~

~~9.2.4.3.1.2 For a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop, xDSL-I capable Loop, or DS1 capable Loop Qwest will return a Firm Order Confirmation (FOC) to CLEC within seventy-two (72) hours from receipt of a valid and accurate LSR. Return of such FOC will indicate that Qwest has identified a Loop assignment. Such FOC will provide CLEC with a firm Due Date commitment. If appropriate facilities are not available to fill CLEC's order, a jeopardy notification will be issued.~~

~~9.2.4.3.1.2.1 If CLEC has pre-approved Loop conditioning, and conditioning is not necessary, Qwest will return the FOC with the standard interval identified in Exhibit C.~~

~~9.2.4.3.1.2.2 If CLEC has not pre-approved Loop conditioning and Qwest determines that the Loop contains load coils, Qwest will notify CLEC via a reject notification. CLEC must submit a new version of the LSR approving Loop conditioning. In this scenario, the Application Date will correspond to date the new version is received by Qwest.~~

~~9.2.4.3.1.2.3 Reserved for Future Use.~~

~~9.2.4.3.1.2.4 Reserved for Future Use.~~

~~9.2.4.3.2 Qwest will not reject any order for any 2/4 Wire non-loaded Loop based on dB loss or loop length, including but not limited to loop length contained in databases or records containing loop make-up information, loop length based on equivalent loop length as determined by a Mechanized Loop Test (MLT).~~

9.2.4.4 Installation intervals for all Unbundled Loops are defined in Exhibit C. The interval will start when Qwest receives a complete and accurate LSR. The LSR date is considered the start of the service interval if the order is received prior to 7:00 p.m. For service requests received after 7:00 p.m., the service interval will begin on the next business day.

9.2.4.4.1 When CLEC places an order for an Unbundled Loop with Qwest that is complete and accurate, Qwest will reply to CLEC with a Firm Order Confirmation within the time specified in Section 20. The Firm Order Confirmation will contain the Due Date that specifies the date on which Qwest will provision the Loop. Qwest will implement adequate processes and procedures to assure the accuracy of the commitment date. If Qwest must make changes to the commitment date, Qwest will promptly issue a jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also submit a new Firm Order Confirmation that will clearly identify the new Due Date.

9.2.4.5 Installation intervals for Unbundled Loops apply when Qwest has facilities or network capacity available.

9.2.4.6 Upon CLEC request, Qwest will convert special access or private line circuits to Unbundled Loops, with or without multiplexing, provided the service originates at the CLEC Collocation in the Serving Wire Center. If multiplexing is not involved, then the Loop conversion ordering process applies. However, if the conversion includes multiplexing, then the ordering process associated with the conversion to EELs applies. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.4.7 Reserved for Future Use.

9.2.4.8 When ordering Unbundled Loops, CLEC is responsible for obtaining or providing facilities and equipment that are compatible with the service CLEC seeks to provide.

9.2.4.9 The installation interval for xDSL Loops depends on the need to condition the Loop.

9.2.4.9.1 When load coils and Bridged Taps do not exist, CLEC may request the standard Due Date interval, which will apply upon submission of a complete and accurate LSR.

9.2.4.9.2 When load coils and/or excessive Bridged Taps do exist, CLEC will request the minimum fifteen (15) business days desired Due Date. CLEC can determine the existence of load coils or Bridged Taps by using one of the Loop make-up tools. CLEC may pre-approve line conditioning on the LSR and, by doing so, CLEC agrees to pay any applicable conditioning charges. If CLEC did not request the fifteen (15) Day interval and Qwest determines that conditioning is required, then the fifteen (15) business day interval starts when the need for conditioning is identified and CLEC approves the conditioning charges.

9.2.4.10 Out of Hours Coordinated Installations.

9.2.4.10.1 For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Installations requested outside of these hours are considered to be Out of Hours Installations.

9.2.4.10.2 CLEC may request an Out of Hours Coordinated Installation outside of Qwest's standard installation hours.

9.2.4.10.3 To request Out of Hours Coordinated Installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an Out of Hours Coordinated Installation in the Remarks section of the LSR.

9.2.4.10.4 The date and time for Out of Hours Coordinated Installations may need to be negotiated between Qwest and CLEC because of system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same appointment times in the same Switch (Switch contention).

9.2.5 Maintenance and Repair

9.2.5.1 CLEC is responsible for its own end user base and will have the responsibility for resolution of any service trouble report(s) from its end users. CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the NID, the Loop Demarcation Point or any other accessible test point that is a Demarcation Point between Qwest's and CLEC's networks. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. For Unbundled Loops, each party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 9.2.5.1, 9.2.5.2 and 9.2.5.3.

9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the end user's side of the Loop Demarcation Point. If the trouble is on the end user's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the Maintenance of Service charge.

9.2.5.3 When CLEC elects not to perform trouble isolation and Qwest performs tests on the Unbundled Loop at CLEC's request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities. Maintenance and Repair processes are set forth in Section 12.3 of this Agreement. Maintenance of Service charges are set forth in Exhibit A.

9.2.5.3(a) Prior to closing out any trouble ticket, Qwest will contact CLEC and confirm with CLEC testing personnel that the trouble has been resolved or

that there is no trouble on the line.

9.2.5.4 Qwest will maintain detailed records of trouble reports of CLEC-ordered Unbundled Loops comparing CLEC provided data with internal data, and evaluate such reports on at a minimum of a quarterly basis to determine the cause of Loop problems. Qwest will conduct a quarterly root cause analysis of problems associated with UNE Loops provided to CLECs by Qwest. Based on this analysis, Qwest will take corrective measure to fix persistent and recurrent problems, reporting to CLECs on the analysis and the process changes that are instituted implemented to fix the problems.

9.2.5.5 Qwest shall allow access to the NID for testing purposes where access at the Demarcation Point is not adequate to allow testing sufficient to isolate troubles; in the event that Qwest chooses not to allow such access, it shall waive any trouble isolation charges that may otherwise be applicable.

9.2.6. Spectrum Management

9.2.6.1 Qwest will provide 2/4 Wire non-loaded Loops, ADSL compatible Loops, ISDN capable Loops, xDSL-I capable Loops, DS1 capable Loops and DS3 capable Loops (collectively referred to in this Section 9.2.6 as "xDSL Loops") in a non-discriminatory manner to permit CLEC to provide Advanced Services to its End User Customer. Such Loops are defined herein and are in compliance with FCC requirements and guidelines recommended by the Network Reliability and Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417.

9.2.6.2 When ordering xDSL Loops, CLEC will provide Qwest with appropriate information using NC/NCI codes, (as required by the FCC), to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. Qwest will treat such information provided by CLEC as confidential and proprietary information. CLEC also agrees to notify Qwest of any change in Advanced Services technology that results in a change in spectrum management class on the xDSL Loop. Qwest agrees CLEC need not provide the speed or power at which the newly deployed or changed technology will operate if the technology fits within a generic PSD mask. Qwest will only use this information for network spectrum management purposes and will not provide this information, either by individual CLEC or in the aggregate, to marketing personnel. Qwest agrees to provide CLECs with information concerning Qwest's spectrum management procedures and policies, the number of Loops using Advanced Services within a binder group, and the types of technologies used on those Loops.

9.2.6.2.1 CLEC information provided to Qwest pursuant to Section 9.2.6.2 shall be deemed Confidential Information and Qwest may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections of 9.2.6.2.

9.2.6.2.2 The Parties may disclose, on a need-to-know basis only, CLEC Confidential Information provided pursuant to Section 9.2.6.2, to legal personnel, if a legal issue arises, as well as to network and growth

planning personnel responsible for spectrum management functions. In no case shall the aforementioned personnel who have access to such Confidential Information be involved in Qwest's retail marketing, sales or strategic planning.

9.2.6.3 If CLEC wishes to deploy new technology not yet designated with a PSD mask, Qwest and CLEC agree to work cooperatively to determine spectrum compatibility. Qwest and CLEC agree, as defined by the FCC, that technology is presumed acceptable for deployment when it complies with existing industry standards, is approved by a standards body or by the FCC or Commission, of if technology has been deployed elsewhere without a "significant degradation of service".

9.2.6.4 Qwest recognizes that the analog T1 service traditionally used within its network is a "known Disturber" as designated by the FCC. Qwest will place such T1s, by wh[redacted]loyed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is Technically Feasible, replace its T1s with a t[redacted]t will eliminate undue interference problems. Qwest also agrees that any future "known Disturber" d[redacted]e FCC or the Commission will be managed as required by FCC rules.

9.2.6.5 If either Qwest or CLEC claims a service is significantly degrading the performance of other Advanced Services or traditional voice band services, then that Party must notify the causing Carrier and allow the causing Carrier a reasonable opportunity to correct the problem. Upon notification, the causing Carrier shall promptly take action to bring its facilities/technology into compliance with industry standards. Upon request, within forty-eight (48) hours, Qwest will provide CLEC with binder group information including cable, pair, Carrier and PSD class to allow CLEC to notify the causing Carrier.

9.2.6.6 If CLEC is unable to isolate trouble to a specific pair within the binder group, Qwest, upon receipt of a trouble resolution request, will perform a main frame pair by pair analysis and provide results to CLEC within five (5) business days.

9.2.6.7 Reserved for Future Use.

9.2.6.8 Qwest will not have the authority to unilaterally resolve any dispute over spectral interference among Carriers. Qw[redacted]st shall not disconnect Carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the interfering Carrier or Qwest is ordered to do so by the Commission or other authorized dispute resolution body. CLEC may submit any claims for resolution under Section 5.18 of this Agreement.

9.2.6.9 Where CLEC demonstrates to Qwest that it has deployed Central Office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or r[redacted]L service in that area. It shall be presumed that the costs

of such mitigation will not be chargeable to any CLEC or to any other Customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other Customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this Agreement.

9.3 Subloop Unbundling

9.3.1 Description

OPEN – Covad proposed; Qwest cannot agree

9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis, pursuant to Section 251 of the Act, to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access , pursuant to Section 251 of the Act, to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 of the Act and other Applicable Law. This section does not address Dark Fiber Subloop which is addressed in Section 9.7.

9.3.1.1.1 Building terminals within or physically attached to a privately [redacted]uilding in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms and conditions differ between MTE environments and non-MTE environments.

9.3.1.1.2 For any configuration not specifically addressed in this Agreement, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any Collocation or other

~~Provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.~~

~~9.3.1.1.3 Any party may request, under any procedure provided for by this Agreement for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.~~

~~9.3.1.1.4 Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in Section 9.3.1.1.2 above only those requirements or intervals that are reasonably necessary.~~

~~9.3.1.1.4.1 MTE Terminals: Accessible terminals within a building in a MTE environment or accessible terminals physically attached to a building in a MTE environment. Qwest Premises located on real property that constitutes a campus environment, yet are not within or physically attached to a non-Qwest owned building, are not considered MTE Terminals.~~

~~9.3.1.1.4.2 Detached Terminals: All accessible terminals other than MTE Terminals.~~

~~9.3.1.2 Standard Subloops available.~~

~~a) Two-Wire/Four Wire Unbundled Distribution Loop~~

~~OPEN – Covad cannot agree; Covad counter below~~

~~b) Intentionally Left Blank~~

~~OPEN – Covad proposed counter; Qwest cannnot agree~~

~~b) DS1 Capable Unbundled Feeder Loop~~

~~c) Two-Wire/Four Wire Non-loaded Distribution Loop~~

~~d) Intrabuilding Cable Loop~~

~~9.3.1.3 Standard Subloop Access~~

~~9.3.1.3.1 Accessing Subloops in Detached Terminals: Subloop~~

~~Unbundling is available after a CLEC requested Field Connection Point (FCP) has been installed within or adjacent to the Qwest accessible terminal. The FCP is a Demarcation Point connected to a terminal block from which Cross Connections are run to Qwest Subloop elements.~~

~~9.3.1.3.2 Accessing Subloops in MTE Terminals: Subloop Unbundling is available after CLEC has notified Qwest of its intention to Subloop unbundle in the MTE, during or after an inventory of CLEC's terminations has been created, and CLEC has constructed a cross-connect field at the building terminal.~~

~~9.3.1.3.2.1 Reserved for Future Use.~~

~~9.3.1.3.2.2 Reserved for Future Use.~~

~~9.3.1.4 Field Connection Point~~

~~9.3.1.4.1 Field Connection Point (FCP) is a Demarcation Point that allows CLEC to interconnect with Qwest outside of the Central Office location where it is Technically Feasible. The FCP interconnects CLEC facilities to a terminal block within the accessible terminal. The terminal block allows a technician to access and combine Unbundled Subloop elements. When a FCP is required, it must be in place before Subloop orders are processed.~~

~~9.3.1.4.2 Placement of a FCP within a Qwest Premises for the sole purpose of creating a cross-connect field to support Subloop unbundling constitutes a "Cross-Connect Collocation."~~

~~9.3.1.4.2.1 The terms, conditions, intervals and rates for Cross-Connect Collocation are found within section 9.3.~~

~~9.3.1.4.2.2 To the extent that CLEC places equipment in a Qwest Premises that requires power and or heat dissipation, such Collocation is governed by the Terms of Section 8 and does not constitute a Cross-Connect Collocation.~~

~~9.3.1.4.3 A FCP arrangement can be established either within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when Technically Feasible, CLEC may place the FCP in an adjacent terminal. CLEC will have access to the equipment placed within the Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.~~

~~9.3.1.5 MTE Point of Interconnection (MTE-POI)~~

~~9.3.1.5.1 A MTE-POI is necessary when CLEC is obtaining access to the Distribution Loop or Intrabuilding Cable Loop from an MTE Terminal. CLEC must create the cross-connect field at the building terminal that will allow CLEC to connect its facilities to Qwest's Subloops. The Demarcation Point between CLEC and Qwest's facilities is the MTE-~~

~~POI.~~

~~9.3.1.6 Once a state has determined that it is Technically Feasible to unbundle Subloops at a designated accessible terminal, Qwest shall either agree to unbundle at such access point or shall have the burden to demonstrate, pursuant to the dispute resolution provisions of this Agreement, that it is not Technically Feasible, or that sufficient space is not available to unbundle Subloop elements at such accessible terminal.~~

~~9.3.1.7 Qwest shall provide access to additional Subloop elements (e.g., copper feeder) to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.~~

~~9.3.2 Standard Subloops Available~~

~~9.3.2.1 Distribution Loops~~

~~9.3.2.1.1 Two-Wire/Four-Wire Unbundled Distribution Loop: a Qwest provided facility from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for local exchange type services. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.~~

~~9.3.2.1.2 Two-Wire/Four-Wire Non-Loaded Distribution Loop: a Qwest provided facility without load coils and excess Bridged Taps from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. When CLEC requests a Non-Loaded Unbundled Distribution Loop and there are none available, Qwest will contact CLEC to determine if CLEC wishes to have Qwest unload a Loop. If the response is affirmative, Qwest will dispatch a technician to "condition" the Distribution Loop by removing load coils and excess Bridged Taps (i.e., "unload" the Loop). CLEC may be charged the cable unloading and Bridged Taps removal nonrecurring charge in addition to the Unbundled Loop installation nonrecurring charge. If a Qwest technician is dispatched and no load coils or Bridged Taps are removed, the nonrecurring conditioning charge will not apply. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.~~

~~9.3.2.1.3 Intrabuilding Subloop [redacted] facility from the building terminal inside a MTE to the Demarcation Point at the End User Customer premises inside the same building. This Subloop element only applies when Qwest owns the intrabuilding cable.~~

~~9.3.2.1.4 To the extent CLEC accesses Subloop in a campus environment from an accessible terminal that serves multiple buildings, CLEC can access these Subloops by ordering a Distribution Loop pursuant to either Section 9.3.2.1.1 or 9.3.2.1.2. A campus environment is one piece of property, owned by one person or entity, on which there are multiple buildings.~~

OPEN – Covad cannot agree; Covad counter below

9.3.2.2 Intentionally Left Blank

9.3.2.2.1 Intentionally Left Blank

OPEN – Covad proposed counter

9.3.2.2 Feeder Loops

9.3.2.2.1 DS1 Capable Unbundled Feeder Loop is a digital transmission path that is provisioned from a Qwest Central Office network interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal. The DS1 Capable Unbundled Feeder Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s.

