ORIGINAL NEW APPLICATION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission
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| **IN THE MATTER OF THE AGREEMENT BETWEEN GILA LOCAL EXCHANGE CARRIER, INC. AND QWEST CORPORATION FOR THE PROVISION OF INTERNETWORK CALLING NAME SERVICES** | DOCKET NO. T-01051B-09-0141<br>T-20515A-09-0141<br>**COMPLIANCE FILING OF AGREEMENT UNDER PROTEST AND WITH RESERVATION OF RIGHTS** |

Pursuant to 47 U.S.C. § 252(e)(1), the Rules of the Arizona Corporation Commission ("Commission") regarding filing of interconnection agreements and amendments to interconnection agreements, Qwest Corporation ("Qwest") files the attached Internetwork Calling Name ("ICNAM") Services Agreement entered into between Qwest Corporation and Gila Local Exchange Carrier, Inc., for approval by the Commission. The attached Agreement shall be referred to herein as the "Commercial ICNAM Agreement." As explained below, Qwest objects to being required to file the Commercial ICNAM Agreement for approval and likewise takes the position that the Commission lacks the authority to review, approve, amend, or reject the Commercial ICNAM Agreement, in whole or in part. Qwest is therefore filing the attached Commercial ICNAM Agreement under protest and with a reservation of rights as explained below.

Under the ICNAM Agreement, Qwest will provide CLEC with ICNAM Service, which includes provisioning of ICNAM Database subscriber information when a Qwest End User

Customer ("Calling Party") calls a CLEC End User Customer ("Called Party"). The effect being that the Called Party can identify the Calling Party subscriber prior to receiving the call, except in those cases where the Calling Party has its ICNAM information blocked.

Qwest's filing of the Commercial ICNAM Agreement under protest is the result of the order entered by the Commission on September 9, 2005 in Docket Nos. T-01051B-04-0540 and T-03574A-04-0540 (the "MCI Filing Order"). In that order, the Commission denied Qwest's Motion to Dismiss the Agreement Filing of MCIMetro Access Transmission Services, L.L.C. ("MCI"). In the MCI Filing Order, the Commission concluded that the Commercial QPP Agreement between Qwest and MCI is subject to the Commission's jurisdiction and that the Telecommunications Act of 1996 ("the Act") required Qwest and MCIMetro to file the agreement and seek the Commission's approval of it.

Pursuant to the Federal Communications Commission's rulings in the *Triennial Review Order*[1] and the *Triennial Review Remand Order*,[2] incumbent local exchange carriers ("ILECs") like Qwest are no longer required to provide mass market switching, shared transport, and certain other services under Section 251 of the Act.[3] Notwithstanding these rulings, Qwest has voluntarily determined that it will provide mass market switching and shared transport services under the QPP Agreement. In *Qwest Corporation v. Arizona Corporation Commission* (the "*Covad Arbitration Decision*"), the United States District Court for the District of Arizona recently ruled that the Commission does not have the authority to require Qwest to include in its arbitrated interconnection agreements obligations to provide network elements that, per rulings of the Federal Communications Commission, Qwest is not required to provide under Section 251.[4] This ruling recognizes that while Congress gave state commissions authority to impose

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[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, 17 FCC Rcd 16978 (2003).

[2] *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005).

[3] 47 U.S.C. §251

[4] 496 F. Supp.2d 1069, 1077 (D. Ariz. 2007).

and enforce requirements involving the unbundled network elements and services included in Section 251, it specifically did not grant state authority over the elements and services that the FCC has removed from Section 251.[5] Similarly, the ICNAM Agreement does not include any services required under Section 251, and is not subject to review by this Commission. Qwest recognizes that the Commission has appealed the *Covad Arbitration Decision* to the Ninth Circuit Court of Appeals, but the district court's decision remains binding while that appeal is pending. Further, that decision is consistent with those of multiple other federal courts that have ruled that states do not have authority under the Act to impose requirements on services and elements that the FCC has removed from Section 251.[6]

Therefore, subject to the foregoing, Qwest hereby files the attached Commercial ICNAM Agreement under protest and, likewise under protest, seeks the Commission's approval of the Agreement under section 252(e)(1) of the Act.

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[5] *Id.* at 1076-78.

