

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

KRISTIN K. MAYES

Chairman

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

2009 MAY 12 P 4: 35
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 12 2009

DOCKETED BY

IN THE MATTER OF THE COMPLAINT OF) DOCKET NOS. T-01051B-08-0506
PAC-WEST TELECOMM AGAINST QWEST) T-03693A-08-0506
CORPORATION AND REQUEST FOR)
IMMEDIATE COMMISSION ACTION) **PAC-WEST TELECOMM, INC.**
) **PROPOSAL**
)

Pac-West Telecomm, Inc. ("Pac-West") submits the following final offer to resolve the billing dispute which precipitated the Pac-West complaint against Qwest Corporation ("Qwest") in the above-referenced docket.¹

Background

On December 10, 2007, Qwest gave Pac-West notice of termination of the existing Interconnection Agreement ("ICA") between Pac-West and Qwest. Exh. A. The ICA had expired and Qwest was authorized to initiate negotiations for a new ICA. Rather than embark on an expensive and lengthy ICA arbitration, Pac-West informed Qwest that

¹ Confidential billing information has been redacted from the publicly filed copy of this proposal. Anyone seeking information regarding the confidential portions of this filing may contact counsel Pac-West Telecomm, Inc. directly.

it would opt-into the existing ICA between Qwest and Level 3 Communications, LLC, as permitted under 47 U.S.C. 252(i). On February 21, 2009, Qwest filed with the Arizona Corporation Commission (the "Commission") for approval of Pac-West's adoption of the ICA between Qwest and Level 3. Exh. B. The new ICA became effective by operation of law on March 22, 2008. Exh. C.

Transition to FX-Like Trunking and Transport

The Level 3 ICA provided that the parties to the agreement would design and implement a virtual FX-Like system that would replace the use of Virtual NXX service. Level 3 ICA Section 7.2.2.1.7.1. (Level 3 ICA Excerpts at Exh. D). No facilities would be physically constructed or dedicated to this use; rather the virtual network would be designed, and a charge assigned to virtual facilities would be paid by Pac-West. Pac-West anticipated that in the months following the effective date of the Level 3 ICA, the parties would meet and design virtual facilities that would match the Pac-West network. Section 7.2.2 of the Level 3 ICA ("Terms and Conditions") described the procedure for developing virtual FX-Like facilities: "CLEC will convert to the FX-Like services as a project and be responsible to provide network diagrams and order submission as necessary to provision all FX-Like trunking and transport." Id. 7.2.2.1.7.9. Section 7.2.2 also discussed negotiations "between the Parties" (7.2.2.1.2) and joint forecasting: "Both CLEC and Qwest shall work in good faith to define a mutually agreed upon forecast of LIS trunking." Level 3 ICA Section 7.2.2.8.1. Section 7.2.2.1.7.6 of the Level 3 ICA placed the onus on the CLEC to establish a virtual POI in each Qwest local calling area. Pac-West was entitled to order and participate in the design of the FX-Like

facilities required under the Agreement. Id. Section 7.2.2.1.7.9. Qwest never sought, and Pac-West never submitted, a project request, network diagram, or an order for the FX-Like facilities as required under the Agreement.

In sum, the terms of the ICA provided that Qwest and Pac-West would together and, over some period of time, design the agreed upon virtual network. During this period the parties were required to exchange traffic on a bill and keep basis: “Until the date the FX-Like Traffic facilities are in place, Qwest will exchange VNXX traffic on a bill and keep basis.” Id. Section 7.2.2.1.7.11. Had the compensation structure remained bill and keep during the first six months of the contract (prior to Pac-West opt-out), Pac-West would owe Qwest approximately \$_____ and no FX-Like facility payments would be due.

FX-Like Facility Billing

On July 1, 2008 Qwest billed Pac-West \$_____ for installation and recurring charges allegedly attributable to “FX-Like” facilities for April through July 2008. Exh. E. The July invoice was the first invoice Pac-West received from Qwest under the new ICA. Pac-West was shocked by the amount of the invoice and did not know how Qwest had calculated the amount due for FX-Like facilities. Pac-West’s typical monthly payment to Qwest for pre-existing local services facilities (not virtual facilities) was approximately \$_____ per month. The monthly amount billed by Qwest for FX-Like facilities was approximately \$_____. Pac-West contacted Qwest regarding the invoice and disputed the amount of the bill. In July of 2008, Pac-West completed

Qwest's "Customer Billing Dispute Notification Form." Exh. F. Letters and email were exchanged throughout September regarding the propriety of the amount billed by Qwest.

Pac-West Request to Opt-In to the XO ICA

On August 15, 2008, Pac-West sent a letter to Qwest formally electing to opt into the interconnection agreement between XO Communications and Qwest. Exh. G. The XO Communications ICA was not available when Pac-West opted into the Level 3 ICA (February 2008). The XO ICA became effective by operation of law on August 26, 2008. Docket Nos. T-1051B-08-0272 and T-04302A-08-9272. The Level 3 ICA provided that "CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing agreement by executing an appropriate amendment to its current Interconnection Agreement." See Level 3 ICA Section 1.8. Additionally, under the Level 3 ICA, a CLEC could opt into a new ICA prior to the conclusion of the term of the Level 3 ICA. See Level 3 ICA Section 5.2.2.1. In other words, the Level 3 ICA was, by its terms, easily terminated by opting into a new ICA.

