

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

ORIGINAL

22

DATE: FEBRUARY 22, 2008

DOCKET NOS: T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091 and T-01051B-06-0091

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY; ESCHELON TELECOM OF ARIZONA, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; MOUNTAIN TELECOMMUNICATIONS, INC.; XO COMMUNICATIONS SERVICES, INC.
and QWEST CORPORATION
(UNIMPAIRED WIRE CENTERS SETTLEMENT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 3, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 11, 2008 and MARCH 12, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 DIECA COMMUNICATIONS DBA COVAD
10 COMMUNICATIONS COMPANY, ESCHELON
11 TELECOM OF ARIZONA, INC., MCLEODUSA
12 TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC.,
XO COMMUNICATIONS SERVICES, INC. AND
QWEST CORPORATION'S REQUEST FOR
COMMISSION PROCESS TO ADDRESS KEY
UNE ISSUES ARISING FROM TRIENNIAL
REVIEW REMAND ORDER, INCLUDING
APPROVAL OF QWEST WIRE CENTER LISTS.

DOCKET NO. T-03632A-06-0091
T-03267A-06-0091
T-04302A-06-0091
T-03406A-06-0091
T-03432A-06-0091
T-01051B-06-0091

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING:

October 30, 2007

14 PLACE OF HEARING:

Phoenix, Arizona

15 ADMINSTRATIVE LAW JUDGE:

Jane L. Rodda

16 APPEARANCES:

Michael W. Patten, ROSHKA, DEWULF
& PATTEN, PLC, on behalf of the Joint
CLECs;

18 Norman G. Curtright, QWEST
CORPORATION; and

19 Maureen Scott, Senior Staff Attorney,
20 Legal Division on behalf of the Utilities
21 Division.

22 **BY THE COMMISSION:**

23 **DISCUSSION**

24 **Procedural History**

25 On February 15, 2006, DIECA Communications, Inc., doing business as Covad
26 Communications Company and Mountain Telecommunications, Inc. ("Covad"); Eschelon Telecom of
27 Arizona, Inc. ("Eschelon"); McLeodUSA Telecommunications Services, Inc. ("McLeod"); and XO
28 Communications Services, Inc. ("XO") (collectively "Joint CLECs") filed a request with the Arizona

1 Corporation Commission (“Commission”) to address key unbundled network element (“UNE”) issues
2 arising from the Federal Communications Commission’s (“FCC”) Triennial Review Remand Order
3 (“TRRO”)¹, including approval of Qwest Wire Center Lists. The Joint CLECs asked the Commission
4 to approve an initial list of non-impaired wire centers, and to implement a process for updating and
5 approving the lists.

6 On February 28, 2006, Qwest filed its Response to the Joint CLECs’ request, in which Qwest
7 concurred that the Commission should conduct an adjudicatory proceeding to determine an initial list
8 of non-impaired wire centers. Qwest also requested the Commission to confirm its right to assess a
9 nonrecurring charge for conversions of former UNEs to other alternative Qwest services or facilities.
10 Qwest requested that the proceeding bind Qwest and all CLECs in Arizona.

11 On February 28, 2006, Qwest filed a Motion for an Order Compelling the Production of
12 CLEC-Specific wire center data.

13 On March 6, 2006, the Joint CLECs filed a Request for Procedural Conference to discuss
14 issues raised by Qwest’s Motion and other scheduling and procedural issues.

15 By Procedural Order dated April 13, 2006, the Commission scheduled a Procedural
16 Conference on May 1, 2006.

17 On May 30, 2006, pursuant to the directive of the Administrative Law Judge during the May 1,
18 2006 Procedural Conference, Qwest, Joint CLECs and Commission Utilities Division Staff (“Staff”)
19 made a Joint Filing Regarding Procedural Matters, in which they proposed a procedural schedule,
20 agreed to a form of protective order, and agreed to a Staff-compiled service list intended to provide
21 notice of the proceeding to CLECs that might be affected by the issues raised in the docket.

22 By Procedural Order dated June 2, 2006, the Commission set the matter for hearing
23 commencing October 18, 2006, and established a schedule for the Joint CLECs, Qwest and Staff to
24 file testimony. The June 2, 2006 Procedural Order setting the matter for hearing and approving a
25 Protective Order, was mailed to the list of Arizona CLECs identified by Staff as being potentially
26 affected by the proceeding.

27 ¹ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of*
28 *Incumbent Local Exchange Carriers, Order on Remand, 20 FCC Rcd 2533 (2005) (“Triennial Review Remand Order” or*
“TRRO”)

1 On June 23, 2006, Qwest filed the Direct Testimony of David Teitzel, Rachel Torrence, Renee
2 Albersheim, and Teressa Million.

3 On July 26, 2006, Joint CLECs filed a Motion to Compel Qwest's production of 2004 ARMIS
4 data.

5 On July 27, 2006, Joint CLECs filed a Supplement To Motion to Compel.

6 On July 28, 2006, the Joint CLECs filed the Testimony of Douglas Denney.

7 On August 2, 2006, Qwest filed a Request for Procedural Modification, requesting that the
8 Commission require parties to affirmatively request to remain on the service list because of the burden
9 and wastefulness of providing copies of all pleadings, especially testimony, to the 110 parties on the
10 service list. Qwest also requested the hearing date be rescheduled due to witness availability.

11 On August 3, 2006, Joint CLECs filed a Second Supplement to Motion to Compel.

12 On August 7, 2006, Qwest filed a Response to the Motion to Compel.

13 By Procedural Order dated August 11, 2006, the Commission reset the hearing until October
14 26, 2006, granted the Joint CLECs' Motion to Compel, and directed all parties on the service list to
15 file by August 31, 2006, an affirmative statement indicating their interest in remaining on the service
16 list.

17 By Procedural Order dated September 20, 2006, the Commission granted Staff's request for
18 extension of time to file testimony, and based on responses to the August 11, 2006 Procedural Order,
19 established a current service list to be used on a going-forward basis.

20 On September 25, 2006, Staff filed the Responsive Testimony of Armando Fimbres.

21 On October 6, 2006, Qwest filed the Rebuttal Testimony of Ms. Albersheim, Mr. Teitzel, Ms.
22 Torrence and Ms. Million, and Joint CLECs filed the Rebuttal Testimony of Mr. Denney.

23 On October 20, 2006, Staff filed the Rebuttal Testimony of Mr. Fimbres.

24 On October 20, 2006, the Joint CLECs and Qwest filed a Motion to Suspend the Hearing
25 Schedule to accommodate settlement discussions.

26 By Procedural Orders dated October 23, 2006, and November 13, 2006, the schedule was
27 suspended indefinitely to accommodate the parties' request, and a status conference was scheduled for
28 November 30, 2006.

1 On November 30, 2006, December 14, 2006, and January 18, 2007, the Commission convened
2 a series of Procedural Conferences for the purpose of ascertaining the status of the parties' discussions.
3 At the conclusion of the January 18, 2007, Procedural Conference, the parties were directed to file a
4 status report by February 9, 2007.

5 On February 9, 2007, the Joint CLECs, Qwest and Staff filed a Joint Status Report and Request
6 for Procedural Conference.

7 By Procedural Order dated February 15, 2007, a Procedural Conference was set for February
8 26, 2007. At that time the parties reported they were still in negotiations, but they also discussed
9 procedures for a proceeding with a briefing schedule as they did not believe that there were issues of
10 fact to resolve. They were directed to file procedural recommendations by March 5, 2007.

11 On March 8, 2007 the parties filed a Joint Status Report and Proposed Procedural Schedule
12 that requested a hearing commence on May 23, 2007. However, no hearing was scheduled at that
13 time.

14 On May 1, 2007, the parties filed a Joint Motion to Set Hearing Date requesting that a hearing
15 be scheduled for June 1, 2007. A Procedural Order dated May 7, 2007, set a procedural conference for
16 May 30, 2007 and a hearing for June 1, 2007.

17 During the May 30, 2007 Procedural Conference, Qwest and the Joint CLECs indicated that
18 settlement negotiations were ongoing and a stipulation regarding the pending issues may be imminent.
19 On May 31, 2007, in a procedural conference, Qwest and Joint CLECs indicated that they had reached
20 a settlement for all states in which Qwest operates and consequently requested the June 1, 2007,
21 hearing be continued indefinitely pending filing of the settlement agreement. By Procedural Order
22 dated May 31, 2007, the June 1, 2007 hearing was vacated and the parties were ordered to file their
23 settlement agreement by June 14, 2007.

24 On June 14, 2007, the Joint CLECs and Qwest separately filed a copy of an unexecuted
25 Settlement Agreement.

26 On June 22, 2007, the Joint CLECs and Qwest filed a Joint Motion for Approval of Settlement
27 Agreement. A copy of the proposed Settlement Agreement is attached hereto as Exhibit A, and
28 incorporated herein by reference.

1 On June 22, 2007, Qwest separately filed in the docket an Application of Approval of 2007
2 Additions to Non-Impaired Wire Center List ("2007 Additions Application") and Motion for
3 Expedited Issuance of Protective Order.

4 On June 27, 2007, the Joint CLECs and Qwest filed Notice of Joint Filing and Amended
5 Request for Order Approving Settlement Agreement.

6 On June 29, 2007, Qwest filed a Submission of Publicly Available Data in Support of Its
7 Application for Approval of 2007 Additions to Non-Impaired Wire Center Designations.

8 On June 29, 2007, Qwest filed a Request for Procedural Conference to address whether its
9 2007 Additions Application was properly docketed in this docket absent an order of consolidation, and
10 the issuance of a protective order regarding confidential data Qwest will submit in support of the 2007
11 Additions Application.

12 By Procedural Order dated July 11, 2007, a Procedural Conference to discuss pending
13 procedural issues was scheduled for July 19, 2007. During the July 19, 2007, Procedural Conference,
14 the parties agreed that a hearing on the proposed Settlement Agreement would be held, that Staff
15 would file a Staff Report or testimony by August 24, 2007, and Qwest and Joint CLECs would file
16 responsive testimony by September 7, 2007; that the 2007 Additions Application would be considered
17 in this same docket as "Phase 2"; and that the parties would later submit a proposed protective order to
18 be used in connection with the 2007 Additions Application.

19 On July 20, 2007, National Brands, Inc. dba Sharenet Communications Company ("Sharenet")
20 filed an Application for Leave to Intervene.

21 On July 30, 2007, Eschelon filed Comments regarding Qwest's 2007 Additions Application.

22 On August 2, 2007, Qwest filed a request for Order Setting Hearing Date, indicating the parties
23 have jointly agreed that the hearing should commence on October 3, 2007.

24 By Procedural Order dated August 8, 2007, the Commission set a hearing to commence on
25 October 3, 2007 and granted intervention to Sharenet.

26 On August 17, 2007, Qwest filed a Response to the July 30, 2007, Comments of Eschelon
27 concerning the 2007 Additions Application.

28 On August 24, 2007, Staff filed a Motion for an Extension of Time to File Staff's Settlement

1 Agreement Testimony. Staff requested a two-week extension of the filing date for its testimony.

2 On August 31, 2007, Qwest filed a Response to Staff's Motion. Qwest sought a revision of the
3 entire procedural schedule if Staff's Motion were granted.

4 On September 6, 2007, a teleconference was conducted with counsel for Qwest, the Joint
5 CLECs and Staff to discuss procedural issues related to Staff's Motion. By Procedural Order dated
6 September 7, 2007, the hearing was set to commence October 29, 2007, with Staff's testimony to be
7 filed by September 7, 2007; and responsive testimony filed by September 28, 2007.

8 On September 7, 2007, Staff filed the Settlement Agreement Testimony of Mr. Fimbres.

9 On September 28, 2007, Qwest file the Responsive Testimony of Ms. Albersheim and Ms.
10 Torrence, and the Joint CLECs filed the Response Testimony of Mr. Denney.

11 On October 19, 2007, Qwest requested a pre-hearing conference to discuss stipulating into the
12 record the testimony that was filed prior to the Settlement Agreement.

13 On October 23, 2007, Staff filed a request to reschedule the hearing on account of oral
14 argument having been scheduled in Federal District Court in another case. The same date Qwest filed
15 a Response to Staff's request, suggesting that the hearing could commence on October 30, 2007.

16 In a telephonic Procedural Conference on October 25, 2007, the parties agreed to reschedule
17 the hearing on the proposed Settlement Agreement to October 30, 2007.

18 The hearing convened on October 30, 2007, before a duly authorized Administrative Law
19 Judge.

20 On December 14, 2007, Joint CLECs filed their Closing Brief.

21 On December 19, 2007, Staff and Qwest filed their Closing Briefs. On December 20, 2007,
22 Staff made an Errata filing, and submitted a substitute Brief containing the corrections.

23 **TRRO and Access to UNEs in Non-impaired Wire Centers**

24 In its *Triennial Review Order* ("TRO"), released on August 21, 2003, the Federal
25 Communications Commission ("FCC") established criteria for determining which unbundled network
26 elements ("UNEs") had to be made available by Incumbent Local Exchange Carriers ("ILECs") to
27 Competitive Local Exchange Carriers ("CLECs") under Section 251(c) of the Telecommunications
28 Act of 1996 (the "1996 Act"). In the *TRO*, the FCC found that a requesting carrier is impaired when

1 lack of access to a network element of an ILEC would pose a barrier to entry, such barriers to include
 2 operational and economic barriers, which would likely make entry into a market uneconomic. States
 3 were given the task of determining whether impairment was present given market conditions within
 4 the state. On appeal, however, the D.C. Circuit Court of Appeals ruled that the FCC could not
 5 delegate its authority to make impairment determinations to the states.² The *TRO* was affirmed in part,
 6 reversed in part and remanded to the FCC for further consideration.

7 In its remand decision, the *TRRO*, released on February 4, 2005, the FCC determined that
 8 CLECs were no longer impaired without unbundled network switching. The FCC also established
 9 certain criteria for determining whether CLECs were impaired without access to other UNEs. When
 10 wire centers are designated as non-impaired for certain services, CLECs are no longer able to access
 11 those UNEs at TELRIC prices, and the CLECs must transition to facilities of their own, to alternative
 12 services from another provider, or from ILECs at tariff prices.

13 In the *TRRO*, the FCC determined impairment for unbundled access to high-capacity loops and
 14 transport on a wire center basis, using the number of business lines and fiber-based collocators in the
 15 wire centers as the criteria.³ Under the *TRRO*'s criteria, CLECs are deemed not to be impaired without
 16 access to DS1 transport on routes connecting a pair of wire centers where both wire centers contain at
 17 least four (4) fiber-based collocators or at least 38,000 business access lines.⁴ Wire centers meeting
 18 these criteria are referred to as "Tier 1" wire centers. For DS3 transport and dark fiber transport, there
 19 is no impairment on routes connecting a pair of wire centers where both wire centers contain at least
 20 three fiber-based collocators or at least 24,000 business lines.⁵ Wire centers with three or more fiber-
 21 based collocators or 24,000 or more business lines are "Tier 2" wire centers.⁶ For DS1 loops, CLECs
 22 are not impaired in any building within the service area of a wire center containing 60,000 or more
 23 business lines and four or more fiber-based collocators.⁷ CLECs are not impaired without access to
 24 DS3 loops in any building within the service area of a wire center containing 38,000 or more business

25 _____
 26 ² *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (2004) ("USTA II")

27 ³ *TRRO* ¶¶ 146, 156, 166, 174, 178, 182, 195.

28 ⁴ *TRRO* ¶ 126.

⁵ *TRRO* ¶¶ 118, 129, 133.

⁶ *TRRO* ¶ 118.

⁷ *TRRO* ¶ 178.

1 lines and four or more fiber-based collocators.⁸ A wire center is the location of the ILEC local
 2 switching facility containing one or more Central Offices; wire center boundaries define the area in
 3 which all customers served by a given wire center are located.

4 Pursuant to the *TRRO*, a CLEC must “undertake a reasonable diligent inquiry” into whether
 5 high capacity loops and transport meet these criteria, and then must self certify to the ILEC that the
 6 CLEC is entitled to unbundled access.⁹ The FCC provided that ILECs must “immediately process”
 7 the UNE order and then may “subsequently” bring a dispute before a state commission or other
 8 authority if it contests the CLEC’s access to the UNEs.¹⁰

9 Proposed Settlement Agreement

10 The Proposed Settlement Agreement was executed by Qwest, Joint CLECs, as well as Integra
 11 Telecom Holdings, Inc. (“Integra”); Onvoy POPP, Com (“POPP”), US Link, Inc. d/b/a TDS
 12 Metrocom, inc. and (“TDSM”).¹¹ The parties to the Settlement filed it in Arizona, Colorado,
 13 Minnesota, Oregon, Washington and Utah.

14 Section I of the proposed Settlement Agreement provides an Introduction. Section II
 15 establishes defined terms. Section III provides a list of Qwest Wire Centers that qualify as non-
 16 impaired at the tier levels and for the facilities noted on Attachment A of the Settlement Agreement.
 17 For Arizona, the initial list of Qwest Non-impaired Wire Centers contains the following 10 wire
 18 centers:

19 Wire Center	20 CLLI Code	21 Non- Impairment Classification	22 Non-Impaired Elements	23 Date
24 McClintock	TEMPAZMC	Tier 1	DS1 and DS3 Transport	5/11/2005
25 Mesa	MESAAZMA	Tier 2	DS3 Transport	5/11/2005
26 Phoenix East	PHNXAZEA	Tier 1	DS1 and DS3 Transport	5/11/2005

27 ⁸ *TRRO* ¶174.