[6] *See, e.g.*, *Verizon New England v. Maine Public Utilities Comm'n, et al.*, Nos. 06-2151, 06-2429, 2007 WL 2509863 (1st Cir. Sept. 6, 2007); *DIECA Communications, Inc. v. Florida Public Service Comm'n, et al.*, 447 F. Supp. 2d 1281 (N.D. Fla. 2006); *Bellsouth Telecommunications, Inc. v. Kentucky Public Service Comm'n, et al.*, No. 06-65-KKC, 2007 WL 2736544 (E.D. Ky. Sept. 18, 2007); *Michigan Bell Tel. Co. v. Lark, et al.*, No. 06-11982, 2007 WL 2868633 (E.D. Mich. Sept. 26, 2007); *Southwestern Bell Tel., L.P. v. Missouri Public Service Comm'n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006).

In *Qwest Corp. v. Public Utilities Commission of Colorado*, 479 F.3d 1184 (10th Cir. 2007), the 10th Circuit ruled that the Colorado and Utah Commissions had authority to review and approve a Qwest commercial agreement known as "Qwest Platform Plus" under Section 252(e)(1). However, Qwest submits that the decision is incorrect because it concludes erroneously that the commercial agreement at issue in that case related to the duties in Sections 251(b) and (c) involving unbundled network elements and interconnection. The mass market switching and shared transport that Qwest provides under the agreement at issue here is not provided pursuant to either Section 251(b) or (c) and therefore does not relate to any of the duties in that section. As such, the agreement is not an "interconnection agreement" subject to this Commission's review and approval under Section 252(e)(1).

RESPECTFULLY SUBMITTED this 20th day of March, 2009.

QWEST CORPORATION

Norman G. Curtright
Corporate Counsel
20 East Thomas Road, 16th Floor
Phoenix, AZ 85012
Telephone: (602) 630-2187

*Attorney for Qwest Corporation*

## CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2009, I caused true and correct copies of the foregoing **COMPLIANCE FILING OF AGREEMENT UNDER PROTEST AND WITH RESERVATION OF RIGHTS** to be mailed by first class mail, postage prepaid, to the following:

Gila Local Exchange Carrier, Inc.
Derek E. White, Subsidiary Manager
P.O. Box 5015
7065 W. Allison Road
Chandler, AZ 85226

Qwest Law Department
Attention: Corporate Counsel, Interconnection
1801 California Street, 10th Floor
Denver, Co 80202

Diane Kipzu

# INTERNETWORK CALLING NAME ("ICNAM") SERVICES AGREEMENT

This Agreement, together with the Attachments and Rate Sheets, incorporated herein by reference, ("Agreement") is between **Qwest Corporation ("Qwest"), a Colorado corporation, and Gila Local Exchange Carrier, Inc. ("CLEC")**, (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"). The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

| **Qwest Corporation:** | **Gila Local Exchange Carrier, Inc.:** |
|---|---|
| By: | By: |
| Name: L. T. Christensen | Name: Derek E. White |
| Title: Director – Wholesale Contracts | Title: Subsidiary Manager |
| Date: 3/5/09 | Date: February 24, 2009 |

**NOTICE INFORMATION:** All written notices required under the Agreement shall be sent to the following:

**Qwest Corporation**
Director - Interconnection Agreements
1801 California Street, 24th Floor
Denver, CO 80202
Phone: 303-965-3029
Fax: 303-965-3527
Email: intagree@qwest.com

**With copy to:**
Qwest Law Department
Associate General Counsel, Interconnection
1801 California Street, 10th Floor
Denver, CO 80202
Phone: 303-383-6553
Email: Legal.Interconnection@qwest.com

**CLEC:**

Derek E. White, Subsidiary Manager
Box 5015
7065 W Allison Rd.
Chandler, Arizona 85226
Phone: 520-796-8845
Fax 520-796-4688
email - dewhite@gilanet.net

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**APPLICABLE STATES:**

Qwest agrees to offer and CLEC intends to purchase Service in the states indicated below by CLEC's signatory initialing (or an "X") on the applicable blanks:

__X__ Arizona
____ Colorado
____ Idaho
____ Iowa
____ Minnesota
____ Montana
____ Nebraska
____ New Mexico
____ North Dakota
____ Oregon
____ South Dakota
____ Utah
____ Washington
____ Wyoming

CLEC and Qwest mutually agree as follows:

1. **Definitions**. Capitalized terms used herein are defined in Attachment 1.

2. **Effective Date**. This Agreement is effective upon the latest execution date by the Parties ("Effective Date").

3. **Term**. The term of this Agreement begins on the Effective Date and continues through December 31, 2010. In the event that at the expiration of the Agreement CLEC has any remaining Customers served under this Agreement, Qwest may immediately convert CLEC to an equivalent alternative service at market-based wholesale rates.