9.3.3 MTE Terminal Subloop Access: Terms and Conditions

9.3.3.1 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, as defined in Section 9.3, refers to creation of a cross connect field and does not constitute Collocation as defined in Section 8. The terms and conditions of Section 8 do not apply to Cross-Connect Collocation if required at or near an MTE.

9.3.3.2 To obtain such access, CLEC shall complete the "MTE-Access Ordering Process" set forth in Section 9.3.5.4.

9.3.3.3 The optimum point and method to access Subloop elements will be determined during the MTE Access Ordering Process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security. CLEC may access the MTE Terminal as a test access point.

9.3.3.4 CLEC will work with the MTE building owner to determine where to terminate its facilities within the MTE. CLEC will be responsible for all work associated with bringing its facilities into and terminating the facilities in the MTE. CLEC shall seek to work with the building owner to create space for such terminations without requiring Qwest to rearrange its facilities.

9.3.3.5 If there is space in the building for CLEC to enter the building and terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space. In such circumstances, an inventory of CLEC's terminations within the MTE shall be input into Qwest's systems to support Subloop orders before Subloop orders are provisioned or in conjunction with the first Subloop order in the MTE. Qwest shall have five (5) calendar Days from

receipt of a written request from CLEC, in addition to the interval set forth in Section 9.3.5.4.1, to input the inventory of CLEC's terminations into its systems. Qwest may seek an extended interval if the work cannot reasonably be completed within the stated interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval [redacted] believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain the extended interval. If CLEC submits a Subloop order before Qwest inputs the inventory into its systems, Qwest shall process the order in accord with Section 9.3.5.4.1.

9.3.3.6 If CLEC connects Qwest's Subloop element to CLEC's facilities using any temporary wiring or cut-over devices, CLEC shall remove any remaining temporary wiring or cut-over devices and install permanent wiring within ninety (90) calendar Days. All wiring arrangements, temporary and permanent, must adhere to the National Electric Code.

9.3.3.7 If there is no space for CLEC to place its building terminal or no accessible terminal from which CLEC can access such Subloop elements, and Qwest and CLEC are unable to negotiate a reconfigured Single Point of Interconnection (SPOI) to serve the MDU, Qwest will either rearrange facilities to make room for CLEC or construct a single point of access that is fully accessible to and suitable for CLEC. Qwest's obligation to construct a SPOI is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE In addition, Qwest shall have an obligation only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI. In such instances, CLEC shall pay [redacted] a nonrecurring charge, which shall be ICB, based on the scope of the work required. If CLEC requests that a new SPOI be established, then CLEC shall pay Qwest a nonrecurring charge that shall be ICB, based on the scope of the work required. If the MTE terminal is hard wired in such a manner that a network Demarcation Point cannot be created, Qwest will rearrange the terminal to create a cross-connect field and Demarcation Point. Charges for such rearrangement shall be recovered through recurring termination charges.

9.3.3.7.1 If Qwest must rearrange its MTE Terminal to make space for CLEC, Qwest shall have forty-five (45) calendar Days from receipt of a written request from CLEC [redacted] plete the rearrangement. Qwest may seek an extended interval if the work cannot reasonably be completed within forty-five (45) calendar Days. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and th[redacted]f, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.3.7.2 If Qwest must construct a new detached terminal that is fully accessible to and suitable for CLEC, the interval for completion shall be negotiated between the Parties on an Individual Case Basis.

9.3.3.7.3 CLEC may cancel a request to construct an FCP or SPOI prior to Qwest completing the work by submitting a written

notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest as well as any costs necessary to restore the property to its original condition.

9.3.3.8 At no time shall either Party rearrange the other Party's facilities within the MTE or otherwise tamper with or damage the other Party's facilities within the MTE. This does not preclude normal rearrangement of wiring or jumpers necessary to connect inside wire or intrabuilding cable to CLEC facilities in the manner described in the MTE Access Protocol. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

9.3.4 Detached Terminal Subloop Access: Terms and Conditions

9.3.4.1 Except as to access at an MTE Terminal, access to unbundled Subloop elements at an accessible terminal must be made through a Field Connection Point (FCP) in conjunction with either a Cross-Connect Collocation or, if power and/or heat dissipation is required, a Remote Collocation.

9.3.4.2 To the extent that the accessible terminal does not have adequate capacity to house the network interface associated with the FCP, CLEC may opt to use Adjacent Collocation to the extent it is Technically Feasible. Such adjacent access shall comport with NEBS Level 1 safety standards

9.3.4.2.1 Reserved for Future Use.

9.3.4.3 Field Connection Point

9.3.4.3.1 Qwest is not required to build additional space for CLEC to access Subloop elements. When Technically Feasible, Qwest shall allow CLEC to construct its own structure adjacent to Qwest's accessible terminal. CLEC shall obtain any necessary authorizations or rights of way required (which may include obtaining access to Qwest rights of way, pursuant to section 10.8 of this Agreement) and shall coordinate its facility placement with Qwest, when placing their facilities adjacent to Qwest facilities. Obstacles that CLEC may encounter from cities, counties, electric power companies, property owners and similar third parties, when it seeks to interconnect its equipment at Subloop access points, will be the responsibility of CLEC to resolve with the municipality, utility, property owner or other third party.

9.3.4.3.2 The optimum point and method to access Subloop elements will be determined during the Field Connection Point process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security.

9.3.4.3.3 CLEC must identify the size and type of cable that will be

~~terminated in the Qwest FCP location. Qwest will terminate the cable in the Qwest accessible terminal if termination capacity is available. If termination capacity is not available, Qwest will expand the FDI at the request of CLEC if Technically Feasible, all reconfiguration costs to be borne by CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. It will be the responsibility of Qwest to seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision the Collocation. CLEC will be responsible for placing the cable from the Qwest FCP to its equipment. Qwest will perform all of the initial splicing at the FCP.~~

~~9.3.4.3.4 CLEC may cancel a Collocation associated with a FCP request prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest.~~

~~9.3.4.3.5 If the Parties are unable to reach an agreement on the design of the FCP through the Field Connection Point Process, the Parties may utilize the Dispute Resolution process pursuant to the Terms and Conditions Dispute Resolution Section. Alternatively, CLEC may seek arbitration under Section 252 of the Act with the Commission, wherein Qwest shall have the burden to demonstrate that there is insufficient space in the accessible terminal to accommodate the FCP, or that the requested Interconnection is not Technically Feasible.~~

~~9.3.4.4 At no time shall either Party rearrange the other Party's facilities within the accessible terminal or otherwise tamper with or damage the other Party's facilities. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.~~

~~9.3.5. Ordering/Provisioning~~

~~9.3.5.1 All Subloop Types~~

~~9.3.5.1.1 CLEC may order Subloop elements through the Operational Support Systems described in Section 12.~~

~~9.3.5.1.2 CLEC shall identify Subloop elements by NC/NCI codes.~~

~~9.3.5.2 Additional Terms for Detached Terminal Subloop Access~~

~~9.3.5.2.1 CLEC may only submit orders for Subloop elements after the FCP is in place. The FCP shall be ordered pursuant to Section 9.3.5.5. CLEC will populate the LSR with the termination information provided at the completion of the FCP process.~~

9.3.5.2.2 Qwest shall dispatch a technician to run a jumper between its Subloop elements and CLEC's Subloop elements. CLEC shall not at any time disconnect Qwest facilities or attempt to run a jumper between its Subloop elements and Qwest's Subloop elements without specific written authorization from Qwest.

9.3.5.2.3 Once the FCP is in place, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.3 Reserved for Future Use.

9.3.5.4 Additional Terms for MTE Terminal Subloop Access – MTE Access Ordering Process

9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing, including via email, of its intention to provide access to Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar Days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership communicated to another CLEC at the same MTE, Qwest shall provide such notification to requesting CLEC within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the Customer side of the terminal, the preceding ten (10) Day period shall be reduced to five (5) calendar Days from Qwest's receipt of such claim.

9.3.5.4.2 If the MTE owner owns the facilities on the Customer side of the terminal, CLEC may obtain access to all facilities in the building in accordance with Section 9.5 concerning access to unbundled NIDs.

9.3.5.4.3 If Qwest owns the facilities on the Customer side of the terminal, and if CLEC requests space to enter the building and terminate its facilities and Qwest must rearrange facilities or construct new facilities to accommodate such access, CLEC shall notify Qwest. Upon receipt of such notification, the intervals set forth in Section 9.3.3 shall begin.

9.3.5.4.4 CLEC may only submit orders for Subloop elements after the facilities are rearranged and/or a new facility constructed, if either are necessary. CLEC will populate the LSR with the termination information provided by CLEC at the completion of the inventory process except when submitting LSRs during the creation of the inventory.

9.3.5.4.5 If CLEC orders Intrabuilding Cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI in accordance with the MTE Access Protocol. If CLEC ordered a Subloop type other than Intrabuilding Cable Loop, Qwest will dispatch a technician to run a jumper between CLECs Subloop elements and Qwest's Subloop

elements to make a connection at the MTE-POI. CLEC, at its option, may request that Qwest run the jumper for Intrabuilding cable in MTEs when the inventory is done and a complete LSR has been submitted.

9.3.5.4.5.1 When CLEC accesses a MTE Terminal, it shall employ generally accepted best engineering practices in accordance with industry standards. CLEC shall clearly label the cross-connect wires it uses. CLEC wiring will be neatly dressed. When CLEC accesses Subloops in MTE Terminals, it shall adhere to Qwest's Standard MTE Terminal Access Protocol unless the Parties have negotiated a separate document for such Subloop access. If CLEC requests a MTE Terminal access protocol that is different from Qwest's Standard MTE Terminal Access Protocol, Qwest shall negotiate with CLEC promptly and in good faith toward that end.

9.3.5.4.5.2 Reserved for Future Use.

9.3.5.4.5.2.1 Reserved for Future Use.

9.3.5.4.5.2.2 Reserved for Future Use.

9.3.5.4.5.2.3 Reserved for Future Use.

9.3.5.4.5.2.4 Reserved for Future Use.

9.3.5.4.6 Once inventory is complete and, if necessary, the facilities are rearranged and or a new facility constructed and when Qwest runs the jumper, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.4.7 For access to Qwest's on-Premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

9.3.5.5 FCP Ordering Process

9.3.5.5.1 CLEC shall submit a Field Connection Point Request Form to Qwest along with its Collocation Application. The FCP Request Form shall be completed in its entirety.

9.3.5.5.2 After construction of the FCP and Collocation are complete, CLEC will be notified of its termination location, which will be used for ordering Subloops.

9.3.5.5.2.1 The following constitute the intervals for

~~Provisioning Collocation associated with a FCP, which intervals shall begin upon completion of the FCP Request Form and its associated Collocation Application in their entirety:~~

~~9.3.5.5.2.1.1 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in Section 8.4.~~

~~9.3.5.5.2.1.2 A Cross-Connect Collocation in a detached terminal shall be provisioned within ninety (90) calendar Days from receipt of a written request by CLEC.~~

~~9.3.5.5.2.1.3 If Qwest denies a request for Cross-Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) calendar Days of CLECs receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Cross-Connect Collocation Application Date for determining RFS unless both Parties agree to a revised date.~~

~~9.3.5.5.2.1.4 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, CLEC can request testing of the FCP at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the Cross-Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the applicable charges.~~

~~9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.~~

9.3.6 Rate Elements

9.3.6.1 All Subloop Types

9.3.6.1.1 Subloop Recurring Charge - CLEC will be charged a monthly recurring charge pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.1.2 Subloop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the Support Functions – Maintenance and Repair Section when trouble is reported but not found on the Qwest facility.

9.3.6.2 Reserved for Future Use.

9.3.6.3 Additional rates for Detached Terminal Subloop Access:

9.3.6.3.1 Cross-Connect Collocation Charge: CLEC shall pay the full nonrecurring charge for creation of the Cross-Connect Collocation set forth in Exhibit A upon submission of the Collocation Application. The FCP Request Form shall not be considered completed in its entirety until complete payment is submitted to Qwest.

9.3.6.3.2 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the rate elements set forth in Section 8.3.