28 ⁹ *TRRO* ¶234.

¹⁰ *TRRO* ¶234.

¹¹ The Settlement Agreement refers to Joint CLECS as all of the CLECs executing the Settlement Agreement. When used in the context of this Order, the term Joint CLECs refers more specifically to those CLECs doing business in Arizona who have executed the Settlement Agreement.

1	Phoenix Main	PHNXAZMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	5/11/2005
2	Phoenix North	PHNXANO	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	5/11/2005
3	Phoenix Northeast	PHNXAZNE	Tier1, DS3	DS1 and DS3 Transport	5/11/2005
4	Scottsdale Main	SCDLAZMA	Tier 2	DS3 Transport	5/11/2005
5	Tempe	TEMPAZMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	5/11/2005
6	Thunderbird	SCDLAZTH	Tier 1	DS1 and DS3 Transport	5/11/2005
7	Tucson Main	TCSNAZMA	Tier 1	DS3 Transport	5/11/2005

8 In Section IV of the proposed Settlement Agreement, the parties agree that for at least three
9 years from the effective date of the Settlement Agreement, Qwest will assess a \$25 nonrecurring
10 charge for each facility converted from a UNE to an alternate service or product. In addition, pursuant
11 to this section, Qwest will provide a \$25 credit to those CLECs who converted facilities prior to the
12 effective date of the Settlement Agreement and paid a \$50 non-recurring conversion charge. The
13 parties agree that they reserve their right to seek a different conversion charge after three years.

14 Section V of the proposed Settlement Agreements sets forth the methodology for determining
15 non-impaired facilities or tier designations, by determining how business lines and fiber-based
16 collocators will be counted. The parties agree that Qwest's retail business lines shall be determined
17 using the most recently filed unadjusted ARMIS data reported to the FCC;¹² UNE loops connected to
18 a Wire Center where DS1 and DS3 unbundled loops and DS1 and DS3 Enhanced Extended Loops
19 ("EELs") are provided to CLECs are counted at full capacity¹³; only Business UNE-P lines will be
20 counted for the Commission-Approved Wire Center List;¹⁴ and Qwest Platform Plus ("QPP"), Qwest
21 Local Services Platform ("QLSP"), and other similar platform product offerings are calculated using
22 actual business line counts for these services. A fiber-based collocator is defined as any carrier,
23 unaffiliated with Qwest, that maintains a collocation arrangement in a Qwest wire center, with active
24 electrical power supply and operating a fiber-optic cable or comparable transmission facility that: (a)

25 _____
26 ¹² Each year on April 1, ILECs file annual network, financial and service quality data with the FCC's Automated Reporting
Management Information System ("ARMIS"). The number of access lines in service is one type of data ILECs provide
annually for FCC Report 43-08.

27 ¹³ DS1s will be counted as 24 business lines and DS3s will be counted as 672 business lines.

28 ¹⁴ Business UNE-P lines will be determined by subtracting the listings of residential UNE-P from the total number of
UNE-P lines.

1 terminates at a collocation arrangement within the wire center; (b) leaves the Qwest wire center
2 premises; and (c) is owned by a party other than Qwest or an affiliate of Qwest. Two or more
3 affiliated fiber-based collocators in a single wire center will be counted as a single fiber-based
4 collocator. Before classifying a carrier as a fiber-based collocator, Qwest will confirm the carrier
5 meets the criteria in 47 CFR §51.5, conduct a field visit to verify the criteria and validate the criteria
6 against the most recent order and/or billing data. Before filing a request for Commission approval of
7 non-impairment designation, Qwest will send a letter by certified mail to CLECs it identifies as fiber-
8 based collocators and inform the carriers that they will be counted as fiber-based collocators in
9 Qwest's filing with the Commission. Pursuant to the Settlement Agreement, the CLEC will have no
10 less than ten (10) business days from the CLEC's confirmed receipt of Qwest's letter to provide
11 feedback before Qwest files its request with the Commission. The parties agreed that in the absence of
12 a response by the Qwest-identified collocators, Qwest may rely on the Qwest-identified collocators in
13 its filing. In addition, however, the Settlement provides that no party shall use the absence of a
14 response from a CELC collocator as the sole basis for its position.

15 Section VI of the proposed Settlement Agreement provides how Qwest can request
16 Commission approval of additional Non-impaired Wire Centers. The parties agree that Qwest may
17 request the addition of Non-impaired Wire Centers at any time based solely on the number of fiber-
18 based collocators, and may request additions based in whole or in part based on line counts at any time
19 up to July 1 of each year based on the prior year line count data. Qwest will provide the Joint CLECS,
20 and all other affected CLECs, notice of the anticipated wire center update proceeding by its email
21 notification channels at least five business days prior to filing with the Commission. Qwest will file
22 supporting data with the Commission and provide a copy of the supporting data to CLECs that have
23 signed the applicable protective order. This Section also provides the details of what Qwest should
24 provide in the way of supporting data for determining fiber-based collocators and the number of lines.
25 The Agreement provides further that once Qwest has filed its request for approval and supporting data
26 with the Commission, a CLEC or any other party will have 30 days to raise objections to the request.
27 If no objections are filed with the Commission, the Effective Date of the Non-Impairment Designation
28 will be thirty days after the Filing Date, unless the Commission orders otherwise.

1 Section VI provides that if a CLEC, or other party, disputes Qwest's proposed non-impairment
2 designations, the parties to the Agreement agree to ask the Commission to use its best efforts to
3 resolve such dispute within 60 days of the date of the objection. Under the proposed Settlement
4 Agreement, when the Commission approves additional DS1, DS3, UNE, Loop, or high capacity
5 transport UNE non-impaired designations, the CLECs will have 90 days from the effective date of the
6 Order to transition applicable facilities to an alternative service. When the Commission approves
7 additional Dark Fiber transport non-impairment designations, CLECs will have 180 days to transition
8 the applicable non-impaired facilities.

9 Finally, Section VII of the Settlement Agreement provides for specific language that the parties
10 have agreed to that will modify the Interconnection Agreements between the Joint CLECs and Qwest
11 to reflect the terms of the Settlement Agreement. In the case of Eschelon, the parties have agreed that
12 the proposed Settlement language would be submitted for approval as "closed" language in their open
13 arbitration currently pending in Arizona, as well as other states.¹⁵ In addition, Section VII provides
14 that the Settlement Agreement may not be used as evidence in any future proceeding.

15 Commission Staff Recommendations

16 Staff believes that in order to be found in the public interest, and approved, portions of the
17 Settlement Agreement should be clarified and/or modified. Staff recommends that Section II of the
18 Agreement, which contains definitions, and in particular, the definition of the "Effective Date of Non-
19 Impairment Designations", may subvert, and need to be reconciled with Commission processes. Staff
20 acknowledges that both parties indicated that it was not their intent to replace normal Commission
21 review and approval processes that would apply to filings made with the Commission. Staff
22 recommends the Commission review the Agreement for consistency with Commission processes.

23 Staff further recommends that Section III of the Settlement Agreement should be clarified to
24 specify the vintage of the data used to determine the initial list of non-impaired wire centers. In
25 response to data requests propounded by Staff, the parties acknowledge that 2004 ARMIS was the
26 information used to derive the initial set of non-impaired wire centers. Staff believes it important that

27 _____
28 ¹⁵ Qwest and Eschelon's current arbitration of a new Interconnection Agreement proceeding is being addressed in Docket
Nos. T-03406A-06-0572 and T-01051B-06-0572.

1 the Agreement include the vintage of the data used for the initial designations.

2 Section IV of the Settlement Agreement addresses the terms and condition that will apply to
3 the conversion of UNEs to alternative services in designated non-impaired wire centers. Staff believes
4 that the negotiated \$25 non-recurring conversion charge is reasonable, and recognizes that the issue of
5 the conversion rate was contentious prior to settlement, and the final agreement is the result of
6 compromise by both sides. Staff is concerned, however, that the Settlement Agreement is silent with
7 respect to the conversion process. Staff bases its recommendation on the substantial disagreement
8 between the parties prior to settlement concerning the conversion process and the CLECs' pre-
9 settlement concerns that their customers suffer no harm as a result of the process. Staff argues that
10 Qwest and Joint CLECs have not provided adequate assurance that this Section of the Agreement, as it
11 stands silent on the conversion process, is in the public interest given earlier testimony regarding
12 potential harm to CLEC customers.

13 Staff has several concerns concerning Section V which outlines the methodology to support
14 future findings of non-impairment. Staff believes that Section V.B should be clarified by providing an
15 inclusive date range for the determination of affiliated, fiber-based collocators. Staff believes that
16 regardless of the data vintage, affiliated fiber-based collocators should not be counted separately if
17 they are legally affiliated at the date of a Commission Order designating a wire center as non-
18 impaired. In addition, Staff was concerned that a 10 day time period for a CLEC to respond to Qwest
19 concerning its fiber-based collocation status was not sufficient time given the importance of the issue.
20 Staff recommends a 60 day response time. Staff believes that constructive time spent at the beginning
21 of the process is time well spent and would avoid a "rush-to-judgment."¹⁶

22 Staff also argued that Section VI should be clarified with respect to fiber-based collocation
23 information and related process steps. As proposed, the Settlement Agreement allows Qwest to file a
24 request for additional non-impaired wire centers based in whole or in part upon line counts at any time
25 up to July 1 of each year. Staff believes that Qwest should have the opportunity to file for additional
26 non-impaired wire centers at any time, without the restriction of the July 1 deadline. Staff believes

27
28 ¹⁶ Tr. at 183.

1 that the Agreement should be modified to allow Qwest to file once a year at such time as Qwest finds
 2 appropriate as long as Qwest provides the appropriate data consistent with the methodologies
 3 described in the final Agreement and approved by the Commission.

4 Finally, Staff argues Section VII of the Agreement should be clarified. Staff notes that while
 5 only certain CLECs signed the Agreement, and it does not purport to bind non-party CLECs, adopting
 6 this Agreement will ultimately affect all CLECs operating in Arizona. Staff does not believe the
 7 Commission would use different criteria to determine non-impaired wire centers for CLECs that did
 8 not sign on to the Agreement. Staff acknowledges that in the course of this proceeding all CLECs
 9 with operating authority in Arizona were provided notice of this Docket and that many chose not to
 10 participate and that active CLECs were provided a copy of the Settlement Agreement and notified of
 11 the hearing. Nevertheless, Staff believes that inactive CLECs should be given additional notice and a
 12 60 day window to provide additional comment on the Settlement.

13 Responses to Staff's Concerns

14 Standard for Approval

15 Qwest argues that the Commission should reject any suggestion that its review of the
 16 Settlement Agreement should be based on application of a broad "public interest" standard. Qwest
 17 argues that a public interest standard is not appropriate where, as here, the parties are simply agreeing
 18 to language that implements legal rights and obligations defined and set forth in an order from the
 19 FCC. Qwest believes that the only relevant questions should be whether the parties' agreement is or is
 20 not faithful to the FCC's order. Citing paragraph 233 of the *TRRO*, Qwest asserts that the FCC clearly
 21 envisioned that ILECs and CLECs would negotiate the terms and conditions necessary to implement
 22 the rulings in the *TRRO*.¹⁷ Qwest believes the *TRRO*'s language indicates that the FCC expected its
 23 rulings would be largely self-effectuating. Consequently, Qwest believes the Commission should give
 24 deference to the parties' settlement, which was negotiated in good faith and is consistent with the
 25 FCC's rulings. Qwest argues that applying a "public interest" standard could potentially conflict with
 26 the FCC's expectation that the *TRRO* is self-effectuating and give rise to a risk that state commissions

27 ¹⁷ *TRRO* at ¶ 233 provides "the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates,
 28 terms, and conditions necessary to implement our rule changes" and it directs the states to monitor the negotiation process
 "to ensure that parties do not engage in unnecessary delay."

1 would make determinations that conflict with the FCC's rulings and policy determinations in the
2 *TRRO*.

3 Notwithstanding Qwest's argument that a "public interest" test should not be applied in this
4 case, Qwest asserts that the Settlement Agreement should be found in the public interest because it
5 fulfills the national telecommunications policy articulated by the *TRRO*. In addition, Qwest argues it
6 furthers the public interest by resolving contested issues without litigation and reduces the potential for
7 future disputes by creating a process going forward; and it promotes judicial and administrative
8 efficiency as well as provides certainty to CLECs.

9 The Joint CLECS note that contrary to Qwest assertions during this proceeding,¹⁸ the *TRRO* is
10 not self-effectuating. They note that at ¶ 233, the *TRRO* provides:

11 We expect that incumbent LECs and competing carriers will implement the
12 Commission's [FCC's] findings as directed by section 252 of the Act. Thus, carriers
13 must implement changes to their interconnection agreements consistent with our
14 conclusions in this Order.

15 Thus, the FCC knew that the parties would have to amend their interconnection agreements to
16 implement the *TRRO*'s provisions. In addition, the Joint CLECs assert that the proposed Settlement
17 Agreement is not self-effectuating because it contemplates Commission review and approval of
18 Qwest's proposed wire center non-impairment or tier designations in all cases, whether or not there are
19 objections to Qwest's proposed list.

20 Use of 2004 ARMIS Data

21 In response to Staff's recommendation that the Settlement Agreement be modified to indicate
22 the 2004 ARMIS 43-08 data was used in the determination of the initial non-impaired wire center list,
23 the Joint CLECs acknowledge that the 2004 ARMIS data were used.¹⁹ The Joint CLECs have no
24 objection if such a modification were made to the Proposed Settlement Agreement.²⁰

25 Qwest also notes that it and the Joint CLECs confirmed for Staff that 2004 ARMIS data was
26 used as the basis for line counts in determining the initial list of non-impaired wire centers. Qwest
27 believes that a notation in the Commission Order approving the Settlement Agreement, rather than

28 ¹⁸ Tr. at 52.

¹⁹ Ex Joint CLEC-1 (Denny Response Testimony) p. 4, lines 10-12.

²⁰ Joint CLEC Brief at 6; Ex Joint CLEC-1 at p.4, lines 15-17.

1 modifying the Settlement Agreement, would be the most efficient way to satisfy Staff's concerns.

2 Nonrecurring Charges and Conversion Process

3 The Joint CLECs note that Staff testified that it believes that the \$25 non-recurring conversion
4 charge in Section IV is just and reasonable.²¹ The Joint CLECs note that the \$25 non-recurring charge
5 is a negotiated compromise and made only for settlement purposes. They reject any suggestion from
6 Staff's words that the \$25 charge may be adopted as a cost-based rate. They note that pursuant to the
7 Settlement Agreement, the parties can argue for a different conversion charge, and that the \$25 that
8 might be approved in this proceeding cannot be used as evidence that it is a cost-based rate.

9 The Joint CLECs state that customer impact from conversions remains a concern, however,
10 they note that nothing in the Settlement Agreement authorizes Qwest to use its proposed method of
11 conversion or precludes the Commission from ruling on the method of conversion in another docket.
12 The Joint CLECs state that the issue of the method of conversion is being left open for Interconnection
13 Agreement negotiations or other proceedings.

14 Qwest states that although Staff is raising the question of whether the conversion process
15 should be addressed in this docket, Staff has not articulated a position, or found a deficiency in
16 Qwest's conversion process. Qwest notes that Staff's witness has declined to take a position on
17 whether the conversion process is good or bad.²² Qwest states the conversion process has been
18 operating for some time and argues that the evidence in the record is that the conversion process has
19 been working.²³ Qwest states that after 1,583 successful UNE conversions, no CLEC has filed a
20 complaint with the Commission concerning the conversion process. Qwest states further that any
21 CLEC that has issues with the conversion process may attempt to resolve them through contract
22 negotiations or arbitrations.

23 Qwest asserts that the Settlement Agreement's silence on the conversion process does not
24 make it deficient under the *TRRO*, as the *TRRO* does not require a specific conversion process. Qwest
25 states too that the lack of treatment of the conversion process does not affect any other provision of the
26 Settlement Agreement. According to Qwest, the conversion process was originally discussed in this

27 ²¹ Ex S-4, Fimbres Settlement Agreement testimony at Executive Summary, ¶3.

28 ²² Tr. at 169, ln 1-6; Tr at p 172, ln 4-6.

²³ Tr. at 28, ln 20-23.

1 proceeding in connection with the conversion charge, and the actual process was not contemplated to
2 be part of this docket.²⁴ Qwest notes that the Joint CLECs viewed the conversion process as a separate
3 issue that was being addressed in the Eschelon arbitration, while the non-recurring charge was viewed
4 as appropriately part of the current docket.²⁵ Qwest notes that approving the Settlement Agreement
5 without addressing the conversion process does not deprive the CLECs or the Commission from
6 treating conversion issues in other dockets. At the hearing, Qwest notes that Staff's witness only
7 wanted clarification that conversion issues will be addressed in arbitrations or other future
8 proceedings.²⁶

9 Timing of Affiliated Collocator Status

10 The Joint CLECs state that Staff's recommendations concerning the timing of the fiber-based
11 collocator information are consistent with the definition of fiber-based collocator, and they do not
12 anticipate that adoption of Staff's recommendation would cause them to reject a modified Settlement
13 Agreement.