4. **Scope of Agreement; Service Provisioning; Controlling Documents; Change of Law; Eligibility for Services under this Agreement; Non-Applicability of Change Management Process.**

4.1 The Services ("Services") described in this Agreement will only be provided in Qwest's incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

4.2 In the event of a conflict in any term of any documents that govern the provision of Services hereunder, the following order of precedence will apply in descending order of control: an Attachment, Rate Sheet, this Agreement, and any Order Form. The Parties agree that the Services offered and purchased under this Agreement are subject to compliance with all Applicable Laws and regulations; and obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date ("Existing Rules"). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

4.4 If a change in law, rule, or regulation materially impairs a Party's ability to perform or obtain a benefit under this Agreement, both Parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

4.5 To receive services under this Agreement, CLEC must be a certified CLEC under applicable state rules. CLEC may not purchase or utilize Services covered under this Agreement for its own administrative use or for the use by an Affiliate.

4.6 Except as otherwise provided in this Agreement, the Parties agree that Services provided under this Agreement are not subject to the Qwest Wholesale Change Management Process ("CMP"), Qwest's Performance Indicators ("PID"), Performance Assurance Plan ("PAP"), or any other wholesale service quality standards, or liquidated damages and remedies. Except as otherwise provided, CLEC hereby waives any rights it may have under the PID, PAP and all other wholesale service quality standards to liquidated damages, and remedies with respect to Services provided pursuant to this Agreement. CLEC proposed changes to Service attributes and process enhancements will be communicated through the standard account interfaces. Change requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

5. **Financial Terms**.

5.1 The description of the Service and applicable rates are set forth in the Attachments and Rate Sheets. The Parties agree that the referenced rates are just and reasonable.

5.2 **Taxes, Fees, and other Governmental Impositions.** All charges for Services provided herein are exclusive of any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges ("Tax" or "Taxes"). Taxes resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such Taxes is placed upon the other Party. However, where the selling Party is specifically permitted by an Applicable Law to collect such Taxes from the purchasing Party, such Taxes shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Taxes shall be billed as a separate item on the invoice in accordance with Applicable Law. The Party Billing such Taxes shall, at the written request of the Party billed, provide the billed Party with detailed information regarding billed Taxes, including the applicable Tax jurisdiction, rate, and base upon which the Tax is applied. If either Party (the Contesting Party) contests the application of any Tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any reasonable costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party has paid the Tax contested. If the purchasing Party provides the selling Party with a resale or other exemption certificate, the selling Party shall exempt the purchasing Party if the selling Party accepts the certificate in good faith. If a Party becomes aware that any Tax is incorrectly or erroneously collected by that Party from the other Party or paid by the other Party to that Party, that Party shall refund the incorrectly or erroneously collected Tax or paid Tax to the other Party.

5.3 Each Party shall be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and shall be responsible for any related tax filings, payment, protest, audit and litigation. Each Party shall be solely responsible for the Billing, collection and proper remittance of all applicable Taxes relating to its own services provided to its own Customers.

6. **Intellectual Property**.

6.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive Service solely as provided in this Agreement or as specifically required by the then-applicable federal rules and regulations relating to Services provided under this Agreement, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trademark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, trade name, trademark, service mark, trade secret, nor other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party without execution of a separate written agreement between the Parties.

6.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) shall indemnify and

hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. The obligation for indemnification recited in this paragraph shall not extend to infringement which results from:

6.2.1. any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or is not reasonably necessary to CLEC's use of the Services offered by Qwest under this Agreement; or

6.2.2. any modification made to the facilities or services of the Indemnifying Party by, on behalf of, or at the request of the Indemnified Party and not required by the Indemnifying Party.

6.3 In the event of any claim, the Indemnifying Party may, at its sole option obtain the right for the Indemnified Party to continue to use the facility or service; or replace or modify the facility or service to make such facility or service non-infringing.

6.4 If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided above and either the facility or service is held to be infringing by a court of competent jurisdiction; or the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party will notify the Indemnified Party and the Parties will negotiate in good faith regarding reasonable modifications to this Agreement necessary to mitigate damage or comply with an injunction which may result from such infringement; or allow cessation of further infringement.

6.5 The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

6.6 To the extent required under applicable federal and state law, Qwest shall use commercially reasonable efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with Services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such Services as contemplated hereunder and at least in the same manner used by Qwest for the Services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection shall be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 6.2, preceding.

6.7. Neither Party shall without the express written permission of the other Party, state or imply that it is connected, or in any way affiliated with the other or its Affiliates; it is part of a joint business association or any similar arrangement with the other or its Affiliates; the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or with respect to its marketing, advertising or promotional activities or materials, the services are in any way associated with or originated from the other Party or any of its Affiliates.

