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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION
OF MCImetro ACCESS TRANSMISSION
SERVICES, LLC, FOR APPROVAL OF AN
AMENDMENT FOR ELIMINATION OF
UNE-P AND IMPLEMENTATION OF
BATCH HOT CUT PROCESS AND QPP
MASTER SERVICE AGREEMENT

Docket No. T-01051B-04-0540
T-03574A-04-0540

JOINT MOTION FOR CONSOLIDATION
OF DOCKETS AND REQUEST FOR ALJ
TO TAKE NOTICE

I. Introduction

On February 4, 2005, the Federal Communications Commission ("FCC") released its Order on Remand¹ addressing issues arising from the D.C. Circuit Court of Appeal's decision in *USTA v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004). While the FCC sought comments in its original Notice of Proposed Rulemaking on whether Commercial Agreements were subject to the Section 252 filing requirement, the Order on Remand did not address the issue.² The Arizona Corporation Commission ("ACC" or "Commission") Staff and Qwest Corporation ("Qwest") accordingly file this Joint Motion in an effort to economize and consolidate the dockets that are now pending before the Commission that address practically identical issues.

II. Background

Since the FCC's August 20, 2003 Triennial Review Order ("TRO")³ was reversed and vacated in part, Incumbent Local Exchange Carriers ("ILECs") such as Qwest have been entering into what

¹ *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-290, 70FR 8940 (Feb.24, 2004).
² *The Order on Remand in footnote 55 states, only that the FCC will address the outstanding issues from the Notice of Proposed Rulemaking in subsequent orders.*
³ *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 Red 16978, 17145, (2003) (*Triennial Review Order*) corrected by Errata, FCC Red 19020 (2003) (*Triennial Review Order Errata*), vacated and remanded in part, affirmed in part, *United States Telecom Ass'n v. FCC*, 359 F.3d 554(D.C. Cir. 2004) (*USTA II*) cert.denied, 125 S.Ct. 313, 316,345 (2004).

1 they call Commercial Agreements for the provision of facilities and elements affected by the D.C.
2 Circuit Court's Order, and delisted by the FCC in its subsequent decisions. This case involves what
3 Qwest has termed a Commercial Agreement entered into between Qwest and MCImetro Access
4 Transmission Services, L.L.C. ("MCI") for the provision of mass market switching and shared
5 transport in Arizona. Other Competitive Local Exchange Carriers ("CLECs") have entered into
6 substantially identical agreements with Qwest. These agreements, which Qwest has labeled the
7 "Qwest Platform Plus" ("QPP") Master Services Agreement, have been provided by Qwest to the
8 Arizona Corporation Commission ("ACC" or "Commission") Staff for informational purposes only.
9 It is Qwest's position that the QPP Master Services Agreement, and all other Commercial
10 Agreements, are not interconnection agreements and thus do not need to be filed with the ACC for
11 approval under Section 252 of the Telecommunications Act of 1996 ("1996 Act"). Both Staff and
12 MCI take the position that the QPP Master Services Agreement is an interconnection agreement and
13 must be filed with the Commission for review and approval under Section 252 of the 1996 Act.

14 **III. Discussion**

15 MCI filed the QPP Commercial Agreement (the "MCI QPP Agreement") for approval by the
16 ACC under Section 252 of the 1996 Act. A Motion to Dismiss was subsequently filed by Qwest to
17 which both MCI and Staff responded. The parties to this matter have briefed the issues and the
18 Hearing Division heard oral argument in November, 2004. The matter is now pending a decision.

19 Since the time Qwest and MCI entered into the MCI QPP Agreement, a number of other
20 carriers have entered into QPP agreements with Qwest. Each agreement listed on Attachment A is a
21 Master Services Agreement for the provision of Qwest Platform Plus Service entered into between
22 Qwest and another CLEC. Each agreement listed on Attachment A is identical in all material respects
23 to the MCI QPP Agreement that is the subject of the MCI QPP proceeding.

