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BEFORE THE ARIZONA CORPORATION COMMISSION

- MIKE GLEASON**
Chairman
- WILLIAM MUNDELL**
Commissioner
- JEFF HATCH-MILLER**
Commissioner
- KRISTIN MAYES**
Commissioner
- GARY PIERCE**
Commissioner

T-01051B-07-0693
DOCKET NO. T-03608A-07-0693

IN THE MATTER OF QWEST CORPORATION'S PETITION FOR ARBITRATION AND APPROVAL OF AMENDMENT TO INTERCONNECTION AGREEMENT WITH ARIZONA DIALTONE, INC. PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996 AND APPLICABLE STATE LAWS

PETITION FOR ARBITRATION

Arizona Corporation Commission
DOCKETED

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1. Qwest Corporation ("Qwest") by and through its attorneys, hereby petitions the Arizona Corporation Commission ("Commission") for arbitration of certain terms and conditions for interconnection and related arrangements with Arizona Dialtone Inc. ("Arizona Dialtone"). (Qwest and Arizona Dialtone are sometimes referred to in this Petition as the "Parties.") This Petition is filed pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"),¹ and the rules of the Commission including A.A.C. R14-2-1505. Qwest respectfully requests that the Commission resolve the issues identified in Section V. of the Petition by ordering the Parties to incorporate

¹ 47 U.S.C. § 252(b)

1 Qwest's positions into an amendment to the Interconnection Agreement between Qwest and
2 Arizona Dialtone for execution by the parties, and by approving said amendment. Qwest's
3 positions incorporate certain orders and related rules and regulations of the Federal
4 Communications Commission ("FCC"). Those FCC orders are commonly referred to as the
5 "TRO"² and "TRRO."³ The amendment to the Interconnection Agreement is commonly referred
6 to as the "TRRO Amendment."⁴

7 2. This Petition includes background information on the Parties, the history of
8 Qwest's TRRO Amendment negotiations with Arizona Dialtone, the Commission's jurisdiction
9 and applicable legal standards, and a comprehensive presentation of the unresolved issues
10 including Qwest's positions on the issues. *Appendix A* to the Petition sets forth the following
11 additional information: the letter dated July 20, 2007, sent by Qwest to Arizona Dialtone
12 requesting negotiations of a TRRO Amendment (the "Request for Negotiations"), and
13 attachments thereto including the TRRO Amendment formatted to display both Parties'
14 proposals respecting disputed sections and provisions as of July 20, 2007. Qwest respectfully
15 requests a reasonable opportunity to supplement this Petition to provide any additional
16 information deemed necessary by the Commission.

17 In support of this Petition, Qwest states as follows:

18
19 ² *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local*
20 *Exchange Carriers, Implementation of the Local Competition Provisions of the*
21 *Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced*
22 *Telecommunications Capability, Report and Order and Order on Remand and Further Notice of*
Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (Triennial Review Order), corrected by
Triennial Review Order Errata, 18 FCC Rcd 19020 (2003).

23 ³ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251*
24 *Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, 20 FCC Rcd*
2533 (2005) (Triennial Review Remand Order).

25 ⁴ *Triennial Review Order and Triennial Review Remand Order ("TRO/TRRO") Amendment to*
26 *the Interconnection Agreement between Qwest Corporation and COMPANY in the State of*
STATE ("TRRO Amendment").

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I. THE PARTIES

3. Qwest is a Delaware corporation with its principal place of business located in Denver, Colorado. Qwest is an Incumbent Local Exchange Carrier (“ILEC”) in this state within the meaning of Section 251(b) of the Act. Within its operating territory, Qwest has been the incumbent provider of telephone exchange service during all relevant times.

4. Arizona Dialtone is a competitive local exchange carrier (“CLEC”) providing local exchange and interexchange telecommunications services in this state pursuant to a Certificate of Convenience and Necessity issued by this Commission. Arizona Dialtone is a Arizona corporation with its corporate president and principal place of business as follows:

Tom Bade
President—Arizona Dialtone, Inc.
6115 S. Kyrene Rd, Suite 103
Tempe, AZ 85283

Telephone 480-776-1999

Arizona Dialtone’s certificate of authority from the Commission is on file with the Commission in Docket No. T-03608A-98-0442, Decision No. 63669 and is incorporated herein by reference.

5. Arizona Dialtone’s regulatory counsel for this State is:

Claudio E. Iannitelli
Cheifetz, Iannitelli, & Marcolini P.C.
Viad Tower, 19th Floor
1850 North Central Avenue
Phoenix, Arizona 85004
Phone: (602) 952-6000

6. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals for Qwest:

Norman G. Curtright
Corporate Counsel
Qwest Corporation

1 20 East Thomas Rd., 16th Floor
Phoenix, Arizona 85012

2 Telephone 602-630-2187

3
4 **II. BACKGROUND AND HISTORY OF NEGOTIATIONS**

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6 6. The Agreement For Terms And Conditions For Interconnection, Unbundled
7 Network Elements, Ancillary Services, And Resale Of Telecommunication Services Provided By
8 Qwest Corporation In The State Of Arizona (“Interconnection Agreement” or “ICA”) between
9 Qwest and Arizona Dialtone was filed with this Commission on September 13, 2001 and
10 approved on November 8, 2001.⁵

11 7. Under the ICA, prior to the effective date of the TRRO Arizona Dialtone
12 purchased an unbundled network service known as UNE-P PAL, which connects pay phones,
13 and UNE-P POTs. A significant number of such circuits were in place upon the effective date of
14 the TRRO. Local circuit switching is a component of UNE-P.

15 8. The FCC’s TRRO established new rules applicable to ILECs’ unbundling
16 obligations regarding mass market local circuit switching, high capacity loops and dedicated
17 interoffice transport effective March 11, 2005. Pursuant to the TRRO and implementing
18 regulations ILECs no longer have an obligation to provide CLECs with unbundled access to
19 mass market local circuit switching, including as a component of UNE-P.⁶ The regulations
20 provided for a one-year transition period from the effective date of the TRRO during which time
21 CLECs may continue to have access to local switching to serve their embedded base of end-user
22 customers, at the rate at which the CLEC obtained the combination of network elements, plus
23 one dollar.

24
25 ⁵ Docket No. T-01051B-01-0721, Decision No. 64190

26 ⁶ 47 C.F.R. § 51.319(d).

1 9. From the effective date of the TRRO to the present time, Arizona Dialtone has
2 refused to implement the requirements of the TRRO. Qwest repeatedly requested that Arizona
3 Dialtone enter into negotiations to implement the TRRO, during and after the one-year transition
4 period. On March 1, 2006, near the end of the one year transition period, Qwest sent its current
5 template form TRRO Amendment to Arizona Dialtone, with a request that Arizona Dialtone sign
6 the TRRO Amendment; alternatively, Qwest's letter notified Arizona Dialtone that Qwest was
7 initiating formal dispute resolution procedures set out in the ICA, in order to conform with the
8 TRRO's standards. Qwest's letter of March 1, 2006, without the TRRO Amendment form,
9 appears at *Appendix B* to this Petition. On March 3, 2006, Arizona Dialtone responded by letter
10 from its attorney, a copy of which is attached to this Petition as *Appendix C*, denying Qwest's
11 request for dispute resolution: "Those dispute resolution procedures have no application to the
12 ongoing discussions regarding Qwest's draft of proposed interconnection agreement provisions
13 that you attribute to the TRRO."⁷

14 10. Arizona Dialtone has refused to sign the TRRO Amendment based on the theory
15 that the TRRO did not mandate the changes.⁸ Arizona Dialtone is mistaken because the TRRO
16 is mandatory and self-executing. *See* paragraph 19, below.

17 11 Arizona Dialtone refused to sign the TRRO Amendment based on reliance on this
18 Commission's order in the arbitration of an interconnection agreement between Qwest and
19 another CLEC Covad Communications, Decision No. 98840, in which the Commission held that
20 it had authority to include Section 271 obligations or conditions in interconnection agreements,
21 or to include in Qwest's interconnection agreements an obligation to provide network elements
22 under Arizona law that Qwest is not required to provide under Section 251.⁹ Arizona Dialtone's
23 reliance on the Commission's order in Decision No. 98840 was misplaced and the Commission's
24

25 ⁷ *See*, Appendix C, p. 1.

26 ⁸ *Id.*, p. 2.

⁹ *Id.*

1 order in Decision No. 98840 has been overturned by the U.S. District Court for the District of
2 Arizona. See paragraph 21, below.

3 12. Despite repeated good faith attempts by Qwest to conform to the TRRO, Arizona
4 Dialtone is the only CLEC in Arizona, and the only CLEC operating in any of Qwest's fourteen
5 states, that has refused to transition its UNE-P services in accordance with the TRO and TRRO.
6 Arizona Dialtone's refusal in that regard is contrary to federal law and amounts to usurpation of
7 a superior position in relation to other carriers that have conformed to the law.

8 13. On July 20, 2007, Qwest sent Arizona Dialtone a bona fide request to negotiate a
9 TRO/TRRO Amendment to the Interconnection Agreement. That request is attached hereto as
10 Appendix A. Qwest and Arizona Dialtone began negotiations toward a TRRO Amendment.
11 However, the Parties have not resolved differences over contract language and policy issues that
12 are substantial. Attached as *Appendix D* is the proposed TRRO Amendment formatted to
13 display the language that remains in dispute as of the time this Petition is filed. Qwest asks the
14 Commission to arbitrate each of these remaining disputes, to find in Qwest's favor and to adopt
15 Qwest's TRRO Amendment.

16 17 **III. JURISDICTION**

18
19 14. This Commission has jurisdiction over this Petition for Arbitration pursuant to
20 Section 252(b)(1) of the Act.

21 15. Under the Section 252(b)(1) of the Act, parties negotiating for interconnection,
22 access to unbundled network elements, or resale of services within a particular state may petition
23 the state commission for arbitration of any unresolved issues during the 135th to the 160th day of
24 such negotiations. The Request for Negotiations was received by Arizona Dialtone on July 20,
25 2007. This negotiation is therefore eligible for mandatory arbitration from December 2, 2007 to
26 December 27, 2007, inclusive.

1 16. Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be concluded not
2 later than nine months after the applicable request for negotiations, which for purposes of this
3 Petition is April 20, 2008.

4
5 **IV. APPLICABLE LEGAL STANDARDS**

6
7 17. This arbitration must be resolved under the standards established in Section 251
8 and 252 of the Act, the rules adopted and orders issued by the Federal FCC in implementing the
9 Act, and the applicable rules and orders of this Commission. Section 252(c)(1) of the Act
10 requires that a state commission resolving open issues through arbitration ensure that such
11 resolution and conditions meet the requirements of section 251, including the regulations
12 prescribed by the FCC pursuant to section 252.

13 18. The FCC's TRRO establishes rules applicable to ILEC's unbundling obligations
14 regarding mass market local circuit switching, high capacity loops and dedicated interoffice
15 transport. The TRRO is effective March 11, 2005.¹⁰ Pursuant to the TRRO and implementing
16 regulations ILECs no longer have an obligation to provide CLECs with unbundled access to
17 mass market local circuit switching, including as a component of UNE-P.¹¹ The regulations
18 provide for a one-year transition period from the effective date during which time CLECs may
19 continue to have access to local switching to serve its embedded base of end-user customers, at
20 the rate at which the CLEC obtained the combination of network elements, plus one dollar.

21 19. The FCC regulations provide, "Requesting carriers may not obtain new local
22 switching as an unbundled network element."¹² The bar against unbundling obligations for mass
23 market local circuit switching is self-implementing.¹³ Because the TRRO was immediately

24 _____
¹⁰ TRRO, ¶ 235.

25 ¹¹ 47 C.F.R. § 51.319(d).

26 ¹² *Id.*

¹³ *Bellsouth v. MCIMetro*, 2005, U.S. Dist. Lexis 9394, at *8 (2005), *aff'd*, 425 F.3d 964 (11th

1 effective, there is not, and has not been since March 11, 2006, anything to negotiate regarding
2 those matters decided by the FCC.