6.8 Nothing in this Section prevents either Party from truthfully describing the Services it uses to provide service to its End User Customers, provided it does not represent the Services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates.

6.9 Because a breach of the material provisions of this Section 6 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

## 7. Financial Responsibility, Payment and Security.

7.1 **Payment Obligation**. Amounts payable under this Agreement are due and payable within thirty (30) Days after the date of invoice ("Payment Due Date"). If the Payment Due Date falls on a Sunday or on a holiday which is observed on a Monday, the payment date will be the first non holiday day following such Sunday or holiday. If such a payment date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non holiday day preceding such Saturday or holiday. For invoices distributed electronically, the date of the invoice date is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If CLEC fails to make payment on or before the Payment Due Date, Qwest may invoke all available rights and remedies.

7.2 **Cessation of Order Processing.** Qwest may discontinue processing orders for Services for the failure of CLEC to make full payment for Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to discontinuing the processing of orders for Services. If Qwest does not refuse to accept additional orders for Services on the date specified in the ten (10) business days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders for Services from CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past-due charges for Services not disputed in good faith under this Agreement, and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 7.5. In addition to other remedies that may be available at law or equity, Qwest reserves the right to seek equitable relief including injunctive relief and specific performance.

7.3 **Disconnection**. Qwest may disconnect any Services provided under this Agreement for failure by CLEC to make full payment for such Services, less any disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to disconnecting Services. CLEC will pay the applicable charge set forth in the Rate Sheet required to reconnect Services for each End User Customer disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, will become due. If Qwest does not disconnect CLEC's Service on the date specified in the ten (10) business days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all Services. For reconnection of the Service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for Services and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 7.5. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Qwest will not effect a disconnection pursuant to this Section in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

7.4 **Billing Disputes.** Should CLEC dispute, in good faith, and withhold payment on any portion of the charges under this Agreement, CLEC will notify Qwest in writing within fifteen (15) Days following the Payment Due Date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC will pay all undisputed amounts due to Qwest. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide reasonably requested documentation regarding the amount disputed, and work in good faith in an effort to resolve and settle the dispute through informal means prior to invoking any other rights or remedies.

7.4.1. If CLEC disputes charges and does not pay such charges by the Payment Due Date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of Qwest, CLEC will pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. CLEC may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of CLEC, Qwest will credit CLEC's bill for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute.

7.4.2. If CLEC pays the disputed charges and the dispute is resolved in favor of Qwest, no further action is required. If CLEC pays the charges disputed at the time of payment or at any time thereafter, and the dispute is resolved in favor of the CLEC, Qwest will adjust the Billing, usually within two Billing cycles after the resolution of the dispute, as follows: Qwest will credit the CLEC's bill for the disputed amount and any associated interest; or if the disputed amount is greater than the bill to be credited, pay the remaining amount to CLEC.

7.4.3. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, will any late payment charges be assessed on any previously assessed late payment charges.

7.4.4. If CLEC fails to dispute a rate or charge within 60 Days following the invoice date on which the rate or charge appeared, adjustment will be made on a going-forward basis only, beginning with the date of the dispute.

7.5 **Security Deposits**. In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of the Agreement, Qwest may request a security deposit. A "material adverse change in financial condition" means CLEC is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with Qwest, or the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by Qwest due to a previous failure to pay undisputed charges in a timely manner. Qwest may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly Delinquent" means any payment of a material amount of total monthly Billing under the Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The deposit may not exceed the estimated total monthly charges for a two (2) month period based upon recent Billing. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by CLEC's actual monthly average charges, payment history under this Agreement, or other relevant factors, but in no event will the security deposit exceed five million dollars ($5,000,000.00). Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to 7.2 and 7.3 of this Section.

7.6 **Interest on Deposits**. Any interest earned on cash deposits will be credited to CLEC in the amount actually earned or at the rate set forth in Section 7.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits are not subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request, and Qwest will consider, a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

7.7 **Late Payment Charge**. If any portion of the payment is received by Qwest after the Payment Due Date, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment charge will be due to Qwest. The late payment charge is the portion of the payment not received by the Payment Due Date multiplied by a late factor. The late factor is the lesser of the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest; or 0.000407 per Day, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest.

8. **Customer Contacts**. CLEC, or CLEC's authorized agent, are the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC will inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party will make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party.