9.3.6.3.3 Subloop Nonrecurring Jumper Charge: CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.4 Additional Rates for MTE Terminal Subloop Access

9.3.6.4.1 Subloop Nonrecurring Charge - CLEC will be charged a nonrecurring charge for the time and materials required for Qwest to complete the inventory of CLEC's facilities within the MTE such that Subloop orders can be submitted and processed.

9.3.6.4.2 Subloop Nonrecurring Jumper Charge – CLEC will be charged a nonrecurring basic installation charge when Qwest runs jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.7 Repair and Maintenance

9.3.7.1 Detached Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the accessible terminal and CLEC will maintain all of its facilities and equipment in the accessible terminal.

9.3.7.2 MTE Terminal Subloop Access: Qwest will maintain all of its

facilities and equipment in the MTE and CLEC will maintain all of its facilities and equipment in the MTE.

9.4 Line Sharing

9.4.1 Description

Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing end user's analog voice-grade (POTS) service on a single copper Loop referred to herein as the "Shared Loop" or "Line Sharing", by using the frequency range above the voice band on the copper portion of the Loop. This frequency range will be referred to herein as the High Frequency Spectrum Network Element (HUNE). A POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous data transmission and POTS service. The POTS service must be provided to the end user by Qwest. This section does not prohibit Line Splitting, which is addressed in Section 9.21.

9.4.1.1 To the extent additional line sharing technologies and transport mechanisms are specified by applicable FCC rules, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access. Qwest also will provide CLECs with network elements to transport data to and from Qwest remote terminals including unbundled Dark Fiber, DS1 capable Loop, and OC-N. Qwest will also provide CLECs with the ability to commingle their data with Qwest's pursuant to Section 9.20 (Unbundled Packet Switching).

9.4.1.2 Qwest shall not be required to provide Line Sharing as an Unbundled Network Element except as set forth below.

9.4.1.2.1 **Grandfathered Line Sharing Arrangements**. Any Line Sharing arrangement that had a Due Date on or before October 1, 2003 and was still in operation as of such date shall be "grandfathered" in accordance with the provisions of this subsection ("Grandfathered Line Sharing Arrangement"). For any such Grandfathered Line Sharing Arrangement, the rate in effect as of October 2, 2003 shall remain in effect unless modified by order, ruling or decision of the FCC. A Grandfathered Line Sharing Arrangement shall automatically terminate on the earlier to occur of: (i) the date on which the End User Customer served by such Grandfathered Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign or (ii) the date as of which such Grandfathered Line Sharing Arrangement is terminated or discontinued by order, ruling or decision of the FCC. In addition, CLEC may disconnect, or may convert to another Qwest product as is Technically Feasible, any Grandfathered Line Sharing Arrangement at any time.

9.4.1.2.2 **Three Year Transition Period**. CLEC may order Line Sharing arrangements during the period beginning on October 2, 2003 and ending on October 1, 2004 ("New Line Sharing Arrangement") in

accordance with the provisions of this subsection. The Due Date for any New Line Sharing Arrangement may be no later than October 1, 2004, and CLEC may not order any New Line Sharing Arrangement after October 1, 2004. Any New Line Sharing Arrangement shall automatically terminate if, at any time after October 1, 2004, the End User Customer served by such New Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign. The nonrecurring charge for the installation of Line Sharing arrangements shall apply to any New Line Sharing arrangements. The monthly recurring charge for any New Line Sharing Arrangement shall apply as set forth below.

(a) During the period beginning on October 2, 2003 and ending [redacted], the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be twenty-five (25) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as [redacted] Exhibit A.

(b) During the period beginning on October 2, 2004 and ending [redacted], the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be fifty (50) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of [redacted] Exhibit A.

(c) During the period beginning on October 2, 2005 and ending on October 1, 2006, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be seventy-five (75) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, [redacted] Exhibit A.

(d) **Completion of Transition**. New Line Sharing Arrangements will no longer be available as of October 2, 2006. No later than October 2, 2006, CLEC must convert all New 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 New Line Sharing arrangement.

e) As of February 2, 2004, Qwest's Billing systems are not equipped to Bill the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above. Qwest will not commence Billing the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above until Qwest has provided CLEC with forty-five (45) Days notice, in accordance with Section 5.21. Until such notice has been given, and the forty-five (45) Day notice period has expired, Qwest will Bill a rate for New Line Sharing Arrangements equal to the rate in effect as of October 1, 2003, unless modified by order, ruling or decision of the FCC.

9.4.1.2.3 **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 be required to purchase the entire loop being disconnected to continue providing DSL service to such End User Customer.

9.4.1.2.4 **Successors and Assigns**. Line Sharing arrangements may be transferred or assigned by CLEC to another Carrier as set forth below.

9.4.1.2.4.1 **Grandfathered Line Sharing Arrangements.** Any Grandfathered Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier if the DSL service to CLEC's End User Customer is not canceled or discontinued in connection with such transfer or assignment. In such event, the monthly recurring rate in effect as of October 2, 2003 shall remain in effect with respect to such Grandfathered Line Sharing Arrangement until it is terminated or modified in accordance with the provisions of Section 9.4.1.2.1. Carrier will be billed the Transfer of Responsibility nonrecurring charge as provided in Exhibit A to transfer or assign Grandfathered Line Sharing Arrangements. Notwithstanding the foregoing, in the event the transfer or assignment of any Grandfathered Line Sharing Arrangement involves: (i) cancellation or discontinuation of the DSL service to CLEC's End User Customer or (ii) re-termination of the End User Customer's DSL service, then (a) such Line Sharing arrangement shall no longer be subject to the grandfathering provisions of Section 9.4.1.2.1 and (b) such line shall be eligible for treatment as a New Line Sharing Arrangement pursuant to, and subject to the terms and conditions of, Section 9.4.1.2.2 (including, without limitation, the specified recurring and nonrecurring charges for New Line Sharing Arrangements and the October 1, 2004 deadline for establishing New Line Sharing Arrangements).

9.4.1.2.4.2 **New Line Sharing Arrangements**. Any New Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier provided that such transfer or assignment takes place before October 1, 2004. Carrier will be charged the Shared Loop nonrecurring charges as provided in Exhibit A to transfer or assign New Line Sharing Arrangements. Following transfer or assignment, the New Line Sharing Arrangement in question will be assessed the monthly recurring rates described in Sections 9.4.1.2.2 (a)-(c) above, and shall be subject to termination in accordance with Sections 9.4.1.2.3 and 9.4.1.2.4. If re-termination of a New Line Sharing arrangement is required to complete any such transfer or assignment, then the new Carrier will be assessed the nonrecurring rates for New Line Sharing Arrangements as specified in Section 9.4.1.2.2 above. No transfers or assignments of New Line Sharing Arrangements shall be allowed after October 1, 2004.

~~9.4.2 Terms and Conditions~~

~~9.4.2.1 General~~

~~9.4.2.1.1 To order the HUNE, CLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user as provided for in this Section, and the end user must have dial tone originating from a Qwest Switch in that Wire Center. CLEC must provide the end user with, and is responsible for, the installation of a Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.~~

~~9.4.2.1.2 Reserved for Future Use.~~

~~9.4.2.1.3 CLEC may use the HUNE to provide any xDSL services that will not interfere with analog voiceband transmissions in accordance with FCC rules. Such services currently are 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 Line Sharing Deployment under applicable FCC rules.~~

~~9.4.2.1.4 CLEC may not order the HUNE on a given copper Loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the end user has requested a change of data providers at which time Qwest shall perform the necessary work required to migrate the HUNE to the new data provider with minimal interruption to the end user's data and voice services.~~

~~9.4.2.1.5 CLEC may request and Qwest will provide, conditioning of Shared Loops to remove load coils and excess Bridged Taps, subject to the charges for Loop conditioning in Exhibit A. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove RDTs or perform a Line Move when necessary to provision the Loop. Qwest will perform requested conditioning, including de-loading and removal of excess Bridged Taps, unless Qwest demonstrates in advance that conditioning a 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 may make a preliminary determination if the Loop can meet the technical parameters applicable to the data service it intends to provide over the Loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop to the point that it is unacceptable to the End User Customer, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.~~

~~9.4.2.1.6 Qwest will provide CLEC with access to the HUNE through POTS Splitters installed in Qwest Wire Centers. POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in this Section. Under either option, POTS~~

~~Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination.~~

~~9.4.2.1.7 Reserved for Future Use.~~

~~9.4.2.2 CLEC Collocation Area Splitter~~

~~9.4.2.2.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via the standard Collocation arrangements set forth in the Collocation Section, CLEC will either purchase the POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to taxes, shipping and handling. The POTS Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. CLEC will be responsible for installing and maintaining the POTS Splitters in its Collocation areas wit[redacted]st Wire Centers.~~

~~9.4.2.2.2 CLEC may designate some or all of its existing TIE Cables for use in connection with Line Sharing. Qwest will perform any necessary TIE Cable reclassifications, frame re-stenciling, and related work for which it is responsible and that is required to provision Line Sharing. Charges will apply pursuant to Exhibit A of the Agreement.~~

~~9.4.2.2.3 Two (2) ITPs and two (2) TIE Cables will be needed to connect POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter located in CLEC's Collocation area. The voice and data traffic will be separated at the POTS Splitter. The data traffic will be routed to CLEC's network within its Collocation area. The voice traffic will be routed to the COSMIC™/MDF Switch termination, via the ICDF, using a second TIE Cable and a second ITP.~~

~~9.4.2.2.4 Interconnection Tie Pairs and TIE Cables. There are two (2) types of ITP arrangements for connecting the Qwest network to the CLEC provided Splitter, depending on whether CLEC elects to use an ICDF or direct connections.~~

~~9.4.2.2.4.1 CLEC may elect to use an ICDF. In this instance, one ITP carries the combined voice/data signal from the COSMIC™/MDF Loop termination to the ICDF and a second ITP carries the voice only signal from the ICDF to the COSMIC™/MDF Switch termination. For each Shared Loop, two pairs of the TIE cable must be used: one pair of the TIE Cable will carry the voice/data from the ICDF to the CLEC provided Splitter, and the second pair will carry the voice-only signal from the CLEC provided Splitter to the ICDF.~~

~~9.4.2.2.4.2 CLEC may elect to use direct connections between the CLEC-provided Splitter and the COSMIC™/MDF. In~~

this instance, Qwest will provide one TIE Cable between each module of the COSMIC™/MDF and the CLEC-provided Splitter. One pair in the TIE Cable will carry the combined voice/data signal from the COSMIC™/MDF Loop termination to the CLEC-provided Splitter in CLEC's Collocation space. A second pair in the TIE Cable will carry the voice-only signal from the CLEC-provided Splitter to the Switch termination on the COSMIC™/MDF. These TIE Cables will be dedicated to CLEC's use, and, as a result, the full cost of the necessary Mechanized Engineering and Layout for Distributing Frame (MELD™) run, cable placement, and cable termination, and associated COSMIC™/MDF hardware to terminate a TIE Cable on each outside plant and Switch equipment module of the COSMIC™/MDF will be assessed to CLEC in accordance with Section 8 (Collocation). To minimize CLECs cost, to the extent feasible, Qwest shall consolidate CLECs requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest. Qwest will provide, for each Shared Loop, the TIE Cable pair assignments.

9.4.2.2.5 The Demarcation Points between Qwest's network and CLEC's network will be the place where the combined voice and data Loop is connected to the ICDF, or where CLEC chooses a direct connection to the COSMIC™/MDF, where the combined voice and data Loop originates from CLECs Collocation.

9.4.2.3 Common Area Splitter Collocation

9.4.2.3.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS Splitters will be installed in those Wire Centers in one of the following locations: (a) in a relay rack near CLEC's DS0 termination points ; (b) on an ICDF to the extent such a frame is available; or (c) at CLEC's direction, on the COSMIC™/MDF, where space is available on the COSMIC™/MDF and priced on an ICB basis, or in some other appropriate location such as an existing Qwest relay rack or bay. In the event that the option selected by CLEC is not available, Qwest may place CLEC's splitter in some other appropriate location such as an existing Qwest relay rack or bay. CLEC either may purchase POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to, taxes, shipping and handling, and any similar charges assessed on Qwest by vendors in connection with the purchase of POTS Splitters. The POTS splitters must meet the FCC requirements and NEBs Level 1 safety standards. If CLEC purchases the POTS splitter, Qwest will be responsible for installing the POTS Splitter shelf with cards as supplied, but CLEC will lease the POTS Splitters to Qwest at no cost. Qwest will not be responsible for shortages of POTS Splitters or Qwest's inability to obtain POTS Splitters from vendors, if acting as purchasing agent on behalf of CLEC. Qwest may install the POTS Splitter shelves of

different CLECs in a single relay rack (bay) or frame.

9.4.2.3.1.1 CLEC has the option to maintain the POTS splitter cards or have Qwest perform this function. When CLEC elects to maintain the POTS splitter cards, CLEC will be responsible to troubleshoot and replace defective cards. Qwest will be responsible for troubleshooting and trouble isolation of circuit continuity issues up to the splitter card and from the splitter card to the DEMARC. CLEC will be responsible to add splitter cards as necessary to provision un-carded splitter shelf slots. CLEC will be responsible to clearly label the splitter shelf as CLEC maintained. Election to maintain the POTS splitter cards will be for all CLEC collocations in Qwest 14 state operating territory.

9.4.2.3.1.2 If CLEC elects to have Qwest perform the splitter card maintenance, CLEC will be responsible for inventory and supply of spare splitter cards in the event a defective card requires replacement or a cards needs to be added to provision an unused splitter card slot.

9.4.2.3.2 Two (2) ITPs and four (4) TIE Cables will be needed to connect the POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter. The voice and data traffic will be separated at the POTS Splitter, and the separated voice and data traffic will be routed to the ICDF via separate TIE Cables (i.e., the second and third TIE Cables). At the ICDF, the data traffic will be routed to CLEC's Collocation area via a fourth TIE Cable, and the voice traffic will be routed to the COSMIC™/MDF Switch termination, via a second ITP. CLEC can also elect a direct connect option pursuant to Section 8.3.1.11.2.

9.4.2.3.3 Qwest will provide the cabling used for TIE Cables between the POTS Splitter and the ICDF. The POTS Splitter Tie Cable Connection Charge will apply.