3 20. According to a decision by the United States Court of Appeals for the 11th Circuit,
4 “Change of Law” processes provided in the Interconnection Agreement are unavailing with
5 respect to the self-implementing nationwide bar the FCC enacted with respect to mass market
6 local switching as a UNE.¹⁴ In any event, during the course of discussions Arizona Dialtone
7 expressly eschewed the applicability of “change of law.” *See, Appendix C.*

8 21. By Order and Judgment of the United States District Court for the District of
9 Arizona in *Qwest Corporation v. Arizona Corporation Commission, et al.*, entered in Case No.
10 CV 06-1030-PHX-ROS on September 30, 2007, this Commission’s authority as an arbitrator of
11 an interconnection agreement to resolve open issues is limited to obligations listed in Section 251
12 of the Act, and the Commission has no authority to include Section 271 obligations or conditions
13 in interconnection agreements, or to include in Qwest’s interconnection agreements an obligation
14 to provide network elements under Arizona law that, per rulings of the FCC, Qwest is not
15 required to provide under Section 251.

16 22. Section 252(a)(4) of the Act provides that a state commission’s consideration of a
17 petition such as this is limited to the matters raised in the petition and the other party’s response,
18 if any. The only matters raised in this Petition relate solely and directly to Qwest’s proposed
19 TRRO Amendment. Qwest expressly limited the matters it raised in its Request for Negotiations
20 to the implementation of the TRRO. National telecommunications policy requires that this
21 arbitration to implement the TRO/TRRO proceed expeditiously unencumbered by issues
22 extraneous to the TRO/TRRO.¹⁵ The FCC states:

23 Cir. 2005).

24 ¹⁴ *Id.*

25 ¹⁵ In the TRO, the FCC expressed concern over undue delay in commencing renegotiations of
26 interconnection provisions, finding that delay in the implementation of the new rules would have
an adverse impact on investment and sustainable competition in the telecommunications
industry. and stating that the TRO itself shall be accorded treatment as a request to negotiate

1 We expect that incumbent LECs and competing carriers will implement
2 the Commission's findings as directed by section 252 of the Act. Thus,
3 carriers must implement changes to their interconnection agreements
4 consistent with our conclusions in this Order. We note that the failure of
5 an incumbent LEC or a competitive LEC to negotiate in good faith under
6 section 251(c)(1) of the Act and our implementing rules may subject that
7 party to enforcement action. Thus, the incumbent LEC and competitive
8 LEC must negotiate in good faith regarding any rates, terms, and
9 conditions necessary to implement our rule changes. We expect that
10 parties to the negotiating process will not unreasonably delay
11 implementation of the conclusions adopted in this Order. We encourage
12 the state commissions to monitor this area closely to ensure that parties do
13 not engage in unnecessary delay.¹⁶

8 V. UNRESOLVED ISSUES

9
10 23. Attached as *Appendix D* is the proposed TRRO Amendment formatted to display
11 the language that is in dispute as of the date this Petition is submitted. Language that is proposed
12 by Qwest and objected to by Arizona Dialtone is displayed in boldface italics. (Example: *Qwest*

13 under Section 252:

14
15 703. [W]e require incumbent and competitive LECs to use section 252(b) as a
16 default timetable for modification of interconnection agreements that are silent
17 concerning change of law and/or transition timing. We find that delay in the
18 implementation of the new rules we adopt in this Order will have an adverse
19 impact on investment and sustainable competition in the telecommunications
20 industry. Therefore, to ensure that there is no undue delay in commencing the
21 renegotiation of interconnection provisions, the effective date of the rules we
22 adopt in this Order shall be deemed the notification or request date for contract
23 amendment negotiations under this default approach. We believe that this
24 requirement will ensure that carriers will begin immediately to negotiate in good
25 faith pursuant to section 251(c)(1) of the Act to modify their interconnection
26 agreements to the extent necessary in view of the rules we adopt today. Further,
under the section 252(b) timetable, where a negotiated agreement cannot be
reached, parties would submit their requests for state arbitration as soon as 135
days after the effective date of this Order but no longer than 160 days after this
Order becomes effective. In turn, the state commissions would conclude their
consideration of such disputes within nine months of the effective date of this
Order. We will rely on state commissions to be vigilant in monitoring compliance
with the provisions of sections 251 and 252. *TRO*, ¶ 703 (footnotes omitted).

¹⁶ *TRO*, ¶ 233 (footnotes omitted).

1 *proposed language*.) Language that is proposed by Arizona Dialtone and objected to by Qwest
2 is underlined. (Example: Arizona Dialtone proposed language.) Qwest states upon information
3 and belief that no other issues have been raised.

4 24. Qwest's statement of the unresolved issues is set forth in paragraphs which
5 follow. Each paragraph lists a disputed issue, assigns each issue a number, identifies the
6 section(s) of the Proposed TRRO Amendment affected by the issue, and sets forth Qwest's
7 positions with respect thereto.

8 25. **Issue 1.**

- 9 a. Statement of Issue: Whether the federal regulatory regime restricts the
10 unbundling obligations that may be imposed upon ILECs in
interconnection agreements arbitrated under Section 252.
- 11 b. Sections affected: TRRO Amendment Attachment 1, §2.4; TRRO
12 Amendment, § VII.
- 13 c. Qwest's Position: Arizona Dialtone's language requested in §2.4,
14 stating that the Parties are aware of no law presently restricting the UNEs
15 that Qwest may [be required] to provide, is patently incorrect and should
16 not be included. An ILEC's obligation to provide unbundled network
17 elements for interconnection is limited to those that are found to meet the
18 impairment standard by the FCC under Section 251(b) and (c) of the Act.
19 The *TRO* and *TRRO* modified ILECs' obligations, removing certain UNEs
20 from the list of UNEs ILECs are required to provide. Without limitation
21 of the foregoing, an ILEC may not be required to arbitrate or place in its
interconnection agreement Section 271 network elements or network
elements that the ILEC is not required to provide under Section 251.
Arizona Dialtone's refusal to delete standard boilerplate language from §
VII can only lead to future disputes over whether the TRRO Amendment
was intended to implement the *TRRO* to the exclusion of previous
arrangements. As such Arizona Dialtone's position with respect the
disputed language in §VII creates ambiguity that tends to impede the
application of the *TRRO* and should be rejected

22 26. **Issue 2.**

- 23 a. Statement of Issue: Whether the scope of Qwest's unbundling
24 obligations should be made conditional upon non-specific references to
state or federal laws and regulations.
- 25 b. Sections affected: TRRO Amendment Attachment 1, §§ 3.1.6.1, 5.1.1;
26 TRRO Amendment, § VII.

1 c. Qwest's Position: Arizona Dialtone's language in §§ 3.1.6.1 and 5.1.1
2 stating that Qwest's relief from the obligation to provide certain kinds of
3 UNEs unless required by state law or regulations is in conflict with
4 controlling federal law. A state may not impose under state law network
5 unbundling obligations that the FCC has removed from the unbundling
6 obligations in Section 251. Arizona Dialtone's language stating that
7 Qwest is relieved from the obligation to provide certain kinds of UNEs
8 *unless required by federal law*, is unnecessary because the TRRO is
9 unambiguous and conclusive with regard to those obligations. If the
10 purpose of the language is to address the possibility of changes to federal
11 law, that is unnecessary because the change of law provisions in the ICA
12 serve that purpose. Arizona Dialtone's refusal to accept standard
13 boilerplate language in § VII can only lead to future disputes over whether
14 the TRRO Amendment was intended to implement the TRRO to the
15 exclusion of previous arrangements. As such Arizona Dialtone's position
16 with respect the disputed language in §VII creates ambiguity that tends to
17 impede the application of the TRRO and should be rejected

10 27. **Issue 3.**

11 a. Statement of Issue: Whether the one-year transition period the TRRO
12 provided for access to local circuit switching, including UNE-P services
13 Arizona Dialtone uses to serve its embedded base of customers,
14 commenced on the effective date of the TRRO and expired on March 10,
15 2006, and the bar against UNE switching has been in place since then, or
16 whether the transition period starts upon the Effective Date of the TRRO
17 Amendment.

15 b. Sections affected: TRRO Amendment Attachment 1, §§ 5.1.1.1.1,
16 5.1.1.2, 5.1.1.3, 5.1.1.4, 5.1.1.5, 5.1.1.6, 5.1.1.6.1, 5.1.1.6.2, 5.1.1.6.3;
17 TRRO Amendment, § VII.

17 c. Qwest's Position: The TRRO clearly orders the one-year transition
18 period for embedded discontinued UNEs to start on the effective date of
19 the TRRO, March 11, 2005, and absolutely bars new orders for mass
20 market switching UNEs from that date.¹⁷ Because Arizona Dialtone's

20 ¹⁷ The TRRO states:

21 199. . . . Finally, we adopt a transition plan that requires competitive LECs to
22 submit orders to convert their UNE-P customers to alternative arrangements
23 within twelve months of the effective date of this order. This transition period
24 shall apply only to the embedded customer base, *and does not permit competitive*
25 *LECs to add new customers using unbundled access to local circuit switching.*

25

26 227. We require competitive LECs to submit the necessary orders to convert their
mass market customers to an alternative service arrangement *within twelve*

1 refusal to accept Qwest's language and its proposal for alternative
2 language proceed from an erroneous position that the time periods stated
3 in the *TRRO* spring from the date parties amend their interconnection
4 agreements rather than the effective date of the *TRRO*, Arizona Dialtone's
5 positions in the affected sections should be rejected.

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28. **Issue 4:**

- a. Statement of Issue: Whether back billings to March 10, 2005 of the FCC ordered rate for embedded switching UNEs during the transition period, and back billing to March 10, 2006 of Commission approved resale PAL service rates, are impermissible as violations of the doctrine against retroactive ratemaking or as untariffed charges.
- b. Sections affected: TRRO Amendment Attachment 1, §§ 2.3, 5.1.1.5, 5.1.1.6, 5.1.1.6.1, 5.1.1.6.2, 5.1.1.6.3; TRRO Amendment, § VII.
- c. Qwest's Position: Neither back billing proposed by Qwest in the affected sections is prohibited by the doctrine regarding retroactive ratemaking because the rates in each instance were determined or approved prior to the time during which they would apply. Back billing clauses substantially similar to the clauses objected to by Arizona Dialtone have been a part of the TRRO Amendments signed by numerous CLECs and approved by the Commission.
- (i) In the case of the transition period rates, the FCC determined in the TRRO that the rate for embedded services during the transition period shall be the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar.¹⁸ Regarding the rate that applies post March 10, 2006, the *TRRO* is clear that the rates for the alternative service arrangements apply with respect to any UNE-P not transitioned by March 10, 2006. Paragraph 227 of the TRRO mandated that Arizona Dialtone transition its UNE-P customers by March 10, 2006. Arizona Dialtone's failure to meet that obligation cannot relieve it of its obligation to pay the alternative services arrangement rate offered by Qwest post March 11, 2006. The rates for alternative resale

months of the effective date of this Order. . . . Consequently, carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes. By the end of the twelve month period, requesting carriers must transition the affected mass market local circuit switching UNEs to alternative facilities or arrangements. TRRO, ¶ 227 (footnotes omitted, emphasis added).

¹⁸ *TRRO*, ¶228

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services were approved by the Commission.

- (ii) In both cases the rates were set prospectively, and CLECs were on notice of the rate before the period that the rate was to be applied. Arizona Dialtone's arguments that the rates may not be charged because they are not tariffed are unavailing, because the rates Qwest will apply are wholesale rates that in this state properly are not stated in filed tariffs. Also, Arizona Dialtone refused to negotiate a different rate, thereby precluding any regulatory filing of an agreement for an alternative rate.