8.1 In the event Qwest terminates Service to CLEC for any reason, CLEC will provide any and all necessary notice to its End User Customers of the termination. In no case will Qwest be responsible for providing such notice to CLEC's End User Customers.

9. **Default and Breach**. If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement and such default or violation continues for thirty (30) Days after written notice thereof, the other Party may terminate this Agreement and seek relief in accordance with the Dispute Resolution provision, or any remedy under this Agreement.

10. **Limitation of Liability**.

10.1 CLEC's exclusive remedies for claims under this Agreement are limited to CLEC's proven direct damages unless CLEC's damages are otherwise limited by this Agreement to outage credits or other service credits, in which case Qwest's total liability will not exceed the aggregate amount of any applicable credits due.

10.2 Except for indemnification and payment obligations under this Agreement, neither Party shall be liable to the other for indirect, incidental, consequential, exemplary, punitive, or special damages, including, without limitation, damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including, without limitation, negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

10.3 Nothing contained in this Section shall limit either Party's liability to the other for willful misconduct, provided that, a Party's liability to the other Party pursuant to the foregoing exclusion, other than direct damages, will be limited to a total cap equal to one hundred per cent (100%) of the annualized run rate of total amounts charged by Qwest to CLEC under the Agreement.

**11. Indemnity.**

11. 1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

11.1.1. Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

11.1.2. In the case of claims or loss alleged or incurred by an End User Customer of either Party arising out of or in connection with Services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying Service was provided or was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.

11.2 The indemnification provided herein is conditioned upon:

11.2.1. The Indemnified Party will promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

11.2.2. If the Indemnifying Party wishes to defend against such action, it will give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party has sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party has the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party will be available to the other Party with respect to any such defense.

11.2.3. In no event will the Indemnifying Party settle or consent to any judgment for relief other than monetary damages pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

**12. Limited Warranties.**

12.1 Each Party will provide suitably qualified personnel to perform this Agreement and all Services hereunder in a good and workmanlike manner and in material conformance with all Applicable Laws and regulations.

12.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, QWEST SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER. QWEST SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES; INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**13. Relationship.** Except to the limited extent expressly provided in this Agreement neither Party has the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other or otherwise act on the other's behalf; and the relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship, or franchise.

**14. Assignment.**

14.1 CLEC may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Qwest, which consent will not be unreasonably withheld. Notwithstanding the foregoing and subject to the prior credit review, submission of appropriate legal documentation (including, but not limited, to any appropriate Secretary of State or other filings or documents specified by Qwest and approval by Qwest of CLEC's proposed assignee, CLEC may assign this Agreement without prior written consent of Qwest to any Affiliate, successor through merger, or acquirer of substantially all of its assets; and Qwest may assign this Agreement without prior written consent to any Affiliate, successor through merger, or acquirer of substantially all of its business assets; provided that in all cases the assignee of CLEC or Qwest, as applicable, acknowledge in writing its assumption of the obligations of the assignor hereunder. Any attempted assignment in violation hereof is of no force or effect and is void. Without limiting the generality of the foregoing, this Agreement will be binding the Parties' respective successors and assigns.

14.2 In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through Services provided by Qwest under this Agreement, Qwest will ensure that the transferee serve as a successor to and fully perform all of Qwest's responsibilities and obligations under this Agreement for a period of ninety (90) Days from the effective date of such transfer or until such later time as the FCC may direct pursuant to the FCC's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest will use best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Qwest's obligations after the above-stated transition period pursuant to the terms of this Agreement.

**15.** **Reporting Requirements**. If reporting obligations or requirements are imposed upon either Party by any third party or regulatory agency in connection with either this Agreement or the Services, including use of the Services by CLEC or its End Users, the other Party agrees to assist that Party in complying with such obligations and requirements, as reasonably required by that Party.

**16.** **Survival**. The expiration or termination of this Agreement does not relieve either Party of those obligations that by their nature are intended to survive.

**17.** **Confidentiality/ Nondisclosure**.

17.1 Neither Party will, without the prior written consent of the other Party issue any public announcement regarding, or make any other disclosure of the terms of, this Agreement; or disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other Party. Consent may only be given on behalf of a Party by its Legal Department. However, a Party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the disclosing Party gives the non-disclosing Party reasonable prior written notice. Notwithstanding the foregoing, if reporting or filing obligations or requirements are imposed upon Qwest by any third party or regulatory agency in connection with this Agreement, CLEC agrees to assist Qwest in complying with such obligations and requirements, as reasonably required by Qwest and to hold Qwest harmless for any failure by CLEC in this regard. Qwest's compliance with any regulatory filing obligation will not constitute a violation of this Section.

