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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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**
T-01051B-04-0425

JOINT BRIEF OF COVAD COMMUNICATIONS COMPANY AND QWEST CORPORATION RELATING TO PHASE II PROCEEDING AND REQUESTING APPROVAL OF AMENDMENT TO INTERCONNECTION AGREEMENT

Pursuant to the oral ruling issued during the procedural conference on December 6, 2006, DIECA Communications, Inc. d/b/a/ Covad Communications Company ("Covad") and Qwest Corporation ("Qwest") submit this brief (1) addressing whether there is any need for the Phase II pricing proceeding contemplated by the Commission's Arbitration Order issued February 2, 2006 ("Arbitration Order"), and (2) requesting approval of the accompanying amendment to the parties' arbitrated interconnection agreement ("ICA") that implements the FCC's *Triennial Review Remand Order* ("*TRRO*"). For the reasons stated below, Covad and Qwest agree there is no need at this time for the Phase II pricing proceeding and, accordingly, the parties jointly request that the Commission refrain from scheduling the proceeding. Further, the parties agree that the *TRRO* amendment they are submitting properly implements the *TRRO* and should be approved.

I. Background and Overview

In the Arbitration Order, the Commission adopted Covad's request to include language in the parties' interconnection agreement ("ICA") that requires Qwest to provide Covad with access to network elements under Section 271 of the Telecommunications Act of 1996 ("the Act"). The Commission further ordered that Qwest should provide access to those Section 271 elements at existing TELRIC ("total element long run incremental cost") rates pending a "further phase of this proceeding . . . to determine just and reasonable rates consistent with state and federal law." Arbitration Order at 23. Although the Arbitration Order provides that this further phase "shall be instituted within 30 days" of issuance of the Order, Covad and Qwest jointly requested and obtained deferrals of the proceeding as they attempted to negotiate rates.

As the parties reported during the procedural conference on December 6, they have reached agreement on the rates for the elements that Covad expects to purchase from Qwest in the reasonably foreseeable future. Since the procedural conference, the parties have formally entered into a "price flex" contract under which Covad will be able to purchase interstate high-capacity transport from Qwest. For informational purposes only, the parties are attaching a copy of that contract to this brief ("Attachment A"). Because the contract involves interstate services, not intrastate facilities or services, the Commission is without authority over the contract and the parties are therefore not submitting the contract to the Commission for approval. Instead, upon approval of the *TRRO* amendment, Qwest will file the contract with the FCC, which has jurisdiction over interstate services.

In addition to the price flex contract, Covad and Qwest have entered into an amendment to their arbitrated ICA for the purpose of implementing the FCC's *Triennial Review Remand Order* ("*TRRO*"). A copy of that amendment is attached hereto as "Attachment B." Because the *TRRO* amendment implements ongoing obligations relating to the services required under Section 251(b) and (c), Covad and Qwest are hereby submitting the amendment for the Commission's approval.

In view of Covad's and Qwest's agreement on the rates and facilities included in the price flex contract, the parties agree that there is no need at this time to proceed with the Phase II pricing proceeding. Accordingly, as explained in the discussion that follows, the parties jointly request that the Commission defer the pricing proceeding and direct the parties to report back to the Commission in approximately eight months concerning whether there is a need for a pricing proceeding at that time.[1]

II. Discussion

A. *The Commission Should Defer The Phase II Pricing Proceeding*

For several reasons, deferral of the Phase II pricing proceeding is in the interest of the parties and in the interest of judicial economy.

First, the arbitration process established by the Act provides a mechanism for ILECs and CLECs to resolve issues that they are unable to resolve through negotiations. Here, Covad and Qwest have reached agreement concerning the rates for the network elements Covad intends to purchase from Qwest for the foreseeable future (including network elements Covad is currently using that will be converted under the *TRRO* amendment) and, accordingly, the parties agree there currently are no unresolved or open pricing issues that need to be decided by the Commission. Stated another way, the parties are content with the negotiated agreement they have reached and have no business need or desire to invest the significant resources that would be required for a Phase II pricing proceeding.

Second, the parties agree that given Qwest's appeal of the Arbitration Order pending in Arizona Federal District Court, it is in the interest of judicial economy to defer the pricing

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[1] As Qwest has made clear in its briefs in this arbitration and in its appeal of the Arbitration Order pending in the United States District Court for the District of Arizona, Qwest does not believe that the Commission has authority to set prices or any other terms and conditions for Section 271 elements. In submitting this brief and suggesting that the Commission direct the parties to comment in the future about the need for a Phase II pricing proceeding, Qwest expressly preserves and is not waiving its position that the Commission does not have authority to set prices and other terms and conditions for Section 271 elements.

proceeding. In its appeal, Qwest is challenging, *inter alia*, the Commission's authority to set rates for Section 271 elements. While Covad disagrees with Qwest's challenge and will contest it, the parties agree it is in the interest of judicial economy to have that jurisdictional issue decided before the parties and the Commission undertake a potentially time-consuming and resource-intensive pricing proceeding. This rationale applies with particular force here, since Covad and Qwest have no immediate need for the Commission to set any prices. With briefing in the district court appeal scheduled to be completed next month, it is probable that the appeal will be decided before Covad exhausts its purchases under the price flex contract. In other words, the jurisdictional issue presented in the appeal will probably be decided before Covad has any need for the Commission to set prices for any Section 271 elements.

Third, deferral of the pricing proceeding is consistent with Congress's and the FCC's preference that CLECs and ILECs reach negotiated agreements concerning prices and other terms and conditions. As described by federal courts of appeals, including the Eighth Circuit, voluntary negotiations are the Act's "preferred method" for establishing rates and terms.[2] The Eighth Circuit has explained that "[t]he structure of the Act reveals the Congress's preference for voluntarily negotiated interconnection agreements between incumbent LECs and their competitors over arbitrated agreements."[3] For these reasons, Covad and Qwest respectfully request that the Commission defer the Section 271 pricing proceeding. Further, Covad and Qwest suggest that the Commission direct the parties to provide an update to the Commission in approximately eight months concerning whether any circumstances have changed that require revisiting this issue.