29. **Issue 5:**

- a. Statement of Issue: Whether in light of the national policy to implement the *TRRO* expeditiously issues raised by either party that were not raised by the Request for Negotiations or that do not flow directly from the *TRRO* should be deferred.
- b. Sections affected: TRRO Amendment § I (A); Attachment 1, § 3.1.6.3; TRRO Amendment, "Whereas" clause.
- c. Qwest's Position: Section 252(a)(4) of the Act provides that a state commission's consideration of a petition such as this is limited to the matters raised in the petition and the other party's response, if any. The only matters raised in this Petition relate solely and directly to Qwest's proposed TRRO Amendment. Qwest expressly limited the matters it raised in its Request for Negotiations to the implementation of the TRRO. National telecommunications policy requires that this arbitration to implement the *TRO/TRRO* proceed expeditiously unencumbered by issues extraneous to the *TRO/TRRO*. Accordingly, Qwest's position is that the matters raised that are identified under "Issue 5" should not be included in this arbitration. They are not properly included because they are not addressed in the Request for Negotiations and do not directly relate to or arise out of the *TRRO*. Certainly, inclusion of non-*TRO/TRRO* issues will unnecessarily delay the implementation of the important national telecommunications policies established under the Act. Such delay should not be allowed.

CONCLUSION

30. In its proposed TRRO Amendment Qwest has presented reasonable modifications to the Interconnection Agreement that are consistent with state and national public policy and which conform to and are required by the FCC's *TRO* and *TRRO*. Arizona Dialtone's positions are utterly inconsistent with those orders, and are calculated to thwart and further delay those

1 public policy objectives.

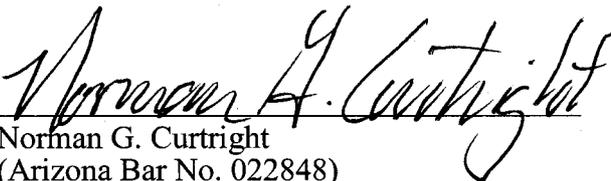
2 **WHEREFORE**, Qwest Corporation respectfully request that this Commission:

- 3 1. Conduct an arbitration pursuant to Section 252(b) of the Federal Act, 47. §252(b);
4 2. Resolve the above listed disputed issues in Qwest Corporation's favor;
5 3. Find that Qwest Corporation's proposed TRRO Amendment is consistent with
6 applicable law;
7 4. Issue an Order adopting the TRRO Amendment as proposed by Qwest; and,
8 5. Grant such other relief as is fair and justified.

9 RESPECTFULLY SUBMITTED this 17th day of December, 2007.

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QWEST CORPORATION



Norman G. Curtright
(Arizona Bar No. 022848)
20 E. Thomas Rd., 16th Floor
Phoenix, Arizona 85012
Tel: (602) 630-2187
Fax: (303) 383-8484
Email: norm.curtright@qwest.com

ORIGINAL and 13 copies hand-delivered
for filing this 17th day of December, 2007, to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

1 Copy of the foregoing hand served and mailed
2 this 17th day of December, 2007, to:

3 Tom Bade
4 President—Arizona Dialtone, Inc.
5 115 S. Kyrene Rd, Suite 103
6 Tempe, AZ 85283

7 Claudio E. Iannitelli
8 Cheifetz, Iannitelli, & Marcolini P.C.
9 Viad Tower, 19th Floor
10 1850 North Central Avenue
11 Phoenix, Arizona 85004

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APPENDIX A



Qwest Services Corporation
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303.383.6552
Facsimile 303.295.7049

Andrew J. Creighton
Corporate Counsel

July 20, 2007

Via Email and U.S. Mail

William D. Cleaveland, Esq.
Davis Miles, PLLC
560 W. Brown Rd., Suite 3004
Mesa, Arizona 85201-3225

Re: Arizona Dialtone, Inc.

Dear Mr. Cleaveland,

Qwest Corporation ("Qwest") proposed and attempted to enter into an amendment to its interconnection agreements with Arizona Dialtone for the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") in the states of Arizona, Colorado and Minnesota. Despite those attempts, Arizona Dialtone failed to enter into that amendment on terms agreeable to Qwest under the applicable change of law process and dispute resolution provisions in our interconnection agreements.

Attached is the last draft of the parties' TRO/TRRO amendment we have in our records. Arizona Dialtone claimed its proposed modifications were based on Arizona Corporation Commission Decision No. 68840. Qwest did not agree with your assertion that Decision No. 68840 requires Qwest to provide Section 271 unbundled switching under the parties' interconnection agreements. Attached is an order from the United States District Court for the District of Arizona dated July 17, 2007 supporting Qwest's position.

This letter serves as a Qwest request to Arizona Dialtone under Section 252 of the Telecommunications Act to negotiate the TRO/TRRO amendment consistent with the TRO, TRRO and the attached District Court order. Within three weeks, please provide Sandy Sanderson (sandy.sanderson@qwest.com) any changes Arizona Dialtone has to its previously proposed modifications to the TRO/TRRO amendment to be compliant with the District Court order. Sandy will then contact Mr. Bade in an attempt to negotiate an amendment to the Arizona Dialtone interconnection agreement to bring it into compliance with the changes in law. If the parties are unable to mutually agree on the TRO/TRRO amendment, Qwest will petition the applicable State commission to arbitrate the TRO/TRRO amendment under Section 252.

Sincerely,

Andrew J. Creighton

cc: Larry Christensen
Sandy Sanderson
Norman G. Curtright, Esq.
Thomas W. Bade (via email and U.S. Mail)

**Triennial Review Order and Triennial Review Remand Order
("TRO/TRRO") Amendment
to the Interconnection Agreement between
Qwest Corporation and
COMPANY
for the State of
STATE**

This is an Amendment ("Amendment") to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and COMPANY ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

RECITALS.

WHEREAS, CLEC and Qwest 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 STATE which was approved by the STATE Commission ("Commission"); 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

Qwest proposes:

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

CLEC proposes:

WHEREAS, the TRO and TRRO Decision, individually and together ("Decisions") materially modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs under Section 251; and

CLEC proposes; Qwest rejects:

WHEREAS, the Decisions notwithstanding, Qwest remains obligated to offer certain UNEs under Section 271 of the Act and other applicable law; and

WHEREAS, CLEC and Qwest desire to have an understanding of billing disputes, ICA interpretation, clarification and effective dates; 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.

CLEC proposes; Qwest rejects:

Qwest agrees not to bill CLEC for any Operator Services or 1+ toll under this agreement. Qwest agrees to pay CLEC a commission equal to the commission paid to it's highest paid aggregator for Operator Services billed to CLEC's end users. Qwest agrees not to bill CLEC for any charges on behalf of any other IXC or other company under any billing agreement Qwest may or may not have with a third party. Qwest agrees to file, within 60 days, it's discount for finished Public Access Lines in Colorado to reflect it's avoided cost in order to comply with FCC regulations and to refund CLEC for past 2 years within 30 days. Qwest agrees to properly identify DUF records with the proper CIC codes for CLEC DUF RECORDS to bill locally ported 800 calls to IXC and prepaid companies PRI lines and agrees that such traffic is not locally terminated and is not "bill and keep" traffic. Qwest agrees that Qwest will no longer bill CLEC for dial up ISP traffic from CLEC end users and that it is "Bill and Keep" traffic. Qwest will not bill CLEC for end user line charges on resold finished Qwest lines. Qwest agrees to pay \$25.00 per person hour for correcting Qwest billing errors.

Qwest and CLEC agree to extend the existing ICA for three years from the date of approval of this amendment after which ICA 5.2 will govern.

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 execution date.

V. Effective Date.

Qwest proposes:

This Amendment shall be deemed effective upon approval by the Commission, except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date. The Parties agree to implement the provisions of this Amendment upon execution ("execution date").

CLEC proposes:

This Amendment shall be deemed effective upon approval by the Commission. The Parties agree to implement the provisions of this Amendment upon execution ("execution 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.

Qwest proposed; CLEC rejects

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.

COMPANY

Qwest Corporation

Signature

Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director- Interconnection Agreements

Title

Date

Date

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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.

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

"Commingle" means the act of Commingling.

"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 this Title.

"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).

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

"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 this chapter. 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 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. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution 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:

CLEC proposes; Qwest rejects:

Instead, all such Network Elements shall be ordered and provided pursuant to Section 271 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 4.1.7 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.

Qwest proposes:

2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for existing 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, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

CLEC proposes:

After execution of this Amendment, except for UNEs required to be offered under Section 271 of the Act, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for existing 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, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

Additionally, for all UNEs required to be offered under Section 271 of the Act, Qwest shall establish just and reasonable rates for each type and class of such UNEs. The just and reasonable rates for UNEs offered under Section 271 shall be established at a commercially viable wholesale pricing level reasonably proportionate to Qwest's retail pricing for competitive classes of service such that the sum of the rates for all UNEs and all reasonable costs of any additional elements or services that would need to be provided by a CLEC to reasonably approximate Qwest's retail services that Qwest provides to its end user customers, less a reasonable retail markup. If needed, a different rate for UNEs offered under Section 271 shall be established for different classes of service, such as (by way of example but not limitation) residential switching, business line switching, PAL line switching, etc.

For all UNEs that Qwest is required to offer under Section 271 of the Act, Instead of back billing CLEC the FCC rate increases to March 11, 2005, as provided in Paragraph 2.3 above, Qwest shall instead refund to CLEC any amounts above the newly established rates that CLEC paid for all such UNE's back to March 11, 2005.

2.4 UNEs shall be obtained solely for the provision of Telecommunications Services and only to the extent allowed by law.

CLEC proposes; Qwest rejects:

Qwest and CLEC are aware of no law presently restricting the UNEs that Qwest may provide.

Qwest proposes; CLEC rejects:

2.5 UNEs shall only be obtained for the provision of Telecommunications Services, which do not include telecommunications utilized by CLEC for its own administrative use.

2.6 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

2.7 If CLEC accesses and uses a UNE consistently with Sections 2.4, 2.5 and 2.6, CLEC may provide any Telecommunications Services over the same UNE.

CLEC proposes; Qwest rejects:

The following paragraphs 2.8 through 7.0 do not apply to any UNEs required to be offered by Qwest under Section 271 of the Act.

2.8 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 4.1.7.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.

2.8.1 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 2.8. 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.

2.8.2 If it is determined 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.

2.8.3 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.

2.8.4 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer is required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC. 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 existing 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.

2.9 Service Eligibility Criteria

Qwest proposes:

2.9.1 The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport).

CLEC proposes:

2.9.1 The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport) offered under Section 251 of the Act.

2.9.1.1 Except as otherwise provided in this Section 2.9.1.1, Qwest shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

2.9.1.2 CLEC must certify that the following Service Eligibility Criteria are satisfied to: (1) convert a Special Access Circuit to a high capacity EEL, (2) to obtain a new high capacity EEL; or (3) to obtain at UNE pricing any portion of a Commingled circuit that includes a high capacity Loop and transport facility or service. Such certification shall be in accordance with all of the following Sections.

2.9.1.2.1 State Certification. CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.9.1.2.2 Per Circuit Criteria. The following criteria are satisfied for

each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

2.9.1.2.3 Telephone Number Assignment. Each circuit to be provided to each End User Customer will be assigned a local telephone number prior to the provision of service over that circuit. This requires that each DS1 circuit must have at least one (1) local telephone number and each DS3 circuit has at least twenty-eight (28) local telephone numbers. The origination and termination of local voice traffic on each local telephone number assigned to a circuit shall not include a toll charge and shall not require dialing special digits beyond those normally required for a local voice call.

2.9.1.2.4 911 or E911. Each circuit to be provided to each End User Customer will have 911 or E911 capability prior to the provision of service over that circuit.

2.9.1.2.5 Collocation.

2.9.1.2.5.1 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location;

2.9.1.2.5.2 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is located at the third party's premises within the same LATA as the End User Customer's premises, when Qwest is the collocator; and

2.9.1.2.5.3 When a DS1 or DS3 EEL Loop is connected to a multiplexed facility, the multiplexed facility must be terminated in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location.