14 In contrast, Qwest argues that Staff's position (i.e. to determine if affiliated fiber-based
15 collocators should not be counted separately up to the date of a Commission order), if adopted, would
16 violate the terms of the *TRRO* and the regulations that implement the *TRRO*. Qwest's position is that
17 once a wire center satisfies the standard for non-impairment, it cannot later be determined to be
18 impaired. Qwest asserts, however, without waiving its position, that the Commission does not have to
19 decide this question now. If, in future filings by Qwest for additions to the non-impaired wire center
20 list, Staff or any CLEC wishes to contend that Qwest's fiber-based collocators count should be
21 amended because of new affiliations between carriers, nothing in the Settlement Agreement precludes
22 them from bringing that issue forward at that time.

23 Qwest states there is no compelling need to decide this hypothetical issue in the context of the
24 approval of the Settlement Agreement. However, Qwest argues, if the Commission decides to address
25 the issue now, Qwest argues it must base its ruling on the FCC's regulations. Qwest states that under
26 the *TRRO*, and FCC regulations, once a wire center satisfies the standard for non-impairment, it cannot

27 ²⁴ Tr. at 119, ln 6-12. Tr at 127, ln 12 through 128, ln 4.

28 ²⁵ Tr. at 119, ln 13-19.

²⁶ Tr. at 172, ln 18 through 173, ln 4.

1 later be determined to be impaired. In the *TRRO*, the FCC stated:

2 Therefore, once a wire center satisfies the standard for no DS1 loop unbundling, the
3 incumbent LEC shall not be required in the future to unbundle DS1 loops in that wire
4 center. Likewise, once a wire center satisfies the standard for no DS3 loop unbundling,
the incumbent ILEC shall not be required in the future to unbundle DS3 loops in that
wire center. *TRRO* fn 466.

5 Qwest states that the FCC codified this concept into its regulations, 47 C.F.R. 51.319, which with
6 respect to DS1, DS3 unbundling and tier designations provides:

7 Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling
will be required in that wire center.

8 Once a wire center exceeds both of these thresholds, no future DS3 loop unbundling
will be required in that wire center.

9 Once a wire center is determined to be a Tier 1 wire center, that wire center is not
10 subject to later reclassification as a Tier 2 or Tier 3 wire center.

11 Once a wire center is determined to be a Tier 2 wire center, that wire center is not
12 subject to later reclassification as a Tier 3 wire center.

13 Qwest interprets the rules as providing that once evidence is gathered and presented substantiating that
14 a given wire center is non-impaired, the wire center is considered to be non-impaired going forward
15 and in perpetuity, and there is no minimum time period for any wire center to meet the prescribed
16 definitions before it can be defined as non-impaired. Qwest states the Joint CLECs agree with
17 Qwest's interpretation.²⁷

18 Qwest claims that Staff's position appears to be that the determination of non-impairment is
19 not made until the Commission approves Qwest's petition, and therefore, the timing of the
20 determination is the date of the Commission's order. Qwest asserts that there is no support for the
21 Staff's view to be found in the *TRRO*, the regulations, the practice in the telecommunications industry,
22 or in the Settlement Agreement. According to Qwest, the process set up by the FCC does not provide
23 for the state commissions to make determination of non-impairment. Qwest states the role of state
24 commissions in the FCC's scheme is to decide disputes that arise out of carrier-made determinations.
25 Qwest cites a decision of the Washington State Utilities and Transportation Commission, Docket UT-
26 053025, that concurs with this interpretation of the states' role.²⁸ Qwest also cites a decision of the

27 ²⁷ Tr at 156, ln 18-22.

28 ²⁸ *In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*, Washington Utilities and Transportation Commission, docket UT-053025, Order Granting in Part Joint CLECs Petition for Reconsideration of Order

1 U.S District Court for the Eastern District of Michigan in *Mich. Bell Tel. Co. v. Lark*, 2007 U.S. Dist.
2 LEXIS 33682, which involved a dispute over Michigan Bell's initial wire center designations. In
3 *Lark*, the court found:

4 [T]he FCC determined that disputes regarding nonimpairment designations must be
5 resolved based upon the facts at the time of a designation. These specifications
6 certainly preclude the MPSC from requiring data relative to counts *after* the date of
7 designation. The count at the time of designation is what matters. *Mich Bell Tel. Co. v.*
8 *Lark, Id.* at *12.

9 Qwest argues its interpretation is the most practical from a public policy perspective, as it minimizes
10 delay tactics and promotes certainty. Qwest states the Settlement Agreement builds on the FCC's
11 structure by providing a procedure for all of Qwest's future determinations to be submitted to the state
12 commissions, providing finality to non-contested determinations and providing a mechanism to
13 resolve disputes over Qwest's determination when disputes arise.

14 10 Day Response Time

15 Staff also recommends increasing the 10 day period allowed for CLECs to respond to a Qwest
16 inquiry concerning fiber-based collocation status. The Joint CLECs note that the 10 day period is
17 intended as a period to provide feedback before Qwest files its request. The Joint CLECs state that it
18 may start a dialogue and assist in avoiding unnecessary filings, but does not have a preclusive effect
19 on allowing the CLEC to object after Qwest files its request. Further, Joint CLECs state that at least
20 two of the provisions of Section VI address Staff's concerns about the ability of CLECs to respond
21 regarding their status as a fiber-based collocator. First, the Joint CLECs point to paragraph VI.E.1.e
22 and .f that require Qwest to provide supporting data to the Commission and CLECs. The Joint CLECs
23 state that the affected CLEC will have an opportunity to review and respond to the information at that
24 time. Second, paragraph VI.F.1 provides that a "CLEC or any other party" may raise objections to
25 Qwest's request with the Commission. The Joint CLECs state there is no limitation on the nature of
26 the objection that would preclude a collocator from objecting at this time. Nevertheless, the Joint
27 CLECs state that if the Commission believes that clarification is needed, the Joint CLECs do not
28 anticipate objecting to such modification.

04; Granting Qwest's Petition for Reconsideration of Order 04; Modifying Interpretive Statement (December 15, 2006)
("Washington Reconsideration Order")

1 Qwest believes that Staff may have misunderstood that the 10 business day validation request
2 period of time as the period when CLECs must file objections to Qwest's filing. Qwest believes the
3 evidence establishes that the ten-day period for responding to the validation request is ample time
4 particularly in view of the fact that the validation request is only part of Qwest's "due diligence" and is
5 not essential either to the determination of wire center status by Qwest or the CLEC's right to dispute
6 Qwest's determination. Qwest argues the Joint CLECs better than anyone else involved in this
7 proceeding know what is and what is not practical and acceptable to their respective businesses.

8 Section VI.F of the Settlement Agreement provides that if no objections are filed with the
9 Commission, the Effective Date of the Non-Impairment Designations will be thirty (30) days after the
10 Filing Date, unless the Commission orders otherwise. During the course of the hearing, the
11 Administrative Law Judge questioned whether 30 days was sufficient time. Staff did not raise the 30
12 day provision in its pre-filed testimony of the Settlement Agreement or in its closing brief. Qwest
13 argues that the record shows that the time allowed for objections is sufficient. Qwest asserts too that
14 the time period is consistent with the objectives of the *TRRO* which was to establish an expeditious
15 method for implementing the non-impairment criteria. Qwest states it is important to note that the
16 role of the Commission in the non-impairment designation process is to resolve disputes between
17 ILECs and CLECs, providing a check on ILEC designations. While the parties to the Settlement
18 Agreement do not preclude Staff from examining Qwest's filings, or from filing objections if they find
19 errors, the intent of the Settlement Agreement is to leave primary responsibility of the matter to the
20 carriers, as did the FCC in the *TRRO*.

21 Qwest asserts the 30 day period is quite reasonable, and comports with other Commission rules
22 concerning approval of interconnection agreements and amendments, which become effective as a
23 matter of law after 30 days if the Commission takes no action to the contrary. Qwest states additions
24 to the non-impaired list will be matters of straightforward "counting" using clearly defined criteria.

25 Restrictions on Requests Based on Line Counts

26 The Joint CLECs state that Paragraph VI.A.2, which provides Qwest is restricted from making
27 a request based on line counts after July 1, is a mutually agreed upon provision and is integral to the
28 compromise reached. The Joint CLECs assert that the paragraph provides for a measure of contractual

1 certainty as the Joint CLECs are engaging in business planning necessary to offer terms to their own
2 customers, which requires them to factor in UNE availability. In addition, the Joint CLECs believe
3 that the ARMIS data used as the basis for a request based on line counts should be current, particularly
4 in the event of declining line counts. The Joint CLECs argue that the annual time period helps ensure
5 the use of current data.

6 Application of Settlement Agreement to all CLECs

7 The Joint CLECs have pointed out that no provision in the proposed Settlement Agreement
8 purports to bind all CLECs. The Joint CLECs note that, as its pre-settlement position, Qwest wanted
9 the resolution of the proceeding to be binding on all CLECs, but in the course of settlement has agreed
10 that the Settlement Agreement's terms provide there is no precedent established and it cannot be used
11 as evidence in other proceedings. The Joint CLECs assert that regardless of whether the proposed
12 Settlement Agreement is sent to CLECs for comment, no precedent is set by its approval.

13 The Joint CLECs assert that although the Settlement Agreement does not bind non-parties, if it
14 is approved, non-participating CLECs will have an opportunity to opt in to its terms under Paragraph
15 VII.A.4 without relinquishing their Section 252 rights to instead negotiate and arbitrate their own
16 terms. According to the Joint CLECs, a CLEC which has executed the *TRRO* amendment (which
17 applied a \$50 NRC) may simply execute Exhibit B and Exhibit D to the Settlement Agreement and
18 obtain the lower \$25 rate, without expending any of its own resources litigating the case. Or, the
19 CLEC has the right, under Section 251 and 252 of the 1996 Act, to pursue a cost-based rate. The Joint
20 CLECs note there are costs associated with litigating, which might explain why some CLECs opted to
21 execute the amendment that imposed a \$50 conversion rate instead of contesting that rate in the first
22 place. The Joint CLECs believe that the Settlement Agreement provisions that it cannot be used as
23 precedent and that give other CLECs the option to opt in address the concern that non-executing
24 CLECs could challenge the list of approved Non-impaired Wire Centers set forth in the agreement.
25 Notwithstanding the foregoing, the Joint CLECs state that they would not anticipate objecting to a
26 modification that provides that Qwest would not impose non-impairment designations on wire centers
27 that are not reflected in the Commission-approved list on any CLEC, regardless of whether the CLEC
28 executed the proposed Settlement Agreement.

1 Qwest argues that Staff's position that all CLECs with operating authority in Arizona should
2 receive additional notice and opportunity to comment on the Settlement Agreement is ill-advised.
3 Qwest states that all CLECs in the state have been on notice about this proceeding since June 2006.
4 Qwest argues the Settlement Agreement and the hearing regarding the Settlement Agreement are
5 merely the final evolution of issues that were contested from the very beginning of this case. Qwest
6 notes that on May 30, 2006, the parties submitted a Joint Filing Regarding Procedural matters, which
7 included, among other things, a service list recommended by Staff. The Joint Filing was approved by
8 a Procedural Order dated June 2, 2006, which scheduled a hearing and testimony filing dates,
9 established a Protective Order, and adopted the proposed service list. On August 2, 2006, Qwest and
10 the Joint CLECs asked for a modification of the procedures, requiring that parties on the service list
11 affirmatively state whether they desire to receive copies of pleadings and testimony. The Commission
12 granted that request and ordered that parties interested in remaining on the service list and in
13 continuing to receive filings in this docket file an affirmative indication of such an interest. Qwest
14 states the efficacy of the notice process established in this docket was further endorsed by the
15 Commission when it renewed it with respect to the next phase of the proceeding for the 2007
16 Additions Application. At that time, Qwest states Staff agreed that the service list was sufficient.
17 Qwest states that if the Commission wishes to re-address the service list for the 2007 Additions
18 Application, or any other future phase of this docket, it may do so, but since the Settlement Agreement
19 is a direct integral part of the original non-impairment wire center docket, about which the
20 Commission took deliberate care to provide a means for all CLECs to be informed, no further notice is
21 necessary for the Commission to approve the Settlement Agreement.

22 **Analysis and Resolution**

23 Staff does not object to the specific wire centers identified by the parties as being non-
24 impaired. Staff has not claimed that any provision of the proposed Settlement Agreement conflicts
25 with the *TRRO*. Staff's proposed modifications are for the most part relatively minor clarifications of
26 the terms of the Agreement or address the process for making additions to the non-impaired wire
27 center list. Staff is also concerned how a settlement between a limited group of carriers might affect
28 CLECs who have not executed the Settlement Agreement.

1 We do not agree with Qwest that the Commission can not, or should not, employ a “public
2 interest” test to whether it should approve the Proposed Settlement Agreement. An agreement that
3 complies with the terms of the *TRRO*, but which purports to implement burdensome or unfair
4 procedures by, for example, imposing draconian time frames for objections to the non-impaired wire
5 center list, or adversely affects non-parties, would not be in the public interest, and should not be
6 approved. That being said, however, we find that the proposed Settlement Agreement, with the
7 clarifications discussed herein below, is reasonable, comports with the *TRRO*, is in the public interest,
8 and should be approved.

9 The Settlement Agreement resolves contentious issues between Qwest and the CLECs. It
10 provides the parties certainty and establishes a process for the designation of future additions to the
11 non-impaired wire center list. The *TRRO*’s criteria for determining non-impairment appears to be a
12 straightforward counting exercise, however, as evidenced by the differences of opinion raised in the
13 course of this proceeding prior to the proposed settlement, differences of opinion on how to apply the
14 data can exist. The parties have negotiated a process that ensures that current data will be utilized in
15 making those counts. The *TRRO* appears to place the burden on CLECs to make a reasonable
16 investigation of whether they are entitled to access UNEs in a particular wire center.²⁹ By establishing
17 a list of non-impaired wire centers, CLECs enjoy greater certainty about which services they are
18 entitled to access. The Joint CLECs who participated in this docket are among the largest and most
19 active in Arizona. Their work in negotiating this settlement will benefit smaller CLECs, who will be
20 able to benefit from the settlement’s framework, but which will not be bound by it if they do not
21 consent. For these reasons we find the Settlement Agreement, as clarified herein, to be in the public
22 interest.

23 Clarifications to Settlement Agreement

24 Specific to Staff’s recommendation concerning the vintage of ARMIS data used in the initial
25 designation, we believe that the parties’ testimony that 2004 ARMIS data was used, and our
26 acknowledgement of that fact in this Order, should satisfy Staff’s concerns for clarity on this issue.

27
28 ²⁹ *TRRO* ¶ 234.

1 With this finding, the Settlement Agreement itself does not need to be amended to specifically add a
2 statement that 2004 ARMIS data was used. At the hearing, Staff appeared to concede that recognition
3 of the use of the 2004 ARMIS data would be sufficient to address its concerns.³⁰

4 Staff also recommended that the Settlement Agreement address the conversion process,
5 although Staff may merely want the Agreement to specifically address the parties' position that the
6 actual conversion process will be addressed in separate proceedings.³¹ We agree that the parties
7 should be free to raise issues relating to the conversion process before this Commission in other
8 proceedings, such as interconnection agreement arbitrations, complaints, a future cost docket or other
9 docket. Indeed, Eschelon is currently arbitrating the issue with Qwest in our pending Docket No. T-
10 03406A-06-0572 et al. Both Qwest and the Joint CLECs agree that the conversion process may be
11 addressed in other proceedings. The Settlement Agreement's silence on the conversion process does
12 not preclude CLECs from pursuing the issue in other dockets. Consequently, to address Staff's
13 concern, we make a specific finding that clarifies that the Settlement Agreement's silence on the
14 conversion process itself has no effect on a party's ability to raise issues concerning the process in
15 another proceeding.

16 Staff believes that the affiliate status of fiber-based collocators for purposes of determining the
17 status of the wire center should be based on data available up to the time of a Commission order
18 approving the designation. Staff wants designations to be based on the most currently available
19 information on the status of competition. Qwest appears to argue that the timing of a Commission
20 order is irrelevant, and that once a wire center achieves non-impaired status, subsequent events do not
21 change that status. The Joint CLECs do not appear to oppose Staff's position. Prior to executing the
22 settlement they took issue with Qwest's count of unaffiliated fiber-based collocators in specific wire
23 centers, but they did not raise this particular issue in the Settlement Agreement. Qwest argues that the
24 Commission does not need to decide the issue to approve the Settlement Agreement. The issue,
25 however, has the potential of arising each time Qwest files to add to the non-impaired wire center list.

26 The Washington Utilities and Transportation Commission, in determining the appropriate

27 _____
28 ³⁰ Tr. at 182-183.

³¹ Tr. at 185-186.

1 vintage of data to use in evaluating a wire center's status as non-impaired, found that it is not the role
 2 of state commissions to designate wire centers as non-impaired, but rather to resolve disputes among
 3 the parties about whether a wire center is properly classified or designated as non impaired.³² From
 4 our review of the *TRRO*, we concur with the conclusions of the Washington commission. The FCC
 5 has created a scheme whereby the designation of wire centers as non-impaired is to a certain extent
 6 self-effectuating, in that neither the FCC nor state commissions are required to be involved in the
 7 designation. The FCC does not specifically state which entity should make the designation, although
 8 as we noted earlier, it appears to charge the CLECs with investigating their entitlement to UNEs
 9 before ordering.³³ It makes sense, however, that the ILEC would have the best information to make
 10 such designation, as well as the greater incentive; and in practice, it appears that it is the ILEC that
 11 designates wire centers as non-impaired.