17.2 All Confidential Information will remain the property of the disclosing Party. A Party who receives Confidential Information via an oral communication may request written confirmation that the material is Confidential Information. A Party who delivers Confidential Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Confidential Information. Each Party has the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party will from that time forward, treat such information as Confidential Information.

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

17.4 Each Party will keep all of the other Party's Confidential Information confidential and will disclose it on a need to know basis only. Each Party will use the other Party's Confidential Information only in connection with this Agreement and in accordance with Applicable Law. Neither Party will use the other Party's Confidential Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. If either Party loses, or makes an unauthorized disclosure of, the other Party's Confidential Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

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

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

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

**18.** **Waiver**. Except as otherwise provided herein, neither Party's failure to enforce any right or remedy available to it under this Agreement will be construed as a waiver of such right or a waiver of any other provision hereunder.

**19.** **Regulatory Approval**. Each Party reserves its rights with respect to whether this Agreement is subject to Sections 251 and 252 of the Act. In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement. If a Party is required by a lawful, binding order to file this Agreement or a provision thereof with the FCC or state regulatory authorities for approval or regulatory review, the filing Party shall provide written notice to the other Party of the existence of such lawful, binding order so that the other Party may seek an injunction or other relief from such order. In addition, the filing Party agrees to reasonably cooperate to amend and make modifications to the Agreement to allow the filing of the Agreement or the specific part of the Agreement affected by the order to the extent reasonably necessary.

**20.** **Notices**. Any notices required by or concerning this Agreement will be in writing and will be sufficiently given if delivered personally, delivered by prepaid overnight express service, sent by facsimile with electronic confirmation, or sent by certified mail, return receipt requested, or by email where specified in this Agreement to Qwest and CLEC at the addresses shown on the cover sheet of this Agreement.

**21.** **Force Majeure**. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure

Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide Service to each other at a level equivalent to the level they provide themselves.

**22.** **Governing Law**. Colorado state law, without regard to choice-of-law principles, governs all matters arising out of, or relating to, this Agreement.

**23.** **Dispute Resolution**.

23.1 The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will within seven (7) Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions will be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations will be treated as Confidential Information developed for purposes of settlement, and will be exempt from discovery and production, and are not admissible in any subsequent proceedings without the concurrence of both Parties.

23.2 If the designated representatives have not reached a resolution of the dispute within fifteen (15) Days after the written notice (or such longer period as agreed to in writing by the Parties), then either Party may commence a civil action. Any action will be brought in the United States District Court for the District of Colorado if it has subject matter jurisdiction over the action, and shall otherwise be brought in the Denver District Court for the State of Colorado. The Parties agree that such courts have personal jurisdiction over them.

23.3 Waiver of Jury Trial and Class Action. Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.

23.4 No cause of action regardless of the form of action, arising out of, or relating to this Agreement, may be brought by either Party more than two (2) years after the cause of action arises.

**24.** **Headings**. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement.

**25.** **Authorization**. Each Party represents and warrants that:

25.1. The full legal name of the legal entity intended to provide and receive the benefits and Services under this Agreement is accurately set forth herein;

25.2. The person signing this Agreement has been duly authorized to execute this Agreement on that Party's behalf;

25.3. The execution hereof is not in conflict with law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected; and

25.4 Each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

**26.** **Third Party Beneficiaries**. The terms, representations, warranties and agreements of the Parties set forth in this Agreement are not intended for, nor will they be for the benefit of or enforceable by, any third party (including, without limitation, Customer's Affiliates and End Users).

**27.** **Communications Assistance Law Enforcement Act of 1994**. Each Party represents and warrants that any equipment, facilities or Services provided to the other Party under this Agreement comply with the CALEA. Each Party will indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and will at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or Services provided to the other Party under this Agreement to ensure that such equipment, facilities and Services fully comply with CALEA.

**28.** **Entire Agreement**. This Agreement (including all Attachments, Rate Sheets, and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Agreement. Notwithstanding the foregoing, certain elements used in combination with the Service provided under this Agreement are provided by Qwest to CLEC under the terms and conditions of its interconnection agreement ("ICA"), and nothing contained herein is intended by the Parties to amend, alter, or otherwise modify those terms and conditions.

**29.** **Proof of Authorization**.

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

29.2 Each Party will make POAs available to the other Party upon request. In the event of an allegation of an unauthorized change or unauthorized service in accordance with all Applicable Laws and rules, the Party charged with the alleged infraction shall be responsible for resolving such claim, and it shall indemnify and hold harmless the other Party for any losses, damages, penalties, or other claims in connection with the alleged unauthorized change or service.