2.9.1.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Where CLEC does not arrange for a meaningful exchange of traffic, those arrangements cannot be attributed towards satisfaction of this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA as the End User Customer served by the circuit. For each twenty-four (24) DS1

circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA as the End User Customer served by the circuit.

2.9.1.2.6.1 Calling Party Number. Each circuit to be provided to each End User Customer will be served by an Interconnection trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 LIS trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. If the Calling Party Number is not exchanged over an Interconnection trunk, that trunk shall not be counted towards meeting this criteria.

2.9.1.2.7 End Office Switch. Each circuit to be provided to each End User Customer will be served by an End Office Switch capable of Switching local voice traffic. CLEC must certify that the Switching equipment is either registered in the LERG as a Class 5 Switch or that it can switch local voice traffic.

2.9.1.3 CLEC must provide certification and the to Qwest through a certification letter, or other mutually agreed upon communication, that each individual high capacity loop in combination, or Commingled, with a Qwest-provided high capacity transport facility or service, meets the Service Eligibility Criteria set forth above before Qwest will provision or convert the high capacity facility in combination or Commingled.

2.9.1.4 CLEC's high capacity combination or Commingled facility Service Eligibility shall remain valid only so long as CLEC continues to meet the Service Eligibility Criteria set forth above. If CLEC's Service Eligibility on a given high capacity combination or Commingled facility is no longer valid, CLEC must submit a service order converting the facility to the appropriate Private Line/Special Access service within thirty (30) Days.

2.9.1.5 Service Eligibility Audits. In order to confirm reasonable compliance with these requirements, Qwest may perform Service Eligibility Audits of CLEC's records. Service Eligibility Audits shall be performed in accordance with the following guidelines:

2.9.1.5.1 Qwest may, upon thirty (30) Days written notice to CLEC that has purchased high capacity combination and Commingled facilities, conduct a Service Eligibility Audit to ascertain whether those high capacity facilities were eligible for UNE treatment at the time of Provisioning or conversion and on an ongoing basis thereafter.

2.9.1.5.2 CLEC shall make reasonable efforts to cooperate with any Service Eligibility Audit by Qwest and shall maintain and provide Qwest with relevant records (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that CLEC's high capacity

combination and Commingled facilities meet the Service Eligibility Criteria.

2.9.1.5.3 An independent auditor hired and paid for by Qwest shall perform any Service Eligibility Audits, provided, however, that if a Service Eligibility Audit reveals that CLEC's high capacity combination and Commingled facility circuit(s) do not meet or have not met the Service Eligibility Criteria, then CLEC shall reimburse Qwest for the cost of the audit. To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Criteria, Qwest shall reimburse CLEC for its costs associated with the Service Eligibility Audit.

2.9.1.5.4 An independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

2.9.1.5.5 Qwest shall not exercise its Service Eligibility Audit rights with respect to CLEC (excluding Affiliates), more than once in any calendar year, unless an audit finds non-compliance. If a Service Eligibility Audit does find non-compliance, Qwest shall not exercise its Service Eligibility Audit rights for sixty (60) Days following that audit, and if any subsequent Service Eligibility Audit does not find non-compliance, then Qwest shall not exercise its Service Eligibility Audit rights for the remainder of the calendar year.

2.9.1.5.6 At the same time that Qwest provides notice of a Service Eligibility Audit to CLEC under this paragraph, Qwest shall send a copy of the notice to the Federal Communications Commission.

2.9.1.5.7 Service Eligibility Audits conducted by Qwest for the purpose of determining compliance with Service Eligibility Criteria shall not effect or in any way limit any audit or Dispute Resolution rights that Qwest may have pursuant to other provisions of this Agreement.

2.9.1.5.8 Qwest shall not use any other audit rights it may have under this Agreement to audit for compliance with the Service Eligibility Criteria of this Section. Qwest shall not require a Service Eligibility Audit as a prior prerequisite to Provisioning combination and Commingled facilities.

2.9.1.5.9 CLEC shall maintain appropriate records to support its Service Eligibility Criteria. However, CLEC has no obligation to keep any records that it does not keep in the ordinary course of its business.

2.9.1.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits

to Private Line/Special Access circuits and CLEC must true-up any difference in payments within thirty (30) days.

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 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 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 execution 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 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 execution date.

3.1.3 Non-Impaired Services – DS1 and DS3 Loops

3.1.3.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 loop leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the loop for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

3.1.3.2 Failure To Convert Non-Impaired Services – DS1 and DS3 Loops. Absent CLEC Transition of DS1 and DS3 Loops within ninety (90) Days after the 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 responsibility 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 FTTH and FTTC Loops. For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). 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 FTTH/FTTC New Builds. Qwest shall have no obligation to provide access to an FTTH/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 FTTH/FTTC Overbuilds. Qwest shall have no obligation to provide access to an FTTH/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 FTTH/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 FTTH/FTTC loop to such Premises, and (ii) upon request provide 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 on an Individual Case Basis. 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 FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

[The following Section 3.1.6.3 applies in states other than Iowa.]

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public

notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

[The following Section 3.1.6.3 applies in Iowa only.]

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with an FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Board notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

3.1.6.4 Handling of embedded FTTH/FTTC Loops. All embedded CLEC services over FTTH/FTTC Loops in place prior to the signature on this Amendment will be 'grandfathered' subject to re-classification upon change of service.

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, but not DSL, 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.

3.1.7.2 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.

[The following Section 3.1.8 is applicable in Minnesota only.]

3.1.8 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. Pursuant to Minnesota Exchange and Network Services Tariff – Section 2.1.1, Minnesota is a Minimum Point of Presence state, and therefore Qwest owns intra-building cable in limited Multi-Tenant Environments (e.g., airports, marinas, and trailer

parks). The intra-building cable provisions of this Section 3.1.8 apply only in those limited Multi-Tenant Environments in which Qwest owns the intra-building cable.

[The following Section 3.1.8 is applicable in North Dakota only.]

3.1.8 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. Due to the limited number of locations in North Dakota where Qwest owns premises cable, campus cable or inside wiring, Qwest will provide premises cable, campus cable or inside wiring ownership notification at each MTE terminal.

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 Retention of Embedded Services – Feeder Subloops. All embedded CLEC services over Feeder Subloops in place prior to the signature on this Amendment will be “grandfathered” subject to re-classification upon any modification to or disconnection of the service. Recurring charge rates effective prior to the signature on this amendment will remain in place. No new requests will be accepted for Feeder Subloop subsequent to signature on this Amendment.

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.

4.0.2 All transport services, when combined with high capacity Loops, are subject to the Service Eligibility Criteria as outlined in Section 2.9 of this Amendment.

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 On Routes for which no unbundling obligation for DS3 Dedicated Transport circuits exists but for which DS1 Dedicated Transport is available on an unbundled basis, CLEC may obtain a maximum of ten (10) unbundled DS1 Dedicated Transport circuits.”

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 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 execution 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 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 execution date.

4.1.3 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.

4.1.4 Non-Impaired Services – DS1 and DS3 UDIT

4.1.4.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 UDIT leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the transport for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

4.1.4.2 Failure To Convert Non-Impaired Services – DS1 and DS3 UDIT. Absent CLEC transition of DS1 and DS3 Transport within ninety (90) Days after the 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 March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

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 4.1.7.1.1, 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 4.1.7.1.1, 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 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 execution date.

4.1.7.1.4 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.

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 Execution 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.

4.1.8.1 Transition period for dark fiber transport circuits. For an eighteen (18) month period beginning on the effective date of the Triennial Review Remand Order, any E-UDF and M-UDF that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.8, 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 E-UDF and M-UDF 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 element. Where Qwest is not required to provide unbundled dark fiber E-UDF and M-UDF pursuant to Section 4.1.8, CLEC may not obtain E-UDF and M-UDF as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted.

4.1.8.2 Billing. The 15% transitional rate increment 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 execution date.

4.1.8.3 Failure To Convert Non-Impaired Networks Elements – E-UDF and M-UDF. Absent CLEC Transition E-UDF and M-UDF as of September 10, 2006, Qwest will begin or maintain the right to begin, disconnect process of Dark Fiber Facilities.

5.0 Unbundled Local Switching

5.1 Transition of Unbundled Local circuit Switching, including UNE-P Services

5.1.1 DS0 Capacity (Mass Market)

5.1.1.1 Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

5.1.1.2 Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit Switching element to an alternative arrangement within twelve (12) months of the effective date of the Triennial Review Remand Order.

5.1.1.3 Notwithstanding Section 5.1.1.2, for a twelve (12) month period from the effective date of the Triennial Review Remand Order, Qwest shall provide access to local circuit Switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit Switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or (B) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. CLEC may not obtain new local Switching as an unbundled network element. Qwest and CLEC will work together to identify those impacted accounts.

5.1.1.4 Qwest shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit Switching is required to be made available pursuant to Section 5.1.1.3. These elements are defined as follows:

5.1.1.4.1 Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

5.1.1.4.2 Call-related databases.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems

5.1.1.4.3 Shared transport.

5.1.1.5 Use after March 10, 2006 - For any UNE-P POTS or UNE-P Centrex 21 leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month resale service alternatives identified in this Section 5.1.1.6.2. All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX leased by CLEC from Qwest after March 10, 2006 are subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month Local Exchange Resale service.

5.1.1.6 Failure to Convert Non-Impaired Networks Elements – Mass Market Switching

5.1.1.6.1 Mass Market Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.1.6.2 UNE-P POTS & UNE-P Centrex 21: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Business Measured Resale services, e.g. Class of Service (COS) LMB. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Business Resale services, e.g. COS 1FB. CLEC is subject to back billing for the difference between the rates for the UNE-P and rates for the Qwest Resale Service to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.6.3 All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Resale services. 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.

5.1.1.6.4 Any UNE-P services with Line Splitting: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services as described above. Line Splitting will be removed from any UNE-P services with Line Splitting.

5.1.2 Enterprise Switching. DS1 Capacity and above (i.e., enterprise market)

Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

5.1.2.1 Transition for DS1 Capacity Unbundled Switching; including UNE-P

- Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, LSRs for Unbundled Local Switching at the DS1 or above capacity. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Local Switching at the DS1 or above capacity to other available Qwest products or services, if CLEC so desires. CLEC will submit complete, error-free LSRs to convert or disconnect any existing Unbundled Local Switching at the DS1 or above capacity with Due Dates within ninety (90) Days of the Execution Date of this Amendment.

5.1.2.2 Failure to Convert DS1 Capacity Unbundled Switching: including UNE-P.

5.1.2.2.1 Enterprise Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.2.2.2 Enterprise Unbundled Switching purchased as a part of UNE-P: Absent CLEC Transition pursuant to the timeline above in 5.1.2.1, Qwest will convert services to the equivalent month to month Resale arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Resale arrangement to the ninety-first (91st) day. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.3 Signaling Networks

5.1.3.1 Transition for Signaling Networks - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, ASRs for Unbundled Signaling Network Elements. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Signaling Network Elements to other available Qwest products or services. CLEC will submit complete, error-free ASRs to convert or disconnect any existing Unbundled Signaling Network Elements with Due Dates that are within ninety (90) Days of

the Execution Date of this Amendment. Qwest and CLEC will work together to identify those network elements.

5.1.3.2 Failure to Convert Non-Impaired Network Elements – Signaling Networks. Absent CLEC Transition of Signaling Networks within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. 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.

6.0 Unbundled Network Element Combinations

6.1 Enhanced Extended Loop (EEL)

6.1.1 EEL is available pursuant to CLEC's Agreement, the relevant loop and transport terms and conditions of this amendment and the following terms and conditions.

6.1.1.1 The "Significant Amount of Local Exchange Traffic" eligibility criteria for EEL is replaced by the Service Eligibility Criteria described in Section 2.9, including the collocation requirement of Section 2.9.1.2.5.