12 In resolving disputes about designations, the Commission must review the most recent data
 13 available to the ILECs at the time of their designation. The FCC gives no guidance on how to
 14 determine the designation date. Under the terms of the Settlement Agreement, the parties have agreed
 15 that if no party objects to Qwest's additions to the non-impairment list within 30 days of Qwest's
 16 filing with the Commission, the effective date of the designation shall be 30 days after the filing date,
 17 or as otherwise ordered by the Commission.³⁴ If a party objects to a designation, the Settlement
 18 Agreement provides that the parties will request the Commission to use its best efforts to resolve the
 19 issue in 60 days.³⁵ In case of such disputes, the effective date of the designation would appear to be
 20 the effective date of the Commission Order resolving the dispute.³⁶ Thus, under the terms of the
 21 Settlement Agreement, the date of the designation would appear to be either 30 days after the Filing
 22 Date, if no dispute, or if there is a dispute, the date of a Commission order. If there are no objections
 23 filed, we would be reasonable to presume that the affiliate status of the fiber-based collocators is not
 24 an issue. If an objection is filed, the Commission should review the most recent data available to it,
 25 which would be information available up to the time of a Commission Order. We believe this

26 ³² Washington Reconsideration Order at ¶ 32.

27 ³³ *TRRO* at ¶ 234.

28 ³⁴ Settlement Agreement at Section VI.F.2.

³⁵ Settlement Agreement at Section VI.F.3.

³⁶ Settlement Agreement at Section VI.F.4.

1 interpretation comports with the terms of the Settlement Agreement, as the Settlement Agreement does
2 not consider a disputed designation effective until the date of a Commission Order. We find that
3 “designation date” and “effective date of designation” to be equivalent. We also believe our
4 interpretation comports with the FCC’s rules that once a wire center is designated as non-impaired, it
5 can not later be changed based on changed circumstances, since the designation is not effective until a
6 Commission Order. We find too that it promotes the public policy of allowing this Commission to use
7 the most recent information available on the state of competition in resolving designation disputes.
8 This is particularly important because of the FCC’s rules that once a designation of non-impairment
9 has been made, changed circumstances will not affect that designation. Consequently, we adopt
10 Staff’s recommendation on this issue.

11 Staff also believed that the 10 business day period for collocators to respond to Qwest’s inquiry
12 about their status as fiber-based collocators was too short. Staff recommended a 60 day response time.
13 Both the Joint CLECs and Qwest argue that the 10 day period should be sufficient for the purpose of
14 the inquiry which is part of Qwest’s due diligence undertaken prior to filing its new designations of
15 non-impairment. While we agree with Staff’s view that given the importance of accurate information
16 when making designations of non-impairment, more accurate information at the beginning of the
17 process is better. The purpose of Qwest’s inquiry letter, however, is for Qwest to garner additional
18 information, it is not the period in which CLECs must object to Qwest’s designation. Qwest may or
19 may not change its planned designation based on the information it receives in response to its letter.
20 On the whole, the ten business day period is reasonable, given the limited purpose for which the letter
21 is being sent.

22 Staff also objected to the July 1st limitation on when Qwest could make a designation filing.
23 Staff believed that Qwest should be able to make a filing once a year at any time. The parties argue
24 that the July 1st cutoff date for filings based on line counts ensures that stale line count data is not
25 utilized. We concur with the parties that the July 1st cut-off is a reasonable term, will promote
26 accuracy by using current line count data and is in the public interest.

27 Section VI.3 of the Settlement Agreement provides:

28 If a CLEC or any other party disputes Qwest’s proposed non-impairment

1 designations, the Parties agree to ask the Commission to use its best
2 efforts to resolve the dispute within 60 days of the date of the objection.

3 This provision does not purport to commit the Commission to resolve the dispute within a given time
4 period, however, we are concerned that by approving the Settlement Agreement, some might argue
5 that the Commission agreed to be bound by this provision. Given the Commission's available
6 resources and the complexity of the dispute, the Commission may or may not be able to meet a 60 day
7 time period. While we do not believe that this provision needs to be modified, as it only affects what
8 the Parties to the Settlement Agreement promise to do, we believe it is important that in approving the
9 Settlement Agreement, the Commission is explicitly clear that it is not committing to alter its
10 processes or procedures to meet this timeframe.

11 Staff requested that the Administrative Law Judge review the agreement to determine if its
12 terms comport with Commission practices. Staff did not object to the proposed 30 day period for filing
13 objections to Qwest's designation filing. The proposed 30 day period for objecting to Qwest's
14 designation filing is similar to other objection deadlines, such as for tariff filings and interconnection
15 agreements. Qwest will be providing notice of its designation filings to all CLECs in Arizona, and
16 will provide the supporting data for its filing to all CLECs who have executed a protective agreement.
17 The Settlement Agreement provides at Section VI.D:

18 In order to provide all interested parties adequate notice of the scope of the
19 requested protective order and the anticipated Wire Center update
20 proceeding, Qwest will provide CLECs (Joint CLECs and other
21 potentially affected Competitive Local Exchange Carriers), including at
22 least the contacts identified by each such carrier for interconnection
23 agreement notices, via its email notification channels, with at least five (5)
24 business days notice prior to filing proposed non-impairment or tier
25 designations for Commission review.

26 While we do not find the 30 day objection period unreasonable, we have some concerns whether
27 CLECs who are not parties to the Settlement Agreement understand the ramifications of Qwest's
28 filing, as well as how the Settlement Agreement could be read to affect Commission practices and
procedures. We understand that the Settlement Agreement does not purport to bind non-party CLECs
to the terms of the Settlement, but we believe that the process developed in this docket will likely be
utilized as a framework for future filings in Arizona. Under the terms of the Settlement Agreement,
the Commission has no input as to the form of notice or scope of the service list. Further, the

1 Settlement Agreement could be read as affecting Commission procedures, even if that was not the
2 parties' intent.

3 In addition to the notice provisions required under the Settlement Agreement, we find that to
4 ensure adequate notice, a full opportunity to participate and a complete record, when Qwest makes a
5 filing to update the unimpaired wire center list, Qwest should request a Procedural Conference, at
6 which time the Commission will review procedures for providing notice of the proceeding and
7 establish the procedures for the update proceeding. Because the filing could affect non-party CLECs,
8 we believe that it is reasonable, and fair, that the procedures established at the time of the update filing
9 will determine a time period for filing objections. In the future, as the Commission and affected
10 parties gain more experience with these types of filings, the Commission can consider appropriate
11 processes and procedures and make modifications to past practices. The parties to this Settlement
12 agreed on a 30 day objection period, but in approving the Settlement Agreement, the Commission is
13 putting all parties on notice that the 30 day period for filing objections does not bind the Commission
14 or prevent it from establishing procedures which it finds reasonable and necessary in its consideration
15 of future filings.

16 We concur with Joint CLECs and Qwest that an additional 60 day comment period, as
17 recommended by Staff, is not required prior to our approval of the Settlement Agreement. All CLECs
18 in Arizona received notice of the proceeding in May 2006, and those interested in the proceedings
19 made affirmative requests to remain on the service list. Any CLEC not a party to the Settlement
20 Agreement is not bound by it, and may, if they choose, contest the designations of non-impairment. If
21 they desire, they may opt into the terms of the Settlement Agreement by executing an amendment to
22 their interconnection agreement with Qwest. They will receive notice of any future filings. Non-party
23 CLECs will not be prejudiced by our adoption of the Settlement Agreement.

24 Finally, with respect to Phase 2 of this proceeding, Qwest's 2007 Additions Application, we
25 will direct the Hearing Division to schedule a Procedural Conference for the purpose of assessing the
26 status of that filing and establishing procedures consistent with this Decision for resolution of that
27 Application.

28 * * * * * * * * * *

1 Having considered the entire record herein and being fully advised in the premises, the
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 1. On February 15, 2006, Covad; Eschelon, McLeod, and XO filed a request with the
5 Commission to address key UNE issues arising from the FCC's *TRRO*, including approval of Qwest
6 Wire Center Lists.

7 2. On February 28, 2006, Qwest filed its Response to the Joint CLECs' request, in which
8 Qwest concurred that the Commission should conduct an adjudicatory proceeding to determine an
9 initial list of non-impaired wire centers.

10 3. By Procedural Order dated April 13, 2006, the Commission scheduled a Procedural
11 Conference on May 1, 2006.

12 4. On May 30, 2006, pursuant to the directive of the Administrative Law Judge during the
13 May 1, 2006 Procedural Conference, Qwest, Joint CLECs and Staff made a Joint Filing Regarding
14 Procedural Matters, in which they proposed a procedural schedule, agreed to a form of protective
15 order, and agreed to a Staff-compiled service list intended to provide notice of the proceeding to
16 CLECs that might be affected by the issues raised in the docket.

17 5. By Procedural Order dated June 2, 2006, the Commission set the matter for hearing
18 commencing October 18, 2006, and established a schedule for the Joint CLECs, Qwest and Staff to
19 file testimony. The June 2, 2006 Procedural Order was sent to all CLECs on the Staff-compiled
20 service list.

21 6. On June 23, 2006, Qwest filed the Direct Testimony of David Teitzel, Rachel Torrence,
22 Renee Albersheim, and Teresa Million.

23 7. On July 28, 2006, the Joint CLECs filed the Testimony of Douglas Denney.

24 8. On August 2, 2006, Qwest filed a Request for Procedural Modification.

25 9. By Procedural Order dated August 11, 2006, the Commission reset the hearing until
26 October 26, 2006, granted a Motion to Compel filed by Joint CLECs, and directed all parties on the
27 service list to file by August 31, 2006, an affirmative statement indicating their interest in remaining
28 on the service list.

1 10. By Procedural Order dated September 20, 2006, the Commission granted Staff's
2 request for extension of time to file testimony, and based on responses to the August 11, 2006
3 Procedural Order, established a current service list to be used on a going-forward basis.

4 11. On September 25, 2006, Staff filed the Responsive Testimony of Armando Fimbres.

5 12. On October 6, 2006, Qwest filed the Rebuttal Testimony of Ms. Albersheim, Mr.
6 Teitzel, Ms. Torrence and Ms. Million, and Joint CLECs filed the Rebuttal Testimony of Mr. Denney.

7 13. On October 20, 2006, Staff filed the Rebuttal Testimony of Mr. Fimbres.

8 14. On October 20, 2006, the Joint CLECs and Qwest filed a Motion to Suspend the
9 Hearing Schedule to accommodate settlement discussions.

10 15. By Procedural Orders dated October 23, 2006 and November 13, 2006, the schedule
11 was suspended indefinitely to accommodate the parties' request, and scheduled a status conference for
12 November 30, 2006.

13 16. On November 30, 2006, December 14, 2006, and January 18, 2007 the Commission
14 convened a series of Procedural Conferences for the purpose of ascertaining the status of the parties'
15 discussions. At the conclusion of the January 18, 2007, Procedural Conference, the parties were
16 directed to file a status report by February 9, 2007.

17 17. On February 9, 2007, the Joint CLECs, Qwest and Staff filed a Joint Status Report and
18 Request for Procedural Conference.

19 18. By Procedural Order dated February 15, 2007, a Procedural Conference was set for
20 February 26, 2007. At that time the parties reported they were still in negotiations, but they also
21 discussed procedures for a proceeding with a briefing schedule. They were directed to file procedural
22 recommendations by March 5, 2007.

23 19. On March 8, 2007, the parties filed a Joint Status Report and Proposed Procedural
24 Schedule.

25 20. On May 1, 2007, the parties filed a Joint Motion to Set Hearing Date requesting that a
26 hearing be scheduled for June 1, 2007. A Procedural Order dated May 7, 2007, set a procedural
27 conference for May 30, 2007 and a hearing for June 1, 2007.

28 21. During the May 30, 2007 Procedural Conference, Qwest and the Joint CLECs indicated

1 that settlement negotiations were ongoing and a stipulation regarding the pending issues may be

2 imminent. On May 31, 2007, in a procedural conference, Qwest and Joint CLECs indicated that they

3 had reached a settlement for all states in which Qwest operates and consequently requested the June 1,

4 2007, hearing be continued indefinitely pending filing of the settlement agreement. By Procedural

5 Order dated May 31, 2007, the June 1, 2007 hearing was vacated and the parties were ordered to file

6 their settlement agreement by June 14, 2007.

7 22. On June 14, 2007, the Joint CLECs and Qwest separately filed a copy of an unexecuted

8 Settlement Agreement.

9 23. On June 22, 2007, the Joint CLECs and Qwest filed a Joint Motion for Approval of

10 Settlement Agreement. A copy of the proposed Settlement Agreement is attached hereto as Exhibit A,

11 and incorporated herein by reference.

12 24. On June 22, 2007, Qwest filed in the docket its 2007 Additions Application and Motion

13 for Expedited Issuance of Protective Order.

14 25. On June 27, 2007, the Joint CLECs and Qwest filed Notice of Joint Filing and

15 Amended Request for Order Approving Settlement Agreement.

16 26. On June 29, 2007, Qwest filed a Request for Procedural Conference to address whether

17 its 2007 Additions Application was properly docketed in this docket absent an order of consolidation,

18 and the issuance of a protective order regarding confidential data Qwest will submit in support of the

19 2007 Additions Application.

20 27. By Procedural Order dated July 11, 2007, a Procedural Conference to discuss pending

21 procedural issues was scheduled for July 19, 2007. During the July 19, 2007, Procedural Conference

22 the parties agreed that a hearing on the proposed Settlement Agreement would be held, that Staff

23 would file a Staff Report or testimony by August 24, 2007, and Qwest and Joint CLECs would file

24 responsive testimony by September 7, 2007; that the 2007 Additions Application would be considered

25 in this same docket as "Phase 2"; and that the parties would later submit a proposed protective order to

26 be used in connection with the 2007 Additions Application.

27 28. On July 20, 2007, National Brands, Inc. dba Sharenet Communications Company

28 ("Sharenet") filed an Application for Leave to Intervene.

1 29. On July 30, 2007, Eschelon filed Comments regarding Qwest's 2007 Additions
2 Application.

3 30. On August 2, 2007, Qwest filed a request for Order Setting Hearing Date.

4 31. By Procedural Order dated August 8, 2007, the Commission set a hearing to commence
5 on October 3, 2007 and granted intervention to Sharenet.

6 32. On August 17, 2007, Qwest filed a Response to the July 30, 2007, Comments of
7 Eschelon.

8 33. On August 24, 2007, Staff filed a Motion for an Extension of Time to File Staff's
9 Settlement Agreement Testimony. Staff requested a two-week extension of the filing date for its
10 testimony.

11 34. On August 31, 2007, Qwest filed a Response to Staff's Motion. Qwest sought a
12 revision of the entire procedural schedule if Staff's Motion were granted.

13 35. On September 6, 2007, a teleconference was conducted with counsel for Qwest, the
14 Joint CLECs and Staff to discuss procedural issues related to Staff's Motion. By Procedural Order
15 dated September 7, 2007, the hearing was set to commence October 29, 2007, with Staff's testimony
16 to be filed by September 7, 2007; and responsive testimony filed by September 28, 2007.

17 36. On September 7, 2007, Staff filed the Settlement Agreement Testimony of Mr.
18 Fimbres.

19 37. On September 28, 2007, Qwest filed the Responsive Testimony of Ms. Albersheim and
20 Ms. Torrence, and the Joint CLECs filed the Response Testimony of Mr. Denney.

21 38. On October 19, 2007, Qwest requested a pre-hearing conference to discuss stipulating
22 into the record the testimony that was filed prior to the Settlement Agreement.

23 39. On October 23, 2007, Staff filed a request to reschedule the hearing. The same date
24 Qwest filed a Response to Staff's request, suggesting that the hearing could commence on October 30,
25 2007.

26 40. In a telephonic procedural conference on October 25, 2007, the parties agreed to
27 reschedule the hearing on the proposed Settlement Agreement to October 30, 2007.

28 41. The hearing convened on October 30, 2007, before a duly authorized Administrative

1 Law Judge.

2 42. On December 14, 2007, the Joint CLECs filed their Closing Brief.

3 43. On December 19, 2007, Staff and Qwest filed their Closing Briefs. On December 20,
4 2007, Staff made an Errata filing, and submitted a substitute Brief containing the corrections.

5 44. As more fully described in the Discussion portion of this Order, the proposed
6 Settlement Agreement designates 10 Qwest wire centers in Arizona as non-impaired for certain UNEs.
7 It also establishes a procedure for Qwest to file with the Commission to add more wire centers to the
8 non-impaired list.

9 45. Staff did not oppose the non-impaired designations of the initial wire centers, but had
10 several recommendations to clarify the Settlement Agreement: Staff recommended:

11 (a) That Section III of the Settlement Agreement, or the Order approving the
12 Agreement, specifically state that 2004 ARMIS data formed the basis of the initial non-impairment
13 designation;

14 (b) That Section IV be clarified to recognize that the Settlement Agreement's silence
15 on the issue of the conversion process does not preclude any party from raising issues related to the
16 conversion process in another proceeding;

17 (c) That the affiliated fiber-based collocators affiliate status should be determined using
18 data available up to the date of an Commission Order;

19 (d) That the 10 day period for a fiber-based collocator to respond to Qwest's inquiry
20 about its status be extended until 60 days;

21 (e) That Qwest not be bound by the July 1st deadline for making filings based on line
22 count data; and

23 (f) That prior to approving the Settlement Agreement, the Commission provide non-
24 parties an additional 60 day period to file Comments on the Agreement.

25 46. Qwest and the Joint CLECs responded to Staff's recommendations as set forth in the
26 Discussion Section of this Order.