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[2] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 801 (8th Cir. 1997), *aff'd in part and rev'd in part on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).; *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvan*ia, 271 F.3d 491,500 (3d Cir. 2001)("The Act's clear preference is for such negotiated agreements").

[3] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 801.

B. The Commission Should Approve The Parties'* TRRO *Amendment To Their Arbitrated ICA.

On June 30, 2006, Covad and Qwest filed their arbitrated ICA with the Commission for approval. Pursuant to Section 252(e)(4) of the Act, the ICA was deemed approved by operation of law 90 days after the parties filed it. Following approval of the ICA, the parties continued negotiating an amendment to the ICA to implement the *TRRO*. The parties have completed those negotiations and are hereby submitting an executed *TRRO* amendment as Attachment B to this brief. The amendment properly implements the *TRRO* and is in the public interest. Further, the amendment is in substantially the same form as other *TRRO* amendments that this Commission and other state commissions have approved, except for certain sections modified to account for the agreement of the parties with respect to network elements in Arizona identified in the *TRRO* amendment and "price flex" contract. Accordingly, the parties respectfully request that the Commission approve the amendment pursuant to its approval authority under Section 252(e)(1).

III. Conclusion

For the reasons stated, Covad and Qwest respectfully request that the Commission: (1) defer the Phase II pricing proceeding, (2) direct the parties to provide a status report in approximately eight months concerning the need for a pricing proceeding, and (3) approve the *TRRO* amendment to the ICA.

DATED: December 20, 2006

Respectfully submitted,
QWEST CORPORATION

By: Norman G. Curtright

Norman G. Curtright
QWEST CORPORATION
4041 N. Central Ave., Suite 1100
Phoenix, Arizona 85012
(602) 630-2187

COVAD COMMUNICATIONS COMPANY

By: [signature]
Gregory T. Diamond
Senior Counsel
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230
Telephone: (720) 670-1069

Original and 13 copies of the foregoing were filed this 20th day of December, 2006 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Copies of the foregoing hand-delivered/mailed/emailed this 20th day of December, 2006 to:

Jane Rodda, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007
jrodda@cc.state.az.us

Dwight D. Nodes
Assistant Chief Administrative
Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Maureen Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
mscott@cc.state.az.us

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
ernestjohnson@cc.state.az.us

Christopher Kempley, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
ckempley@cc.state.az.us

Michael W. Patten
Roshka De Wulf & Patten
One Arizona Center
400 E. Van Buren Street
Suite 800
Phoenix, AZ 85007
mpatten@rdp-law.com

Gregory T. Diamond
Senior Counsel
Covad Commissions Company
7901 Lowry Boulevard
Denver, CO 80230
gdiamond@covad.com

Diane Kyran

ATTACHMENT A

QWEST CORPORATION
PRICING FLEXIBILITY PLAN CONTRACT FOR
NEW INTERSTATE DS1 AND DS3 PRIVATE LINE SERVICES

This Pricing Flexibility Plan Contract for New Interstate DS3 Private Line Services ("Contract") is made by and between Qwest Corporation ("Qwest") at 1801 California Street, Suite 1000, Denver, Colorado 80202 (Attn.: Corporate Counsel-Interconnection, Facsimile #: 303-295-7049); and **DIECA Communications, Inc. d/b/a Covad Communications Company** ("Customer") at **110/130 Rio Robles San Jose, CA 95134** (Attn.: **James A. Kirkland, Senior Vice-President, Strategic Development& General Counsel**). This Contract will commence upon the effective date of the contract tariff filed by Qwest with the FCC ("Effective Date").

1. Background. This Contract provides for a discount off of certain fixed period price plan rates for up to 18 DS3 private line services under Qwest Interstate Access Tariff F.C.C. No. 1 ("FCC1 Tariff") specified in this Contract ("Services"). For the discount to apply:

(a) the Service must be newly ordered service under a 36 month fixed period price plan,
(b) the Service must be in a Metropolitan Statistical Area ("MSA") and wire center in Arizona set forth in this Contract and be eligible for Phase II pricing flexibility,
(c) the Service must be available on existing facilities and equipment and not require additional construction for new facilities,
(d) Customer may not be included in the Qwest Regional Commitment Program for DS3s circuits,
(e) order completion for Services must be within 30 days of the order application date, but when order completion is delayed due to Qwest reasons, the order completion date will be extended,
(f) within 30 days after the Effective Date, Customer must initially order eight DS3 private line circuits under this Contract as replacements for DS3 dedicated transport Qwest previously provisioned to Customer as unbundled network elements under Customer's interconnection agreement with Qwest and that are active and connected as of the date of execution of this Agreement and are to be converted to an alternative service arrangement pursuant to the FCC's order in *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (FCC 04-290) ("Converted Circuits"), and
(g) if Customer complies with Section 1(f), then before December 1, 2007, Customer may order up to 10 additional new DS3 private line circuits under this Contract ("New Circuits") with each order for a New Circuit counting towards the cap of 10 regardless of whether that circuit is disconnected within the first 12 months after the Effective Date.

2. Converted Circuits. The Design Change Charge set forth in Section 5.2.2.C of the FCC1 Tariff will apply to the conversions of the Converted Circuits to Services under this Contract. The new install nonrecurring charge for the Service and new install NRCs for existing expanded interconnection channel terminations or interconnection tie pairs converted with the Service will not apply to such conversions.