**30.** **General Terms**

30.1 Qwest will provide general repair and maintenance services on its facilities, including those facilities supporting Services purchased by CLEC under this Agreement, at a level that is consistent with other comparable services provided by Qwest.

30.2 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in transmission parameters that are within transmission limits of the Service ordered by CLEC. Qwest will provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules.

30.3 Network Security.

30.3.1. Protection of Service and Property. Each Party will exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc., but in no case less than a commercially reasonable degree of care.

30.3.2. Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide Service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

30.3.3. The Parties' networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

30.3.4. Qwest shall not be liable for any losses, damages or other claims, including, but not limited to, uncollectible or unbillable revenues, resulting from accidental, erroneous, malicious, fraudulent or otherwise unauthorized use of Services or facilities ('Unauthorized Use"), whether or not such Unauthorized Use could have been reasonably prevented by Qwest, except to the extent Qwest has been notified in advance by CLEC of the existence of such Unauthorized Use, and fails to take commercially reasonable steps to assist in stopping or preventing such activity.

30.4. Individual Case Basis Requests. CLEC may request additional Services not specified in this Agreement and Qwest will consider such requests on an Individual Case Basis ("ICB").

# ICNAM SERVICES AGREEMENT
## ATTACHMENT 1- DEFINITIONS

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended.

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

"Applicable Law" means all laws, statutes, common law including, but not limited to, the Act, the regulations, rules, and final orders of the FCC, a state regulatory authority, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or a state regulatory authority.

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

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

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

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

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

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers under Section 229 of the Act.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature and that: (a) the receiving Party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party; and/or (b) is of such a nature that the receiving Party should reasonably understand that the disclosing Party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Agreement by the receiving Party or is already known or is independently developed by the receiving Party.

"Customer" means the Person purchasing a Telecommunications Service or an information service or both from a Carrier.

"Day" means calendar days unless otherwise specified.

"Demarcation Point" is defined as the point at which the LEC ceases to own or control Customer Premises wiring including without limitation inside wiring.

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

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

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

"Facility Signaling Point of Interconnection" (FSPOI) is defined as a Qwest designated ordering point to which customers may establish SS7 signaling connections.

"FCC" means the Federal Communications Commission.

"ICNAM Service" as defined herein is Qwest's service that allows Carrier to query Qwest's ICNAM Database and other available contracted databases for Calling Party name information, in order to deliver that information to Carrier's End User Customers.

"ICNAM Database" is Qwest's database containing current calling name data for all working lines served or administered by Qwest, including calling name data provided by other local exchange carriers participating in the Calling Name Delivery Service arrangement.

"ICNAM Information" means End User Customer names associated with one or more ten (10) digit line(s) or billing numbers.

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

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

"Loop" or "Unbundled Loop" is defined as a transmission facility between a distribution frame (or its equivalent) in a Qwest Central Office and the Loop Demarcation Point at an End User Customer's Premises

"Order Form" means service order request forms issued by Qwest, as amended from time to time.

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

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

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider and may take the form of a third party verification format.

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

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the North American Numbering Plan in

connection with the provision of switched services.

"Service Control Point" (SCP) is a database in an SS7 network used to store information such as ICNAM.

"Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular Customer Premises.

"Signaling Point" (SP) means an SS7 network interface element capable of initiating and/or terminating SS7 Messages. SPs may be end offices, access tandem switches, operator service systems, database managers, or other SPs.

"Signaling Transfer Point" (STP) is the point where Exchange Carrier interconnects with an SS7 network. In order to connect to Qwest's SS7 network, Exchange Carrier or other third party initiating Exchange Carrier's ICNAM queries must connect with a Qwest STP in order to connect to Qwest's SCP.

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

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

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

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

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

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

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erms not otherwise defined here but defined in the Act and the orders and he rules implementing the Act or elsewhere in the Agreement, shall have he meaning defined there. The definition of terms that are included here nd are also defined in the Act, or its implementing orders or rules, are ntended to include the definition as set forth in the Act and the rules nplementing the Act

# ICNAM SERVICES AGREEMENT
## ATTACHMENT 2- SERVICE DESCRIPTION

**1. ICNAM Service Description**

1.1 Under this Agreement, Qwest will provide CLEC with ICNAM Service, which includes provisioning of ICNAM Database subscriber information when a Qwest End User Customer ("Calling Party") calls a CLEC End User Customer ("Called Party"). The effect being that the Called Party can identify the Calling Party subscriber prior to receiving the call, except in those cases where the Calling Party has its ICNAM Information blocked.