9.4.2.3.4 The Demarcation Point between Qwest's network and CLEC's network will be at the place where the data Loop leaves the POTS Splitter on its way to CLEC's Collocated equipment, or at the ICDF, where the data Port is cabled to existing CLEC Collocation tie cable.

9.4.3 Line Sharing Deployment

9.4.3.1 New applications for installation of POTS Splitters will be processed in the manner outlined in the Collocation Section for Cageless or Common Collocation.

9.4.3.2 CLEC may submit applications for additional DSO TIE Cable

terminations and/or reclassifications to support Line Sharing. Qwest will process any such applications for augmentation and/or reclassification of DSO TIE Cable terminations under intervals as outlined below in this Section.

9.4.3.3 Augmentation intervals will be thirty (30) Calendar Days, subject to the following terms and conditions identified below:

9.4.3.3.1 Intentionally Left Blank.

9.4.3.3.2 Intentionally Left Blank.

9.4.3.3.3 The interval for reclassification will be fifteen (15) Calendar Days, subject to the following terms and conditions. If requested reclassification engineering results in additional requirements for DSO TIE Cable termination or TIE Cable support, the interval will default to thirty (30) Calendar Days.

9.4.3.3.4 Intentionally Left Blank.

9.4.3.3.5 In the event CLEC, or Qwest acting as purchasing agent for CLEC, is unable to procure any equipment needed to complete all work required by applications submitted to Qwest by CLEC, including but not limited to, POTS Splitters or cabling, Qwest will install the subject equipment when it becomes available. If Qwest is acting as purchasing agent for CLEC and is unable to procure equipment to complete all work in a timely manner, CLEC may provide Qwest with the subject equipment. CLEC will be notified by Qwest of the required material on-site date for the affected Wire Center(s) and CLEC will have two (2) business days to determine if it will be able to provide the subject equipment in advance of the material on-site date. If CLEC does not notify Qwest in writing of its intent to provide the subject equipment within this two (2) business days period, or if the subject equipment is not provided in a timely manner, Qwest will install the subject equipment when available.

9.4.4 Rate Elements

9.4.4.1 Recurring Rates for Shared Loop

9.4.4.1.1 Shared Loop Charge - A monthly recurring charge for the use of the Shared Loop will apply.

9.4.4.1.2 OSS Charge – A monthly recurring charge to recover upgrades to Qwest Operational Support Systems required to accommodate Line Sharing will apply.

9.4.4.2 Nonrecurring Rates for the Shared Loop

9.4.4.2.1 Basic Installation Charge for Shared Loop – A nonrecurring charge for each Shared Loop installed will apply.

9.4.4.2.2 If CLEC requests conditioning of a Shared Loop, a

nonrecurring conditioning charge specified in Exhibit A will apply for removal of load coils and excess Bridged Taps. If the conditioning significantly degrades the voice services on the Loop to the point it is unacceptable to the end user, CLEC shall pay the conditioning charge in Exhibit A to recondition the Loop.

9.4.4.3 Nonrecurring Rates for Tie Cable Reclassification

9.4.4.3.1 Reclassification Charge – A nonrecurring charge will apply, based on time and materials for reclassification of existing TIE cable capacity, by among other things, reclassification of existing TIE cables for Line Sharing, frame re-stenciling, and any other work performed between CLEC's Collocation and the intermediate distribution frame required to provision Line Sharing.

9.4.4.4 Nonrecurring Rates for Maintenance and Repair

9.4.4.4.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.4.4.4.2 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 Exhibit A.

9.4.4.5 Rates for Common Area Splitter Collocation

9.4.4.5.1 Splitter Shelf Charge – This charge recovers installation and ongoing maintenance associated with Splitter installation, bay installation, lighting costs, aerial support structures and grounding charge for Splitters either in a bay, on the IDF, or on the MDF/COSMIC™. These are both recurring and nonrecurring charges.

9.4.4.5.2 POTS Splitter Charge – A nonrecurring charge will apply for the cost of each POTS Splitter purchased by Qwest on behalf of CLEC. This charge will cover the cost of the POTS Splitter, plus any associated costs incurred by Qwest to order the POTS Splitter.

9.4.4.5.3 Engineering – A nonrecurring charge will apply for the planning and engineering associated with placing POTS Splitters in the Central Office, either in a bay, on the IDF, or on the MDF/COSMIC™.

9.4.4.6 POTS Splitter TIE Cable Connections Charge – A nonrecurring charge will apply for the cost of each TIE Cable connected to the POTS Splitters. This charge will cover both the TIE cables and associated blocks per one hundred (100) pair between the POTS Splitter and the intermediate distribution frame or Splitter bay.

9.4.4.7 The rates for each of the aforementioned Line Sharing rate

elements are set forth in Exhibit A. Where such rates are interim, they will be subject to true up based on either mutually agreed to permanent rates or permanent rates established in a Line Sharing cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are set established by the Commission.

9.4.5 Ordering Process

9.4.5.1 Shared Loop

9.4.5.1.1 As a part of the pre-order process, CLEC can access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. However, use of any Qwest loop qualification tool is not required prior to placing an order for a Shared Loop. CLEC will determine, in its sole discretion, whether to order the HUNE across any specific copper loop Qwest and CLEC will work together to modify the Loop Information Tool to better support Line Sharing. CLEC shall accept the risk that the Loop selected may not be suitable for providing the type of xDSL service CLEC seeks to provide.

9.4.5.1.2 The appropriate Splitter Meet Points dedicated to the POTS 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 ordered by the Commission or further agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC™/MDF and ICDF.

9.4.5.1.3 Basic Installation "lift and lay" procedure will be used for all 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.

9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) and load coils on Shared Loops as part of basic installation. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Qwest will perform an ANI test to verify that the proper pair has been connected to CLEC's DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF.

9.4.5.1.4 Qwest will provision the Shared Loop within the standard unbundled Loop Provisioning interval as defined in Exhibit C.

9.4.5.1.5 CLEC shall not place initial orders for Shared Loops until all infrastructure work necessary to provision Line Sharing in a given Qwest Wire Center, including, but not limited to, POTS 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 Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

9.4.5.1.6 Prior to placing an LSR for Shared Loop, CLEC must obtain a Proof of Authorization from the End User Customer in accordance with the Proof of Authorization Section.

9.4.5.2 Common Area Splitter Collocation

9.4.5.2.1 This Section only applies to situations where CLEC orders placement of the Splitter in a common area.

9.4.5.2.2 New POTS Splitter shelves may be ordered via a single Collocation application form and quote preparation fee. Standard intervals as contained in Exhibit C will apply.

9.4.5.2.3 New POTS Splitter shelves may be ordered with an existing Collocation. CLEC must submit a new Collocation application form and the applicable fee to Qwest. Standard Cageless and/or Common Collocation intervals as contained in Exhibit C will apply.

9.4.5.3 TIE Cable Reclassification

9.4.5.3.1 To the extent CLEC has existing DSO TIE Cable terminations extending from an intermediate distribution frame to its Collocation space, CLEC may request that these existing DSO TIE Cable terminations be reclassified for use with Line Sharing. CLEC shall request such reclassification through the same process used to order new terminations.

9.4.6 Repair and Maintenance

9.4.6.1 Qwest will allow CLEC to access Shared Loops at the point where the combined voice and data Loop is cross-connected to the POTS Splitter. If CLEC elects the Common Area Splitter Maintenance option, CLEC may access all cross connect points on the ICDF at which CLEC's data circuits terminate.

9.4.6.2 Qwest will be responsible for repairing voice services provided over Shared Loops and the physical line between Network Interface Devices at end user premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at end user premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end users. CLEC will be responsible for repairing data services provided on 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 POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC has not elected otherwise, Qwest shall have maintenance responsibility.~~

~~9.4.6.3 Qwest and CLEC will continue to develop repair and maintenance procedures for Line Sharing and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsServices/pcat/TABL1-0.html. In the interim, Qwest and CLEC agree that the following general principles will guide the repair and maintenance process for Line Sharing.~~

~~9.4.6.3.1 If an end user complains of a voice service problem that may be related to the use of a Shared Loop for data services, Qwest and CLEC will work together with the end user to solve the problem to the satisfaction of the end user. Qwest will not disconnect the data service provided to an end user over a Shared Loop without the written permission of CLEC unless the end user's voice service is so degraded that the end user cannot originate or receive voice grade calls and/or the end user authorizes Qwest to disconnect the data service. Qwest will notify CLEC whenever this occurs upon voice trouble ticket closure. If the trouble is isolated into the CLEC collocation arrangement, Qwest shall notify the CLEC when disconnecting the data service and immediately restore the data service once the CLEC notifies Qwest that the trouble has been cleared.~~

~~9.4.6.3.2 Qwest and CLEC are responsible for their respective end user base. Qwest and CLEC will have the responsibility for resolution of any service trouble report(s) initiated by their respective end users.~~

~~9.4.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess CLEC the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at its option, may require Qwest to pay a charge, equivalent to the Qwest TIC charge, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.~~

~~9.4.6.3.4 When trouble reported by CLEC is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of CLEC on a case-by-case basis. CLEC may request that Qwest perform additional~~

testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide CLEC with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, CLEC will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge.

9.4.6.3.5 Where Qwest has billed CLEC for Trouble Isolation Charges for a CLEC Trouble Report, Qwest will remove such Trouble Isolation Charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Trouble Isolation Charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and

- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and

- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and

- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and

- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

9.4.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.4.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing Shared

Loops. This equipment must meet the requirements for Central Office equipment set by the FCC in its March 31, 1999 Order in CC Docket No. 98-147.

9.4.6.6 Qwest and CLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.4.7 Other

9.4.7.1 Reserved for Future Use.

9.5 Network Interface Device (NID)

9.5.1 Description

The Qwest NID is defined as any means of Interconnection of on-premises wiring and Qwest's distribution plant, such as a cross connect device used for that purpose. Specifically, the NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit at a premises. If CLEC seeks to access a NID as well as a Subloop connected to that NID, it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. Qwest shall permit CLEC to connect its own Loop facilities to on-premises wiring through Qwest's NID, or at any other technically feasible point. The NID carries with it all features, functions and capabilities of the facilities used to connect the Loop distribution plant to the Customer premises wiring, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the Customer premises wiring, it may not represent the Demarcation Point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the Customer's on-premises wiring against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the Customer's on-premises wiring to the end user's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

9.5.1.1 Simple NID – The modular NID is divided into two (2) components, one containing the over-voltage unit (protector) and the other containing the end-user's on-premises inside wiring termination, and a modular plug which connects the inside wire to the distribution plant or dial tone source. The non-modular NID is a protector block with the inside wire terminated directly on the distribution facilities.

9.5.1.2 Smart NID – To the extent Qwest has deployed "Smart" devices in general meaning a terminating device that permits the service provider to isolate the Loop facility from the premises wiring for testing purposes, and such devices have spare functioning capacity not currently used by Qwest or any other provider, Qwest shall provide unbundled access to such devices. Qwest shall also continue to allow CLEC, at its option, to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any

~~other capabilities now existing or as they may exist in the future regardless of whether or not CLEC terminates its own distribution facility on the NID.~~

~~9.5.1.3 Multi-Tenant (MTE) NID - The MTE NID is divided into two (2) functional components: one containing the over-voltage unit (protector) and the other containing the terminations of the on-premises inside wiring. Such devices contain the protectors for, and may be located externally or internally to the premises served.~~

~~9.5.2 Terms and Conditions~~

~~9.5.2.1 A CLEC can use the existing Qwest NID to terminate its drop if space permits, otherwise a new NID or other Technically Feasible Interconnection point is required. If CLEC installs its own NID, CLEC may connect its NID to the Qwest NID by placing a cross-connect between the two. When Provisioning a NID to NID connection, CLEC will isolate the Qwest facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Qwest will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facility based provider up to and including its NID, the Qwest facility currently in place, including the NID, will remain in place.~~

~~9.5.2.1.1 Qwest shall allow CLEC to connect its Loops directly to the NID field containing the terminations of the on-premises inside wiring not owned or controlled by Qwest, without restriction. Where Qwest does not own or control the on-premises inside wiring, CLEC and the landowner shall determine procedures for such access.~~

~~9.5.2.1.2 Qwest shall allow CLEC to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.~~

~~9.5.2.1.3 Pursuant to generally acceptable work practices, and provided the inside wire re-termination is required to meet service requirements of either Parties' End User Customer. Either Party may remove the inside wire from the NID and that wire to that Party's own NID.~~

~~9.5.2.1.4 CLEC may enter the subscriber access chamber or "End User Customer side" of "dual chamber" NID enclosures for the purpose of NID to NID connections.~~

~~9.5.2.1.5 Upon CLEC request, Qwest will make other rearrangements to the inside wire terminations or terminal enclosure. Charges will be assessed per section 9.5.3.4. No such charge shall be applicable if Qwest initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without a Customer's perceivable disruption in service. Qwest will not make any rearrangements of wiring that is provided by another Carrier that~~

relocates the other Carrier's test access point without notifying the affected Carrier promptly after such rearrangement if CLEC has properly labeled its cross connect wires.

9.5.2.2 Qwest will retain sole ownership of the Qwest NID and its contents on Qwest's side. Qwest is not required to proactively conduct NID change-outs, on a wide scale basis. At a CLEC's request, Qwest will change the NID on an individual request basis by CLEC and charges will be assessed per section 9.5.3.5 except where Section 9.5.5.1 applies. Qwest is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Qwest NID, it shall employ generally accepted best engineering practices and comply with industry standards should such standards exist when it physically connects its NID (or equivalent) to the Qwest NID and makes Cross Connections necessary to provide service. At MTE NIDs, CLEC shall clearly label the cross-connect wires it uses to provide service. Qwest shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Qwest NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the Customer's in-premises wiring. All services fed through a protector field in a Qwest NID that is attached to a building will interface on industry standard lugs or a binding post type of termination and then extend, via a Cross Connection, to the Customer's on-premises wiring.