3. Tariff. Qwest will provide Service pursuant to pricing flexibility granted by the FCC under the FCC1 Tariff, which is incorporated herein by reference. Qwest may provide competitive pricing for certain interstate services available in the MSAs and wire centers specified in Section 23 of the FCC1 Tariff. The FCC1 Tariff can be viewed at: http://tariffs.qwest.com:8000. Qwest provides Service solely under the regulations, rates, and charges of the FCC1 Tariff, including, but not limited to minimum term for service and termination liability. Pursuant to FCC requirements, Qwest is required to file a summary of this Contract and any subsequent addenda as a contract tariff with the FCC. Qwest will not file the contract tariff with the FCC until the date that certain TRRO amendment executed by Customer on the same date as this Contract and between Qwest and Customer amending the parties' Arizona interconnection agreement is approved, either by the Arizona Corporation Commission or by operation of law. If the Arizona Corporation Commission rejects that TRRO amendment, this Contract is null and void and a contract tariff will not be filed with the FCC. At the request of the FCC, the Contract may be filed with the FCC by either party upon notification to the other party. If any provision of this Contract or the contract tariff is deemed finally to be in violation of any regulation, law or FCC order or court decision, this Contract will continue to be in full force and effect with respect to provisions not affected by such regulation, law, FCC order or court decision. In the event of a conflict between this Contract, Qwest records, and/or the Tariff, the order of precedence is the discount and rate terms and conditions in this Contract as set forth in the contract tariff; the FCC1 Tariff; the other provisions of this Contract; and Qwest's records.

4. Services Ordered; Locations. Qwest will provide and maintain the Service at the locations requested by Customer as evidenced by Qwest records. Customer must reference this Contract and the contract tariff number in its request for Service.

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QWEST CORPORATION
PRICING FLEXIBILITY PLAN CONTRACT FOR
NEW INTERSTATE DS1 AND DS3 PRIVATE LINE SERVICES

5. Term of Service. Each individual Service ordered by Customer under this Contract will have its own 36 month term. The individual Service term will commence on the date the particular Service is available to Customer under this Contract as evidenced by Qwest records ("Term").

6. Discount, Rates. During the Term for the Service, the following discounts will be applied to the monthly recurring charges ("MRCs") for a 36 month DS3 term plan set forth in Section 17 of the FCC1 Tariff and the tables below:

(a) 35% discount on DS3 Channel Termination MRCs for Services in the wire centers in Table A.

Table A
TEMPAZMA
PHNXAZNO
PHNXAZMA

(b) 35% discount on DS3 Transport Channels MRCs for Services between the wire centers in Table B.

Table B
TEMPAZMC
PHNXAZEA
PHNXAZMA
PHNXAZNO
PHNXAZNE
TEMPAZMA
SCDLAZTH
MESAAZMA
SCDLAZMA
TSCNAZMA

Those MRCs for the particular fixed period price plan will be frozen from Qwest-initiated rate changes during its Term. All other rate elements will be billed at the applicable rates set forth in the FCC1 Tariff. Nonrecurring charges for Service cannot be rate stabilized and as such any additions or changes to Service will incur the then-current FCC1 Tariff nonrecurring charge. The discounts available under this Contract are in lieu of, not in addition to, any other discounted rates for which Customer may be otherwise eligible and cannot be combined with any other contract tariff, promotion or discount.

7. Termination. Customer understands that if Customer disconnects Service for reasons other than default by Qwest, in whole or in part, after Service is installed, but prior to the completion of the Term, the FCC1 Tariff's termination liability charges apply.

8. Notices. All required notices will be in writing, transmitted to the parties' addresses specified above and will be considered given either: (a) when delivered in person to the recipient named above; (b) when deposited in either registered or certified U.S. Mail, return receipt requested, postage prepaid; or (c) when delivered to an overnight courier service.

9. Dispute Resolution; Governing Law. This Contract will be governed by the laws of New York, without regard to its choice of law principles; provided however, this Contract may also be subject to the Communications Act of 1934, as amended. Any legal proceeding arising out of, or relating to this Contract, will be brought in a United States District Court, or absent federal court jurisdiction, in a state court of competent jurisdiction, in the Denver, Colorado metropolitan area. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury.

10. Legally Mandated Changes. Any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of this Contract to that extent without further notice.

11. Counterparts and Facsimile Signatures. This Contract may be executed by the parties in separate counterparts, each of which, when so executed and delivered, will be an original, but all such counterparts will together constitute one and the same Contract. Facsimile signatures will be deemed to be, and will constitute and be treated as, an original signed document or counterpart, as applicable.

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QWEST CORPORATION
PRICING FLEXIBILITY PLAN CONTRACT FOR
NEW INTERSTATE DS1 AND DS3 PRIVATE LINE SERVICES

12. General Provisions. This Contract constitutes the entire understanding between Qwest and Customer with respect to Service provided herein and supersedes any prior contracts, agreements, or understandings. Neither party will, without the prior written consent of the other party, issue any public announcement regarding the Contract or use the name or marks of the other party or its affiliates. Such consent may only be given on behalf of Qwest by its Legal Department. Customer may not assign this Contract or any of its rights or obligations hereunder without the prior written consent of Qwest, which will not be unreasonably withheld.

Customer: DIECA Communications, Inc. d/b/a Covad Communications Company	**Qwest Corporation**
[signature]	
Authorized Signature	Authorized Signature
James A. Kirkland	
Name Typed or Printed	Name Typed or Printed
Senior Vice-President, Strategic Development & General Counsel	
Title	Title
12/19/06	
Date	Date

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ATTACHMENT B

**Triennial Review Order and Triennial Review Remand Order
("TRO/TRRO") Amendment
to the Interconnection Agreement between
Qwest Corporation
and
DIECA Communications, Inc. d/b/a Covad Communications Company
for the State of Arizona**

This is an Amendment to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation (f/k/a U S WEST Communications, Inc.) ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("CLEC"), a Virginia corporation. Qwest and CLEC shall be known jointly as the "Parties".

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement"), for services in the State of Arizona, that was filed with the Arizona Corporation Commission on June 30, 2006, as referenced in Docket Nos. T-03632A-04-0425, T-01051B-04-0425; and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its Report and 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, 96-98 and 98-147, (effective October 2, 2003) ("TRO"); and

WHEREAS, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act; and

WHEREAS, the TRO and TRRO Decision, individually and together ("Decisions") modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs; and

WHEREAS, the Parties wish to amend the Agreement to comply with the Decisions hereby agree to do so under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms.

To the extent applicable, the Agreement is hereby amended by deleting certain UNEs or by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 and Exhibit A to this Amendment, attached hereto and incorporated herein by this reference (collectively, the foregoing documents are referred to as the "Amendment").

II. Limitations.

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Decisions, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment 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 Decisions should be changed, vacated, dismissed, stayed or modified.