24 Qwest and Staff agree, in the interest of judicial economy, that the resolution of issues raised
25 in the MCI QPP proceeding should control with respect to the question of whether each agreement
26 listed on Attachment A should be filed with the Commission for approval under Section 252 of the
27 1996 Act. The agreements listed on Attachment A involve the same form of agreement, the same
28 legally relevant facts, and the same legal principles as the MCI QPP proceeding. Therefore, both

1 Qwest and Staff jointly move the Commission for an order or orders consolidating the dockets that s
2 listed on Attachment A with the MCI QPP proceeding.

3 Qwest filed Motions to Dismiss with regard to the filings of certain of the agreements listed in
4 Attachment A, as noted on said Attachment. Qwest and Staff request, should the Hearing Division
5 grant the Joint Motion to Consolidate, that the Qwest Motions to Dismiss be subsumed in the
6 consolidation. Qwest and Staff further request that the ALJ treat Staff's response to Qwest's Motion
7 to Dismiss in the MCI QPP proceeding, as its response to all of Qwest's pending Motions to Dismiss
8 the other QPP filings listed on Attachment A. Qwest and Staff also jointly request that the
9 Administrative Law Judge decide the issue of whether the agreements listed on Attachment A (and
10 future QPP agreements as discussed below) must be filed with and approved by the ACC under
11 Section 252, based upon the briefs and arguments already submitted in this case.

12 Further, while Qwest and Staff have not discussed this Joint Motion with all of the other
13 parties to the Agreements listed on Attachment A, Staff and Qwest respectfully request that the
14 Administrative Law Judge, in his procedural order, allow any other party to an agreement listed on
15 Attachment A, 10 days to object. If no objection is entered, the agreement should be deemed
16 consolidated with the MCI QPP case. Qwest and Staff also request that to the extent there are other
17 QPP agreements that have been executed by Qwest and other carriers, or which may be executed in
18 the future, that those QPP agreements be handled in a like manner, until the Commission enters its
19 decision in this matter.

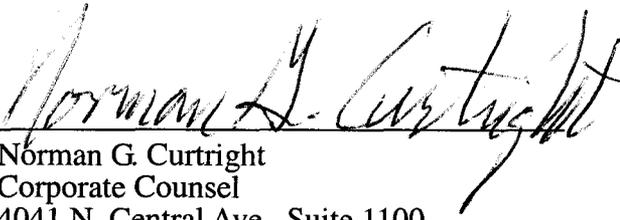
20 Qwest and Staff make this request for consolidation with the understanding that the respective
21 claims and arguments regarding the obligation to file said agreements with the Commission will not
22 be re-litigated before the Commission with respect to the agreements listed on Attachment A and
23 others subsequently filed pursuant to this Joint Proposal, to the extent such cases have been
24 consolidated with the MCI QPP case and a final decision on the merits has been issued by the
25 Commission. This understanding will not limit the parties' rights to re-litigate before the
26 Commission with respect to QPP agreements listed on Attachment A to the extent that subsequent
27 decisions or court orders in an appeal of the MCI QPP case provide a basis for rehearing. Nothing
28 herein shall be construed as a waiver by either Qwest or Staff of their arguments advanced in the MCI

1 QPP case, as a limitation on the right of any party to apply for reconsideration or rehearing of any
2 decision by the Commission in the MCI QPP case, or as a limitation on the right of any party to
3 appeal the decision of the Commission in the MCI QPP case to a Court of competent jurisdiction.⁴

4 **IV. Conclusion**

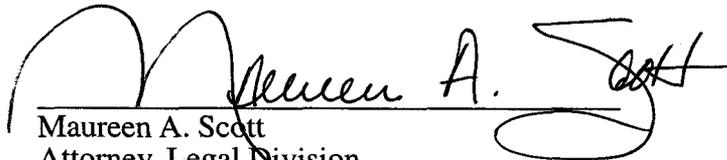
5 Staff and Qwest respectfully request that the Commission enter an order consolidating the
6 dockets listed on Attachment A, with this docket consistent with the discussion set forth above. Staff
7 and Qwest also respectfully request that the Commission consider all of the matters submitted for
8 decision based upon the pleadings filed and arguments made in this Docket.