27 47. The initial list of non-impaired Qwest wire centers was based in part on 2004 ARMIS
28 data.

1 48. The Settlement Agreement does not preclude any party from raising issues about the
2 conversion process in another proceeding.

3 49. Consistent with the terms of the Settlement Agreement that provides a designation of
4 non-impairment is not effective until 30 days after a filing, or as ordered by the Commission, or in the
5 event of an objection to Qwest's filing, at the date of a Commission Order, data relating to the affiliate
6 status of a fiber-based collocator, that is available up to the date of the Commission Order may be
7 considered by the Commission in resolving disputes concerning Qwest's future non-impaired
8 designation filings.

9 50. The \$25 non-recurring charge for conversions under the terms of the Settlement
10 Agreement is a reasonable, negotiated charge and is not being approved as a cost-based charge.

11 51. The ten business day response period to Qwest's inquiry of fiber-based collocators
12 prior to its filing pursuant to Section V.B.4 of the Settlement Agreement is reasonable under the
13 circumstances.

14 52. Although the Settlement Agreement provides that when an objection to a Qwest
15 designation is filed, the parties will seek Commission resolution of the dispute within 60 days of the
16 objection being filed, the Commission is not bound to resolve such disputes within any pre-established
17 timeframe.

18 53. The Settlement Agreement does not bind any party not a signatory, and non-party
19 CLECs are not prejudiced by the Settlement Agreement. Non-party CLECs retain all their rights
20 pursuant to Sections 251 and 252 of the 1996 Act.

21 54. The Settlement Agreement does not specifically state the role of Commission Staff in
22 the approval process for future Qwest filings for non-impairment status. It is in the public interest that
23 Staff be permitted to review and comment on future Qwest filings.

24 55. Potentially affected CLECs have received adequate notice of the proceeding and have
25 had opportunity to participate. Because non-party CLECs are not bound by the terms of the
26 Settlement Agreement, additional notice and opportunity to comment on the Settlement Agreement are
27 not required at this time.

28 56. With respect to future Qwest applications for additions to the non-impaired wire center

1 list, the Commission will establish appropriate procedures for providing notice and deadlines for
2 objections at the time the filing is made.

3 **CONCLUSIONS OF LAW**

4 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
5 Constitution.

6 2. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

7 3. Joint CLECs are public service corporations within the meaning of Article XV of the
8 Arizona Constitution.

9 4. Joint CLECs are telecommunications carriers within the meaning of 47 U.S.C. § 252,
10 and are authorized to do business in Arizona.

11 5. The Commission has jurisdiction over Qwest and Joint CLECs and of the subject
12 matter of the Settlement Agreement.

13 6. Notice of the proceeding was provided in conformance with law.

14 7. With the clarifications discussed herein, the Settlement Agreement attached hereto as
15 Exhibit A, is fair and reasonable and in the public interest.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the Settlement Agreement filed by Qwest Corporation,
18 DIECA Communications, Inc., doing business as Covad Communications Company and Mountain
19 Telecommunications, Inc.; Eschelon Telecom of Arizona, Inc.; McLeodUSA Telecommunications
20 Services, Inc.; and XO Communications Services, Inc. is approved subject to the directives of the
21 Commission set forth herein.

22 IT IS FURTHER ORDERED that, unless and until a non-party CLEC executes an
23 amendment to its Interconnection Agreement with Qwest, the Settlement Agreement does not bind
24 any party not a signatory, and non-party CLECs retain all their rights pursuant to Sections 251 and
25 252 of the 1996 Act.

26 IT IS FURTHER ORDERED that neither the Settlement Agreement nor our approval
27 precludes any party from raising issues about the conversion process in another proceeding.

28 IT IS FURTHER ORDERED that in future filings made pursuant to the Settlement

1 Agreement, data relating to the affiliate status of a fiber-based collocator that is available up to the
2 date of the Commission Order may be considered by the Commission in resolving disputes
3 concerning Qwest's designation filing.

4 IT IS FURTHER ORDERED that the \$25 non-recurring charge for conversions under the
5 terms of the Settlement Agreement is a negotiated charge and is not being approved as a cost-based
6 charge.

7 IT IS FURTHER ORDERED that approval of the Settlement Agreement does not bind the
8 Commission to any pre-established procedures or timeframe for resolving disputes relating to future
9 filings on non-impairment status made pursuant to the Settlement Agreement.

10 IT IS FURTHER ORDERED that in approving the Settlement Agreement, the Commission
11 is not bound by the procedures and timeframes established therein for the approval of updates to the
12 unimpaired wire center list.

13 IT IS FURTHER ORDERED that when it makes future filings to update the unimpaired wire
14 center list, Qwest Corporation shall request a Procedural Conference, at which time the Commission
15 will establish procedures to govern the proceeding.

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IT IS FURTHER ORDERED that the Hearing Division shall convene a Procedural Conference with the purpose of discussing the process and procedures for its consideration of Qwest Corporation's 2007 Additions Application consistent with this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2008.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

JR:dap

SERVICE LIST FOR:

DIECA COMMUNICATIONS, INC., DOING BUSINESS AS
COVAD COMMUNICATIONS COMPANY AND
MOUNTAIN TELECOMMUNICATIONS, INC.; SCHELON
TELECOM OF ARIZONA, INC.; CLEODUSA
TELECOMMUNICATIONS SERVICES, INC.; O
COMMUNICATIONS SERVICES, INC.
QWEST CORPORATION

DOCKET NOS.:

T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091;
T-03406A-06-0091; T-03432A-06-0091 and T-01051B-06-
0091

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COVAD COMMUNICATIONS COMPANY
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- 7 Brad VanLeur, President
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EXHIBIT A

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

This Multi-State Settlement Agreement ("Settlement Agreement") is entered into between Qwest Corporation ("Qwest") and Covad Communications Company ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom, Inc. ("TDSM"), and XO Communications Services, Inc. ("XO"). Qwest and each CLEC are referred to separately as a "Party" or collectively as the "Parties."

I. INTRODUCTION

WHEREAS, the Federal Communications Commission ("FCC") issued 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, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March 11, 2005)(Triennial Review Remand Order) (FCC 04-290) ("TRRO");

WHEREAS, on February 15, 2006, some or all of the Joint CLECs filed requests with the state Commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state Commissions, in accordance with the TRRO, develop and approve a list of Non-Impaired Wire Centers and a process for future updates of the wire center list;

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC)

investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition.

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues, and bind all CLECs.

WHEREAS, the Joint CLECs and Qwest have reached resolution of their disputes. Because of the multi-state nature of these issues, the Parties have determined that it is in their mutual interest to effect a multi-state settlement of issues.

THEREFORE, the Parties agree to the following resolution of issues:

II. DEFINITIONS

"Commission" for Arizona means the Arizona Corporation Commission or any successor state agency.

"Commission" for Colorado means the Colorado Public Utilities Commission or any successor state agency.

"Commission" for Minnesota means the Minnesota Public Utilities Commission or any successor state agency.

"Commission" for Oregon means the Public Utility Commission of Oregon or any successor state agency.

"Commission" for Utah means the Utah Public Service Commission or any successor state agency.

"Commission" for Washington means the Washington Utilities and Transportation Commission or any successor state agency.

"Commission-Approved Wire Center List" is Attachment A to this Settlement Agreement, as

may be updated by the Commission, as described in Section V of this Settlement Agreement.

“Effective Date of this Settlement Agreement” is the effective date of the Commission order approving this Settlement Agreement.

“Effective Date of Non-Impairment Designation” is the date on which the non-impairment designation begins as specified in this Settlement Agreement at Section III(B) for the Initial Commission-Approved Wire Center List and as later determined pursuant to Section VI (F) for future non-impairment designations identified in a Commission-Approved Wire Center List.

“Filing Date” is the date on which Qwest submits its non-impairment or tier designation filing, with supporting data, as described in Section VI of this Settlement Agreement, to the Commission for review and provides the Commission and CLECs that, as of that date, have signed the applicable protective order/agreement (or are subject to a standing protective order). If Qwest provides the data to the Commission and Joint CLECs on different dates, the Filing Date shall be the later of the two dates.

“Initial Commission-Approved Wire Center List” is Attachment A to this Settlement Agreement as of the Effective Date of this Settlement Agreement.

“Joint CLECs” refers collectively to Covad Communications Company (“Covad”), Eschelon Telecom, Inc. (“Eschelon”), Integra Telecom Holdings, Inc. (“Integra”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), Onvoy, POPP.Com (“POPP”), US Link, Inc. d/b/a TDS Metrocom (“TDSM”), and XO Communications Services, Inc. (“XO”).

“Non-Impaired Facilities” are those network elements identified in an applicable FCC order as no longer available as unbundled network elements (“UNEs”) under 47 U.S.C. § 251(c)(3) based on non-impairment or tier designations and that have been reviewed and approved by a Commission using the process and methodology set forth in Section IV of this Settlement Agreement.

“Non-Impaired Wire Center” is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

"Parties" refers collectively to Qwest Corporation and the Joint CLECs.

"Qwest" refers to "Qwest Corporation."

"Wire Center" For purposes of this Settlement Agreement, 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 chapter 1 of Title 47 of the Code of Federal Regulations. The Wire Center boundaries define the area in which all customers served by a given Wire Center are located.

III. INITIAL COMMISSION-APPROVED WIRE CENTER LIST

Notwithstanding anything that may be to the contrary in the Definitions set forth in Section I and the Methodology set forth in Section V of this Settlement Agreement, the Parties agree the Qwest Wire Centers listed in Attachment A qualify as Non-Impaired Wire Centers at the tier levels and for the facilities noted on Attachment A.

For Wire Centers identified in Attachment A, the Parties agree as follows:

- A. The Joint CLECs agree that, upon the Effective Date of this Settlement Agreement, they will not order Non-Impaired Facilities identified in the Initial Commission-Approved Wire Center List. An order approving this Settlement Agreement is, and will also be recognized by the Parties as, an order approving the non-impairment or tier designations identified in the Initial Commission-Approved Wire Center List.
- B. The Effective Date of Non-Impairment Designations contained in the Initial Commission-Approved Wire Center List is March 11, 2005, with the following exceptions:
 1. **July 8, 2005:** The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.
 2. **Thirty (30) Days After the Effective Date of this Settlement Agreement:** The Effective Date of Non-Impairment Designations for the

Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of this Settlement Agreement.

IV. NON-RECURRING CHARGE FOR CONVERSIONS USING THE INITIAL WIRE CENTER LIST AND FOR FUTURE COMMISSION-APPROVED ADDITIONS TO THAT LIST

- A. Qwest will, for at least three (3) years from the Effective Date of this Settlement Agreement, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service or product under this Settlement Agreement. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.
- B. For purposes of settlement, Qwest will provide a clearly identified lump-sum credit of \$25 per converted facility to those CLECs that have (1) converted Non-Impaired Facilities to a Qwest alternative service before the Effective Date of this Settlement Agreement pursuant to the TRRO and (2) paid a \$50 non-recurring conversion charge. In the event a CLEC has, prior to the Effective Date of this Settlement Agreement, disconnected a converted circuit and, as a result that circuit is no longer in service as of the Effective Date of this Settlement Agreement, Qwest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

- C. The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of this Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Settlement Agreement precludes a Party from addressing the non-recurring charge after three years from the Effective Date of this Settlement Agreement. A different non-recurring charge will apply only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties.

V. METHODOLOGY

Non-Impaired Facilities, non-impairment or tier designations will be determined using the following methodology:

- A. Business Lines – Business lines shall be counted as follows:
1. Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-wire center adjustments to this data and without including the same lines in more than one of the categories listed in paragraphs (2) – (4) of this Section V(A).
 2. UNE loops connected to a Wire Center where DS1 & DS3 unbundled loops and DS1 & DS3 Enhanced Extended Loops (“EEL”) are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will counted as 672 business lines).
 3. Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.

4. Qwest Platform Plus ("QPP"), Qwest Local Services Platform ("QLSP"), and other similar platform product offerings shall be calculated using actual business line counts for these services.

B. Collocation –

1. A fiber-based collocator is defined as any carrier, unaffiliated with the incumbent LEC (Qwest), that maintains a collocation arrangement in an incumbent LEC (Qwest) Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that:
 - a. terminates at a collocation arrangement within the Wire Center;
 - b. leaves the incumbent LEC's (Qwest's) Wire Center premises; and
 - c. is owned by a party other than the incumbent LEC (Qwest) or any affiliate of the incumbent LEC (Qwest), except as set forth in this definition. Dark fiber obtained from an incumbent LEC (Qwest) on an indefeasible right of use basis shall be treated as non-incumbent LEC (non-Qwest) fiber-optic cable. Two or more affiliated fiber-based collocators in a single Wire Center shall collectively be counted as a single fiber-based collocator. For the purposes of this definition, "affiliate" is defined by 47 U.S.C. §153(1) and any relevant interpretation in that title.
2. Before classifying a carrier as a fiber-based collocator in a Qwest filing request pursuant to Section VI for Commission approval of a non-impaired designation, Qwest will:
 - a. Confirm that the carrier meets the criteria contained in the definition of fiber-based collocator in 47 C.F.R. § 51.5 (as reflected in paragraph B(1) and subparts above);
 - b. Conduct a field visit to verify and document the above (2.a.) criteria; and

- c. Validate the criteria against the most recent order and/or billing data.
3. Express fiber will be counted as a functional fiber facility for purposes of identifying a fiber-based collocator, if it meets the definition of fiber-based collocator in 47 C.F.R. §51.5 (as reflected in paragraph B(1) and subparts above). The Joint CLECs agree not to raise the lack of Qwest-provided power when there is traffic over the express fiber as the sole basis to dispute whether express fiber can be counted as a functional fiber facility for purposes of identifying a fiber-based collocator. For the purpose of this Settlement Agreement, "express fiber" means a CLEC-owned fiber placed to the collocation by Qwest that terminates at CLEC-owned equipment in a collocation and draws power from a remote location.
4. Before filing a request pursuant to Section VI for Commission approval of a non-impairment designation, Qwest will send a letter by certified U.S. mail, return receipt requested, to CLECs identified by Qwest as fiber-based collocators, using the contacts identified by each such CLEC for interconnection agreement notices, and inform them that they will be counted by Qwest as fiber-based collocators in Qwest's filing. The CLEC will have a reasonable opportunity (which Qwest will identify in its letter but which will be no less than ten (10) business days from the CLEC's confirmed receipt of Qwest's letter) to provide feedback to this information before Qwest files its request. In the absence of a response by the Qwest-identified collocators, Qwest may rely on the Qwest-identified collocators in its filing. No party shall use the absence of a response from a CLEC collocator as the sole basis for its position.

VI. FUTURE QWEST FILINGS TO REQUEST COMMISSION APPROVAL OF NON-IMPAIRMENT DESIGNATIONS AND ADDITIONS TO THE COMMISSION-APPROVED WIRE CENTER LIST

- A. Qwest may file a request(s) with the Commission to obtain additional Non-Impaired Wire Centers as data supporting such designations become available,

subject to the following conditions:

1. Qwest may request addition of Non-Impaired Wire Centers to the Commission-Approved Wire Center List at any time based solely the number of fiber-based collocators.
 2. Qwest may request addition of Non-Impaired Wire Centers based in whole or part upon line counts at any time up to July 1 of each year, based on prior year line count data.
 3. Notwithstanding the above, Qwest will not request addition of any Non-Impaired Wire Centers until after the 2007 ARMIS filing (using December 2006 line count data).
- B. When requesting additional non-impairment designations, Qwest will use the methodology set forth in Section V above, and will use the most recent data available at the time Qwest submits its proposed non-impairment designations for Commission review. For business line counts, Qwest will use and submit the most recent filed ARMIS (as reported) data available at the time of submission of its request to the Commission.
- C. At least five (5) days prior to filing new non-impairment or tier designations for Commission review, Qwest will request a protective order from the Commission to govern the handling of confidential information during the proceedings. Attached as Attachment E to this Settlement Agreement, is a model protective order. The Parties agree to seek from the individual Commission's approval for a standing protective order based upon the attached model protective order that will apply in future proceedings. Where a Commission adopts a standing protective order, Qwest is not required to submit a request for a new protective order, and CLECs that have signed the protective order are not required to re-sign it for each new Qwest request. A Commission may modify a standing protective order using its standard processes and procedures after Qwest has made its filing.
- D. In order to provide all interested parties adequate notice of the scope of the requested protective order and the anticipated Wire Center update proceeding, Qwest will provide CLECs (Joint CLECs and other potentially affected

Competitive Local Exchange Carriers), including at least the contacts identified by each such carrier for interconnection agreement notices, via its email notification channels, with at least five (5) business days notice prior to filing proposed non-impairment or tier designations for Commission review.

- E. Qwest will file supporting data (as outlined below) with the Commission when filing its request to obtain additional non-impairment designations. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective order to CLECs that have signed the applicable protective agreement (or are subject to a standing protective order).

1. If Qwest relies upon Fiber-Based Collocators for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

- a. The name of each fiber-based collocator.
- b. The applicable Qwest Ready for Service date.
- c. The results of any field verification that Qwest undertook to verify the fiber-based collocation, including the field technicians' notes which includes: (1) the Wire Center and state; (2) collocator name; (3) collocation type; (4) fiber type; (5) validation of fiber termination at the fiber-based collocation; (6) validation that fiber exits a Wire Center premises; (7) visual power verification; (8) power verification at Battery Distribution Fuse Bay/Board ("BDFB,") if possible; (9) additional comments from field personnel.
- d. A copy of the letter sent by Qwest to collocator(s) identified by Qwest as fiber-based collocator(s) requesting validation of status as a fiber-based collocator and ownership/responsibility.
- e. Copies of any responses to the letter noted in 1(d) above, including an indication of whether the collocator has affirmatively identified (or disputed) itself as a fiber-based collocator; and
- f. All written correspondence between Qwest and the collocator(s) identified by Qwest as fiber-based collocator(s) regarding the validation of the fiber-

based collocation.