1.2 When Qwest receives an ICNAM query for a Calling Party name that is not stored with Qwest, or is not available through a provider that Qwest has a contract with, Qwest will deliver the following:

1.2.1 When the Calling Party's NPA/NXX is within the Qwest 14 state region, Qwest will deliver "City State".

1.2.2 When the Calling Party's NPA/NXX is outside of the Qwest 14 state region, Qwest will deliver "State".

1.3 CLEC will store their End User Customers' ICNAM Information in the Qwest ICNAM Database.

1.4 CLEC will establish signaling links to a Qwest designated STP pair or FSPOI pair. Signaling links are available in FCC Tariff #1 and State Access Tariffs. ICNAM is then activated on CLEC's link set by issuing an ASR for Data Base Options Activation.

1.5 During the term of this Agreement, Qwest will allow CLEC to query Qwest's ICNAM Database, and ICNAM Information available from other contracted database providers, as requested by the CLEC, in order to obtain ICNAM Information which identifies the Calling Party.

**2. Terms and Conditions**

2.1 In response to properly received queries for Qwest's ICNAM Database, Qwest will provide the listed name of the Calling Party that relates to the calling telephone number (provided the information is available and the delivery is not blocked or otherwise limited by the Calling Party). CLEC is responsible for properly and accurately launching the query from its service office to the ICNAM Database. CLEC shall arrange its calling party number based services in such a manner that when a Calling Party requests privacy, CLEC will not reveal that Calling Party's name or number to the Called Party (CLEC's End User Customer). CLEC will comply with all FCC guidelines and, if applicable, the appropriate Commission rules, with regard to honoring the privacy indicator.

2.2 In response to proper queries Qwest will provide information that is currently in its ICNAM Database accessed by the CLEC.

2.3. CLEC warrants that it shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per the specification standard documents identified here: Telcordia SS7 Specification TR-NPL-000246, CLASS Calling Name Delivery Generic Requirements TR-NWT-001188, CCS Network Interface Specifications TR-TSV-000905; ANSI SS7 Specifications Message Transfer Part T1.111, Signaling Connection Control Part T1.112, Transaction Capabilities Application Part T1.114. CLEC acknowledges and agrees that transmission in said protocol is necessary for Qwest to provision its ICNAM Services. CLEC will adhere to other applicable standards, which include Telcordia specifications defining service applications, message types and formats. Qwest reserves the right to modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands within the United States telecommunications industry. All such changes shall be announced in advance and coordinated with Exchange CLEC.

2.4 All queries to Qwest's ICNAM Database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. CLEC acknowledges that such subsystem number and translation type values are necessary for Qwest to properly process queries to Qwest's ICNAM Database.

2.5 CLEC acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of Qwest's SS7 network. CLEC further agrees that Qwest, in its sole discretion, shall employ certain automatic and/or manual overload controls within Qwest SS7 network to safeguard against any detrimental effects. Qwest shall report to CLEC any instances where overload controls are invoked due to CLEC's SS7 network, and CLEC agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation. Qwest reserves the right to temporarily discontinue the ICNAM service if CLEC's incoming calls are so excessive as determined by Qwest to jeopardize the viability of the ICNAM service.

2.6 Qwest shall exercise best efforts to provide CLEC accurate and complete ICNAM Information. Qwest does not warrant or guarantee the correctness or the completeness of such information; however, Qwest will access the same ICNAM databases for CLEC's queries as Qwest accesses for its own queries. In no event shall Qwest have any liability for errors, system outage or inaccessibility or for losses arising from the authorized use of the ICNAM Information by CLEC.

2.7 All ICNAM responses shall be returned over the same routing path as the query was sent.

**3. Ownership of ICNAM Information**

Qwest retains full and complete ownership and control over ICNAM Information in the Qwest ICNAM Database. CLEC agrees not to copy, store, maintain or create any table or database of any kind from any response received after initiating an ICNAM query to Qwest's ICNAM Database.

**4.0 Rate Elements**

4.1 Qwest will charge per query initiated into Qwest's ICNAM Database for any information whether or not any information is actually provided. The ICNAM query price includes the database query from Qwest's STP or FSPOI to Qwest's SCP.

4.2. Qwest will charge per ICNAM query initiated into a non-Qwest ICNAM database at the Qwest contract rate with a non-Qwest provider, whether or not any information is actually provided.

4.3 Qwest will charge for transport per ICNAM query initiated into a non-Qwest ICNAM database.