6.1.1.2 CLEC EEL certification process is replaced by the Certification process described in Sections 2.9.1.3.

6.1.1.3 EEL Audit provisions are replaced by the Service Eligibility Audit process described in Sections 2.9.1.5.

6.1.1.4 Service Eligibility Criteria in Section 2.9 apply to combinations of high capacity (DS1 and DS3) loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs (e.g., high capacity loops attached to special access transport). CLEC cannot utilize combinations of Unbundled Network Elements that include DS1 or DS3 Unbundled Loops and DS1 or DS3 unbundled dedicated interoffice transport (UDIT) to create high capacity EELs unless CLEC certifies to Qwest that the EELs meet the Service Eligibility Criteria in Section 2.9.

6.1.1.5 Transition for EEL – CLEC must verify that all embedded EEL meet the new Service Eligibility Criteria. Qwest account representatives will work with CLEC on a plan to convert any non-compliant EEL to other service arrangements.

6.1.1.6 Use after March 10, 2006. For any non-compliant EELs leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing in accordance with the back billing terms for non-impaired DS1 and DS3 loops and UDIT, as applicable, set forth in Sections 3.1.3.1 and 4.1.4.1.

6.1.1.7 Failure to Convert Non-Compliant EEL. Absent CLEC Transition of non-compliant EEL within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. 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.

6.2 Loop-Mux Combination (LMC)

6.2.1 Description

6.2.1.1 Loop-mux combination (LMC) is an unbundled Loop, as defined by CLEC's Agreement as amended, (referred to in this Section as an LMC Loop) Commingled with a private line (PLT), or with a special access (SA), Tariffed DS1 or DS3 multiplexed facility with no interoffice transport. The PLT/SA multiplexed facility is provided as either an Interconnection Tie Pair (ITP) or Expanded Interconnection Termination (EICT) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.1.2 LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

6.2.1.3 Qwest offers the LMC Loop as a billing conversion or as new provisioning.

6.2.2 Terms and conditions

6.2.2.1 An Extended Enhanced Loop (EEL) may be commingled with the PLT/SA multiplexed facility.

6.2.2.2 LMC Loops will be provisioned where existing facilities are available.

6.2.2.3 The PLT/SA DS1 or DS3 multiplexed facility must terminate in a Collocation.

6.2.2.4 The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.

6.2.2.5 The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.2.6 A rearrangement nonrecurring charge may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop; or on some Private Line/Special Access circuits when coupled with a Conversion as Specified Request to convert to LMC Loop.

6.2.3 Rate Elements

6.2.3.1 The LMC Loop is the Loop connection between the End User Customer Premises and the multiplexer in the serving Wire Center where CLEC is Collocated. LMC Loop is available in DS0 and DS1. Recurring and non-recurring charges apply

6.2.3.2 DS0 Mux Low Side Channelization. LMC DS0 channel cards are required for each DS0 LMC Loop connected to a 1/0 LMC multiplexer. Channel cards are available for analog loop start, ground start, reverse battery, and no signaling. See channel performance for recurring charges as set forth in Exhibit A.

6.2.3.3 Nonrecurring charges for billing conversions to LMC Loops and Rearrangement of existing LMC Loops are set forth in Exhibit A.

6.2.4 Ordering Process

6.2.4.1 Ordering processes for LMC Loop(s) are contained in this Agreement and in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:

6.2.4.1.1 Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.

6.2.4.1.2 Step 2: Obtain billing account number (BAN) through account team representative.

6.2.4.1.3 Step 3: Allow two (2) to three (3) weeks from Qwest's receipt of a completed questionnaire for accurate loading of LMC rates to the Qwest billing system.

6.2.4.1.4 Step 4: After account team notification, place LMC Loop orders via an LSR.

6.2.4.2 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization (POA) as set forth in this Agreement.

6.2.4.3 Standard service intervals for LMC Loops are in the Service Interval Guide (SIG) available at www.qwest.com/wholesale.

6.2.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA or EDI interfaces or through

facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

6.2.5 Billing

6.2.5.1 Qwest shall provide CLEC, on a monthly basis, within seven to ten (7 to 10) calendar Days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual End User Customer sub-account information.

6.2.6 Maintenance and Repair

6.2.6.1 Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.

6.3 Commingling

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Network Elements offered pursuant to Section 271.

6.3.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with Access Services.

6.3.3 When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a unique provisioning process 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. Work performed by Qwest to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

6.3.4 Qwest will not combine or Commingle services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

6.3.5 Services are available for Commingling only in the manner in which they are provided in Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

6.3.6 Entrance Facilities and mid-span meet SPOI obtained pursuant to the Local Interconnection section of the Agreement are not available for Commingling.

6.3.7 CLEC may request Qwest to commingle DS1 or DS0 analog voice grade unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Qwest's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 6.2 of this Amendment.

7.0 Ratcheting

7.1 To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

7.2 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

8.0 Routine Network Modifications

8.1 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.

8.2 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.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Qwest Corporation,
Plaintiff,
v.
Arizona Corporation Commission, et al.,
Defendants.

No. CV 06-1030-PHX-ROS
ORDER

This case involves what is now an interpretation of the Telecommunications Act of 1996 adopted by a majority of the courts that have considered it.

Section 251 of the Telecommunications Act of 1996 defines the interconnection duties of telecommunications carriers. 47 U.S.C. § 251. Under that section, every telecommunications carrier has the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Section 251(c) states that incumbent local exchange carriers (ILECs)¹, must negotiate in good faith with any competitive local exchange carrier (CLEC) the particular terms and conditions of agreement

¹ Incumbent local exchange carriers are defined in § 251(h). The parties agree that Qwest is an incumbent and Covad is a competitive local exchange carrier.

1 to fulfill the duties listed in paragraphs (1) through (5) of subsection (b).² Further, all ILECs
2 must provide for interconnection with any requesting CLEC's, here Covad's, network and
3 provide to all requesting CLECs nondiscriminatory access to network elements on an
4 unbundled basis.

5 Section 252 of the Act provides the procedures for negotiation, arbitration, and
6 approval of interconnection agreements. If the ILEC and the CLEC can reach a voluntary
7 negotiated agreement, such agreement may be entered into without regard to the
8 requirements of subsections (b) and (c) of section 251. If no voluntary agreement has been
9 reached 135 to 160 days after the CLEC's request for interconnection, the CLEC may
10 petition the appropriate state commission, in this case, the Arizona Corporation Commission
11 (ACC), for compulsory arbitration, in which the parties must participate.³ Regardless, all
12 interconnection agreements must be submitted to the ACC for approval. 47 U.S.C. §
13 252(e)(1). Under §252 (b)(4), the ACC must limit its consideration of the petition to the
14 issues set forth in the petition and the response from the ILEC. Further, the State
15 commission shall resolve each issue set forth in the petition and the response . . . by imposing
16 appropriate conditions as required to

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18 ² The five duties listed in subsection (b) are: (1) Resale - The duty not to prohibit, and
19 not to impose unreasonable or discriminatory conditions or limitations on, the resale of its
20 telecommunications services; (2) Number portability - The duty to provide, to the extent
21 technically feasible, number portability in accordance with requirements prescribed by the
22 Commission; (3) Dialing parity - The duty to provide dialing parity to competing providers
23 of telephone exchange service and telephone toll service, and the duty to permit all such
24 providers to have nondiscriminatory access to telephone numbers, operator services,
25 directory assistance, and directory listing, with no unreasonable dialing delays; (4) Access
26 to rights-of-way - The duty to afford access to the poles, ducts, conduits, and rights-of-way
27 of such carrier to competing providers of telecommunications services on rates, terms, and
28 conditions that are consistent with section 224 of this title; and (5) Reciprocal compensation -
The duty to establish reciprocal compensation arrangements for the transport and termination
of telecommunications.

27 ³ The ACC is required to conclude the resolution of any unresolved issues not later
28 than 9 months after the date on which the ILEC received the request for interconnection. 47
U.S.C. § 251.

1 (1) ensure that such resolution and conditions meet the
2 requirements of section 251 of this title, including the
3 regulations prescribed by the Commission pursuant to section
4 251 of this title;

5 (2) establish any rates for interconnection, services, or network
6 elements according to subsection (d) of this section; and

7 (3) provide a schedule for implementation of the terms and
8 conditions by the parties to the agreement.

9 Section 271 of the Telecommunications Act of 1996 states that no Bell operating
10 companies (BOCs)⁴ may provide interLATA⁵ services except as provided in that section.
11 Section 271 states that a BOC may provide interLATA services only after an application is
12 filed with and approved by the Federal Communications Commission (FCC). Section
13 271(d)(2)(B) provides that before a determination is made with respect to a BOC's
14 application, the FCC must consult with the appropriate state commission, in this case the
15 ACC, in order to "verify the compliance of the [BOC] with the requirements of subsection
16 (c) of this section. Section 271(c) lists the requirements for providing interLATA services.

17 The first requirement under section 271(c) is that all BOCs must have either:

18 (A) entered into one or more binding agreements that have
19 been approved under section 252 of this title specifying
20 the terms and conditions under which the Bell operating
21 company is providing access and interconnection to its
22 network facilities for the network facilities of one or
23 more unaffiliated competing providers of telephone
24 exchange service to residential and business subscribers;
25 or

26 (B) not entered into one or more binding agreements if no
27 CLEC has requested access and interconnection before
28 the date which is 3 months before the date the BOC
makes its application for interLATA, and a statement of
the terms and conditions that the company generally
offers to provide such access and interconnection has

25 ⁴ Bell operating companies are defined in 47 U.S.C. § 153(4). The parties agree
26 that Qwest is a BOC.

27 ⁵ InterLATA is defined in 47 U.S.C. §153(21) as "telecommunications between
28 a point located in a local access and transport area and a point located outside such area."
Effectively, this means long-distance calls.

1 been approved or permitted to take effect by the state
2 commission under section 252(f) of this title.

3 47 U.S.C. §271(c)(1).

4 The second requirement under section 271(c) is that access or interconnection
5 provided or generally offered by the BOC to other telecommunications carriers must comply
6 with a checklist.⁶

7 After consultation with the ACC, the FCC must then issue a written determination
8 within 90 days after receiving the application approving or denying the BOC's request to
9 provide interLATA services. 47 U.S.C. 271(d)(3). After approval, under section 271(d)(6),
10 if the FCC determines that a BOC has ceased to meet any of the interLATA requirements,
11 it may issue an order requiring the BOC to correct the deficiency, suspend or revoke the
12 approval, or impose penalties on the BOC.

13 Defendant Covad, as a CLEC, pursuant to sections 251 and 252 of the
14 Telecommunications Act requested interconnection with Qwest, as a ILEC. After failing to
15 reach an agreement, the parties underwent compulsory arbitration with the ACC. On
16 February 2, 2006, the ACC issued an Arbitration Order which resolved the disputed issues
17 between the parties regarding their ICA. The parties agree that the only issue of relevance
18 at this point is issue #2: "May Section 271 Elements and Unbundled Elements Under State
19 Law be Included in the Interconnection Agreement?"

20 In its order, the ACC included provisions in the ICA that defined Qwest's
21 interconnection and access obligations under Section 271. The ACC found that since section
22 252(e) requires that "[a]ny interconnection agreement adopted by negotiation or arbitration
23 shall be submitted for approval to the [ACC]," it had the authority to monitor and enforce
24 Qwest's obligations under Section 271 and impose Section 271(c)(2) interconnection

25 _____
26 ⁶ The checklist lists 14 requirements, including interconnection in accordance
27 with sections 251(c)(2) and 252(d)(1), nondiscriminatory access to network elements in
28 accordance with sections 251(c)(3) and 252(d)(1), and reciprocal compensation arrangements
in accordance with section 252(d)(2). 47 U.S.C. § 271(c)(2)(B).