2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

a. The latest available ARMIS 43-08 line counts, using the methodology described in Section V(A) of this Agreement and used to create official ARMIS data on file with the FCC.

b. Total wholesale UNE loops shown at the aggregated level for the Wire Center(s) at issue, and by capacity (voice grade, DS1, DS3). This information will also be provided on a disaggregated basis for all CLECs with the CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data. Qwest calculations to derive 64-kbps equivalents for high capacity (e.g., DS1 and DS3) loops will also be provided.

c. CLEC line counts based upon QPP or Qwest Local Services Platform (or similar platform product) will be provided on a disaggregated basis for all CLECs with CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data.

F. Once Qwest submits its new non-impairment or tier designation filing to request Commission approval, including all of the information identified in Section VI(E) above:

1. A CLEC or any other party will have 30 days from the Filing Date to raise objections to Qwest's request with the Commission.
2. If no objections are filed with the Commission, the Effective Date of the Non-Impairment Designation will be thirty (30) days after the Filing Date, unless the Commission orders otherwise ("Effective Date for Undisputed Designations"). The Parties agree that they will request that the Commission not alter the Effective Date for Undisputed Designations without good cause. If no objections are filed with the Commission, the

Joint CLECs agree that they will not order Non-Impaired Facilities in the Wire Center(s) identified on the applicable Commission-Approved Wire Center List as of fifteen (15) days from the Effective Date of the Non-Impairment Designation.

- a. In the event no objections to Qwest filing are filed with the Commission, the Parties agree that they will, within thirty (30) days of the Effective Date of the Non-Impairment Designations, jointly request an expedited order designating as non-impaired the facilities identified in the Qwest filing, if no order has been received.
 - b. To facilitate the expedited order described in the previous paragraph, the Parties further agree that they will, within thirty (30) days of the Effective Date of Non-Impairment Designations, include a mutually agreed to proposed order designating as non-impaired the facilities identified by Qwest in its filing on the Filing Date as an attachment to the joint request for an expedited order, if no order has been received.
3. If a CLEC or any other party disputes Qwest's proposed non-impairment designations, the Parties agree to ask the Commission to use its best efforts to resolve such dispute within 60 days of the date of the objection.
- a. In the event no objections are filed with respect to some but not all of the non-impairment designations identified by Qwest in a request on the Filing Date, the Parties agree that they will jointly request an expedited order approving the undisputed designations identified in the Qwest filing on the Filing Date, using the process noted in paragraphs 2(a) and 2(b) above.
4. If a CLEC or any other party disputes Qwest's proposed non-impairment designation but Qwest prevails and the Wire Center is added to the Commission-Approved Wire Center List, the Joint CLECs agree they will not order Non-Impaired Facilities in (for loops) and between (for transport) Wire Centers identified on the applicable Commission-

Approved Wire Center List as of fifteen (15) days after the effective date of the Commission order adding it to the Commission-Approved Wire Center List.

5. If a CLEC or any other party disputes Qwest's proposed non-impairment designation and prevails, and it is not added to the Commission-Approved Wire Center List, DS1 and DS3 UNE loop or high capacity transport UNE facilities in (for loops) and between (for transport) such Wire Centers will continue to be treated as UNEs until those facilities are added to a Commission-Approved Wire Center List in a future filing.

G. Length of Transition Period for Additional Non-Impairment Designations.

1. When the Commission approves additional DS1 and DS3 UNE loop or high capacity transport UNE non-impairment designations as described in this Section VI, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service pursuant to the terms of the applicable interconnection agreement.
2. When the Commission approves additional Dark Fiber transport non-impairment Designations as described in this Section VI, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities, pursuant to the terms of the applicable interconnection agreement to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such a change.

H. Rate During Transition Period for Additional Non-Impairment Designations

1. During the Transition Periods identified in Section VI (G), facilities subject to the transition will be provided at a rate equal to 115% of the UNE rates applicable as of the applicable effective date. The 115% transitional rate for additional Non-Impaired Facilities will be applied to

CLEC bills as a manual adjustment on the following bill cycle. The 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 as of the applicable effective date.

2. The non-recurring conversion charge is addressed in Section IV.

VII. OTHER PROVISIONS

A. This Settlement Agreement is the entire agreement between the Parties regarding resolution of the underlying dispute and this Settlement Agreement may be modified only if agreed to in writing, signed by the Parties and approved by the Commission. This Settlement Agreement is not intended to alter or amend the existing interconnection agreements between Qwest and Joint CLECs. To the extent that any term of this Settlement Agreement would affect interconnection agreement terms, interconnection agreement terms will not be dealt with in the Settlement Agreement but will instead be included in filed and approved interconnection agreements or amendments as described in subparagraphs 1-3 of this Section VII(A):

1. Attachments B, C, and D to this Settlement Agreement contain interconnection agreement ("ICA") provisions regarding issues addressed in this Settlement Agreement. The CLECs that are part of the Joint CLECs are at varying stages of ICA negotiations with Qwest. Qwest and the Joint CLECs agree that the ICA language will be addressed as follows:
 - a. Covad, Integra, POPP.Com, and XO have each executed TRRO ICA amendments with Qwest. Qwest, Covad, Integra, POPP.Com and XO agree to amend their interconnection agreements with Qwest using the amendment terms in Attachment B.
 - b. Eschelon and Qwest have executed a Bridge Agreement and are currently parties to ICA arbitrations. Qwest and Eschelon agree that, in each arbitration, the language in Attachment C will be added as closed (*i.e.*, agreed upon) language to the interconnection

agreement that is submitted in the compliance filing for Commission approval in each state. Inserting this language will not re-open or modify any closed language in the proposed interconnection agreement. Eschelon agrees to add the closed language reflected in Attachment C to the negotiations multi-state interconnection agreement negotiations draft within ten (10) business days of the Effective Date of this Settlement Agreement.

- c. McLeodUSA and TDSM have not agreed to or executed TRRO Amendments to their current ICAs and are in negotiations with Qwest pursuant to Section 252 of the federal Act. The timeframes of Section 252 apply to those interconnection agreement negotiations. Qwest, McLeodUSA and TDSM agree to execute an amendment to their existing ICAs to include the amendment terms in Attachment D. Qwest, McLeodUSA and TDSM reserve their rights as to TRRO and ICA terms not set forth in Attachment D including terms with respect to the rates, terms and backbilling for the time period from March 10, 2006 to the time McLeodUSA and TDSM convert their existing base of Non-Impaired Facilities as well as the consequences for any non-conversion (or "Failure to Convert") after the end of a transition period.
2. Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
 3. McLeodUSA and TDSM agree to execute the ICA terms in Attachment D within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
 4. Qwest agrees to make the terms in Exhibits B, C, and D available to other

requesting CLECs for inclusion of one or the other in their interconnection agreements, consistent with Section 252(i) of the Act, as well.

- B. This Settlement Agreement is a settlement of a controversy. No precedent is established by this Settlement Agreement, whether or not approved by Commissions. The Settlement Agreement is made only for settlement purposes and does not represent the position that any Party would take if this matter is not resolved by agreement. This Settlement Agreement may not be used as evidence or for impeachment in any future proceeding before a Commission or any other administrative or judicial body, except for future enforcement of the terms of this Settlement Agreement after approval.
- C. If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement as to that particular state.
- D. Qwest has entered into ICA Amendments (*See, e.g.*, Section 2.6 of the Qwest-Covad TRRO Amendment; Section 2.8.5 of the Qwest-Integra TRRO Amendment, and Section 2.9.4 of the Qwest-XO TRRO Amendment.) under which Qwest has agreed that facilities previously converted to (or ordered as) non-UNEs based on initial Qwest non-impairment designations will be converted back to UNEs at no charge with corresponding refunds to the CLECs for non-recurring charges and the difference between the applicable non-UNE and UNE recurring rates after a determination that the relevant Wire Center did not meet the FCC's non-impairment criteria. Qwest agrees herein that these provisions and all the conversion and refund terms therein will apply to any of the relevant Joint CLEC's facilities previously designated by Qwest as non-impaired, but not identified as non-impaired in Attachment A to this Settlement Agreement. For any refunds that are due and owing pursuant to such provisions as of the Effective Date of this Settlement Agreement, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of this Settlement Agreement.
- E. For those non-impairment designations that have an effective date of July 8, 2005 under this Settlement Agreement, CLECs that have already been back-billed to March 11, 2005 for those facilities shall receive from Qwest a lump sum credit equal to the amount back-billed

specifically for the period from March 11, 2005 to July 8, 2005.

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this _____ day of June, 2007.

Qwest Corporation

By: _____
Perry W. Hooks, Jr.
Director – Product & Marketing
1801 California Street, Suite 2150
Denver, CO 80202

TRRO - Non-impaired Wire Centers

State	Wire center	CLLI Code	Non-impairment Classification	Non-impaired Elements	Date
AZ	McClintock	TEMPAZMC	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Mesa	MESAAZMA	Tier 2	DS3 Transport	11-Mar-05
	Phoenix East	PHNXAZE	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Phoenix Main	PHNXAZMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Phoenix North	PHNXAZNO	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Phoenix Northeast	PHNXAZNE	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Scottsdale Main	SCDLAZMA	Tier 2	DS3 Transport	11-Mar-05
	Tempe	TEMPAZMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Thunderbird	SCDLAZTH	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Tucson Main	TCSNAZMA	Tier 2	DS3 Transport	11-Mar-05
	Aberdeen	ENWDCOAB	Tier 2	DS3 Transport	11-Mar-05
	Avrarda	ARVDCOMA	Tier 2	DS3 Transport	11-Mar-05
	Aurora	AURRCOMA	Tier 2	DS3 Transport	11-Mar-05
	Boulder	BLDRCOMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Capitol Hill	DNVRCOCH	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Colo. Springs Main	CLSPCOMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05
	Curtis Park	DNVRCOCP	Tier 1	DS1 and DS3 Transport	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05
	Denver East	DNVRCOEA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05, DS3-L 30+ED
	Denver Main	DNVRCOMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Denver South	DNVRCOSO	Tier 2	DS3 Transport	11-Mar-05
Denver Southeast	DNVRCOSE	Tier 2	DS3 Transport	8-Jul-05	
Dry Creek	DNVRCODC	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05	
Lakewood	LKWDCOMA	Tier 2	DS3 Transport	8-Jul-05	
Northglenn	NGLNCOMA	Tier 2	DS3 Transport	8-Jul-05	
Pikeview	CLSPCOV	Tier 1	DS1 and DS3 Transport	Tier 1 - 8-Jul-05, Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	
Sullivan	DNVRCOSL	Tier 1	DS1 and DS3 Transport	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	
MN	Crystal	CRYSMNCR	Tier 2	DS3 Transport	11-Mar-05
	Eagan-Lexington	EAGMNLB	Tier 2	DS3 Transport	11-Mar-05
	Eden Prairie	EDPRMNEP	Tier 2	DS3 Transport	8-Jul-05
	Maplewood	MPWDMNMA	Tier 2	DS3 Transport	11-Mar-05
	St. Paul Market	STPLMNMK	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Mpls 7th Av.	MPLSMN07	Tier 2	DS3 Transport	11-Mar-05
	Mpls Downtown	MPLSMN0T	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS3 and DS1 Loops	11-Mar-05
	Normandale	BLTNMNNO	Tier 1	DS1 and DS3 Transport	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05
	Orchard	GLVYMNOR	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Rochester	ROCHMNRO	Tier 2	DS3 Transport	11-Mar-05
	St. Cloud	STCDMNTO	Tier 2	DS3 Transport	11-Mar-05
	Fargo/Moorhead (ND & Minn)	FARGNDBC	Tier 2	DS3 Transport	11-Mar-05

DECISION NO. _____

TRRO - Non-impaired Wire Centers

State	Wire center	CLLI Code	Non-impairment Classification	Non-impaired Elements	Date
OR	Bend	BENDOR24	Tier 2	DS3 Transport	11-Mar-05
	Eugene 10th Av.	EUGNOR53	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Medford	MDFDOR33	Tier 2	DS3 Transport	11-Mar-05
	Portland Alpine	PTLDOR11	Tier 2	DS3 Transport	11-Mar-05
	Portland Belmont	PTLDOR13	Tier 2	DS3 Transport	11-Mar-05
	Portland Capitol	PTLDOR69	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS3 and DS1 Loops	11-Mar-05
	Salem Main	SALMOR58	Tier 1	DS1 and DS3 Transport	11-Mar-05
UT	Murray	MRRYUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Ogden Main	OGDNUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Provo	PROVUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Salt Lake City Main	SLKCUTMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
	Salt Lake City South	SLKCUTSO	Tier 1	DS1 and DS3 Transport	Tier 1 - 8-Jul-05
	Salt Lake City West	SLKCUTWE	Tier 1	DS1 and DS3 Transport	Tier 2 - 11-Mar-05, Tier 1 8-Jul-05
WA	Bellevue Glencourt	BLLVWAGL	Tier 2	DS1 and DS3 Transport	11-Mar-05
	Belleview Sherwood	BLLVWASH	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Kent O'Brien	KENTWAOB	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Olympia Whitehall	OLYMWA02	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Seattle Atwater	STTLWA05	Tier 1	DS1 and DS3 Transport	8-Jul-05
	Seattle Campus	STTLWACA	Tier 1	DS1 and DS3 Transport	8-Jul-05
	Seattle Cherry	STTLWACH	Tier 2	DS3 Transport	11-Mar-05
	Seattle Dumwamish	STTLWADU	Tier 2	DS3 Transport	8-Jul-05
	Seattle East	STTLWA03	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Seattle Elliott	STTLWAEL	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Seattle Main	STTLWA06	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS3 and DS1 Loops	11-Mar-05
	Spokane Riverside	SPKNWA01	Tier 1	DS1 and DS3 Transport	11-Mar-05
	Tacoma Fawcett	TACMWafa	Tier 2	DS3 Transport	11-Mar-05

NOTES:

DS1 Transport circuits provided by Qwest that originate in a "Tier 1" wire center and terminate in a "Tier 1" wire center are considered non-impaired.

DS3 Transport circuits provided by Qwest that originate in a "Tier 1" or "Tier 2" wire center and terminate in a "Tier 1" or "Tier 2" wire center are considered non-impaired.

DS1 loops provided by Qwest that reside in a wire center classified as "DS1 Loops" are considered to be non-impaired.

DS3 loops provided by Qwest that reside in a wire center classified as "DS3 Loops" are considered to be non-impaired.

30 days + ED = 30 days after Commission Order approving Settlement Agreement with Attachment A

ATTACHMENT B
Triennial Review Remand Order ("TRRO") Wire Center Amendment
to the Interconnection Agreement between
Qwest Corporation and
[insert CLEC] for the State of [insert State]

This is an Amendment ("Amendment") to reflect the results of certain Wire Center Dockets in the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and [insert CLEC] ("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 as the "Agreement") for services in the state of [insert state] which was approved by the [enter state commission] Commission ("Commission") on [insert date] as referenced in Docket No. [insert docket number]; and

WHEREAS, the Federal Communications Commission ("FCC") issued 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, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO"); and

WHEREAS the Parties executed an amendment to the Agreement incorporating terms of the TRRO on [insert date] ("TRRO Amendment"); and

WHEREAS, on or about February 15, 2006, certain CLECs (collectively referred to as "Joint CLECs"), including in some states CLEC, filed requests with the state commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state commissions, in accordance with the TRRO, develop and approve a list of non-impaired wire centers and a process for future updates of the wire center list; and

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition; and

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues; and bind all CLECs; and

WHEREAS, the Parties wish to amend the Agreement to reflect certain terms resulting from the publicly filed settlement of issues in the Wire Center Dockets ("Settlement Agreement") and agree to do so under the terms and conditions contained in this Amendment.

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

I.0 DEFINITIONS

The Agreement, including specifically Section 1.0 (Definitions) of the TRRO Amendment to the Agreement, is amended to add the following definitions:

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

STATE SPECIFIC - ARIZONA

"Wire Center Docket" means Commission Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091 entitled "In the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Request for Commission

Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists. (AZ Wire Centers),” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

“Wire Center Docket” means Commission Docket No. 06M-080T entitled “In The Matter Of The Joint Competitive Local Exchange Carriers’ Request Regarding The Status Of Impairment In Qwest Corporation’s Wire Centers And The Applicability Of The Federal Communications Commission’s Triennial Review Remand Order,” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA

“Wire Center Docket” means Commission Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 entitled “In the Matter of CLECS’ Request for Commission Approval of ILEC Wire Center Impairment Analysis.” and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled “In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loops or Transport UNEs at Cost-Based Rates,” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

“Wire Center Docket” means Commission Docket No. UM 1251 entitled “In the Matter of COVAD COMMUNICATIONS COMPANY; ESCHOLON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; And XO COMMUNICATIONS SERVICES, INC. Request for Commission Approval of Non-Impairment Wire Center List,” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

“Wire Center Docket” means Commission Docket No. 06-049-40 entitled “In the Matter of the Investigation into Qwest Wire Center Data,” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON

“Wire Center Docket” means Commission Docket No. UT-053025 entitled “In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC’s

Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved wire center list, and the Commission approves addition of wire center(s) to the list.