III. Conflicts.

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

IV. Scope.

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the approval date. Nothing in this Amendment is intended to address, implement or affect any obligations Qwest may have under 47 U.S.C. Section 271.

V. Effective Date.

This Amendment shall be deemed effective when approved, either by the Commission or by operation of law ("approval date").

VI. Further Amendments.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment 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.

VII. Entire Agreement.

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended 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 the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

DIECA Communications, Inc. d/b/a Covad Communications Company	Qwest Corporation
Signature	Signature
James A. Kirkland Name Printed/Typed	L. T. Christensen Name Printed/Typed
Senior VP and General Counsel Title	Director- Interconnection Agreements Title
12/19/06 Date	Date

Table of Contents

ATTACHMENT 1

1.0 Definitions

"Business Line" means a Qwest-owned switched access line used to serve a business customer, whether by Qwest itself or by CLEC that leases the line from Qwest. The number of Business Lines in a Wire Center shall equal the sum of all Qwest business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Qwest end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

"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.

"Dedicated Transport" is Qwest transmission facilities between wire centers or switches owned by Qwest, or between wire centers or switches owned by Qwest 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.

"Fiber-based Collocator" means any carrier, unaffiliated with Qwest, that maintains a Collocation arrangement in a Qwest Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Qwest Wire Center premises; and (3) is owned by a party other than Qwest or any affiliate of Qwest, except as set forth in this paragraph. Dark fiber obtained from Qwest on an indefeasible right of use basis shall be treated as non-Qwest fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this paragraph, the term "affiliate" is defined by 47 U.S.C. § 153(1) and any relevant interpretation in Title 47 of the Code of Federal Regulations.

"Interexchange Service" means telecommunications service between stations in different exchange areas. *Cf.* Modification of Final Judgment, § IV(K), *reprinted in United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Long Distance Service" (see "Interexchange Service").

"Mobile Wireless Service" means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the vice offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

"Non-impaired Wire Center" – A Non-impaired Wire Center is a Wire Center that meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops and §51.319(a)(5)(i) for DS3 Loops. Non-impaired Wire Centers also include Tier 1 and Tier 2 Wire Centers as defined in §51.319(e)(3) and subject to the limitations of §51.319(e)(2)(ii)(A) for DS1 Dedicated Transport, §51.319(e)(2)(iii)(A) for DS3 Dedicated Transport and §51.319(e)(2)(iv)(A) for Dark Fiber Transport.

"Route" is a transmission path between one of Qwest's Wire Centers or switches and another of Qwest's Wire Centers or Switches. A Route between two (2) points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch "X"). Transmission paths between identical end points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

"Triennial Review Remand Order" The Triennial Review Remand Order is the Commission's Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005).

"Wire center" A wire center is the location of a Qwest local Switching facility containing one or more central offices, as defined in the Appendix to part 36 of of Title 47 of the Code of Federal Regulations. The wire center boundaries define the area in which all customers served by a given wire center are located.

"Tier 1 Wire Centers" means those Qwest Wire Centers that contain at least four Fiber-based Collocators, at least 38,000 Business Lines, or both. Tier 1 Wire Centers also are those Qwest tandem Switching locations that have no line-side Switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

"Tier 2 Wire Centers" means those Qwest Wire Centers that are not Tier 1 Wire Centers, but contain at least 3 Fiber-based Collocators, at least 24,000 Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

"Tier 3 Wire Centers" means those Qwest Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

2.0 Unbundled Network Elements (UNE) General

2.1.1 CLEC's Interconnection Agreement may include terms and conditions for certain Network Elements that Qwest is no longer required to offer on an unbundled basis pursuant to Section 251 of the Act. The FCC determined in its Decisions, that certain Unbundled Network Elements no longer satisfy the FCC's impairment test, and as a result, Qwest is no longer obligated to offer to CLEC those Network Elements on an unbundled basis pursuant to Section 251 of the Act.

2.2 As of the approval date of this Amendment, CLEC shall not order, and Qwest will not provide, the following Network Elements on an unbundled basis pursuant to Section 251 of the Act:

2.2.1 Unbundled Loops

a) Certain DS1 Loops subject to the requirements of Section 3.0 following;

b) Certain DS3 Loops subject to the requirements of Section 3.0 following;

c) OCn Loops;

d) FTTH & FTTC Loops subject to the requirements of Section 3.1.6 following;

e) Dark Fiber Loops subject to the requirements of Section 3.1.5 following;

f) Hybrid Loops (non-copper distribution Loops) except as identified in Section 3.1.7 following;

g) Line Sharing;

h) Feeder-Sub-Loop;

i) Shared Distribution Loops.

2.2.2 Transport

a) E-UDIT (Extended Unbundled Dedicated Interoffice Transport); Transport from a CLEC's Premises to a Qwest Wire Center;

b) E-UDF (Extended Unbundled Dark Fiber); Transport from a CLEC's Premises to a Qwest Wire Center;

c) OCn UDIT; including Remote Node/Remote Port and SONET add/drop multiplexing;

d) UDIT and UDF as a part of a Meet-Point arrangement;

e) Certain DS1 Transport (UDIT) subject to the requirements of Section 4.0 following;

f) Certain DS3 Transport (UDIT) subject to the requirements of Section 4.0 following;

g) Certain Dark Fiber Transport (UDF-IOF) subject to the requirements of Section 4.1.10 following;

h) Multiplexing associated with UDIT and Loop/Mux Combo.

2.2.3 Unbundled Switching

a) Packet Switching;

b) Tandem Switching;

c) Mass Market Switching, including UNE-P and related services as identified in Section 2.2.3.1;

d) Enterprise Local Switching, including UNE-P and related services as identified in Section 2.2.3.1;

e) Signaling Networks (stand alone).

2.2.3.1 Related services

a) Customized Routing
b) Signaling
c) AIN Database Services
d) Line Information Database (LIDB)
e) 8XX Database Services
f) InterNetwork Calling Name (ICNAM)
g) Local Number Portability (LNP) Database
h) Shared Transport

2.2.4 Transition

2.2.4.1 Transition plans for embedded Network Elements identified in the above lists are identified in the following sections.