9 RESPECTFULLY submitted this 18th day of April, 2005.

10
11 

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26
27 ⁴ Qwest notes that it has filed federal court appeals in Colorado and Utah, wherein Qwest claims that the decisions of the
28 Colorado and Utah commission to assert jurisdiction over the Commercial QPP Agreement between Qwest and MCI
under section 252 are unlawful. Both appeals were filed in December 2004.

1 Original and 13 copies of the foregoing
2 filed this 19th day of April, 2005, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 Copy of the foregoing mailed this
8 19th day of April, 2005, to:

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Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and Vycera Communications, Inc.” (QPP)</p>	<p>None</p>	<p>Agreement given to Staff for informational purposes 2-22-05 Staff letter to parties 2-23-05 Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of Qwest Corp. for Approval of an Interconnection Agreement with Granite Telecommunications, Inc. (QPP)</p>	<p>T-1051B-04-0764 T-04208A-04-0764</p>	<p>Agreement given to Staff for informational purposes 9-1-04 Agreement docketed by Staff 10-25-04 Qwest filed Motion to Dismiss 11-8-0404 Staff filed Response to Motion to Dismiss 12-2-04</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and New Rochelle Telephone Corp. fka Peconic Telco” (QPP)</p>	<p>None</p>	<p>Agreement given to Staff for informational purposes 2-10-05 Staff letter to parties 2-18-05 Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and AT&T and TCG”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Integra Telecom of Arizona, Inc.”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and McLeodUSA Telecommunications Services, Inc.”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Carrier Services Inc. dba”</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>Phones for All” (QPP)</p>		<p>parties 2-18-05 Staff docketed Agreement 4-11-05</p>	
<p>“Commercial Agreement between Qwest Corp. and Metropolitan Telecommunications of Arizona, Inc.” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-24-05 Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Quality Telephone, Inc.” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-17-05 Staff letter to parties 2-18-05 Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of MCImetro Access Transmission Services for Approval of an Amendment for Elimination of UNE-P and Implementation of Batch Hot Cut Process and QPP Master Services</p>	<p>T-01051B-04-0540 T-03574A-04-0540</p>	<p>Agreement docketed 7-28-04 by MCImetro Qwest filed Motion to Dismiss Application for Review of Negotiated Commercial Agreement 8-6-04 Qwest filed</p>	<p>Consolidate other QPP cases into this one</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		<p>Request for Suspension of Time Clock 8-13-04</p> <p>Staff filed Response to Motion to Dismiss 9-20-04</p>	
<p>Application of Qwest Corp. for Interconnection Agreement with Z-Tel Communications, Inc.</p> <p>(QPP)</p>	<p>T-01051B-04-0925</p> <p>T-03589A-04-0925</p>	<p>Agreement given to Staff for informational purposes 11-10-04</p> <p>Agreement docketed by Staff 11-23-04</p> <p>Staff letter to parties 11-24-05</p> <p>Qwest filed Motion to Dismiss 1-12-05</p>	<p>Consolidate with Docket Nos.</p> <p>T-01051B-04-0540</p> <p>T-03574A-04-0540</p>
<p>Application of Qwest Corp. for an Interconnection Agreement with Northstar Telecom, Inc.</p> <p>(QPP)</p>	<p>T-01051B-04-0926</p>	<p>Agreement given to Staff for informational purposes 10-28-04</p> <p>Staff letter to parties 11-24-04</p> <p>Agreement docketed by Staff 12-23-04</p> <p>Qwest filed Motion to Dismiss 1-12-05</p>	<p>Consolidate with Docket Nos.</p> <p>T-01051B-04-0540</p> <p>T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between ACN Communication Services, Inc. and Qwest Corp.”</p> <p>(OPP)</p>	None	<p>Agreement given to Staff for informational purposes 1-17-05 Staff letter to parties 1-27-05</p> <p>Agreement docketed by Staff 4-11-05</p> <p>Qwest filed Motion to Dismiss 2-10-05 (Qwest filed this Motion in Docket 05-0032)</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of the J. Richard LLC, dba Live Wire Phone Company for Approval of the QPP Master Service Agreement</p>	<p>T-04257A-05-0048 T-01051B-05-0048</p>	<p>Agreement given to Staff for informational purposes 12-15-04</p> <p>Staff letter to parties 1-14-05</p> <p>Agreement docketed 1-26-05 by J. Richard</p> <p>Qwest filed Motion to Dismiss 2-7-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Long Distance Inc.”</p>	None	<p>Agreement given to Staff for informational purposes 1-28-05</p> <p>Staff letter to</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