1 requirements into the arbitrated ICA. The ACC also found that it had authority under
2 Arizona law to impose unbundling requirements even though they had been eliminated by
3 the FCC under Section 251 and by the D.C. Circuit in U.S. Telecom Ass'n v. FCC, 359 F.3d
4 554 (D.C. Cir. 2004).⁷ Finally, the ACC found that the total element long-run incremental
5 cost (TELRIC) pricing method⁸ for unbundled network elements (UNEs) that was in effect
6 when the FCC approved Qwest's entry into the Arizona interLATA market would remain
7 in effect.

8 Qwest argues the three rulings made by the ACC are incorrect and must be
9 overturned. First, it is argued that the Telecommunications Act does not give the ACC any
10 decision making or enforcement authority relating to Section 271 obligations. Second,
11 Qwest argues that the ACC has no authority to require unbundling under Arizona law that
12 the FCC has explicitly rejected. Finally, Qwest argues that the Arbitration Order improperly
13 applies TELRIC prices to Section 271 elements because the TELRIC pricing standard only
14 applies to UNEs that ILECs provide under Section 251(c)(3). The ACC and Covad disagree,
15 and argue that the ACC was correct in its order for the reasons discussed below.

16 **I. Standard of Review**

17
18 ⁷ An UNE is defined as a facility or equipment used in the provision of a
19 telecommunications service that must be given a separate price for equipment and supporting
20 services. Such term also includes features, functions, and capabilities that are provided by
21 means of such facility or equipment, including subscriber numbers, databases, signaling
22 systems, and information sufficient for billing and collection or used in the transmission,
23 routing, or other provision of a telecommunications service. 47 U.S.C. § 153; AT & T Corp.
v. Iowa Utilities Bd., 525 U.S. 366, 394 (U.S. 1999) (stating that FCC's definition of
unbundled matches the FCC's interpretation of the word).

24 ⁸ The FCC defines TELRIC as the forward-looking cost over the long run of the total
25 quantity of the facilities and functions that are directly attributable to, or reasonably
26 identifiable as incremental to, such element, calculated taking as a given the I LEC's
27 provision of other elements. 47 C.F.R. §§ 51.503, 51.505 (1997). TELRIC pricing is based
28 upon the cost of operating a hypothetical network built with the most efficient technology
available. AT & T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 375 (U.S.1999).

1 Qwest brings this action pursuant to 47 U.S.C. §252(e)(6), which states that “[i]n any
2 case in which a State commission makes a determination under this section, any party
3 aggrieved by such determination may bring an action in an appropriate Federal district court
4 to determine whether the agreement or statement meets the requirements of section 251 of
5 this title and this section.”⁹ The scope of review is confined to the administrative record.
6 U.S. West Communications, Inc. v. Jennings, 46 F.Supp.2d 1004, 1008-09 (D.Ariz. 1999),
7 *reversed in part on other grounds*, 304 F.3d 950 (9th Cir. 2002). With regard to the standard
8 of review, this court does not sit as a surrogate public utilities commission to second-guess
9 the decisions made by the state agency to which Congress has committed primary
10 responsibility for implementing the Act in Arizona. *Id.* Rather, this court's principal task is
11 to determine whether the ACC properly interpreted the Act and any implementing
12 regulations, which is a question of federal law that is reviewed de novo. *Id.* In all other
13 respects, review will be under the arbitrary and capricious standard. *Id.*

14 **II. The ACC's Role Under Section 271**

15
16
17 ⁹ The ACC argues that the issues that Qwest presents are not ripe for
18 adjudication. In effect, the ACC claims that until it actually orders that Qwest provide to
19 Covad a specific Section 271 network element at a specific rate on a non-interim basis,
20 Qwest's challenge to the ACC's Section 271 authority is not ripe. To determine ripeness,
21 the Court must evaluate (1) whether the issues are fit for judicial decision, and (2) whether
22 the parties will suffer hardship if the Court declines to consider the issues. City of Auburn
23 v. Qwest Corp., 260 F.3d 1160, 1171 (9th Cir. 2001). If a controversy is “essentially legal
24 in nature,” W. Oil & Gas Ass'n v. Sonoma County, 905 F.2d 1287, 1291 (9th Cir. 1990), it
25 is fit for judicial decision. This is the case when no “further factual amplification is
26 necessary.” City of Auburn v. Qwest Corp., 260 F.3d at 1172. Here, Qwest is challenging
27 the ACC's determination that it can enforce and monitor Qwest's Section 271 compliance,
28 arguing that the ACC cannot do so under federal law, which is purely legal in nature. Thus,
Qwest's claims are fit for judicial decision.

Further, Qwest will suffer hardship if the Court declines to consider the issues. Qwest
need not wait until the ACC finds that a specific element is required under Section 271, it
is enough that the ACC has found that it can enforce Section 271. *See id.* Further, the
ACC's order that TELRIC rates apply on an interim basis is not imaginary or speculative.
This is an immediate harm suffered by Qwest, and is ripe for review. *Id.*

1 Qwest argues that the Telecommunications Act does not give the ACC the authority
2 to ensure compliance with the Section 271 checklist requirements. Qwest maintains that
3 because there is an absence of specific language in the Act which authorizes the ACC to
4 perform such a function, it is forbidden as preempted by federal law. Qwest maintains that
5 the only role that the ACC is authorized to perform under Section 271 is to consult with the
6 FCC before the FCC makes a final determination regarding a BOC's interLATA application.
7 Further, Qwest argues the Act does not contemplate that the ACC could impose Section 271
8 requirements into ICAs that the ACC arbitrates under Section 252. Finally, Qwest contends
9 that the only requirements that the ACC may impose into the ICAs are those in Section 251
10 regarding interconnection. See 47 U.S.C. § 252(c) (stating that state commissions are to
11 resolve open issues by imposing conditions that meet the requirements of Section 251)

12 The ACC and Covad respond by arguing that under the Act, the ACC plays a major
13 role in implementing Section 271, specifically through the Section 252 ICA arbitration
14 process. They claim that since the FCC only has a limited 90 days to grant or deny Section
15 271 applications, which are extremely complex, the FCC has placed reliance on state
16 commissions to develop factual records which the FCC uses to make its determinations.
17 These factual records are produced via the Section 252 ICA arbitration process.
18 Accordingly, it is argued that the Act contemplates that the ACC can impose Section 271
19 requirements into arbitrated ICAs and monitor and enforce compliance with those Sections
20 as part of the ICAs.¹⁰ Further, Defendants point to Section 252(e) claiming that the
21 ACC is given review and approval authority over "any interconnection agreement."
22 (Emphasis added.) Additionally, Section 271(c)(2) is entitled "specific interconnection
23 requirements." Defendants state that it is nonsensical for Qwest to argue that Congress

24 _____
25 ¹⁰ During oral argument, Defendants cited Southwestern Bell Telephone, L.P. v.
26 Public Utility Commission of Texas, 467 F.3d 418 (5th Cir. 2006) in support of their position
27 that state commissions can enforce Section 271 of the Act. Southwestern Bell, however, did
28 not deal with the issue of whether a state commission can enforce and monitor a BOC's
Section 271 compliance under federal law. In Southwestern Bell, the Plaintiffs never
challenged the state commissions' authority under Federal law, unlike the present case.

1 intended for the states to arbitrate only Section 251 interconnection requirements while
2 Section 271 requirements are absent from ICAs.

3 In reply, Qwest argues that while there are no Ninth Circuit cases directly on point,
4 there are several opinions from other districts the upshot of which are that state commissions
5 do not have the authority to impose Section 271 requirements into arbitrated ICAs. See
6 DIECA Communications, Inc. v. Florida Public Service Commission, 447 F.Supp.2d 1281,
7 1286 (N.D.Fla. 2006) (stating under the plain terms of the statute, the state commission's
8 resolution of open issues and imposition of conditions must be based on § 251; the statute
9 directs the state commission to ensure that such resolution and conditions meet the
10 requirements of section 251, including the regulations prescribed by the FCC and that state
11 commissions have no authority to enforce Section 271); Southwestern Bell Telephone, L.P.
12 v. Missouri Public Service Com'n, 461 F.Supp.2d 1055, 1069 (E.D.Mo.2006) (stating that
13 state commissions do not have the jurisdiction and authority to order § 271 unbundling
14 obligations to be included as part of an interconnection agreement arbitration pursuant to §
15 252, where the parties have not agreed to negotiate access to these facilities pursuant to §
16 251); Indiana Bell, 359 F.3d at 497 (state agency cannot "parlay" its limited role as a
17 consultant under Section 271 into an opportunity to issue an order dictating the provision of
18 local service).¹¹

19 The Court agrees with Qwest. The Defendants' interpretation of the Act makes no
20 textual sense. They offer an interpretation of the Act that confuses the complimentary yet
21 distinct nature of the requirements of Sections 252 and 252 and those of 271.

22 By enacting the Telecommunications Act in 1996, "Congress entered what was
23 primarily a state system of regulation of local telephone service and created a comprehensive
24

25
26 ¹¹ Defendants rely on New England v. Maine Public Utilities Commission, 441 F.
27 Supp.2d 147 (D.Me. 2006), holding that state commissions do have the authority under the
28 Act to set rates for Section 271 elements. The Court declines to follow this case, finding that
the reasoning is unpersuasive in light of the analysis in the line of cases cited by Plaintiff,
holding that state commissions have no such authority.

1 scheme of telecommunications regulation administered by the Federal Communications
2 Commission.” Indiana Bell Tel. Co. v. Indiana Utility Regulatory Comm'n, 359 F.3d 493,
3 494 (7th Cir. 2004). While state utility commissions have a role in carrying out the Act, the
4 Supreme Court of the United States has held that the Act “unquestionably” took “regulation
5 of local telecommunications competition away from the States,” and required that the
6 participation of the state commissions in the new federal regime be guided by federal-agency
7 regulations. AT & T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 n. 6 (1999); Southwestern
8 Bell Telephone, L.P. v. Missouri Public Service Com'n, 461 F.Supp.2d 1055, 1058 (E.D.Mo.
9 2006); Indiana Bell, 359 F.3d at 494. Regulating local telecommunications competition
10 under the 1996 Act no longer is a lawful or permissible activity for a state. Rather, it is an
11 activity in which states and state commissions are not entitled to engage except by express
12 leave of Congress. MCI Telecommunication Corp. v. Bell Atlantic Pennsylvania, 271 F.3d
13 491, 510 (3rd Cir. 2001).

14 Congressional intent “ ‘is the ultimate touchstone’ of pre-emption analysis.” Cipollone
15 v. Liggett Group, Inc., 505 U.S. 504, 516 (1992) (quoting Malone v. White Motor Corp.,
16 435 U.S. 497, 504 (1978)). Courts find Congress' intent either explicit in a statute's language
17 or implicit in a statute's structure and purpose. Id.; Gade v. National Solid Wastes Mgmt.
18 Ass'n, 505 U.S. 88, 98 (1992). Where, like in the Act, Congress has not explicitly
19 commanded preemption, the Supreme Court has recognized two types of implied preemption.
20 National Solid Wastes Mgmt. Ass'n, 505 U.S. at 98. First, there is field preemption, which
21 occurs when the federal law occupies a legislative field so thoroughly “as to make reasonable
22 the inference that Congress left no room for the States to supplement it.” Cipollone, 505 U.S.
23 at 516 (quoting Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153 (1982));
24 National Solid Wastes Mgmt. Ass'n, 505 U.S. at 98. Second, there is conflict preemption,
25 where compliance with both the state and federal law is physically impossible, or where the
26 state regulation “stands as an obstacle to the accomplishment and execution of the full
27 purposes and objectives of Congress.” National Solid Wastes Mgmt. Ass'n, 505 U.S. at 98
28 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

1 Due to conflict preemption, the arbitration orders of the ACC conflict with the Act.
2 “For when the question is whether a Federal act overrides a state law, the entire scheme of
3 the statute must, of course, be considered. . . . If the purpose of the act cannot otherwise be
4 accomplished-if its operation within its chosen field else must be frustrated and its provisions
5 be refused their natural effect-the state law must yield to the regulation of Congress within
6 the sphere of its delegated power.” Hines v. Davidowitz, 312 U.S. 52, 67 (1941) (quoting
7 Savage v. Jones, 225 U.S. 501, 533 (1912)). The scope of the ACC’s role in regulating local
8 competition and the ACC’s participation in 271 Application proceedings is measured by
9 federal law and must follow the purposes and objectives of Congress. It is clear from the Act
10 that Section 252 provides the ACC with the authority to enforce ICAs and that Section 271
11 contemplates merely an advisory role for the ACC, where it makes recommendations to the
12 FCC regarding Qwest’s compliance. Indiana Bell, 2003 WL 1903363 at 10.