2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for embedded (in service as of March 10, 2005) Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.10.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

2.4 So long as CLEC is offering an eligible Telecommunications Service - i.e., not exclusively long distance or mobile wireless services – over the high capacity loop or dedicated transport it may obtain that element as a UNE. CLEC may not access UNEs for its own administrative uses. If CLEC accesses and uses a UNE consistently with this section, CLEC may provide any Telecommunications Services over that UNE.

2.5 To submit an order to obtain a high-capacity loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 3.1.1 and 3.1.2, and that a requested unbundled DS1, DS3 or dark fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Sections 4.1.1, 4.1.2 and 4.1.10.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate business records that document what CLEC relied upon to support its certification.

2.5.1 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 of the Triennial Review Remand Order, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-impairment thresholds referred to in Section 2.5. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in CLEC's Interconnection Agreement.

2.5.2 If it is mutually agreed upon by CLEC and Qwest that CLEC's access to or use of UNEs is inconsistent with Existing Rules, except due to change in law, CLEC has thirty (30) calendar Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Qwest alternate service arrangements. CLEC is also responsible for all non-recurring charges associated with such conversions.

2.5.3 When CLEC submits an order to convert a special access circuit to a UNE and that circuit has previously been exempt from the special access surcharge pursuant to 47 CFR 69.115, CLEC shall document in its certification when and how the circuit was modified to permit interconnection of the circuit with a local exchange subscriber line.

2.5.4 Additional Non-Impaired Wire Centers. If Qwest determines additional Qwest Wire Centers meet the non-impairment threshold in a specific wire center for high capacity loop UNEs and/or dedicated transport based upon the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order, Qwest shall provide notice to CLEC. Upon request by CLEC, Qwest will provide CLEC with the methodology Qwest used in making the determination the additional Wire Center(s) meets the count thresholds as ordered by the FCC. Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition exiting DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.

2.6 In the event that (1) Qwest designates a wire center as non-impaired, (2) CLEC converts existing UNEs to other services or orders new services as services other than UNEs, (3) CLEC otherwise would have been entitled to UNEs in such wire center at the time alternative services were provisioned, and (4) Qwest acknowledges or a state or federal regulatory body with authority determines that, at the time Qwest designated such wire center as non-impaired, such wire center did not meet the FCC's non-impairment criteria, then upon request of CLEC, Qwest will, at no costs or expense to CLEC, transition to UNEs any alternative services in such wire center that were established after such wire center was designated as non-impaired. In such instances, Qwest shall refund CLEC the difference between the rate paid by CLEC for such services and the applicable UNE rate, including but not limited to any non-recurring or other charges associated with the unnecessary conversion from UNE to other wholesale services.

2.7 Qwest acknowledges that as of the date of execution of this Amendment, the only applicable nonrecurring charge associated with conversions is a design change charge identified in the appropriate tariff. For example, if the conversion is to an interstate service, the charge is as described in Qwest's FCC Tariff No. 1 at § 5.2.2 C ($50.00). The foregoing notwithstanding, Qwest reserves the right to change this charge or otherwise add, remove or change, in accordance with Applicable Law, any applicable nonrecurring charges associated with conversions under this Amendment. Any changes to applicable nonrecurring charges associated with conversions shall only apply prospectively.

3.0 Unbundled Loop

3.1 Unbundled Loops are available pursuant to CLEC's Agreement and the following terms and conditions.

3.1.1 DS1 Unbundled Loops. Subject to the cap described in Section 3.1.1.1, Qwest shall provide CLEC with non-discriminatory access to a DS1 loop on an unbundled basis to any building not served by a Wire Center with at least 60,000 Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that Wire Center.

3.1.1.1 Cap on Unbundled DS1 Loop Circuits. CLEC may obtain a maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

3.1.1.2 Transition period for DS1 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.1 or 3.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. Where Qwest is not required to provide unbundled DS1 loops pursuant to Sections 3.1.1 or 3.1.1.1, CLEC may not obtain new DS1 loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.1.3 Billing. The 15% transitional rate increment (in addition to the loop charge in Exhibit A of the Agreement) will be applied to CLEC bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract approval date.

3.1.2 DS3 Unbundled Loops. Subject to the cap described in Section 3.1.2.1, Qwest shall provide CLEC with non-discriminatory access to a DS3 loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

3.1.2.1 Cap on Unbundled DS3 Loop Circuits. CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled loops.

3.1.2.2 Transition period for DS3 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.2 or 3.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element. Where Qwest is not required to provide unbundled DS3 loops pursuant to Sections 3.1.2 or 3.1.2.1, CLEC may not obtain new DS3 loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.2.3 Billing. The 15% transitional rate increment (in addition to the loop charge in Exhibit A of the Agreement) will be applied to CLEC bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract approval date.

3.1.3 Failure To Convert Non-Impaired Services – DS1 and DS3 Loops. Absent CLEC Transition of DS1 and DS3 Loops within ninety (90) days of execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

3.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

3.1.5 Dark Fiber Loops Including Fiber Sub-loop. Qwest is not required to provide CLEC with access to a Dark Fiber Loop on an unbundled basis except for UDF-MTE Subloop below. 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.

3.1.5.1 Transition period for Dark Fiber Loop circuits. For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any Dark Fiber Loop UNEs that a CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. CLEC may not obtain new Dark Fiber Loops as Unbundled Network Elements. Qwest and CLEC will work together to identify those circuits impacted.

3.1.5.2 Failure To Convert Non-Impaired Network Elements. Dark Fiber Loops including Fiber Sub-loop. Absent CLEC transition of Dark Fiber Loops as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Loops.

3.1.5.3 UDF MTE Subloop begins at or near an MTE to provide access to MTE premises wiring.

3.1.5.3.1 Access to Dark Fiber MTE Subloops at or near 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. The termination and placement of CLEC fiber facilities at an MTE is solely the responsibly of CLEC. CLEC is responsible for all negotiations with the End User Customer and or premises owner for such placement of CLEC facilities.