(QPP)		parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0050) Staff docketed Agreement 4-11-05	
“Commercial Agreement Between Qwest Corp. and Budget Phone, Inc. ” (QPP)	None	Agreement given to Staff for informational purposes 1-31-05 Staff letter to parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0063) Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and Lightyear Network Solutions, LLC ” (QPP)	None	Agreement given to Staff for informational purposes 2-1-05 Staff letter to parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		<p>(Qwest filed this Motion in Docket 05-0066)</p> <p>Staff docketed Agreement 4-11-05</p>	
<p>“Commercial Agreement between Qwest Corp. and Popp Telecom, Inc.”</p> <p>(QPP)</p>	<p>None</p>	<p>Agreement given to Staff for informational purposes 2-8-05</p> <p>Staff letter to parties 2-9-05</p> <p>Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0079)</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Telscape Communications, Inc.”</p> <p>(QPP)</p>	<p>T-04215A-05-0113 T-01051B-05-0113</p>	<p>Agreement given to Staff for informational purposes 2-8-05</p> <p>Staff letter to parties 2-9-05</p> <p>Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0080)</p> <p>Telscape docketed Agreement</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and Eschelon Telecom of Arizona, Inc. (QPP)</p>	<p>None</p>	<p>2-18-05 Agreement given to Staff for informational purposes 2-8-05 Staff letter to parties 2-9-05 Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0081) Eschelon filed its application for approval of QPP agreement in Docket 05-0081 2-24-05 Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and PiperTel Communications LLC” (QPP)</p>	<p>None</p>	<p>Agreement given to Staff for informational purposes 2-24-05 Staff letter to parties 4-1-05 Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Ernest</p>	<p>None</p>	<p>Agreement given to Staff for informational purposes 3-10-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>Communications, Inc.” (QPP)</p>		<p>Staff letter to parties 3-16-05</p> <p>Staff docketed Agreement 4-11-05</p>	
<p>“Commercial Agreement between Qwest Corp. and Bullseye Telecom Inc.” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 3-7-05</p> <p>Staff letter to parties 3-16-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement Between Qwest Corp. and Global Crossing Local Services Inc. fka Frontier Local Services” (QPP)</p>	None	<p>Agreement given to Staff informational purposes 3-21-05</p> <p>Staff letter to parties 3-23-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement Between Qwest Corp. and DIECA Communications Inc. dba Covad Communications Company” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 3-21-05</p> <p>Staff letter to parties 3-23-05</p> <p>Staff docketed Agreement 4-1-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
“Commercial	None	Agreement given to	Consolidate with

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>Agreement Between Qwest Corp. and CAT Communications International, Inc.</p> <p>(QPP)</p>		<p>Staff for informational purposes 3-21-05</p> <p>Staff letters to parties 3-23-05; 3-31-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement Between Qwest Corp. and Prime Time Ventures LLC”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 3-21-05</p> <p>Staff letter to parties 3-23-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and 1-800-Reconex Inc. dba USTel”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 1-24-05</p> <p>Staff letter to parties 1-27-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Ionex Communications North, Inc.”</p>	None	<p>Agreement given to Staff for informational purposes 4-4-05</p> <p>Staff letter to parties 4-5-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
(QPP)		Staff docketed Agreement 4-11-05	
"Commercial Agreement between Qwest and Tel West Communications, LLC"	None	Agreement given to Staff for informational purposes 2-15-05 Staff letter to parties 2-18-05 Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540