13 According to the plain terms of the statute, the ACC cannot impose Section 271
14 requirements into an arbitrated ICA under Section 252. Section 252 clearly states that state
15 commissions are to resolve open issues by imposing conditions that meet the requirements
16 of Section 251. In Section 252(c) (“Standards for arbitration”), there is no mention of
17 Section 271, and again under Section 271, the ACC’s role is defined as only an advisor to
18 the FCC. If a BOC is not complying with the checklist requirements of Section 271, it is not
19 the ACC’s role to impose such requirements in an ICA so that they may thereafter be
20 monitored by the state. Rather, Section 271(d)(6)(B) provides the sole means of enforcement
21 of Section 271(c)’s requirements - a complaint shall be filed with the FCC, which it will rule
22 on within 90 days without uninvited involvement from the state.

23 **III. The ACC’s Authority Regarding Unbundling**

24 Under Section 251(c), ILECs are required to provide to all requesting CLECs
25 “nondiscriminatory access to network elements on an unbundled basis.” 47 U.S.C. §
26 251(c)(3). ILECs, however, do not have to provide all network elements on an unbundled
27 basis. Rather, under Section 251(d)(2), only where access to such network elements as are
28 proprietary in nature and the failure to provide access to such network elements would impair

1 the ability of the CLEC to provide the services that it seeks to offer is it necessary for the
2 ILEC to provide those elements on a unbundled basis.

3 Qwest argues that Congress explicitly assigned to the FCC the task of “determining
4 what network elements should be made available to CLECs [on a unbundled basis].” 47
5 U.S.C. §251(d)(2). Further, the D.C. Circuit in U.S. Telecom Ass'n v. FCC, 359 F.3d 554,
6 568 (D.C. Cir. 2004) confirmed that task must be preformed by the FCC and it cannot be
7 delegated to state commissions.

8 However, Section 251(d)(3) explains

9 In prescribing and enforcing regulations to implement the
10 requirements of this section, the [FCC] shall not preclude the
11 enforcement of any regulation, order, or policy of a State
12 commission that--

13 (A) establishes access and interconnection obligations of local
14 exchange carriers;

15 (B) is consistent with the requirements of this section; and

16 (c) does not substantially prevent implementation of the
17 requirements of this section and the purposes of this part.

18 Thus, a state commission may impose their own unbundling requirements, but only where
19 such requirements are consistent with the requirements of Section 251 and do not
20 substantially prevent implementation of the requirements of Section 251 and the purposes
21 of the Act. See In the Matter of Review of the Section 251 Unbundling Obligations of
22 Incumbent Local Exchange Carriers, hereinafter TRO, 18 F.C.C.R. 16978, 17100 (August
23 21, 2003).

24 Qwest states that the ACC adopted Covad’s proposed language regarding unbundling,
25 with the language “Qwest will continue providing access to certain network elements as
26 required by Section 271 or state law, regardless of whether access to such UNEs is required
27 by Section 251 of the Act.” Qwest argues, however, that the FCC in the TRO stated that it
28 “decline[d] to use section 271 . . . to broaden the unbundling obligations of section 251.” 18
F.C.C.R. 16978, 17387 Further, the FCC stated:

Our recognition that pricing pursuant to section 252 does not
apply to network elements that are not required to be unbundled

1 is consistent with the Commission's general approach in the
2 UNE Remand Order, and has been applied - apparently with no
3 adverse effect - with respect to access to directory assistance and
4 operator services. The Commission removed directory
5 assistance and operator services from the list of UNEs in the
6 UNE Remand Order. These network elements, like loops,
7 transport, switching and signaling databases, are separately
8 listed in the competitive checklist. Accordingly, as explained in
9 subsequent section 271 Orders, access to directory assistance
10 and operator services remains a condition of long distance entry
11 - but the standard applicable to rates and conditions is *not*
12 *derived* from sections 251 and 252.

13 Id. at 17388 (Emphasis added). Qwest argues that those elements without unbundling
14 requirements specifically de-listed from Section 251 and placed into the checklist of Section
15 271 cannot be required to be unbundled again by state commissions, as under Section
16 251(d)(3), which would substantially prevent implementation of the purposes of the Act.

17 The Court agrees. The mine run of elements that were removed from section 251 and
18 placed into Section 271 without unbundling requirements, as described in the TRO, are
19 intended by Congress and the FCC to be outside the scope of unbundling. State
20 commissions, including the ACC, cannot impose broad sweeping unbundling requirements
21 in ICAs that would require all Section 271 elements to be unbundled.¹² See Verizon
22 Telephone Companies v. F.C.C., 374 F.3d 1229, 1235 (C.A.D.C. 2004) (stating that the TRO
23 resolved the issue of whether the removal of the section 251 unbundling requirement for a
24 particular element by itself mandates forbearance from the corresponding checklist
25 requirement under section 271); TRO at 17384 (stating BOCs have an independent
26 obligation, under section 271 (c)(2)(B), to provide access to certain network elements that
27 are no longer subject to unbundling under section 251). Such an outcome would be contrary
28 to the purposes of the Act, namely to promote competition within markets and usurp the
authority of the FCC.

12 At oral argument, the ACC took issue with this ruling by the Court, arguing
that there are unbundling requirements in Section 271. The Court realizes that certain
Section 271 network elements must be unbundled, separate from the unbundling
requirements of Section 251(d)(3). Nothing in the Court's ruling is intended to hold or is to
be interpreted otherwise.

1 **IV. TELRIC Prices**

2 Qwest argues that the Arbitration Order improperly applies TELRIC prices to Section
3 271 elements because the TELRIC pricing standard only apply to UNEs that ILECs provide
4 under Section 251(c)(3). Because the Court holds that the ACC does not have the authority
5 or jurisdiction to impose Section 271 requirements into ICAs, it follows that the ACC does
6 not have to authority to set the prices for those Section 271 elements. Further, even if the
7 ACC did have some sort of authority to set prices for Section 271 elements, it would be
8 inappropriate to use TELRIC pricing for those elements in light of FCC rulings. See TRO,
9 18 F.C.C.R. at 17386-87; Verizon New England, Inc. v. New Hampshire Public Utilities
10 Com'n, 2006 WL 2433249 at 8 (D.N.H. 2006) (stating that FCC has determined that TELRIC
11 pricing is not appropriate for § 271 UNEs and prices should be based on the just, reasonable,
12 and nondiscriminatory rate standard as codified in Sections 201 and 202 of the Act).

13 **V. Conclusion**

14 Although the briefing was not presented as such because it is undisputed that there are
15 no issues of fact, the Court will treat the briefs as cross-motions for summary judgment, deny
16 Defendants' motion and grant Plaintiff's motion.

17 Accordingly,

18 **IT IS ORDERED THAT** Qwest's requests for declaratory and injunctive relief are
19 granted and judgment is granted in Plaintiff's favor. Plaintiff shall file a proposed form of
20 judgment for declaratory and injunctive relief within 10 days from the date of this order.

21 DATED this 17th day of July, 2007.

22
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24
25
26
27
28


Roslyn O. Silver
United States District Judge

APPENDIX B



Larry Christensen
Director – Interconnection Agreements
1801 California Street, Room 2430
Denver, CO 80202
303-896-4686
larry.christensen@qwest.com

via email and overnight mail

March 1, 2006

Arizona Dial Tone
Tom Bade
7170 W Oakland Street
Chandler, AZ 85226
480-705-9461
tombade@arizonadialtone.com

Dear Mr. Bade:

RE: Initiation of Dispute Resolution on Triennial Review Remand Order Amendment

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 modified the rules governing Qwest's obligation to make certain UNEs available to CLECs under Section 251(c)(3) of the Telecommunications Act of 1996.

Qwest has attempted to negotiate a TRRO Amendment with your company without success. As we have yet to receive any proposal of the amendment from Arizona Dial Tone, Qwest feels it must take this step. Pursuant to the provisions of your Interconnection Agreement ("Agreement"), Qwest is initiating formal Dispute Resolution. Therefore, Steve Hansen, Vice President – Carrier Relations will be the designated Qwest representative with authority to make commitments to review, meet, and negotiate to resolve the dispute. Please provide the name and contact information of your designated representative to me so I can set up a call to discuss this dispute.

Sincerely,

Larry Christensen

APPENDIX C

MORRILL & ARONSON P.L.C.
ATTORNEYS AT LAW

K. LAYNE MORRILL
MARTIN A. ARONSON
JOHN T. MOSHIER
WILLIAM D. CLEAVELAND
SCOTT D. LARMORE
STEPHANIE L. SAMUELSON

Received T. Berg
MAR 06 REC'D
Action _____

ONE EAST CAMELBACK ROAD, SUITE 340
PHOENIX, ARIZONA 85012-1648
(602) 263-8993
FAX (602) 285-9544

WRITER'S DIRECT LINE
(602) 650-4124
WRITER'S E-MAIL

wcleaveland@maazlaw.com
FILE NUMBER

36063-0100

March 3, 2006

Mr. Larry Christensen
Director - Interconnection Agreements
Qwest
1801 California Street
Room 2430
Denver, CO 80202

**RE: Arizona Dialtone/Qwest
Proposed Triennial Review Remand Order Amendment**

Dear Mr. Christensen

We represent Arizona Dialtone, Inc. I am in receipt of your letter, dated March 1, 2006, to Tom Bade at Arizona Dialtone regarding modifications Qwest recently proposed relating to the Qwest/Arizona Dialtone Interconnection Agreement and the FCC's Triennial Review Remand Order ("TRRO"). In your letter to Mr. Bade, you state that you are "initiating formal Dispute Resolution" procedures set out in the current Arizona Dialtone/Qwest Interconnection Agreement. Those dispute resolution procedures have no application to the ongoing discussions regarding Qwest's draft of proposed new interconnection agreement provisions that you attribute to the TRRO. While discussions about Qwest's new proposed interconnection agreement terms among upper level business executives within Qwest and Arizona Dialtone may be appropriate considering the importance of these issues involving sweeping changes from the current interconnection terms, we must emphasize that in no way are any such discussions to be construed as any kind of "consent" or "acquiescence" by Arizona Dialtone in the application of the Dispute Resolution procedures found in the current Qwest/Arizona Dialtone Interconnection Agreement. To the contrary, Arizona Dialtone explicitly objects to the application of any of the Dispute Resolution provisions in the existing Interconnection Agreement to any discussions of the so-called TRRO Amendment that Qwest now proposes.

Qwest's proposed TRRO Amendment is no part of the current Qwest/Arizona Dialtone Interconnection Agreement. To the contrary, the TRRO Amendment proposed by Qwest includes sweeping changes that if adopted would create a significantly different interconnection agreement, and the proposed amendments themselves constitute an interconnection agreement.

March 3, 2006

Page 2

Interconnection agreements, like the draft TRRO Amendment are subject to different dispute resolution processes including but not limited to arbitration by the State Commission under certain circumstances.

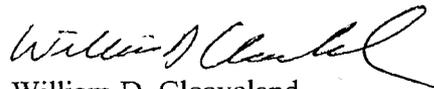
Additionally, the proposed TRRO Amendment that Qwest has drafted seems to imply that somehow the modifications contained in it are mandated by the TRRO currently on review in the Washington DC courts. While the TRRO is quite a lengthy document, I have been searching it for any mention of such a mandate to implement the changes in the Amendment, but I have been unable to find one. If you would provide me with an explanation and citation to the appropriate provisions that you interpret as mandating these changes, I will certainly review them.