3.1.5.3.2 Termination at an MTE. CLEC shall access the UDF MTE Subloop on the MTE premises at a technically feasible point if possible. If access is not technically feasible on the MTE premises, then CLEC may request access to UDF MTE Subloop at a technically feasible point near the MTE premises. Qwest will prepare and submit to CLEC a quote along with the original Field Verification Quote Preparation form (FVQP) within the interval set forth in Exhibit C. Quotes are on an Individual Case Basis (ICB) and will include costs and an interval in accordance within the interval set forth in the Agreement.

3.1.5.3.3 A complex IRI is used to determine if a UDF MTE Subloop is available to gain access to network infrastructure within an MTE. Quotes are on an Individual Case Basis (ICB) and may include costs in addition to any installation charges specified in Exhibit A. of your Agreement.

3.1.6 FTTC Loops. For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's Premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's Premises.

3.1.6.1 FTTC New Builds. Qwest shall have no obligation to provide access to an FTTC 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.

3.1.6.2 FTTC Overbuilds. Qwest shall have no obligation to provide access to an FTTC 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 FTTC loop parallel to, or in replacement of, an existing copper loop facility:

3.1.6.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's Premises after deploying the FTTC loop to such Premises, and (ii) upon request provide non-discriminatory access to such copper loop as an Unbundled Network Element. Notwithstanding 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 upon request. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 3.1.6.2.1 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 3.1.6.3 below.

3.1.6.2.2 In the event Qwest, in accordance with the provisions of Section 3.1.6.3 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 FTTC loop to a 64 kbps transmission path capable of voice grade service.

3.1.6.3 Section 9.1.15 of the Agreement with respect to Retirement of Copper Loops and replacement with FTTH Loops shall also apply to replacement with FTTC Loops.

3.1.7 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.

3.1.7.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, Qwest shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Qwest's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.7.1.1 Qwest is not required to unbundle packet switching equipment, DSLAMs and other equipment used to deliver DSL services.

3.1.7.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

3.1.7.2.1 Provide non-discriminatory 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; or

3.1.7.2.2 Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis.

3.1.8 Subloop Unbundling. 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 within the cable without removing a splice case to reach the wire 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 Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3.

3.1.8.1 Qwest's obligation to construct a Single Point of Interface (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 to construct a SPOI only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI.

3.1.8.2 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, refers to creation of a cross connect field and does not constitute Collocation. The terms and conditions of Collocation do not apply to Cross-Connect Collocation if required at or near an MTE.

3.1.8.3 Failure To Convert Non-Impaired Services – Feeder Subloops. Absent CLEC Transition of Feeder SubLoop, within ninety (90) Days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

3.1.9 Line Sharing. Qwest shall not be required to provide Line Sharing unless the Agreement has been amended with a Qwest Commercial Line Sharing Amendment.

3.1.10 Shared Distribution Loop. Qwest shall not be required to provide Shared Distribution Loop unless the Agreement has been amended with a Qwest Commercial Shared Distribution Loop Amendment.

4.0 Unbundled Dedicated Interoffice Transport (UDIT)

4.0.1 Qwest is not obligated to provide CLEC with unbundled access to dedicated transport that does not connect a pair of Qwest Wire Centers.

4.1 UDIT is available pursuant to CLEC's Agreement and the following terms and conditions.

4.1.1 DS1 UDIT. Qwest shall unbundle DS1 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Qwest must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

4.1.1.1 CLEC may obtain a maximum of ten (10) unbundled DS1 dedicated transport circuits on each Route where DS1 dedicated transport is available on an unbundled basis.

4.1.1.2 Transition period for DS1 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.1 or 4.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 *percent of the rate the requesting carrier paid for the dedicated* transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS1 transport pursuant to Sections 4.1.1 or 4.1.1.1, CLEC may not obtain new DS1 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.1.3 Billing. The 15% transitional rate increment (in addition to the loop charge in Exhibit A of the Agreement) will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract approval date.

4.1.2 DS3 UDIT. Qwest shall unbundle DS3 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.2.1 CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated transport is available on an unbundled basis.

4.1.2.2 Transition period for DS3 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.2 or 4.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 *percent of the rate the requesting carrier paid for the dedicated* transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS3 transport pursuant to Sections 4.1.2 or 4.1.2.1, CLEC may not obtain new DS3 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.2.3 **Billing.** The 15% transitional rate increment (in addition to the loop charge in Exhibit A of the Agreement) will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract approval date.

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4.1.4 Failure To Convert Non-Impaired Services – DS1 and DS3 UDIT. Absent CLEC transition of DS1 and DS3 Transport within ninety (90) days of the approval date, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is responsible for all non-recurring charges associated with such conversions.

4.1.4.1 CLEC plans to convert the UDITs CLEC has in place between Non-Impaired Wire Centers as of the approval date ("Converted Circuits") to a separate service agreement between the parties for Qwest's Tariff Special Access Services ("Separate Service Agreement") before the ninety (90) day period referenced in Section 4.1.4 expires. On the first or second bill cycle following the contract approval date, Qwest will back bill CLEC for the Converted Circuits and any other UDIT circuits disconnected prior to the date both parties have signed this Amendment that would have otherwise been subject to conversion under this Amendment if still in service ninety (90) days after the approval date ("Other UDITs") in accordance with 4.1.1.2 and 4.1.2.2 between March 11, 2005 and March 11, 2006 and at a rate equal to the difference between the FCC 115% transition rate referenced in Sections 4.1.1.2 and 4.1.2.2 and the section 251 UNE rate for such circuits from March 11, 2006 until the Converted Circuits are converted to the Separate Service Agreement or the Other UDITs were disconnected. The back bill period shall be from the date the affected circuit was first placed in service (but in no instance earlier than March 11, 2005) as a UNE pursuant to section 251 of the Act.