9.5.2.4.1 Reserved for Future Use.

9.5.2.4.2 Reserved for Future Use.

9.5.2.4.3 Reserved for Future Use.

9.5.2.4.4 Reserved for Future Use.

9.5.2.5 If so requested by CLEC, Qwest shall allow CLEC to connect its Loops directly to the protector field at Qwest NIDs that have unused protectors and are not used by Qwest or any other Telecommunications Carrier to provide service to the premises. If a CLEC accesses the Qwest protector field it shall do so on the distribution side of the protector field only where spare protector capacity exists. In such cases, CLEC shall only access a Qwest NID protector field in cable increments appropriate to the NID. If twenty-five (25) or more metallic cable pairs are simultaneously terminated at the MTE NID, additions must be in increments of twenty-five (25) additional metallic pairs. In all cases, Telecommunications cables entering a Qwest NID must be terminated in compliance with FCC 88-57, section 315 of the National Electric Safety Code and section 800.30 of the National Electric Code. When CLEC removes Qwest facilities from the NID protector, it must terminate the spare Qwest Loops on protection devices that ensure that Qwest's facilities and the Customer's premises be protected from electrical surges. In such instances, CLEC must provide Qwest with written notice within 10 days that it had so disconnected the

Qwest facilities from the protection device. CLECs will be liable for damages in situations where their technicians have failed to follow standard electrical protection and safety procedures. To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement.

9.5.2.6 Reserved for Future Use.

9.5.3 Rate Elements

9.5.3.1 If CLEC requests the current Simple NID to be replaced with a different Simple NID, pursuant to section 9.5.2.1, charges will be assessed on a time and materials basis with CLEC paying only for the portion of the change out that is specific to and for the functionality that supports CLEC requirements.

9.5.3.2 Recurring rates for unbundled access to the protector field in a Qwest NID are contained in Exhibit A of this Agreement and apply pursuant to 9.5.2.5. As of the Effective Date of this Agreement, Qwest has not implemented charges for this recurring rate element, but reserves the right to assess such a charge in the future.

9.5.3.3 When a CLEC requests that Qwest perform the work to connect its NID to the Qwest NID, the costs associated with Qwest performing such work will be charged to CLEC on a time and materials basis.

9.5.3.4 Where Qwest makes 9.5.2.1.5 rearrangements to the inside wire terminations or terminal enclosure on CLEC request pursuant to Section 9.5.2.1.5, charges will be assessed on a time and materials basis.

9.5.3.5 CLEC will be billed on a time and materials basis for any change out Qwest performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change out that is specific to the CLEC request for additional capacity.

9.5.4 Ordering Process

9.5.4.1 Reserved for Future Use.

9.5.4.2 CLEC may access a MTE NID after determining that the terminal in question is a NID, per the process identified in 9.3. If the terminal is a NID and CLEC wishes to access the Customer field of the NID, no additional verification is needed by Qwest. CLEC shall tag their jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross-connect field other than to the Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within 10 business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal

or disputing the claim of technical infeasibility pursuant to the dispute resolution provisions of this Agreement. No additional verification is needed by Qwest and CLEC shall tag their jumper wire.

9.5.4.3 Subject to the terms of 9.5.4.2, CLEC may perform a NID-to-NID connection, according to 9.5.2.3, and access the Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

9.5.5 Maintenance and Repair

9.5.5.1 If Qwest is dispatched to an end user's location on a maintenance issue and finds the NID to be defective, Qwest will replace the defective element or, if beyond repair, the entire device at no cost to CLEC. If the facilities and lines have been removed from the protector field or damaged by CLEC, CLEC will be responsible for all costs associated with returning the facilities and lines back to their original state. Charges for this work will be on a time and materials basis and billed directly to CLEC. Billing disputes will be resolved in accordance with the dispute resolution process contained in this Agreement. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6 Unbundled Dedicated Interoffice Transport (UDIT)

Qwest shall provide access to Unbundled Dedicated Interoffice Transport (UDIT) in a non-discriminatory manner according to the following terms and conditions. The following services are not available under the terms of this Agreement:

a) Extended Unbundled Interoffice Transport (EUDIT);

b) OCn UDIT;

c) More than twelve (12) DS3 UDIT, for one carrier or its affiliates, per route;

d) UDIT as a part of a Meet-Point;

e) Remote Node/Remote Port/

f) SONET add/drop multiplexing; or

OPEN – Covad proposed; Qwest cannot agree

g) UDIT on routes where the Commission has found no CLEC impairment under Section 251 of the Act; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

9.6.1 Description

9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a Network Element of a single transmission path between Qwest End Office Switches, Serving Wire Centers or Tandem Switches in the same LATA and state. A UDIT can also provide a path between one (1) CLEC's Collocation in one (1) Qwest Wire Center and a different CLEC's Collocation in another Qwest Wire Center. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. UDIT is available in DS0 through DS3 bandwidths. CLEC can assign channels and transport its choice of voice or data. Specifications, interfaces and parameters are described in Qwest Technical Publication 77389.

9.6.1.2 An unbundled multiplexer is offered as an optional stand-alone element associated with UDIT. A 3/1 multiplexer provides CLEC with the ability to multiplex the DS3 44.736 Mbps signal to twenty-eight (28) DS1 1.544 Mbps channels. The 3/1 multiplexer, in conjunction with an ITP, provides a DS3 signal terminated at a Demarcation Point and twenty-eight (28) DS1 signals terminated at a Demarcation Point. A 1/0 multiplexer provides CLEC with the ability to multiplex the DS1 1.544 Mbps signal to twenty-four (24) DS0 64 Kbps channels. The 1/0 multiplexer provides a DS1 signal terminated at a Demarcation Point and twenty-four (24) DS0 signals terminated at a Demarcation Point.

9.6.1.3 Intentionally Left Blank

9.6.1.4 Where unbundled DS3 is available as a UNE, Qwest is not required to provide, and CLEC shall not submit orders for, more than twelve (12) DS3 UDIT channels on a specific Wire Center to Wire Center route for which unbundled DS3 UDIT is available as an Unbundled Network Element.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s).; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes. Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has so found no impairment under Section 251 and also has not required access under Section 271 or applicable state

law. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s). ; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes. Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has so found no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

9.6.1.7 CLEC will not order services provided in this Section with High Capacity Loops. If CLEC wishes to order services provided in this Section with High Capacity Loops in the future, the parties will negotiate an amendment to this agreement incorporating the terms and conditions for ordering such services, including applicable Service Eligibility Criteria established by Applicable Law

9.6.1.8 All services provided in this Section are subject to the Ratcheting criteria as outlined in Section 9.1.1.4 of this Agreement.

9.6.2 Terms and Conditions

9.6.2.1 To the extent that CLEC is ordering access to a UNE Combination, and Cross Connections are necessary to combine UNEs, Qwest will perform requested and necessary Cross Connections between UNEs in the same manner that it would perform such Cross Connections for its End User Customers or for itself. When UDIT is combined or Commingled with high capacity loops, the circuit is subject to the Service Eligibility Criteria as stated in Section 9.1.1.5. If not ordered as a combination, CLEC is responsible for performing Cross Connections at its Collocation or other mutually determined Demarcation Point between UNEs and ancillary or Finished Services, and for transmission design work including regeneration requirements for such connections. Such Cross Connections will not be required of CLEC when CLEC orders a continuous dedicated transport element from one point to another. UDIT may be directly connected to Finished Services, except as prohibited by Existing Rules.

9.6.2.2 CLEC must order all multiplexing elements (if it chooses the multiplexing option) and regeneration requirements with its initial installation for the 3/1 multiplexer, including all 28 DS1s and the settings on the multiplexer cards. If options are not selected and identified on the order by CLEC, the order will be held until options are selected. For the 1/0 multiplexer, the low side channels may be ordered as needed. Low Side Channelization charges are assigned as channels are ordered. When Loops are ordered in combination with multiplexing, Qwest will provision Loops directly terminated to the multiplexer.

9.6.2.3 With the exception of combinations provided through the UNE Combinations Section 9.23, CLEC may utilize any form of Collocation at both ends of the UDIT . Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network. Cable distance limitations are based on ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

9.6.2.4 Intentionally Left Blank.

9.6.2.5 Intentionally Left Blank.

9.6.2.6 Intentionally Left Blank.

9.6.2.7 Intentionally Left Blank.

9.6.3 Rate Elements

9.6.3.1 DS1 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS1 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 1.544 Mbps termination at a DSX or DCS. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS1 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 1.544 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS1 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) Intentionally Left Blank.

9.6.3.2 DS3 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS3 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 44.736 Mbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS3 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides an interoffice transmission path of 44.736 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS3 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) DS3 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS3 service.

e) Intentionally Left Blank.

9.6.3.3 DS0 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS0 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 64 Kbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS0 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 64 Kbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS0 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) DS0 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS0 service.

9.6.3.4 Intentionally Left Blank.

9.6.3.5 Intentionally Left Blank.

9.6.3.6 Low Side Channelization (LSC) Charge. A recurring charge for low side multiplexed channel cards and settings at each end of the DS0 UDIT.

9.6.3.7 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:

a) Recurring Multiplexing Charge. The Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.

9.6.3.8 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:

a) Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.

c) Low Side Channelization (LSC). A recurring charge for low side multiplexed channel cards and settings plus a nonrecurring charge for each individual channelization Provisioning.

9.6.3.9 Rearrangement rates are contained in Exhibit A of this agreement.

9.6.3.10 Remote Node/Remote Port rates are contained in Exhibit A of this Agreement and include the following charges:

a) Recurring Remote Node Charge. The Remote Node at OC3, OC12 or OC48.

b) Recurring Remote Port Charge. A recurring charge for Remote Port card at DS1, DS3, OC3, OC12.

c) Nonrecurring Remote Port. One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

9.6.4 Ordering Process

9.6.4.1 Ordering processes and installation intervals are as follows:

9.6.4.1.1 UDIT is ordered via the Access Service Request (ASR) process. Ordering processes are contained in the Access to OSS Section of this Agreement.

~~9.6.4.1.2 Reserved for Future Use.~~

~~9.6.4.1.3 The interval will start when Qwest receives a complete and accurate Access Service Request (ASR). This date is considered the start of the installation interval if the order is received prior to 3:00 p.m. The installation interval will begin on the next business day for service requests received after 3:00 p.m. The installation intervals have been established and are set forth in Exhibit C, Section 2.0 of this Agreement.~~

~~9.6.4.1.4 Subsequent changes to the quantity of services on an existing order will require a revised order. Also, additional charges apply for the following modifications to existing orders unless the need for such change is caused by Qwest:~~

~~a) Service Date changes;~~

~~b) Partial cancellation;~~

~~c) Design change; and~~

~~d) Expedited order.~~

~~9.6.4.1.5 An order may be canceled any time up to and including the Service Date. Cancellation charges will apply except when:~~

~~a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Qwest that such Due Date will be, delayed ten (10) business days or longer; or~~

~~b) The original Due Date has been scheduled later than the expiration of the standard interval set forth in Exhibit C and CLEC cancels its order no later than ten (10) Days before such original Due Date.~~

~~9.6.4.1.6 Definitions of the most common critical dates that occur during the ordering and installation process are included in the Definitions Section of this Agreement.~~

~~9.6.4.2 UDIT is ordered with basic installation. Qwest will install the UDIT extending connections to CLEC Demarcation Point and will notify CLEC when the work activity is complete. UDIT will comply will technical specifications contained in Technical Publication 77389. Joint testing is available pursuant to the joint testing provisions contained in Section 8 of this Agreement.~~

~~9.6.4.3 UDIT 3/1 multiplexing is provisioned as a complete system with terminations at the Demarcation Point and all multiplexing cards. CLEC must order settings for all cards at the time of the multiplexing request.~~

~~9.6.4.4 For UDIT 1/0 multiplexing, the high side is fully provisioned with the order. The low side is provisioned when low side channels are ordered. Optional card settings are selected by CLEC at the time of the DS0 order.~~

9.6.4.5 Qwest will perform industry standard tests, set forth in Technical Publication 77389, when installing UDIT service.

9.6.4.6 Reserved for Future Use.

9.6.5 Maintenance and Repair

9.6.5.1 The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC Cross Connections will be repaired by CLEC and Qwest Cross Connections will be repaired by Qwest. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

9.6.6 Rearrangement

9.6.6.1 CLEC can submit requests through the ASR process to move or rearrange UDIT terminations on CLEC's Demarcation Point or to change UDIT options. These rearrangements are available through a single Wire Center or dual Wire Center request. Single Wire Center rearrangements are limited to the change in options or movement of terminations within a single Wire Center. Dual Wire Center rearrangements are used to change options or movement of terminations in two (2) Wire Centers. Rearrangement is only available for in-place and working UDITs.

9.6.6.2 The rearrangement of terminations or option changes are completed as an "uncoordinated change" (basic request) and will be completed within the normal intervals outlined in Exhibit C. If CLEC desires a coordinated rearrangement of terminations or options changes, additional labor installation as identified in Exhibit A shall apply.

9.6.6.3 CLEC will submit an ASR with the rearrange USOC and appropriate termination information (e.g., CFA) or NC/NCI codes (Network Channel Codes/Network Channel Interface Codes).

9.7 Unbundled Dark Fiber

CLEC does not intend to order Unbundled Dark Fiber; however in the event CLEC wishes to order Unbundled Dark Fiber, the Parties will negotiate an appropriate amendment to this Agreement.

9.8 Shared Interoffice Transport

CLEC does not intend to order Shared Interoffice Transport; however in the event CLEC wishes to order Shared Interoffice Transport, the Parties will negotiate an appropriate amendment to this Agreement.

9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)

CLEC does not intend to order UCCRE; however in the event CLEC wishes to

~~order UCCRE, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.10 Local Tandem Switching~~

~~CLEC does not intend to order Local Tandem Switching; however in the event CLEC wishes to order Local Tandem Switching, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.11 Local Switching~~

~~CLEC does not intend to order Local Switching; however in the event CLEC wishes to order Local Switching, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.12 Customized Routing~~

~~CLEC does not intend to order Customized Routing; however in the event CLEC wishes to order Customized Routing, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.13 Access to Signaling~~

~~CLEC does not intend to order Access to Signaling; however in the event CLEC wishes to order Access to Signaling, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.14 AIN Services~~

~~CLEC does not intend to order AIN Services; however in the event CLEC wishes to order AIN Services, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.15 Interconnection to Line Information Database (LIDB)~~

~~CLEC does not intend to order LIDB; however in the event CLEC wishes to order LIDB, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~9.16 8XX Database Query Service~~

~~CLEC does not intend to order 8XX Database Query Service; however in the event CLEC wishes to order 8XX Database Query Service, the Parties will negotiate an appropriate amendment to this Agreement.~~

9.17 InterNetwork Calling Name (ICNAM)

CLEC does not intend to order ICNAM; however in the event CLEC wishes to order ICNAM, the Parties will negotiate an appropriate amendment to this Agreement.