2.0 Unbundled Network Elements (UNE) General

The Agreement, including specifically Section 2.0 (Unbundled Network Elements General) of the TRRO Amendment to the Agreement, is amended as follows:

2.0.A Whether a high capacity loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and updating the Commission-Approved Wire Center List. For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions to the initial Commission-Approved Wire Center List, see Section 2.0.F of this Amendment.

2.0.A.1 Section 2.3 of the TRRO Amendment is hereby replaced with the following language in these Sections 2.3, 2.3.1 and 2.3.2:

For Covad:

"2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place 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, 4.1.10.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

For Integra and POPP.Com:

"2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place 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.

For XO:

"2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place 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. Such back billed amounts shall appear on the Charges and Credits section of the invoice and those amounts shall not be subject to billing measurements, interest or penalties. Payment for the back billed amounts will be due thirty (30) days after the date of the invoice containing such back billed amounts in the Charges and Credits section.

2.3.1 July 8, 2005: The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.

2.3.2 Thirty (30) Days After the Effective Date of the Settlement Agreement in the Wire Center Docket: The Effective Date of Non-Impairment Designations for the Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of the Commission order approving the Settlement Agreement in the Wire Center Docket."

2.0.B Upon receiving a request for access to a high capacity loop or high capacity transport UNE pursuant to Section 2.0 of the TRRO Amendment, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the self-certification letter information through remarks in the service request, or through other means) for any such facility, unless the Parties agree otherwise in an amendment to the Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 2.0.A, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 2.0.F. For changes of law, the Parties agree that the change of law provisions contained in the interconnection agreement between the Parties will apply.

2.0.C Intentionally Left Blank.

2.0.D For high capacity loops and high capacity transport UNEs, Qwest will for a period of at least three (3) years from the effective date of a Commission order approving the Settlement Agreement in a Wire Center Docket, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service arrangement, as shown in Exhibit A to this Amendment. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing

cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

2.0.D.1 The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of the Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Agreement precludes a Party from addressing charges after three years from the Effective Date of the Settlement Agreement. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties and reflected in an amendment to the Agreement.

2.0.E For high capacity loops and high capacity transport UNEs, Qwest will also provide a clearly identified lump sum credit of \$25 per converted facility to CLEC, if CLEC has converted Non-Impaired Facilities pursuant to the TRRO before the effective date of a Commission order approving the Settlement Agreement in the Wire Center Docket and paid a \$50 non-recurring conversion charge. Qwest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

2.0.F Additional Non-Impaired Wire Centers. When Qwest files a request(s) to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests approved by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in the Agreement and the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on the addition(s) to the Commission-Approved Wire Center List. Fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.

2.0.F.1 Length of Transition Period for Additional Non-Impairment Designations.

2.0.F.1.1 When the Commission approves additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.F, CLEC will have ninety

(90) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.

2.0.F.1.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.F, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition to an alternative arrangement. Qwest and CLEC will work together to identify those circuits impacted by such a change.

Integra (§2.8.4), POPP.Com (§2.8.4) and Covad (§2.5.4):

2.0.F.1.2.1 In addition to the changes required by Paragraph 2.0.F above, the last sentence of the paragraph entitled "Additional Non-Impaired Wire Centers" of the TRRO Amendment is hereby modified to refer to back billing to the ninety-first (91st) Day "for additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations" and to add "and the one-hundred and eighty first (181st) Day for additional Dark Fiber transport non-impairment designations."

Integra (2.8.4):

2.0.F.1.2.2 The Parties specifically agree that the fifth (5th) sentence in Paragraph 2.8.4 of Integra's TRRO Amendment will remain in full force and effect. That sentence states: "If CLEC makes a commercially reasonable best effort to transition such services and if extraordinary circumstances arise the Parties agree to discuss an alternate time frame."

2.0.F.2 Rate During Transition Period for Additional Non-Impairment Designations.

2.0.F.2.1 For a ninety (90) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.2 For a one-hundred and eighty (180) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.3 The 115% rate described in Sections 2.0.F.2.1 and 2.0.F.2.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.4 The non-recurring conversion charge is addressed in Section 2.0.D of this Amendment.

2.0.F.3 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).

2.0.F.3.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0.F.3.2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0.F.4 Methodology. The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

For Covad:

2.0.G Section 2.6 is modified to add the following subpart:

"2.6.1 For any refunds that are due and owing pursuant to Section 2.6, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

For Integra and POPP.Com:

2.0.G Section 2.8.5 is modified to add the following subpart:

"2.8.5.1 For any refunds that are due and owing pursuant to Section 2.8.5, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

For XO:

2.0.G Section 2.9.4 is modified to add the following subpart:

"2.9.4.1 For any refunds that are due and owing pursuant to Section 2.9.4, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

II. Effective Date

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

III. Further Amendments

The provisions of this Amendment apply notwithstanding anything in the TRRO Amendment that may be to the contrary. Except as modified herein, the provisions of the Agreement, including the TRRO Amendment, shall remain in full force and effect. Except as provided in the Agreement, this Amendment may not be further amended or altered, and no waiver of any provision thereof shall be effective, except by written instrument executed by an authorized representative of both Parties.

IV. Entire Agreement

Other than the publicly filed Agreement, its Amendments, and the publicly filed Settlement Agreement in the Wire Center Docket, Qwest and CLEC have no agreement or understanding, written or oral, relating to the subject of this Amendment. The publicly filed Settlement Agreement in the Wire Center Docket is not intended to alter or amend the Agreement.

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.

Signature Blocks

**ATTACHMENT C to
Triennial Review Remand Order ("TRRO") Wire Center
Multi-State Settlement Agreement**

ATTACHMENT C & MULTI-STATE DRAFT

For insertion in Section 4 ("Definitions") in alphabetical order, with gray shading indicating state-specific language (to be inserted as applicable per each state):

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. §251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

STATE SPECIFIC - ARIZONA

"Wire Center Docket" means Commission Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091 entitled "In the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists. (AZ Wire Centers)," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

"Wire Center Docket" means Commission Docket No. 06M-080T entitled "In The Matter Of The Joint Competitive Local Exchange Carriers' Request Regarding The Status Of Impairment In Qwest Corporation's Wire Centers And The Applicability Of The Federal Communications Commission's Triennial Review Remand Order," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA

"Wire Center Docket" means Commission Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 entitled "In the Matter of CLECS' Request for Commission Approval of ILEC Wire Center Impairment Analysis." and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled "In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loops or Transport UNEs at Cost-Based Rates," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

"Wire Center Docket" means Commission Docket No. UM 1251 entitled "In the Matter of COVAD COMMUNICATIONS COMPANY; ESCHELON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; and XO COMMUNICATIONS SERVICES, INC. Request for Commission Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

"Wire Center Docket" means Commission Docket No. 06-049-40 entitled "In the Matter of the Investigation into Qwest Wire Center Data," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON

"Wire Center Docket" means Commission Docket No. UT-053025 entitled "In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-approved wire center list, and the Commission approves addition of wire center(s) to the list.

SECTIONS 9.1.13 – 9.1.15 - For insertion in Section 9 ("UNEs"), in the location indicated by section number:

9.1.13 To submit an order to obtain a High Capacity Loop or high capacity

transport UNEs, 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 as reflected in this Agreement and that it is therefore entitled to unbundled access to the particular Unbundled Network Elements sought pursuant to section 251(c)(3). Before placing the first such order under this Agreement, CLEC shall provide its self-certification through a letter sent to Qwest, or in another form to which the Parties mutually agree in writing. The applicable UNE rate(s) in Exhibit A will apply to UNEs and UNE Combinations.

9.1.13.1 CLEC will maintain appropriate records to support the self-certification described in Section 9.1.13. See Section 9.23.4 for Service Eligibility Criteria for High Capacity EELs.

9.1.13.2 Qwest has a limited right to audit compliance with the Service Eligibility Criteria for High Capacity EELs, as described in Section 9.23.4.3. Notwithstanding any other provision of this Agreement, there is no other auditing requirement for self-certification, as CLEC certifies only to the best of its knowledge.

9.1.13.3 Whether a High Capacity Loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and requests for additions to the Commission-Approved Wire Center List. For non-impaired facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.14.4. CLEC will transition such UNEs impacted by the Commission-Approved Wire Center List as described in Section 9.1.14.

9.1.13.4 Upon receiving a request for access to a High Capacity Loop or high capacity transport UNE pursuant to Section 9.1.13, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the information in the self-certification letter through remarks in the service request, or through other means) for any such facility on non-impairment grounds, unless the Parties agree otherwise in an amendment to this Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 9.1.13.3, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.14.4. Regarding changes in law, see Section 2.2.

9.1.13.4.1 To the extent that Qwest seeks to challenge access to any such UNE(s), it subsequently can raise that issue through the Dispute resolution procedures in Section 5.18 of this Agreement. Regarding Service Eligibility Criteria for High Capacity EELs, see Sections 9.23.4.2.1.3 and 9.23.4.3.

9.1.13.4.1.1 If Qwest seeks to challenge any such UNEs, it will provide written notice to CLEC of its request for Dispute resolution.

9.1.13.4.1.2 If Qwest seeks to challenge any such UNEs, it will also provide CLEC with data to support its claim.

9.1.13.4.1.2.1 For Wire Centers: This may, in some cases, be limited to providing a copy of a Commission Approved Wire Center List, while in other cases the data may be more extensive (such as data that allows CLEC to identify the disputed circuits and other data upon which Qwest relies). In the event of such a dispute, CLEC will also provide Qwest the data upon which it relies for its position that CLEC may access the UNE.

9.1.13.4.1.2.2 For Caps:

9.1.13.4.1.2.2.1 With respect to disputes regarding the caps described in Sections 9.2 and 9.6.2.3, data that allows CLEC to identify all CLEC circuits relating to the applicable Route or Building [including if available circuit identification (ID), installation purchase order number (PON), Local Service Request identification (LSR ID), Customer Name/Service Name, installation date, and service address including location (LOC) information (except any of the above, if it requires a significant manual search), or such other information to which the Parties agree]. In the event of such a dispute, CLEC will also provide Qwest the data upon which it relies for its position that CLEC may access the UNE.

9.1.13.4.1.2.2.2 Notwithstanding anything in this Section 9.1.13.4 that may be to the contrary, to the extent that Qwest challenges access to any UNE(s) on the basis that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 or 9.6.2.3 because CLEC has ordered more than ten UNE DS1 Loops or more than the applicable number of DS3 Loop circuits or UDIT circuits in excess of the applicable cap on a single LSR (or a set of LSRs submitted at the same time for the same address for which CLEC populates the related PON field to indicate the LSRs are related), Eschelon does not object to Qwest rejecting that

single LSR (or the set of LSRs that meets the preceding description) on that basis. The means by which Qwest will implement rejection of such orders is addressed in Section 9.1.13. Except as provided in this Section 9.1.13.4.1.2.2.2, in all other situations when Qwest challenges access to any UNE(s) on the basis that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 or 9.6.2.3, Qwest must immediately process the request and subsequently proceed with the challenge as described in Section 9.1.13.4.1.

9.1.13.5 If the Parties agree or it is determined through Dispute resolution that CLEC was not entitled to unbundled access to a particular UNE that is not subject to one of the transition periods described in Section 9.1.14, or the transition period has ended, CLEC will place an order within thirty (30) Days to either disconnect the UNE or convert such UNE to an alternative service arrangement. Back billing for the difference between the rates for UNEs and rates for the Qwest alternative service arrangements will apply no earlier than the later of: (1) the installation date; or (2) the effective date of the TRO or TRRO, whichever is applicable.

9.1.13.5.1 With respect to the caps described in Sections 9.2 and 9.6.2.3, the back billing period described in Section 9.1.13.5 will apply no earlier than the later of: (1) the installation date; or (2) the effective date of the TRO or TRRO, whichever is applicable; unless the Parties agree to a different date or a different date is determined through Dispute resolution.

9.1.13.5.2 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.

9.1.13.5.2.1 The Parties disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).

9.1.14 Transition periods. A transition period allows CLEC to transition away from use of UNEs where they are not impaired. The transition plans described in this Section apply only to the embedded End User Customer base. During the applicable transition period, CLEC will retain access to the UNE at the terms described in this Section.

9.1.14.1 For a 12-month period beginning on March 11, 2005, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.

9.1.14.1.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, Qwest shall back bill CLEC for such rate adjustment for the time period for which the facilities were in place between March 11, 2005 to March 10, 2006. Such back billing shall not be subject to billing measurements and penalties (as identified in this Agreement) on the grounds that such back billing was not implemented earlier than ninety (90) Days after approval of this Agreement.

9.1.14.2 For an 18-month period beginning on March 11, 2005, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that 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 CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.

9.1.14.2.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, Qwest shall back bill CLEC for such rate adjustment for the time period for which the facilities were in place between March 11, 2005 to September 10, 2006. Such back billing shall not be subject to billing measurements and penalties (as identified in this Agreement) on the grounds that such back billing was not implemented earlier than ninety (90) Days after approval of this Agreement.

9.1.14.3 Bridge Period from March 11, 2006 until Effective Date of this Agreement.

9.1.14.3.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, for the period from March 11, 2006 until the Effective Date of this Agreement, Qwest shall back bill retroactive to March

11, 2006 (or a later date, if a UNE became unavailable after that date) for the time period for which the facilities were in place and CLEC agrees to pay Qwest pursuant to this Agreement the difference between the UNE rate(s) and the applicable alternate service rate(s) (such as Special Access Service rate(s)) on all Loop and transport UNEs that were no longer required to be offered by Qwest as UNEs beginning March 11, 2006.

9.1.14.4 Additional Non-Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-Approved Wire Center List. Fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.

9.1.14.4.1 Transition Periods for additions to the Commission-Approved Wire Center List.

9.1.14.4.1.1 For a ninety (90) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.14.4.1.2 For a one-hundred and eighty (180) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.14.4.1.3 The 115% rate described in Sections 9.1.14.4.1.1 and 9.1.14.4.1.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.14.4.2 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).

9.1.14.4.2.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

9.1.14.4.2.2 If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

9.1.14.4.3 Methodology: The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

9.1.14.5 If it is determined by CLEC and Qwest that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 and 9.6.2.3, CLEC has thirty (30) 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.

9.1.14.6 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum

credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.

9.1.14.6.1 The Parties disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).

9.1.15 If CLEC has not converted or disconnected a UNE facility that the Parties agree, or it is determined in Dispute resolution that the facility, should be converted or disconnected by the end of the applicable transition period described in Sections 9.13 and 9.14, Qwest will convert facilities to month-to-month service arrangements in Qwest's FCC No. 1 Tariff or, for Dark Fiber facilities, begin the disconnect process after reasonable notice to CLEC sufficiently identifying the Dark Fiber facility(ies) to be disconnected. If such a facility is disconnected, the applicable disconnection charge in Exhibit A, if any, will apply. Qwest and CLEC will work together to identify impacted facilities.

9.1.15.1 If Qwest believes or asserts that a particular UNE's availability status has changed, Qwest shall notify CLEC of Qwest's claim and the basis for the claim and upon request, provide sufficient data to enable CLEC to identify and agree upon any impacted facility(ies). If the Parties do not reach agreement, Qwest must continue to provide the UNE to CLEC until the Dispute is resolved. See Section 9.1.14.

9.1.15.2 If Qwest converts a facility to an analogous or alternative service arrangement pursuant to Section 9.1.15, the terms and conditions of this Section 9.1.15.2 will apply.

9.1.15.2.1 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.

9.1.15.2.1.1 The Parties may disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).

9.1.15.2.2 The Parties will complete the transition of facility(ies) using a seamless process that does not affect the End User Customer's perception of service quality. The Parties will establish and abide by any necessary operational procedures to ensure Customer service quality is not affected by conversions.

ATTACHMENT D
Triennial Review Remand Order ("TRRO") Wire Center Amendment
to the Interconnection Agreement between
Qwest Corporation and
[insert CLEC] for the State of [insert State]

This is an Amendment ("Amendment") to reflect the results of certain Wire Center Dockets in the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and [insert CLEC] ("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 as the "Agreement") for services in the state of [insert state] which was approved by the [enter state commission] Commission ("Commission") on [insert date] as referenced in Docket No. [insert docket number]; and

WHEREAS, the Federal Communications Commission ("FCC") issued 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, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO"); and

WHEREAS the Parties are in negotiations regarding interconnection agreement language addressing terms of the TRRO; and

WHEREAS, on or about February 15, 2006, certain CLECs (collectively referred to as "Joint CLECs"), including in some states CLEC, filed requests with the state commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state commissions, in accordance with the TRRO, develop and approve a list of non-impaired wire centers and a process for future updates of the wire center list; and

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition; and

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues; and bind all CLECs; and

WHEREAS, the Parties wish to amend the Agreement to reflect certain terms resulting from the publicly filed settlement of issues in the Wire Center Dockets ("Settlement Agreement") and agree to do so under the terms and conditions contained in this Amendment.