4.1.4.2 Qwest reserves whatever rights it claims it has or claims it may have in the future to back bill the CLEC the difference between the rates charged to CLEC under Section 4.1.4.2 post March 11, 2006 and the Qwest month to month service arrangements in Qwest's Special Access Tariff to the later of March 11, 2006 or the date the affected circuit was first placed in service until the Converted Circuits are converted to the Separate Service Agreement or the Other UDITs were disconnected if Qwest prevails in its complaint (and no further appeal has been taken or can be taken under Applicable Law to the Court of Appeals, the United States Supreme Court or any other court of competent jurisdiction) filed with the United States District Court, District of Arizona (Case No. CV06-1030-PHX-MHM) regarding the Commission Decision No. 68440 (issued by the Commission on February 2, 2006) that the Commission does not have any authority to require Qwest to provide in CLEC's interconnection agreement access to network elements under Section 271 of the Act or to conduct a pricing proceeding for the purpose of establishing rates for Section 271 network elements.

4.1.5 Failure To Convert Non-Impaired Services – OCn UDIT. Absent CLEC transition of OCn Transport within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.6 Failure To Convert Non-Impaired Services – DS1 and DS3 E-UDIT and M-UDIT. Absent CLEC transition of DS1 and DS3 E-UDIT and M-UDIT within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff_and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.7 Unbundled Dark Fiber (UDF) IOF

4.1.7.1 Dedicated dark fiber transport shall be made available to CLEC on an unbundled basis as set forth in the Interconnection Agreement and as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

4.1.7.1.1 Qwest shall unbundle dark fiber transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.7.1.2 **Transition period for dark fiber transport circuits.** For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any dark fiber dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.10.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled dark fiber transport pursuant to Section 4.1.10.1.1, CLEC may not obtain new dark fiber transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

4.1.7.1.3 Billing. The 15% transitional rate increment (in addition to the loop charge in Exhibit A of the Agreement) will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract approval date.

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4.1.7.1.5 Failure To Convert Non-Impaired Services – UDF-IOF. Absent CLEC Transition of UDF, as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Facilities.

4.1.8 E-UDF and M-UDF (Meet Point Billed-UDF) Transition Language. Upon the approval date of this Amendment, CLEC will not place, and Qwest will not accept, any ASRs for Extended Unbundled Dark Fiber (E-UDF) or M-UDF (Meet Point UDF). Qwest account representatives will work with CLECs on a plan to convert any existing E-UDF or M-UDF to other alternative Qwest products or services, if CLEC so desires. CLEC must convert these services by December 10, 2005. Qwest and CLEC will work together to identify those circuits impacted.

4.1.8.1 Failure To Convert Non-Impaired Networks Elements – E-UDF and M-UDF. Absent CLEC Transition E-UDF and M-UDF as of December 10, 2005, Qwest will begin or maintain the right to begin, disconnect process of Dark Fiber Facilities.

5.0 Intentionally Left Blank

6.0 Unbundled Network Element Combinations

6.1 Intentionally Left Blank

6.2 Loop-Mux Combination (LMC). At the request of either Party, the Parties shall negotiate, in good faith, an amendment to the Agreement for the provision of loop-mux combinations.

6.3 Commingling

When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a provisioning process that materially alters the manner in which Qwest provisions the UNE or service is not required for the UNE or service due to the commingling. Performance measurements and\or remedies are not applicable to the total commingled arrangement but do apply to each facility or service ordered within the commingled arrangement. If Qwest is not required to comply with the service interval as provided in this section, Qwest shall in any event exercise best efforts to provision the service as soon as reasonably practicable.

7.0 Routine Network Modifications

7.1 Qwest shall make all routine network modifications to unbundled loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Qwest shall perform these routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

7.2 A routine network modification is an activity that Qwest regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Qwest ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

TRO and TRRO Exhibit A
Transition Rates
Arizona

Amendment		Recurring	Recurring per Mile	Non-Recurring	REC	REC per Mile	NRC
9.0	Unbundled Network Elements (UNEs)						
9.2	Unbundled Loops						
9.2.3	Digital Capable Loops						
9.2.3.3	DS1 Capable Loop						
9.2.3.3.4	DS1 Transitional Rate 15% Incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)						
9.23.3.3.4.1	Rate Group 1	$10.11			*		
9.23.3.3.4.2	Rate Group 2	$10.18			*		
9.23.3.3.4.3	Rate Group 3	$11.41			*		
9.2.3.4	DS3 Capable Loop						
9.2.3.4.4	DS3 Transitional Rate 15% Incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)						
9.2.3.4.4.1	Rate Group 1	$110.86			*		
9.2.3.4.4.2	Rate Group 2	$112.47			*		
9.2.3.4.4.3	Rate Group 3	$139.92			*		
9.2.8	Private Line / Special Access to Unbundled Loop Conversion (as is)			$40.32			A
9.6	Unbundled Dedicated Interoffice Transport (UDIT)						
9.6.2	DS1 UDIT						
9.6.2.7	DS1 UDIT Transitional Rate 15% Incremental adjustment between non-impaired wire centers, in addition to Monthly Rates, (Effective 3/11/05 thru 3/10/06)						
9.6.2.7.1	Over 0 to 8 Miles	$5.40	$0.10		*	*	
9.6.2.7.2	Over 8 to 25 Miles	$5.40	$0.14		*	*	
9.6.2.7.3	Over 25 to 50 Miles	$5.40	$0.26		*	*	
9.6.2.7.4	Over 50 Miles	$5.40	$0.24		*	*	
9.6.3	DS3 UDIT						
9.6.3.7	DS3 UDIT Transitional Rate 15% Incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 3/10/06)						
9.6.3.7.1	Over 0 to 8 Miles	$36.48	$2.00		*	*	
9.6.3.7.2	Over 8 to 25 Miles	$36.92	$2.39		*	*	
9.6.3.7.3	Over 25 to 50 Miles	$37.60	$3.44		*	*	
9.6.3.7.4	Over 50 Miles	$37.39	$3.37		*	*	
9.6.12	Private Line / Special Access to UDIT Conversion (as is)			$126.14			1
9.7	Unbundled Dark Fiber (UDF)						
9.7.4	UDF - Single Strand						
9.7.4.1	UDF - Interconnection Facility (UDF-IOF) - Single Strand						
9.7.4.1.6	UDF-IOF - Single Strand Transitional Rate 15% Incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 9/10/06)						
9.7.4.1.6.1	Fiber Transport, per Strand / Mile	$9.41			*		
9.7.4.1.6.2	Termination, Fixed, per Strand / Office / Termination	$0.78			*		
9.7.4.1.6.3	Fiber Cross-Connect, per Strand / Office	$0.33			*		
9.7.4.2	UDF - Loop - Single Strand Transitional Rate for all wire centers (Effective 3/11/05 thru 9/10/06)						
9.7.4.2.3	Fiber Loop, per Strand / Route	$98.04			**		
9.7.4.2.4	Termination, Fixed, per Strand / Office	$6.01			**		
9.7.4.2.5	Termination, Fixed, per Strand / Premise	$5.37			**		
9.7.4.2.6	Fiber Cross-Connect, per Strand / Office	$2.50			**		
9.7.5	UDF - per Pair						
9.7.5.1	UDF- Interconnection Facility (UDF - IOF) - per Pair						
9.7.5.1.6	UDF-IOF - Per Pair Transitional Rate 15% Incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 9/10/06)						
9.7.5.1.6.1	Fiber Transport, per Pair / Mile	$12.24			*		
9.7.5.1.6.2	Termination, Fixed, per Pair / Office / Termination	$1.00			*		
9.7.5.1.6.3	Fiber Cross-Connect, per Pair / Office	$0.59			*		