9.18 Additional Unbundled Elements

CLEC may request non-discriminatory access to and, where appropriate, development of, additional UNEs not covered in this Agreement pursuant to the Bona Fide Request Process.

9.19 Construction Charges

Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a Network Element that satisfies the description of a UNE contained in this Agreement, that Network Element shall be deemed a UNE.

9.20 Unbundled Packet Switching

Packet Switching is no longer an Unbundled Network Element under existing rules.

9.21 UNE-P Line Splitting

CLEC intends to operate only as a DLEC and does not intend to operate as the voice provider CLEC as described in this Section 9.21. In the event that CLEC wishes to order voice services under this Section 9.21, the Parties will negotiate an amendment to this Agreement adding the appropriate sections of the SGAT.

9.21.1 Description

Line Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with a new or existing UNE-P by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. A POTS Splitter must be inserted into the UNE-P to accommodate

establishment of the advanced data service. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.21.2 Terms and Conditions

OPEN – Covad proposed; Qwest cannot agree

On the effective date of a Commission determination If the Commission determines that Qwest is no longer required to provide UNE-P Combination services in a market area pursuant to Section 251 of the Act, CLEC shall not submit new orders for, Line Splitting is also not available in that market area as of the date the Commission rules CLECs are no longer entitled to submit orders for unbundled switching. If, notwithstanding the Section 251 determination, Qwest is required to provide access to unbundled switching under Section 271 or applicable state law, then line splitting remains available in that market area. To the extent Qwest is no longer required to provide access to unbundled switching under any applicable law, and. tTo the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.

9.21.2.1 General

9.21.2.1.1 The Customer of record will order the insertion of a POTS Splitter. Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.21.2.1.2 To order Line Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.21.2.1.3 CLEC/DLEC may provide any xDSL services that are compatible with CLEC UNE-P POTS service in accordance with ANSI T1.413 or IEEE 820 or other industry standards.

9.21.2.1.4 There may be only one DLEC at any given time that provides advanced data service on any given UNE-P.

9.21.2.1.5 The Customer of record will be able to request conditioning of the Unbundled Loop portion of the UNE-P. If necessary to

meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) shared Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. In order to meet the applicable standards or if requested by CLEC to d[redacted]g, Qwest may also remove UDCs or perform a Line Move when necessary to provision the loop. If CLEC requests conditioning and such conditioning significantly d[redacted]s the voice services on the Loop of the UNE-P to the point that it is unacceptable to CLEC, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.21.2.1.6 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Shared Loop Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination. For UNE-P Line Splitting, Qwest shall use the same number of Cross Connections and the same length of the tie pairs as it uses for Line Sharing.

9.21.2.1.7 Reserved for Future Use.

9.21.2.1.8 POTS Splitter Collocation requirements are covered in the Shared Loop Section of this Agreement.

9.21.3 Rate Elements

The following UNE-P Line Splitting rate elements are contained in Exhibit A of this Agreement.

9.21.3.1 Recurring Rates for UNE-P Line Splitting.

9.21.3.1.1 Interconnection TIE Pairs (ITP). A monthly recurring charge to recover the costs associated with the use of 2 ITPs, one for voice and one for voice/data.

9.21.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the UNE-P Loop.

9.21.3.2 Nonrecurring Rates for the UNE-P Line Splitting

9.21.3.2.1 Basic Installation Charge for UNE-P Line Splitting – A nonrecurring charge for each UNE-P Line Splitting installed will apply.

9.21.3.2.2 Charge for conditioning Loop associated with UNE-P – A nonrecurring charge for either conditioning the Loop by removing load coils and/or excess Bri[redacted] Taps; or r[redacted]itioning the line if necessary to assure the quality of the voice service on the UNE-P.

9.21.3.3 Nonrecurring Rates for Maintenance and Repair

9.21.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.21.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.

9.21.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.21.3.5 Where there are no Commission-approved interim or permanent rates for UNE-P Line Splitting, the current rates for Line Sharing will be used for Line Splitting. All such Line Splitting rates shall be deemed as interim, and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission for UNE-P Line Splitting. In the event interim rates for UNE-P Line Splitting are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true-up will be performed until mutually agreed upon permanent rates are established or permanent rates are established by the Commission for UNE-P Line Splitting.

9.21.4 Ordering Process

9.21.4.1 UNE-P Line Splitting

9.21.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific UNE-P associated Loop. Neither the CLEC/DLEC nor the Customer of Record are required to access loop characteristic information prior to placing an order.

9.21.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.21.4.1.3 Basic Installation "lift and lay" procedure will be used for all Line Splitting 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/DLEC's collocated equipment in the same Wire Center. At CLEC's request, Qwest will perform a

synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. When installation of Line Splitting is in conjunction with the migration of service from another provider, every effort will be taken by Qwest to ensure that the End User's services, both voice and data, experience limited interruption.

9.21.4.1.4 The Customer of record shall not place orders for UNE-P Line Splitting until all work necessary to provision UNE-P Line Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.21.4.1.5 If a Line Splitting LSR is placed to change from Line Sharing to UNE-P Line Splitting or to change the voice provider in a UNE-P Line Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.21.4.1.6 The Customer of record shall submit the appropriate LSR's associated with establishing UNE-P and Line Splitting. A single LSR may be used to establish both the UNE-P and Line Splitting service at the same time.

9.21.5 Billing

9.21.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format, Billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for CLEC/DLEC review.

9.21.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Line Splitting rate elements.

9.21.6 Repair and Maintenance

9.21.6.1 Qwest will allow CLEC/DLEC to access UNE-P Line Splitting at the point where the combined voice and data Loop is cross-connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points document.

9.21.6.2 The Customer of record will be responsible for reporting to Qwest voice service troubles provided over UNE-P Line Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. CLEC/DLEC will be responsible for repairing data services provided on UNE-P Line Splitting. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have

maintenance responsibility.

9.21.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for UNE-P Line Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: http://www.qwest.com/wholesale/productsservices/pcat/index.html. In the interim, Qwest and CLEC/DLEC agree that the following general principles will guide the repair and maintenance process for UNE-P Line Splitting.

9.21.6.3.1 If an end user complains of a voice service problem that may be related to the use of an UNE-P for data services, Qwest and CLEC/DLEC will work together with the end user to solve the problem to the satisfaction of the end user. Disconnection of the data service will only be done after Qwest has clearly determined that no trouble exists in the Qwest network or parts of the network maintained by Qwest (i.e.; Common Area Splitter Collocation where the problem is in the splitter). Should Qwest temporarily disconnect the data service in order to restore voice service caused by a problem in the data providers network, Qwest shall promptly restore the data service and complete the normal test process, including synchronization testing, to ensure both data and voice are working properly. This will be done within twenty-four (24) hours of notification by the customer of record that the problem in the data providers network has been corrected.

9.21.6.3.2 CLEC and DLEC are responsible for their respective end user base. CLEC/DLEC will have the responsibility for initiation and resolution of any service trouble report(s) initiated by their respective end users.

9.21.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on UNE-P Line Splitting in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 35[redacted] Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC or CLEC's actual cost, whichever is less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.21.6.3.4 When trouble reported by the Customer of record is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of the Customer of record on a case-by-case basis. The Customer of record may request that Qwest perform additional testing

and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide the Customer of record with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, the Customer of record will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC/DLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge to the Customer of record.

9.21.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC/DLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC/DLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.21.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC/DLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing UNE-P Line Splitting. This equipment must meet the requirements for Central Office equipment set by the FCC.

9.21.6.6 Qwest, CLEC and DLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

9.21.7 Customer of Record and Authorized Agents

9.21.7.1 "Customer of record" is defined for purposes of this section as the CLEC that is the billed Customer for Line Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.21.7.2 and 9.21.7.3 to perform ordering and/or Maintenance and Repair functions.

9.21.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.21.7.3 The Customer of record shall hold Qwest harmless with regard to any harm to Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices through the Customer of record, including but not limited to user identifications, digital certificates and SecurID cards, that allow such person to access the records of the Customer of record unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

9.22 Reserved for Future Use

9.23 Unbundled Network Elements Combinations (UNE Combinations)

CLEC does not intend to order UNE Combinations; however in the event CLEC wishes to order UNE Combinations, the Parties will negotiate an appropriate amendment to this Agreement.

9.24 Loop Splitting

9.24.1 Description

Loop Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with voice over a new or existing Unbundled Loop by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.24.1.1 With regard to the current requirement that Loop Splitting be offered over an existing Unbundled Loop, Qwest acknowledges that there are ongoing industry discussions regarding the Provisioning of Loop Splitting over a new Unbundled Loop. If as a result of those discussions, a process is developed for Loop Splitting over a new Loop, Qwest will amend its Agreement to eliminate the limitation of Loop Splitting to existing Unbundled Loops. Requests for other Loop Splitting applications, including line splitting on resold lines, must be submitted through the Special Request Process (SRP).

9.24.2 Terms and Conditions

9.24.2.1 General

9.24.2.1.1 Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.24.2.1.2 To order Loop Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.24.2.1.3 There may only be one DLEC at any given time that provides advanced data service on any given Unbundled Loop.

9.24.2.1.4 If Loop Splitting is requested for an analog Loop, the Loop must be converted to a 2/4 wire non-loaded Loop or ADSL compatible Loop.

9.24.2.1.4.1 The Customer of record will be able to request conditioning of the Unbundled Loop pursuant to the charges contained in Exhibit A. Qwest will perform requested conditioning of Unbundled Loops to remove load coils and excess Bridged Taps, undertake a line move, and/or remove [redacted]s under the terms and conditions associated with Loop conditioning contained in Section 9.2 of this Agreement.

9.24.2.1.4.2 If requested conditioning significantly degrades the existing service over the Unbundled Loop to the point that it is unacceptable to CLEC, Customer of record shall pay to convert back to an analog Loop.

9.24.2.1.5 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Line Sharing Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that points of termination are kept to a minimum. For Loop Splitting, Qwest shall use the same length of tie pairs as it uses for Line Sharing, except for the additional CLEC to CLEC connection, which is not required for Line Sharing.

9.24.2.1.6 POTS Splitter Collocation requirements are covered in the Line Sharing Section of this Agreement.

9.24.3 Rate Elements

The following Loop Splitting rate elements are contained in Exhibit A of this Agreement.

9.24.3.1 Recurring Rates for Loop Splitting.

9.24.3.1.1 Interconnection TIE Pairs (ITP) - A monthly recurring charge to recover the costs associated with the use of ITPs.

9.24.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the Unbundled Loop.

9.24.3.2 Nonrecurring Rates for the Loop Splitting

9.24.3.2.1 Basic Installation Charge for Loop Splitting – A nonrecurring charge for Loop Splitting installed will apply.

9.24.3.3 Nonrecurring Rates for Maintenance and Repair

9.24.3.3.1 Trouble Isolation Charge – A nonrecurring charge for

~~Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Loop Splitting in response to trouble tickets initiated by CLEC. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the Trouble Isolation Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC charge or CLEC's actual cost, whichever is less, to recover it's cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.~~

~~9.24.3.3.2 Additional Testing – The Customer of record 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 Exhibit A.~~

~~9.24.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.~~

~~9.24.3.5 All of these rates are interim and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are established by the Commission.~~

~~9.24.4 Ordering Process~~

~~9.24.4.1 Loop Splitting~~

~~9.24.4.1.1 As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific Unbundled Loop. However, neither CLEC/DLEC nor the Customer of record are required to access Loop characteristic information prior to placing an order.~~

~~9.24.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.~~

9.24.4.1.3 Basic Installation "lift and lay" procedure will be used for all Loop Splitting 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/DLEC's collocated equipment in the same Wire Center.

9.24.4.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage), excessive bridged tap, and load coils as part of basic installation. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM.

9.24.4.1.3.2 Loop Splitting shall be provided in accordance with the technical specifications contained in Technical Publication 77384.

9.24.4.1.4 The Customer of record shall not place orders for Loop Splitting until all work necessary to provision Loop Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.24.4.1.5 The Customer of record shall submit the appropriate LSR's associated with establishing Unbundled Loop and Loop Splitting.

9.24.4.1.6 If a Loop Splitting LSR is placed to change from Line Sharing to Loop Splitting or to change the voice provider in an existing Loop Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.24.5 Billing

9.24.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format.

9.24.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Loop Splitting rate elements.

9.24.6 Repair and Maintenance

9.24.6.1 Qwest will allow CLEC/DLEC to access Loop Splitting at the point where the combined voice and data Loop is cross connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points documents.

9.24.6.2 The Customer of record or its authorized agent will be responsible for reporting to Qwest service troubles provided over Loop Splitting. Qwest will be responsible to repair troubles on the physical line between Network

Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.24.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for Loop Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website.

9.24.7 Customer of Record and Authorized Agents

9.24.7.1 "Customer of Record" is defined for the purposes of this section as the CLEC that is the billed Customer for Loop Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.24.7.2 and 9.24.7.3 to perform ordering and/or Maintenance and Repair functions.

9.24.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.24.7.3 The Customer of record shall hold Qwest harmless with regard to any harm Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that allow person to access the records of the Customer of record unless such access and security devices through the Customer of record were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

Section 10.0 - ANCILLARY SERVICES

10.1 Reserved for Future Use

10.2 Local Number Portability

CLEC does not intend to order Local Number Portability (LNP); however in the event CLEC wishes to order Local Number Portability (LNP), the Parties will negotiate an appropriate amendment to this Agreement.