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

I.0 DEFINITIONS

The following definitions apply for purposes of this Amendment:

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

STATE SPECIFIC - ARIZONA

"Wire Center Docket" means Commission Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091 entitled "In the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists. (AZ Wire Centers)," and any successor

or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

"Wire Center Docket" means Commission Docket No. 06M-080T entitled "In The Matter Of The Joint Competitive Local Exchange Carriers' Request Regarding The Status Of Impairment In Qwest Corporation's Wire Centers And The Applicability Of The Federal Communications Commission's Triennial Review Remand Order," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA

"Wire Center Docket" means Commission Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 entitled "In the Matter of CLECS' Request for Commission Approval of ILEC Wire Center Impairment Analysis." and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled "In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loops or Transport UNEs at Cost-Based Rates," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

"Wire Center Docket" means Commission Docket No. UM 1251 entitled "In the Matter of COVAD COMMUNICATIONS COMPANY; ESCHELON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; And XO COMMUNICATIONS SERVICES, INC. Request for Commission Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

"Wire Center Docket" means Commission Docket No. 06-049-40 entitled "In the Matter of the Investigation into Qwest Wire Center Data," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON

"Wire Center Docket" means Commission Docket No. UT-053025 entitled "In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which

Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved wire center list, and the Commission approves addition of wire center(s) to the list.

2.0 Unbundled Network Elements (UNE) General

The Agreement is amended as follows:

2.0.A Whether a high capacity loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and updating the Commission-Approved Wire Center List. For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions to the initial Commission-Approved Wire Center List, see Section 2.0.F of this Amendment.

2.0.A.1 Effective Dates.

2.0.A.1.1 **July 8, 2005:** The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.

2.0.A.1.2 **Thirty (30) Days After the Effective Date of the Settlement Agreement in the Wire Center Docket:** The Effective Date of Non-Impairment Designations for the Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of the Commission order approving the Settlement Agreement in the Wire Center Docket.

2.0.A.2 Transition periods. A transition period allows CLEC to transition away from use of UNEs where they are not impaired. The transition plans described in this Section apply only to the embedded End User Customer base. During the applicable transition period, CLEC will retain access to the UNE at the terms described in this Section.

2.0.A.2.1 For a 12-month period beginning on March 11, 2005, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has

established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.

2.0.A.2.2 For an 18-month period beginning on March 11, 2005, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that 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 CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.

2.0.A.2.3 For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will convert such Non-Impaired Facilities according to the timeframes identified in this Section 2.0.A.2.3. Qwest and CLEC will work together to identify those circuits impacted by such a change.

2.0.A.2.3.1 When the Commission has approved additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.A for the initial Commission-Approved Wire Center List, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the initial Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.

2.0.A.2.3.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.A for the initial Commission-Approved Wire Center List, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the initial Commission-Approved Wire Center List to transition to an alternative arrangement.

2.0.B Upon receiving a request for access to a high capacity loop or high capacity transport UNE, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the self-certification letter information through remarks in the service request, or through other means) for any such facility, unless the Parties agree otherwise in an amendment to the Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 2.0.A, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 2.0.F. For changes of law, the Parties agree that the change of law provisions contained in the Agreement will apply.

2.0.C Intentionally Left Blank.

2.0.D For high capacity loops and high capacity transport UNEs, Qwest will for a period of at least three (3) years from the effective date of a Commission order approving the Settlement Agreement in a Wire Center Docket, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service arrangement, as shown in Exhibit A to this Amendment. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

2.0.D.1 The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of the Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Agreement precludes a Party from addressing charges after three years from the Effective Date of the Settlement Agreement. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties and reflected in an amendment to the Agreement.

2.0.E For high capacity loops and high capacity transport UNEs, Qwest will also provide a clearly identified lump sum credit of \$25 per converted facility to CLEC, if CLEC has converted Non-Impaired Facilities pursuant to the TRRO before the effective date of a Commission order approving the Settlement Agreement in the Wire Center Docket and paid a \$50 non-recurring conversion charge. Qwest and the CLEC will work together to identify the applicable disconnected/converted circuit to ensure that the disconnected/converted circuit is included in the lump-sum credit described above. CLEC and Qwest agree to promptly provide available documentation necessary to verify the amount to be refunded pursuant to this Paragraph for any such disconnected circuits and will work in good faith in an effort to identify applicable circuits and resolve disputes, if any, through informal means prior to initiating any other rights or remedies. Available documentation may include, for example, copies of bills or identifying information such as circuit identification number, depending on the circumstances. CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

2.0.F Additional Non-Impaired Wire Centers. When Qwest files a request(s) to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests approved by the Commission in the Wire Center Docket. If the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.

2.0.F.1 Length of Transition Period for Additional Non-Impairment Designations.

2.0.F.1.1 When the Commission approves additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.F, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.

2.0.F.1.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.F, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition to an alternative arrangement. Qwest and CLEC will work together to identify those circuits impacted by such a change.

2.0.F.2 Rate During Transition Period for Additional Non-Impairment Designations.

2.0.F.2.1 For a ninety (90) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.2 For a one-hundred and eighty (180) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.3 The 115% rate described in Sections 2.0.F.2.1 and 2.0.F.2.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the

effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.4 The non-recurring conversion charge is addressed in Section 2.0.D of this Amendment.

2.0.F.3 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).

2.0. F.3.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0. F.3.2 If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0.F.4 Methodology: The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

II. Effective Date and Reservation of Rights

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

The Parties, which are in negotiations regarding interconnection agreement language addressing terms of the TRRO, reserve their rights as to TRRO terms not set forth in this Amendment.

III. Further Amendments

Except as modified herein, the provisions of the Agreement, including the TRRO Amendment, shall remain in full force and effect. Except as provided in the Agreement, this Amendment may not be further amended or altered, and no waiver of any provision thereof shall be effective, except by written instrument executed by an authorized representative of both Parties.

IV. Entire Agreement

Other than the publicly filed Agreement, its Amendments, and the publicly filed Settlement Agreement in the Wire Center Docket, Qwest and CLEC have no agreement or understanding, written or oral, relating to the subject of this Amendment. The publicly filed Settlement Agreement in the Wire Center Docket is not intended to alter or amend the Agreement.

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.

Signature Blocks

ATTACHMENT E

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
 100 Washington Square, Suite 1700
 100 Washington Avenue South
 Minneapolis, Minnesota 55401-2138

TELEPHONE: (612) 341-7600
 TTY: (612) 341-7346

VIA E-MAIL AND U.S. MAIL

June 28, 2006

29

To: All Parties on the Attached Service List

Re: *In the Matter of CLECS' Request for Commission
 Approval of ILEC Wire Center Impairment Analysis*
 PUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211

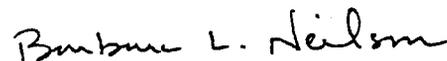
and

*In the Matter of a Commission Investigation Identifying
 Wire Centers in which Qwest Corporation Must Offer
 High-Capacity Loop or Transport UNEs at Cost-Based
 Rates*
 PUC Docket No. P-999/CI-06-685

OAH Docket No. 11-2500-17274-2

Based upon recent e-mail communications from counsel in this matter, it is my understanding that the parties all concur in the use of the draft Protective Order I sent you last week. Accordingly, I have signed that Protective Order, and a copy is hereby served upon each of you.

Sincerely,



BARBARA L. NEILSON
 Administrative Law Judge
 Telephone: (612) 341-7604

Encl.

Providing Impartial Hearings for Government and Citizens
 An Equal Opportunity Employer

Administrative Law Division & Administrative Services
 Facsimile: (612) 349-2665

Workers' Compensation Hearings Division
 Facsimile: (612) 349-2691

Workers' Compensation Settlement Division
 Facsimile: (612) 349-2634

DECISION NO. _____

OAH Docket No. 11-2500-17274-2
 MPUC Docket No. P-5692, 5340, 5323, 465, 6422/M-06-211
 MPUC Docket No. P-999/CI-06-685

**In the Matter of CLECs' Request for Commission Approval
 of ILEC Wire Center Impairment Analysis
 and**

**In the Matter of a Commission Investigation Identifying
 Wire Centers in which Qwest Corporation Must Offer
 High-Capacity Loop or Transport UNEs at Cost-Based Rates**

Administrative Law Judge's Service List as of June 28, 2006

Commission and Administrative Law Judge

Dr. Burl W. Haar (15) Executive Secretary Public Utilities Commission Suite 350 121 Seventh Place East St. Paul,, MN 55101-2147	John J. Lindell Analyst Public Utilities Commission Suite 350 121 Seventh Place East St. Paul, MN 55101-2147	Barbara L. Neilson (Original) Office of Administrative Hearings Suite 1700 100 Washington Square Minneapolis, MN 55401-2138
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Parties

Linda Chavez (4) Telephone Docketing Coordinator Department of Commerce Suite 500 85 Seventh Place East St. Paul, MN 55101-2198	Karen A. Finstad Hammel Assistant Attorney General Suite 1500 445 Minnesota Street St. Paul, MN 55101	Joan C. Peterson Jason D. Topp Corporate Counsel Qwest Corporation Room 2200 200 South Fifth Street Minneapolis, MN 55402
Dan Lipschultz Attorney at Law Moss & Barnett, P.A. Suite 4800 90 South Seventh Street Minneapolis, MN 55402-4129	Joy Gullikson Corporate Counsel Onvoy, Inc. Suite 700 300 South Highway 169 Minneapolis, MN 55426	Mary T. Buley Sr. Regulatory Manager Onvoy, Inc. Suite 700 300 South Highway 169 Minneapolis, MN 55426

Court Reporter

Janet Shaddix Elling
 Shaddix & Associates
 Suite 122
 9100 W. Bloomington
 Freeway
 Bloomington, MN 55431

DECISION NO. _____

**Email service list
Parties**

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linda.chavez@state.mn.us
joan.peterson@qwest.com
jason.topp@qwest.com
LipschultzD@moss-barnett.com
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mary.buley@onvoy.com

Court Reporter

jshaddix@janetshaddix.com

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

LeRoy Koppendraye
Marshall Johnson
Phyllis A. Reha
Kenneth A. Nickolai
Thomas Pugh

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of CLECs' Request for
Commission Approval of ILEC Wire Center
Impairment Analysis

MPUC Docket No. P-5692, 5340,
5643, 5323, 465, 6422/M-06-211

In the Matter of a Commission
Investigation Identifying Wire Centers in
which Qwest Corporation Must Offer High-
Capacity Loop or Transport UNEs at Cost-
Based Rates

MPUC Docket No. P-999/CI-06-685

OAH Docket No. 11-2500-17274-2

PROTECTIVE ORDER

The purpose of this Protective Order ("Order") is to facilitate the disclosure of documents and information during the course of these proceedings and to protect Confidential Information and Highly Confidential Information. Access to and review of Confidential Information and Highly Confidential Information by parties other than government agencies shall be strictly controlled by the terms of this Order. The parties other than government agencies have represented and agree that Confidential Information and Highly Confidential Information as defined in this Order constitute "trade secret information" under Minn. Stat. § 13.37, subd. 1(b), and "nonpublic data" under Minn. Stat. § 13.02, subd. 9. The parties other than government agencies have

acknowledged that the government agencies involved in this docket, which include the Minnesota Public Utilities Commission ("Commission"), the Office of Administrative Hearings ("OAH"), the Minnesota of Commerce ("Department"), and the Office of Attorney General ("OAG") and Office of Attorney General-Residential and Small Business Utilities Division ("OAG-RUD") are subject to the Minnesota Government Data Practices Act ("MGDPA")¹ and records retention requirements of Minn. Stat. §§ 138.163-138.226. The parties other than government agencies, which parties are hereinafter referred to as "parties", "persons" or "entities" have further agreed to the terms of paragraphs one through twelve below, and, upon that agreement, and all the files, records and proceedings herein, it is hereby ordered:

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA" designation. All copies of documents so marked shall be made on yellow paper. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as "NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA." Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

¹ Minn. Stat. Chapter 13.

(b) Use of Confidential Information – Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceeding in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("proceedings"), and shall keep the Confidential Information secure as trade secret, confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in proceedings; (3) only those employees of the party who are directly involved in these proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to the government agencies, their counsel, employees, consultants and experts.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit A. Court reporters whose activities

are not regulated by Minn. Stat. Ch. 13 shall also be required to sign an Exhibit A upon written request of a party and to comply with the terms of this Order.

The nondisclosure agreement (Exhibit A) shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, employer, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within five (5) days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in section 1(c) above shall be responsible for having each such person execute an original of Exhibit A and a copy of all such signed Exhibit As shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and arguments in connection with this proceeding, or in the case of persons designated in section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the proceedings in accordance with section 2(b) below.

(b) Destruction. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the proceedings.

The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Trade Secret Information. Any person, whether a party or non-party, may designate certain competitive Confidential Information as "Highly Confidential Trade Secret Information" (herein referred to as "Highly Confidential Information") if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

NONPUBLIC HIGHLY CONFIDENTIAL TRADE SECRET
 INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER
 IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211
 AND P-999/CI-06-685

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly

Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The redacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and Confidential Information described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit B of the nondisclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as Highly Confidential. Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit B also shall describe in detail the duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including the sale or marketing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be

made in writing to counsel submitting the challenged individual's Exhibit A or B within three (3) business days after receiving the challenged individual's signed Exhibit A or B. Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, in-house consultants, outside counsel and outside experts who have signed Exhibit B, and to the Department and OAG-RUD, their employees and counsel, and to their consultants and experts who have signed Exhibit B.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of this Order. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in a secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Small Company. Notwithstanding anything to the contrary in this Order,

persons authorized to review Confidential Information and Highly Confidential Information on behalf of a company with less than 5,000 employees shall be limited to the following: (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) a reasonable number of outside counsel; (3) the company's employees and witnesses; and (4) independent consultants acting under the direction of the company's counsel or senior management and directly engaged in this proceeding. Such persons **do not** include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization for that person to review the Confidential Information or Highly Confidential Information. If the producing party refuses to give such written authorization, the company may, for good cause shown, request an order from the Administrative Law Judge ("ALJ") allowing that person to review the Confidential Information or Highly Confidential Information. The producing party shall be given the opportunity to respond to the company's request before an order is issued.

5. Masking. Information or documents provided in this proceeding showing the identity of any fiber-based collocators in a wire center must be designated as Confidential. Similarly, any information or documents provided in this proceeding showing the identity of a telecommunications carrier's business lines or line counts must be provided in a "masked" format, identifying the information using a code, and must be designated as Confidential. Each individual carrier will be provided its own code to verify data concerning that carrier. The government agencies will be provided a code for each carrier identified in the information or documents provided.

DECISION NO. _____

6. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

7. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be Confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(i) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(ii) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information,

document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such Confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by section 7(b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

(e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be Confidential.

8. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

(i) Prior to the use of, or substantive reference to, any Confidential or Highly Confidential Information, the parties intending to use such information shall make that intention known to the providing party.

(ii) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature.

(iii) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(iv) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

(v) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685," and shall not be examined by any person except under the conditions set forth in this Order.

(c) In Camera Hearing. Any Confidential or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-

examination on, or substantive reference to, Confidential or Highly Confidential Information (or that portion of the record containing Confidential or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential or Highly Confidential Information pursuant to section 1(c) above and have signed an Exhibit A or B, unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceeding. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within thirty (30) days after final settlement or conclusion of the proceedings. If the

providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel of the receiving party shall verify in writing that the material has in fact been destroyed.

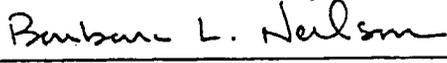
9. Use in Pleadings. Where references to Confidential or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 7), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit A or B. All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

10. Summary of Record. If deemed necessary by the Commission or ALJ, the providing party shall prepare a written summary of the Confidential or Highly Confidential Information referred to in the Order to be placed on the public record.

11. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to MPUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-999/CI-06-685. In addition, experts and consultants of government agencies are subject to the provisions of this Protective Order that are applicable to experts and consultants of parties.

12. This Protective Order shall continue in force and effect after these dockets are closed.

Dated: June 28, 2006.



BARBARA L. NEILSON
Administrative Law Judge

DECISION NO. _____

EXHIBIT A

CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____ 2006, in MPUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-999/CI-06-685P-421/CI-05-1996, and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

DECISION NO. _____

EXHIBIT B

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated _____ 2006, in MPUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685, and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

DECISION NO. _____

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 20th day of June, 2007.

Qwest Corporation

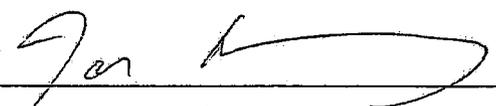
By: Perry W. Hooks, Jr.

Perry W. Hooks, Jr.
Director - Product & Marketing
1801 California Street, Suite 2150
Denver, CO 80202

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 22nd day of June, 2007.

Covad Communications Company and
DIECA Communications, Inc.



By: James Kirkland
Its: Executive Vice-President, Strategic Development
and General Counsel

DECISION NO. _____

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 14th day of June, 2007.

XO Communications Services, Inc.



Heather B. Gold

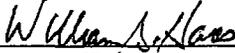
Heather B. Gold
SVP - External Affairs

DECISION NO. _____

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 13th day of June, 2007.

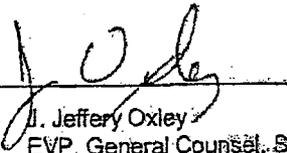
McLeodUSA Telecommunications Services, Inc.



William A. Haas
Vice President & Deputy General Counsel
1 Martha's Way
Hiawatha, Iowa 52233
(319) 790-7295

DECISION NO. _____

Eschelon

By: 

J. Jeffery Oxley
EVP, General Counsel, Secretary
Eschelon Telecom, Inc.
730 Second Avenue S., Suite 990
Minneapolis, MN 55402