TRO and TRRO Exhibit A
Transition Rates
Arizona

	Recurring	Recurring, per Mile	Non-Recurring	REC	REC per Mile	NRC
9.7.5.2 UDF - Loop - per Pair Transitional Rate for all wire centers (Effective 3/11/05 thru 9/10/06)						
9.7.5.2.3 Fiber Loop, per Pair / Route	$127.49			**		
9.7.5.2.4 Termination, Fixed, per Pair / Office	$7.92			**		
9.7.5.2.5 Termination, Fixed, per Pair / Premise	$7.25			**		
9.7.5.2.6 Fiber Cross-Connect, per Pair / Office	$4.55			**		
9.7.7 UDF MTE Subloop	ICB		ICB	3		3
9.11 Local Switching						
9.11.1 Ports						
9.11.1.1 Analog Line Side Port Transitional Rate (REC rates effective 3/11/05 thru 3/10/06)						
9.11.1.1.1 First Port	$3.44			***		
9.11.1.1.2 Each Additional	$3.44			***		
9.11.1.1.3 Disconnect						
9.11.1.2 Digital Line Side Port Transitional Rate (Supporting BRI ISDN) (REC rates effective 3/11/05 thru 3/10/06)						
9.11.1.2.1 First Port	$11.38			***		
9.11.1.2.2 Each Additional Port	$11.38			***		
9.11.1.3 Digital Trunk Ports						
9.11.1.3.4 PBX / DID Trunk Port, per DS1 Transitional Rate (REC rate effective 3/11/05 thru 3/10/06)	$4.32			***		
9.11.1.4 DS0 Analog Trunk Port Transitional Rate (REC rates effective 3/11/05 thru 3/10/06)						
9.11.1.4.1 First Port	$16.78			***		
9.11.4.1.2 Each Additional Port	$16.78			***		
9.23 UNE Combinations						
9.23.6 Loop MUX Combo (LMC)						
9.23.6.4 Loop Mux DS1						
9.23.6.4.3 DS1 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)						
9.23.6.4.3.1 Rate Group 1	$10.11			*		
9.23.6.4.3.2 Rate Group 2	$10.18			*		
9.23.6.4.3.3 Rate Group 3	$11.41			*		
9.23.6.5 Private Line / Special Access to LMC Conversion (as is)			$40.32			A
9.23.7 Enhanced Extended Loop (EEL)						
9.23.7.3 EEL DS1						
9.23.7.3.3 DS1 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)						
9.23.7.3.3.1 Rate Group 1	$10.11			*		
9.23.7.3.3.2 Rate Group 2	$10.18			*		
9.23.7.3.3.3 Rate Group 3	$11.41			*		
9.23.7.4 EEL DS3						
9.23.7.4.3 DS3 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)						
9.23.7.4.3.1 Rate Group 1	$110.86			*		
9.23.7.4.3.2 Rate Group 2	$112.47			*		
9.23.7.4.3.3 Rate Group 3	$139.92			*		
9.23.7.6 Private Line / Special Access to EEL Conversion (as is)			$40.32			A
9.23.7.8 EEL Transport						
9.23.7.8.2.5 DS1 Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates. (Effective 3/11/05 thru 3/10/06)						
9.23.7.8.2.5.1 Over 0 to 8 Miles	$5.40	$0.10		*	*	
9.23.7.8.2.5.2 Over 8 to 25 Miles	$5.40	$0.14		*	*	
9.23.7.8.2.5.3 Over 25 to 50 Miles	$5.40	$0.26		*	*	
9.23.7.8.2.5.4 Over 50 Miles	$5.40	$0.24		*	*	
9.23.7.8.3.5 DS3 Transitional Rate 15% incremental adjustment between non impaired wire centers, in addition to Monthly Rates. (Effective 3/11/05 thru 3/10/06)						

TRO and TRRO Exhibit A
Transition Rates
Arizona

		Recurring	Recurring per Mile	Non-Recurring	REC	REC per Mile	NRC
9.23.7.8.3.5.1	Over 0 to 8 Miles	$36.48	$2.00		*	*	
9.23.7.8.3.5.2	Over 8 to 25 Miles	$36.92	$2.39		*	*	
9.23.7.8.3.5.3	Over 25 to 50 Miles	$37.60	$3.44		*	*	
9.23.7.8.3.5.4	Over 50 Miles	$37.39	$3.37		*	*	

NOTES:

A: Cost Docket T-00000A-00-0194 Phase II Order No. 64922 Effective 6/12/02

* Transitional Rate Increment developed using 15% of the existing rate, per CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05

** Rate includes 15% increase authorized in CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05

*** Rate includes $1.00 per Port increase authorized in CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05

[1] Rate not addressed in cost docket (estimated TELRIC)
[3] ICB, Individual Case Basis pricing.