~~10.3 911/E911 Service~~

~~CLEC does not intend to order 911/E911 Service; however in the event CLEC wishes to order 911/E911 Service, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~10.4 White Pages Directory Listings~~

~~CLEC does not intend to order White Pages Directory Listings; however in the event CLEC wishes to order White Pages Directory Listings, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~10.5 Directory Assistance~~

~~CLEC does not intend to order Directory Assistance; however in the event CLEC wishes to order Directory Assistance, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~10.6 Directory Assistance List~~

~~CLEC does not intend to order Directory Assistance List; however in the event CLEC wishes to order Directory Assistance List, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~10.7 Toll and Assistance Operator Services~~

~~CLEC does not intend to order Toll and Assistance Operator Services; however in the event CLEC wishes to order Toll and Assistance Operator Services, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~10.8 Access to Poles, Ducts, Conduits, and Rights of Way~~

~~CLEC does not intend to order Access to Poles, Ducts, Conduits, and Rights of Way; however in the event CLEC wishes to order Access to Poles, Ducts, Conduits, and Rights of Way, the Parties will negotiate an appropriate amendment to this Agreement.~~

~~Section 11.0 - NETWORK SECURITY~~

~~11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc.~~

~~11.2 Each Party is responsible to provide security and privacy of~~

communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Parties' Telecommunications networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the Telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of

such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, [redacted] Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-879-7328. In cases of emergency, CLEC shall call 911 and 1-888-879-7328.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Qwest and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 Qwest and CLEC's employees, agents and vendors shall comply with Qwest Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction may result in denial of access for that individual and may constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar Days of a CLEC violation of this provision to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of

this provision and the personnel involved, 2) identification of the safety regulation violated, and 3) date and location of such violation. CLEC will have five (5) calendar Days to remedy any such violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such violation of which it has received notice within such five (5) calendar Days following receipt of such notice, CLEC shall be denied unescorted access to the affected Premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resoluti[redacted]lution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest Premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this Agreement, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11 shall prevent CLEC, its employees or agents from performing modifications, alterations, [redacted]ns or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises, Qwest equipment or Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, t[redacted] Qwest Service Assurance ([redacted]-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. The compliant [redacted] non-compliant work activity to the non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. If such non-compliant work activities pose an immediate threat to the safety of the other Party's employees, interference with the performance of the other Party's service obligations, or pose an immediate threat to the physical integrity of the other Party's facilities, the compliant Party may perform such work and/or take action as is necessary to correct the condition at the non-compliant Party's expense. In the event the non-compliant Party disputes any action the compliant Party seeks to take or has taken pursuant to this provision, the non-compliant Party may pursue immediate resolution by expedited Dispute Resolution. If the non-compliant Party fails to correct any safety non-compliance within ten (10) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within ten (10) calendar Days of written notice of non-compliance, and if the non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, the compliant Party may pursue immediate resolution by expedited Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification may be asked to vacate the Premises and Qwest security may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar Days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)

800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available seven (7) Days a week, twenty-four (24) hours a Day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) prior to gaining access into a Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel. On a [redacted]ly basis, Qwest will provide said list to CLEC.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.34.1 Uncollectable or unbillable revenues resulting from, but not confined to, Provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing such error or malicious acts, if such malicious acts could have reasonably been avoided.

11.34.2 Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending Operational Support Systems by unauthorized third parties that could have reasonably been avoided shall be the responsibility of the Party having administrative control of access to said Network Element or operational support system software.

11.34.3 Qwest shall be responsible for any direct uncollectible or unbillable revenues resulting from the unauthorized physical attachment to Loop facilities from the Main Distribution Frame up to and including the Network Interface Device, including clip-on fraud, if Qwest could have reasonably prevented such fraud.

11.34.4 To the extent that incremental costs are directly attributable to a revenue protection capability requested by CLEC, those costs will be borne by CLEC.

11.34.5 To the extent that either Party is liable to any toll provider for fraud and to the extent that either Party could have reasonably prevented such fraud, the Party who could have reasonably prevented such fraud must indemnify the other for any fraud due to compromise of its network (e.g., clip-on, missing information digits, missing toll restriction, etc.).

11.34.6 If Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction of CLEC, take reasonable action to mitigate the fraud where such action is possible.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven (7) Days a week/twenty-four (24) hours a Day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or *57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to

law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a twenty-four (24) hours a Day, seven (7) Days a week contact for processing such requests, should they occur.

Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

12.1 Description

12.1.1 Qwest has developed and shall continue to provide Operational Support System (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation and support, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of the Change Management Process (CMP) set forth in Section 12.2.6.

12.1.2 Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing functions. For those functions with a retail analogue, such as pre-ordering and ordering and Provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and Provisioning of Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website,

training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order and Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines/standards shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre Ordering - Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to Customer Service Records (CSRs) for Qwest retail or resale End User Customers. The information will include Billing name, service address, Billing address, service and feature subscription, Directory Listing information, and long distance Carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for

service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 For End User Customer locations, facility availability, Loop qualification, including resale DSL, and Loop make-up information, including, but not limited to, Loop length, presence of Bridged Taps, repeaters, and loading coils.

12.2.1.4.8 A list of valid available CFAs for Unbundled Loops.

12.2.1.4.9 A list of one to five (1-5) individual Meet Points or a range of Meet Points for shared Loops.

12.2.1.4.10 Design Layout Record (DLR) Query which provides the layout for the local portion of a circuit at a particular location where applicable.

12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use.

12.2.1.5.2 Reserved for Future Use.

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs for use by CLEC Customer service representatives at a single CLEC location, CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.7 Facility Based EDI Listing Process -- Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines/standards in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CMP process to consider any suggestions made by CLEC to improve or modify such plans. CLEC specific requests for

~~modifications t[redacted]s will [redacted] mutually agreed upon between Qwest and CLEC.~~

~~12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.~~

~~12.2.1.9.1 Qwest shall provide all Provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours Provisioning services to CLEC on a non-discriminatory basis as it provides such Provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours Provisioning on its wholesale website.~~

~~12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic Firm Order Confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest Due Date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing [redacted]t notifies CLEC that the service order has posted to the Billing system.~~

~~12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual Firm Order Confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order r[redacted] completion that notifies CLEC that the service order has posted to the Billing system.~~

~~12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.~~

12.2.1.9.7 Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.

12.2.2 Maintenance and Repair

12.2.2.1 Qwest shall provide electronic interface gateways, including an Electronic Bonding interface and a GUI interface, for reviewing a Customer's trouble history at a specific location, conducting testing of a Customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

12.2.3 Interface Availability

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows as applicable.

12.2.4 Billing

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local Billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of Telecommunications Billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information

~~SAG/FAM~~	~~Street Address/Facility Availability Information~~

~~12.2.5.1 Bills~~

~~12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as Billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.~~

~~12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one time charges plus a summary of any usage charges. These bills are segmented by product, LATA, Billing account number (BAN) and bill cycle.~~

~~12.2.5.2 Files and Reports~~

~~12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given Day as captured or recorded by the network Switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in ATIS standard Electronic Message Interface (EMI) format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:~~

~~a) Resale;~~

~~b) Unbundled Switch Port; and~~

~~c) UNE-P for POTS.~~

~~12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.~~

~~12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily~~

~~usage information is transmitted to a Carrier, it will contain these records for these types of calls as well.~~

~~12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the End User Customer has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:~~

~~a) Intentionally Left Blank;~~

~~b) Resale;~~

~~c) Unbundled Loop;~~

~~d) Unbundled Line Side Switch Port;~~

~~e) UNE-P for POTS;~~

~~f) Line Sharing;~~

~~g) UNE-P Line Splitting – Loss Report is provided only to the Customer of record; and~~

~~h) Loop Splitting – Loss Report is provided only to the Customer of record~~

~~12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:~~

~~a) Intentionally Left Blank;~~

~~b) Resale;~~

~~c) Unbundled Loop;~~

~~d) Unbundled Line Side Switch; and~~

~~e) UNE-P for POTS.~~

~~12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.~~

~~12.2.5.2.7 Category 1150 series records are used to exchange~~

s[redacted]illed access minutes-of-use. Qwest will make accessible to CLEC through electronic means the transmission method/media types available for these mechanized records.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

a) SAG provides Address and Serving Central Office Information.

b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA Carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

12.2.6 Change Management

Qwest agrees to maintain a change management process, known as the Change Management Process (CMP), that is consistent with or exceeds industry guidelines, standards and practices to address Qwest's OSS, products and processes. The CMP shall include, but not be limited to, the following: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), CMP notifications, systems release life cycles, and communications; (ii) provide a forum for CLECs and Qwest to discuss and prioritize CRs, where applicable pursuant to Exhibit G; (iii) develop a mechanism to track and monitor CRs and CMP notifications; (iv) establish intervals where appropriate in the process; (v) processes by which CLEC impacts that result from changes to Qwest's OSS, products or processes can be promptly and effectively resolved; (vi) processes that are effective in maintaining the shortest timeline practicable for the receipt, development and implementation of all CRs; (vii) sufficient dedicated Qwest processes to address and resolve in a timely manner CRs and other issues that come before the CMP body; (viii) processes for OSS Interface testing; (ix) information that is clearly organized and readily accessible to CLECs, including the availability of web-based tools; (x) documentation provided by Qwest that is effective in enabling CLECs to build an electronic gateway; and (xi) a process for changing CMP that calls for collaboration among CLECs and Qwest and requires agreement by the CMP participants. Pursuant to the scope and procedures set forth in Exhibit G, Qwest will submit to CLECs through the CMP, among other things, modifications to existing products and product and technical documentation available to CLECs, introduction of new products available to CLECs, discontinuance of products available to CLECs, modifications to pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, introduction of pre-ordering, ordering/Provisioning, Maintenance/Repair or Billing processes, discontinuance of pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, modifications to existing OSS interfaces, introduction of new OSS interfaces, and retirement of existing OSS interfaces. Qwest will maintain as part of CMP an escalation process so that CMP issues can be escalated to a Qwest representative authorized to make a final decision and a process for the timely resolution of disputes. The governing document for CMP, known as the "Change Management Process," is attached as Exhibit G (the "CMP Document"). The CMP

Document (Exhibit G) is the subject of ongoing negotiations between Qwest and CLECs in the ongoing CMP redesign process. Not all of the sections of Exhibit G have been discussed or considered during the ongoing CMP redesign process, and the CMP Document will continue to be changed through those discussions. Exhibit G reflects the commitments Qwest has made regarding maintaining its CMP, and Qwest commits to implement agreements made in the CMP redesign process as soon as practicable after they are made. Following the completion of the CMP Document, Exhibit G will be subject to change through the CMP process, as set forth in the CMP Document. Qwest will maintain the most current version of the CMP Document on its wholesale website.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be implemented pursuant to the CMP set forth in Exhibit G.

12.2.6.3 Notwithstanding any other provisions in this Agreement, the CMP document attached as Exhibit G will be modified pursuant to the terms of Exhibit G, or the procedures of the redesign process and incorporated as part of the Agreement without requiring the execution or filing of any amendment to this Agreement.

12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces

12.2.7.1 Before CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces

Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLEC demonstrates the

ability to generate correct functional transactions for enhancements not previously certified. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

12.2.9 CLEC Responsibilities f[redacted]rt for OSS Interfaces

12.2.9.1 If using the GUI interface, CLEC will take reasonable efforts to train CLEC personnel on the GUI functions that CLEC will be using.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing envir[redacted]t that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to controlled production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment ("SATE") – Qwest's stand-alone testing envir[redacted]t will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The SATE provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. SATE uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATE pre-order queries and orders are subjected to the same edits as production pre-order and order transactions. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in Interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify

~~processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of valid data in Qwest production systems. All Interoperability pre-order queries and order transactions are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.~~

~~12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.~~

~~12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must make every effort to comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.~~

~~12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the EDI interface. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel where Technically Feasible.~~

~~12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.~~

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, where Technically Feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two (2) months after the implementation of the next release. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two (2) months after the next release implementation may continue certifying additional products and activities until two (2) months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the SATE or Interoperability environment before two (2) months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or Interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the Dispute Resolution procedures of this Agreement or expedited resolution through request to the

~~state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reas[redacted] tified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a fi[redacted]at the test sc[redacted] and activities [redacted] interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.~~

~~12.2.9.9 Reserved for Future Use.~~

~~12.2.10 CLEC Support~~

~~12.2.10.1 Qwest shall provide documentation and assistance for CLEC to [redacted]rstand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include, but is not limited to, contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation and CLEC Help Desk.~~

~~12.2.10.2 CLEC Help Desk~~

~~12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.~~

~~12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access [redacted]n, SecurID configuration, Profile Setup, and password verification.~~

~~12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: Resale/POTS; UNE POTS; Design Services and Repair.~~

~~12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.~~

~~12.2.10.3 Additional assistance to CLEC is available through various public~~

web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site. Qwest will provide Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery

Recurring and nonrecurring OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any recurring or nonrecurring OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

12.3 Maintenance and Repair

12.3.1 Service Levels

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Qwest provides for itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner as Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

12.3.1.4 During the performance of Maintenance and Repair services, neither Party shall make disparaging remarks about the other Party. Neither Party shall provide information about its own products or services to End User Customers of the other Party during performance of maintenance and repair services; however, nothing in this Agreement shall be deemed to prohibit either Party from discussing its own products and services with End User Customers of the other Party seeking such information.

12.3.2 Branding

12.3.2.1 Qwest shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded Maintenance and Repair forms. Qwest may not

unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

12.3.3 Service Interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring Carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring Carriers involved in its services; 3) violate any Applicable Law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party) shall promptly notify the Party causing the Impairment of Service (the "Impairing Party) of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the Impaired Party) shall promptly notify the Party causing the Impairment of Service (the Impairing Party) of the nature and location of the problem. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours

procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to CLEC as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

12.3.4 Trouble Isolation

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, Point of Interface or such other test points as are identified in this Agreement or applicable Qwest publications. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is found to be on Qwest's side of the Demarcation Point, Qwest will credit CLEC a Maintenance of Service charge or CLEC's actual costs, whichever is less, pursuant to Section 12.3.4.4. If the trouble is on the End User Customer's side of the Demarcation Point, and the CLEC authorizes Qwest to repair trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC's request, a Maintenance of Service Charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the repeat Trouble Report submitted within the time frame as set forth in Section 12.3.4.4 for the same line or circuit, Maintenance of Service charges shall not apply.

12.3.4.4 Where Qwest has billed CLEC for Maintenance of Service charges for a CLEC Tr[redacted] Report, Qwest will remove such Maintenance of Service charge from CLEC's account and CLEC may bill Qwest for its repeat

dispatch(es) to recover a Maintenance of Service charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and

- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and

- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and

- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and

- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the End User Customer's Demarcation Point) for CLEC or its End User Customers.