In any event, the TRRO Amendment that Qwest has drafted is significantly contrary to Arizona Dialtone's business plan, and therefore Arizona Dialtone cannot agree to such an amendment in its present form. Arizona Dialtone has been searching for alternatives that more closely fit its business model and yet also address what apparently are Qwest's concerns. They have had numerous conversations with Qwest personnel over the past year, but as of yet, they have been unable to find a promising "middle ground alternative" so to speak. If you know of any viable alternatives Arizona Dialtone will certainly consider them as well.

Quite frankly, Arizona Dialtone views the issues in Qwest's proposed TRRO Amendment more along the lines of the recent Arizona Corporation Commission Decision in the Qwest/Covad Interconnection Arbitration, ACC Docket No. T-03632A-04-0425, in that the changes are not mandated in the TRRO, and instead, the continued offering of une switching is mandatory under other applicable provisions of the Telecommunications Act of 1996 and other applicable laws and regulations. We understand that Qwest has sought reconsideration of that Qwest/Covad ACC Decision, and that Qwest is taking other measures to challenge that Decision or have it modified. We believe that under the circumstances, it would be appropriate to let the Qwest/Covad regulatory and litigation process play out, and then the two companies can revisit these issues after we both know if the Qwest/Covad Interconnection Agreement is available for opt-in, or know whether other issues may be further resolved in that process.

Very truly yours,

MORRILL & ARONSON, P.L.C.



William D. Cleaveland

WDC/lk

cc: Norman G. Curtright, Esq.
Timothy Berg, Esq. ✓
Mr. Thomas Bade
Martin A. Aronson, Esq.

APPENDIX D

**Triennial Review Order and Triennial Review Remand Order
("TRO/TRRO") Amendment
to the Interconnection Agreement between
Qwest Corporation and
COMPANY
for the State of
STATE**

This is an Amendment ("Amendment") to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and COMPANY ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

RECITALS.

WHEREAS, CLEC and Qwest 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 STATE which was approved by the STATE Commission ("Commission"); 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") materially modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs; and

WHEREAS, CLEC and Qwest desire to have an understanding of billing disputes, ICA interpretation, clarification and effective dates; 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:

TRO and TRRO Amendment/COMPANY/STATE
Amendment to CDS-000000-0000

1

Underlined language proposed by CLEC and opposed by Qwest
Bold italic language proposed by Qwest and opposed by CLEC

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.

(A) Qwest agrees not to bill CLEC for any Operator Services or 1+ toll under this agreement. (B) Qwest agrees to pay CLEC a commission equal to the commission paid to its highest paid aggregator for Operator Services billed to CLEC's end users. (C) Qwest agrees not to bill CLEC for any charges on behalf of any other IXC or other company under any billing agreement Qwest may or may not have with a third party. (D) Qwest agrees to file, within 60 days, its discount for finished Public Access Lines in Colorado to reflect its avoided cost in order to comply with FCC regulations and to refund CLEC for past 2 years within 30 days. (E) Qwest agrees to properly identify DUF records with the proper CIC codes for CLEC DUF RECORDS to bill locally ported 800 calls to IXC and prepaid companies PRI lines and agrees that such traffic is not locally terminated and is not "bill and keep" traffic. (F) Qwest agrees that Qwest will no longer bill CLEC for dial up ISP traffic from CLEC end users and that it is "Bill and Keep" traffic. (G) Qwest will not bill CLEC for end user line charges on resold finished Qwest lines. Qwest agrees to pay \$25.00 per person hour for correcting Qwest billing errors. (H) The parties agree that Qwest PAL lines will be priced less than the rate for residential lines in the commercial UNE-P replacement agreement. (I) Qwest agrees to remove Pair Gains from CLECs PAL lines on request and at no charge (in order to not discriminate between PAL services for POTS vs. coin lines, which are not put on Pair Gains).

Qwest and CLEC agree to extend the existing ICA for three years from the date of approval of this amendment after which ICA 5.2 will govern.

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 execution date.

V. Effective Date.

This Amendment shall be deemed effective upon approval by the Commission.

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.

COMPANY

Qwest Corporation

Signature

Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director- Interconnection Agreements

Title

Date

Date

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1.0 Definitions

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

"Commingle" means the act of Commingling.

"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.

"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.

"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).

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

"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 this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

2.0 Unbundled Network Elements (UNE) General

2.1 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. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution 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) DS1 Loops subject to the requirements of Section 3.0 following
- b) 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
- 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) DS1 Transport (UDIT)
- f) DS3 Transport (UDIT)
- g) Dark Fiber Transport (UDF-IOF)
- 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 existing Mass Market Switching Services pursuant to Transition rate increases identified in Section 5.1. Such back billing shall not be subject to billing measurements and penalties. Qwest and CLEC agree that Qwest has no approved back-billing tariff and Qwest has not been approved by any state PUC to retroactively increase its rates or to back charge CLEC any amounts for Mass Market Switching or other Services.*

2.4 UNEs shall be obtained solely for the provision of Telecommunications Services and only to the extent allowed by law, ***which do not include telecommunications utilized by CLEC for its own administrative use.*** Qwest and CLEC are aware of no law presently restricting the UNEs that Qwest may provide.

2.5 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

2.6 If CLEC accesses and uses a UNE consistently with Sections 2.4 and 2.5, CLEC may provide any Telecommunications Services over the same UNE.

2.7 CLEC represents that as of the effective date of this Amendment, CLEC has not purchased any DS1, DS3, dark fiber, or EEL (IOF) facilities from Qwest. The parties agree that DS1, DS3, dark fiber, EELs (IOF) Stand Alone Signaling, E-UDIT (Extended Unbundled Dedicated Interoffice Transport) M-UDIT (Meet Point Unbundled Dedicated Interoffice Transport) will no longer be available under the Agreement.

3.0 Unbundled Loop

3.1 ONLY DSO Unbundled Loops are available pursuant to CLEC's Agreement.

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3.1.6 FTTH and FTTC Loops. For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). 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 FTTH/FTTC New Builds. Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation unless required by state regulations or any other applicable law 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 FTTH/FTTC Overbuilds. Qwest shall have no obligation to provide access to an FTTH/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 FTTH/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 FTTH/FTTC loop to such Premises, and (ii) upon request provide 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 on an Individual Case Basis. 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 FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); (ii) provide by e-mail and certified mail notice of such planned retirement to CLEC including identification of the specific loop(s) and subloop(s) that are applicable to CLEC and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any

applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

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, but not DSL, 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.

3.1.7.2 **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.

[The following Section 3.1.8 is applicable in Minnesota only.]

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. Pursuant to Minnesota Exchange and Network Services Tariff – Section 2.1.1, Minnesota is a Minimum Point of Presence state, and therefore Qwest owns intra-building cable in limited Multi-Tenant Environments (e.g., airports, marinas, and trailer parks). The intra-building cable provisions of this Section 3.1.8 apply only in those limited Multi-Tenant Environments in which Qwest owns the intra-building cable.

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 **Retention of Embedded Services – Feeder Subloops.** All embedded CLEC services over Feeder Subloops in place prior to the signature on this Amendment will be "grandfathered" subject to re-classification upon any modification to or disconnection of the service. Recurring charge rates effective

prior to the signature on this amendment will remain in place. No new requests will be accepted for Feeder Subloop subsequent to signature on this Amendment.

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.

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5.0 Unbundled Local Switching

5.1 Transition of Unbundled Local circuit Switching, including UNE-P Services

5.1.1 DS0 Capacity (Mass Market), including UNE-P

5.1.1.1 Unless required to do so by any applicable state or federal laws or regulations, Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers ("CLEC") for the purpose of serving end-user customers using DS0 capacity loops.

5.1.1.1.1 ***CLEC represents that as of the effective date of this Amendment, CLEC has not purchased any: 1) Mass market or enterprise stand-alone switching services; 2) Enterprise switching services as part of UNE-P; 3) Mass market switching services as a part of UNE-P other than UNE-P PAL and UNE-P POTS; or Line Splitting services from Qwest. The parties agree that these services will no longer be available under the Agreement.***

5.1.1.2 CLEC shall disconnect or migrate its embedded base of end-user customers off of the unbundled local circuit Switching element to an alternative arrangement within ***[ninety (90) calendar days of the execution date of this Amendment.]*** [twelve (12) months of the effective date of this Amendment.]

5.1.1.3 Notwithstanding Section 5.1.1.2, for a twelve (12) month period from the effective date of this Agreement Qwest shall provide access to local circuit Switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit Switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 or (B) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Agreement, for that combination of network elements. Pursuant to the Triennial Review Remand

Order, CLEC may not obtain new local Switching as an unbundled network element. Qwest and CLEC will work together to identify those impacted accounts and to execute a commercial agreement for Mass Market Switching.

5.1.1.4 Use between March 11, 2005 and March 10, 2006 - The price for the unbundled local circuit switching in combination with unbundled DS0 capacity loops and shared transport obtained under this Agreement, effective March 11, 2005 through March 10, 2006 shall be the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar. Effective upon execution of this Amendment, CLEC will be billed the one dollar increase for all lines that were in service during this period. Qwest shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit Switching is required to be made available pursuant to Section 5.1.1.3. These elements are defined as follows:

5.1.1.4.1 Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

5.1.1.4.2 Call-related databases.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems

5.1.1.4.3 Shared transport.

5.1.1.5 Use after March 10, 2006 - For any and all UNE-P services leased by CLEC from Qwest after March 10, 2006, effective upon execution of this Amendment, CLEC is subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month local exchange resale service alternatives identified in Section 5.1.1.6.1.

5.1.1.6 Failure to Convert Non-impaired Networks Elements – Mass Market Switching, including UNE-P

5.1.1.6.1 UNE-P POTS & UNE-P PAL: Absent CLEC transition within ninety (90) Days after the execution date of this Amendment, Qwest will convert services to the equivalent month to month Qwest

local exchange measured rate resale services e.g. class of service (COS) LMB. In the event measured services are unavailable, services will be converted to the equivalent month-to-month Qwest local exchange flat rate resale services, e.g. COS 1FB. All UNE-P POTS services will be converted to a month-to-month Business COS. All UNE-P PAL services will be converted to a month-to-month PAL COS. CLEC is also responsible for all manual non-recurring charges associated with such conversions.

5.1.1.6.2 UNE-P POTS & UNE-P Centrex 21: Absent CLEC transition within 12 months after the effective date of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Business or Residential Flat Rate Resale services at no charge to CLEC, e.g. Class of Service (COS) LMB. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Flat Rate Resale services, e.g. COS 1FB

5.1.1.6.3 All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent CLEC transition within 12 months after the effective date of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Measured Resale services at no charge to CLEC. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Measured Resale services. Qwest agrees to promptly file in compliance with applicable FCC rules and regulations a resale PAL percentage discount rate in Colorado including a wholesale percentage discount set at 15.70 percent for recurring and non-recurring charges and use its best efforts to obtain regulatory approval of that rate as an FCC compliance filing.

5.1.1.6.4 Any UNE-P services with Line Splitting: Absent CLEC transition within 12 months after the execution of this Amendment, Qwest will convert services as described above. Line Splitting will be removed from any UNE-P services with Line Splitting.

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6.3 Commingling

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Network Elements offered pursuant to Section 271.

6.3.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with Access Services.

6.3.3 When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a unique provisioning process 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. Work performed by Qwest to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

6.3.4 Qwest will not combine or Commingle services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

6.3.5 Services are available for Commingling only in the manner in which they are provided in Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

6.3.6 Entrance Facilities and mid-span meet SPOI obtained pursuant to the Local Interconnection section of the Agreement are not available for Commingling.

6.3.7 CLEC may request Qwest to commingle DS1 or DS0 analog voice grade unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Qwest's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 6.2 of this Amendment.

7.0 Ratcheting

7.1 To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

7.2 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

8.0 Routine Network Modifications

8.1 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.

8.2 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.