12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

12.3.6.1 Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.2 Prior to Qwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services

provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Qwest's portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including Central Office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.

12.3.7 Work Center Interfaces

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective End User Customers with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End User Customers of CLEC shall be instructed to report all cases of trouble to CLEC. End User Customers of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will

be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain Proprietary Information such as Customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

12.3.10 Protective Maintenance

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Qwest shall provide notice of potentially CLEC Customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

12.3.11 Hours of Coverage

12.3.11.1 Qwest's repair operation is seven (7) Days a week, twenty-four (24) hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than three (3) troubles in a rolling thirty (30) Day period, pursuant to Section 12.2.2.1.

12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines and designed service circuits, Qwest is responsible for all Maintenance and Repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC Customer premises without prior CLEC authorization. For dispatch to the CLEC Customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the Electronic Bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

12.3.15 Intervals/Parity

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.16 Jeopardy Management

12.3.16.1 Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its End User Customer trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC may employ similar techniques in its centers.

12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported trouble, Qwest will inform CLEC of repair completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

12.3.19 End User Customer Interface Responsibilities

12.3.19.1 CLEC will be responsible for all interactions with its End User Customers including service call handling and notifying its End User Customers of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC End User Customers will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the Customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, Customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC Customers.

12.3.20 Repair Call Handling

12.3.20.1 Manually-reported repair calls by CLEC to Qwest will be answered with the same quality and speed as Qwest answers calls from its own End User Customers.

12.3.21 Single Point of Contact

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven (7) Days a week, twenty-four (24) hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major Switch maintenance activities off-hours, during certain "maintenance windows". Major Switch maintenance activities include Switch conversions, Switch generic upgrades and Switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 am Monday through Friday, and Saturday 10:00 p.m. through

Monday 6:00 a.m., Mountain Time. Although Qwest normally does major Switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Reserved for Future Use.

12.3.23.4 Planned generic upgrades to Qwest Switches are included in the ICONN database, available to CLEC via Qwest's Web site.

12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one Switch and its replacement with another. Generic Switch software or hardware upgrades, the addition of Switch line and trunk connection hardware and the addition of capacity to a Switch do not constitute Switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the Switch Ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a Switch or frame conversion planned day of cut-over to the replacement frame(s) or Switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the Day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A Switch or frame conversion embargo is the time period that the Switch or frame Trunk Side facility connections are frozen to facilitate conversion from one Switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for Trunk Side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for Switch or frame Trunk Side facility augments to capacity or changes to Switch or frame Trunk Side facilities must be issued by CLEC with a Due Date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject Switch or frame Trunk Side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's Due Date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For Switch and Trunk Side frame conversions, Qwest

shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) Days before the Conversion Date.

12.3.24.4.3 For Switch and Trunk Side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) Days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old Switch or frame to the new Switch or frame, and sixty (60) Days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame E[redacted]riod. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During Switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the Trunk Side of the Switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old Switch to the new Switch on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new Switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for Switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest [redacted]tifies itself, its End User Cust[redacted]ers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain Due Dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, Billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during Switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the Switch or frame conversion. LSRs of any kind issued during the Switch

~~or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.24.7.2 The quiet period for Switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion and is identified in the ICONN database.~~

~~12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion.~~

~~12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a Due Date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.~~

~~12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested Due Date, will be processed after the quiet period expires.~~

~~12.3.24.7.6 CLEC may request a Due Date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change. Such changes shall be handled as emergency orders by Qwest.~~

~~12.3.24.7.7 CLEC may request a Due Date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date until 12 noon Mountain Time the Day after the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.~~

~~12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.~~

~~12.3.24.8 Switch Upgrades. Generic Switch software and hardware upgrades are not subject to the Switch conversion embargoes or quiet periods described above. If such generic Switch or software upgrades require significant activity related to translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet~~

periods during Switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing Switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such Switch hardware additions.

Section 13.0 - ACCESS TO TELEPHONE NUMBERS

CLEC does not intend to order Access to Telephone Numbers; however in the event CLEC wishes to order Access to Telephone Numbers, the Parties will negotiate an appropriate amendment to this Agreement.

Section 14.0 - LOCAL DIALING PARITY

CLEC does not intend to order Local Dialing Parity; however in the event CLEC wishes to order Local Dialing Parity, the Parties will negotiate an appropriate amendment to this Agreement.

Section 15.0 - Qwest Dex

CLEC does not intend to order Qwest Dex; however in the event CLEC wishes to order Qwest Dex, the Parties will negotiate an appropriate amendment to this Agreement.

Section 16.0 - REFERRAL ANNOUNCEMENT

CLEC does not intend to order Referral Announcement; however in the event CLEC wishes to order Referral Announcement, the Parties will negotiate an appropriate amendment to this Agreement.

Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other interconnection agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the processing fee specified in Exhibit A of this Agreement. Qwest will refund one-half (1/2) of the processing fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of Interconnection or access;

17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar Days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the

~~unbundling requirements of the Act or state law.~~

~~17.5 If Qwest determines during the twenty-one (21) Day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact. Qwest shall promptly, but in no case later than the twenty-one (21) Day period, provide a written report setting forth the basis for its conclusion.~~

~~17.6 If Qwest determines during such twenty-one (21) Day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar Days, but in no case later than the end of such twenty-one (21) Day period.~~

~~17.7 As soon as feasible, but in any case within forty-five (45) calendar Days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.~~

~~17.8 A CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.~~

~~17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but may be subject to termination liability assessment or minimum period charges.~~

~~17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.~~

~~17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.~~

~~17.12 In the event CLEC has submitted a request for Interconnection, Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest~~

may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections 17.2.1 through 17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

17.15 Qwest will provide notice to CLECs of all BFRs which have been deployed or denied, provided, however, that identifying information such as the name of the requesting CLEC and the location of the request shall be removed. Qwest shall make available a topical list of the BFRs that it has received with CLECs under the Agreement or an Interconnection Agreement. The description of each item on that list shall be sufficient to allow CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of CLEC to provide sufficient details about the terms and conditions of any granted requests to allow CLEC to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this Agreement. CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to CLEC of the need therefore.

Section 18.0 - AUDIT PROCESS

18.1 Nothing in this Section 18 shall limit or expand the Audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the Audit provisions in this Section 18. For purposes of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of the books, records, and other documents used in providing services under this Agreement. The term "Audit" also applies to the investigation of company records, back office systems and databases pertaining to Loop information.

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems

~~necessary.~~

~~18.2 This Audit shall take place under the following conditions:~~

~~18.2.1 Either Party may request to perform an Audit or Examination.~~

~~18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.~~

~~18.2.3 The Audit or Examination shall occur during normal business hours. However, such Audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.~~

~~18.2.4 There shall be no more than two (2) Audits requested by each Party under this Agreement in any twelve (12) month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.~~

~~18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.~~

~~18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.~~

~~18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least twenty-four (24) months.~~

~~18.2.8 Audit or Examination Expenses~~

~~18.2.8.1 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.~~

~~18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the requesting Party's commercially reasonable expenses~~

in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the Billing to the requesting Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) Days after the Parties' receipt of the final Audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process; (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and Audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an Affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such Affiliate's disaggregated data, as required by reasonable needs of the Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16.

In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

18.3.1 Either Party may request an Audit of the other's compliance with this Agreement's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting Party has provided to the other. Those Audits shall not take place more frequently than once in every three (3) years, unless cause is shown to support a specifically requested Audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this Section 18 that are not inconsistent herewith shall apply, except that in the case of these Audits, the Party to be audited may also request the use of an independent auditor.

Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to Unbundled Loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to Unbundled Loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to Unbundled Loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of End User Customers and without discrimination among the various Carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

Section 20.0 - SERVICE PERFORMANCE

Performance Indicator Definitions (PIDs), in their current form, are included in Exhibit B of this Agreement. Subsequent changes to these PIDs that are made by the Long-Term PID Administration or the Commission shall be incorporated into Exhibit B by reference. Modifications of PIDs that apply to the Qwest Performance Assurance Plan (QPAP) shall be made in accordance with Section 16.0 of Exhibit K.

Section 21.0 - NETWORK STANDARDS

21.1 The Parties recognize that Qwest services and Network Elements have been purchased and deployed, over time, to Telcordia and Qwest technical standards. Specification of standards is built into the Qwest purchasing process, whereby vendors incorporate such standards into the equipment Qwest purchases. Qwest supplements generally held industry standards with Qwest Technical Publications.

21.2 The Parties recognize that equipment vendors may manufacture Telecommunications equipment that does not fully incorporate and may differ from industry standards at varying points in time (due to standards development processes and consensus) and either Party may have such equipment in place within its network. Except where otherwise explicitly stated within this Agreement, such equipment is acceptable to the Parties, provided said equipment does not pose a security, service or safety hazard to Persons or property.

21.3 Generally accepted and developed industry standards which the Parties agree to support include, but are not limited to:

21.3.1 Switching

GR-954-CORE LIDB

GR-2863-CORE AIN

GR-1428-CORE Toll Free Service

GR-1432-CORE TCAP

GR-317-CORE Call Control Using Integrated Services Digital User Part (ISDNUP)

GR-905-CORE ISUP

GR-1357-CORE Switched Fractional DS1

GR-1298-CORE AIN Switching System Generic Requirements

GR-1299-CORE AIN Service Control Point Adjunct Interface Generic Requirements

TR-NWT-001284 AIN 0.1 Switching System Generic Requirements

GR-905-CORE Common Channel Signaling Network Interface Specification

~~GR-1432-CORE CCS Network Interface Specification~~

~~Telcordia TR-TSY-000540, Issue 2R2~~

~~GR-305-CORE~~

~~GR-1429-CORE~~

~~GR-2863-CORE~~

~~FR-64 LATA LSSGR~~

~~GR-334-CORE Switched Access Service~~

~~TR-NWT-000335 Voice Grade Special Access Services~~

~~TR-TSY-000529 Public LSSGR~~

~~TR-NWT-000505 LSSGR Call Processing~~

~~FR-NWT-000271 OSSGR~~

~~TR-NWT-001156 OSSGR Subsystem~~

~~SR-TSY-001171 System Reliability Analysis~~

~~21.3.2 Transport~~

~~Telcordia FR-440~~

~~TR-NWT-000499 (TSGR) Transport Systems Generic Requirements~~

~~GR-820-CORE Generic Transmission Surveillance; DS1 and DS3 Performance~~

~~GR-253-CORE Synchronous Optical Network Systems (SONET)~~

~~TR-NWT-000507 Transmission~~

~~TR-NWT-000776 NID for ISDN Subscriber Access~~

~~TR-INS-000342 High Capacity Digital Special Access Service~~

~~ST-TEC-000051 & 52 Telecommunications Transmission Engineering Handbooks Volumes 1 & 2~~

~~ANSI T1.102-1993 Digital Hierarchy – Electrical Interface, Annex B.~~

~~21.3.3 Loops~~

~~TR-NWT-000057 Functional Criteria for Digital Loop Carrier Systems Issue 2~~

~~TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines~~

~~GR-253-CORE [redacted]NET Common Generic Criteria~~

~~TR-NWT-000303 Integrated Digital Loop Carrier System Generic Requirements~~

~~TR-TSY-000673 Operations Interface for an IDLC System~~

~~GR-303-CORE Issue 1 Integrated Digital Loop Carrier System Generic Requirements~~

~~TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines~~

~~TR-TSY-000008 Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch~~

~~TR-NWT-008 and 303~~

~~TA-TSY-000120 Subscriber Premises or Network Ground Wire~~

~~GR-49-CORE Generic Requirements for Outdoor Telephone Network Interface Requirements~~

~~TR-NWT-000239 Indoor Telephone Network Interfaces~~

~~TR-NWT-000937 Generic Requirements for [redacted] Entrance~~

~~TR-NWT-000133 Generic Requirements for Network Inside Wiring~~

~~21.3.4 Local Number Portability~~

~~Number Portability Generic Switching and Signaling Requirements for Number Portability, Issue 1.00, February 12, 1996 (Editor – Lucent Technologies, Inc.);~~

~~Generic Requirements for SCP Application and GTT Function for Number Portability, Issue 0.95, Final Draft, September 4, 1996 (Editor – Ameritech Inc.);~~

~~Generic Operator Services Switching Requirements for Number Portability, Issue 1.00, Final Draft, April 12, 1996 (Editor – Nortel);~~

~~ATIS, TRQ No. 1, Technical Requirements for Number Portability Operator Services Switching Systems, April 1999;~~

~~ATIS, TRQ No. 2, Technical Requirements for Number Portability Switching Systems, April 1999;~~

ATIS, TRQ No. 3, Technical Requirements for Number Portability Database and Global Title Translation, April 1999;

FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Released July 2, 1996;

FCC First Memorandum Opinion and Order on Reconsideration; FCC 97-74; CC Docket 95-116, RM 8535; Released March 11, 1997.

FCC Second Report and Order, FCC 97-298; CC Docket 95-116, RM 8535; Released August 18, 1997.

21.4 The Parties will cooperate in the development of national standards for Interconnection elements as the competitive environment evolves. Recognizing that there are no current national standards for Interconnection Network Elements, Qwest has developed its own standards for some Network Elements, including:

Qwest Interconnection – Unbundled Loop #77384

Expanded Interconnection and Collocation for Private Line Transport and Switched Access Services - #77386

Unbundled Dedicated Interoffice Transport - #77389

Telecommunications Equipment Installation Guidelines - #77350.

21.5 Qwest Technical Publications have been developed to support service offerings, inform End User Customers and suppliers, and promote engineering consistency and deployment of developing technologies. Qwest provides all of its Technical Publications at no charge via website: http://www.qwest.com/techpub/.

Section 22.0 - SIGNATURE PAGE

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

~~(CLEC)~~	~~Qwest Corporation~~
~~Signature~~	~~Signature~~
~~Name Printed/Typed~~	~~Name Printed/Typed~~
~~Title~~	~~Title~~
~~Date~~	~~Date~~

HARD COPY OF Tapes of oral argument

DOCKET SEQUENCE NO. _____

EXHIBIT _____

CASE NO. PU-05-165

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051