Qwest responded to that opt-in notice by asserting, without citation, that "Qwest is under no obligation to consider Pac-West's request under the Agreement for alternative agreements or amendments to the Agreement" and by threatening to disconnect Pac-West facilities. Exh. H. On September 23, 2009, Qwest notified Pac-West that it would begin disconnection of all Pac-West services on October 7, 2009, and asserted that Pac-West owed Qwest \$ _____ for FX-Like facilities. Exh. I. Qwest characterized the amount

due as “undisputed,” without regard to the fact that Pac-West had completed and submitted to Qwest a “Customer Billing Dispute Notification Form.” Exh. F.

Pac-West filed this complaint to halt the threatened disconnection by Qwest over the virtual facilities bill. Qwest and Pac-West agreed to mediate the billing dispute, with the assistance of Commission Staff. Qwest, Staff and Pac-West met regarding the amount in dispute and made progress, but could not reach agreement.

Proposed Resolution of Billing Dispute

Qwest billed Pac-West approximately \$ _____ per month for FX-Like facilities under the Level 3 ICA. These facilities were not designed with input from Pac-West and, may overstate the virtual facilities required by Pac-West. Billing under the Level 3 ICA began (according to Qwest billing statements) on April 5, 2008. According to the terms of the Level 3 ICA, the parties were contractually obligated to work together to design FX-Like facilities appropriate for the Pac-West network. During this ramp-up period, the parties were to operate on a bill and keep basis. Pac-West submits that a minimum of sixty days (until June 5, 2009) was necessary for this ramp-up period, and the implementation phase could have taken much longer. During this period, Qwest would not have owed reciprocal compensation to Pac-West and Pac-West would not have paid for FX-Like facilities.

Pac-West opted out of the Level 3 ICA on August 15 and notified Qwest that it would be opting into the XO ICA. Commission approval of a negotiated (opt-in) ICA requires only thirty 30 days. Sixty days is a reasonable period within which to transition to a new ICA. (Pac-West’s opt-in to the Level 3 Agreement occurred; start to finish, in

approximately 60 days.) Presuming this transition period, the XO ICA would have been effective by October 15, 2009. The applicable term, for purposes of this dispute, thus is June 5, 2009 to October 15, 2009.

Pac-West proposes to settle this matter for \$ _____, with Pac-West and Qwest continuing with a bill and keep arrangement until a new ICA is in place. This settlement sum is derived by taking the total charges for FX-Like facilities billed by Qwest, plus reciprocal compensation payments (owed back to Qwest) for April and May and then subtracting from that figure: (1) the amount Qwest owed for reciprocal compensation for July and October, (2) a partial payment for reciprocal compensation that Qwest refused to pay, (3) the non-recurring charge billed by Qwest, and (4) a 15% settlement discount. The amounts owed for July and October (based on historic collected averages) are undisputed and are thus appropriately subtracted from the FX-Like facilities charges. The partial (50%) payment of disputed reciprocal compensation billed by Pac-West is a reasonable compromise. The non-recurring charge for FX facilities is properly removed from the amount owed Qwest. Non-recurring fees typically reimburse a carrier for its one-time costs associated with installing or building facilities. Qwest was not required to install or build any sort of facility in this case because everything Pac-West was asked to purchase was virtual. Finally, the 15% discount for settlement is what makes this a settlement. Qwest has repeatedly demanded that Pac-West "settle" this case by paying the full amount that Qwest contends is owed for facilities never fully agreed upon by the parties. Full payment, however, is not settlement. A discount for purposes of settlement

is reasonable and the acceptance of such a discount is a common practice by carriers in the industry.

Qwest will contend that this sum is unfair for a variety of reasons. Qwest will argue that Pac-West should have known, before signing, the full cost of the Level 3 ICA and that it is not entitled to full payment on reciprocal compensation billings. But in fact, both Qwest and Pac-West were unclear regarding the extent of the virtual facilities costs (for the Pac-West network) well into the term of the contract. Qwest will also contend that the FX-Like facilities should have applied from the effective date of the contract and that Pac-West must pay what it owes, and not a penny less. This refusal to compromise at any level has brought the parties to this point. This offer is intended to compensate Qwest fairly for virtual facilities that required no hard cost outlay by Qwest and no new construction.

Pac-West has made every effort to settle this dispute with a fair and reasonable payment to Qwest. On February 2, 2009, Pac-West offered to pay Qwest \$_____ to settle this dispute. This offer was made during a mediation conference call with Staff present and was also communicated in writing. Remarkably, this offer was 90% of the \$_____ that Qwest contended was due as of September 23, 2009. Exh. I. Qwest refused this offer and pressed Pac-West for more money. Qwest's refusal to work cooperatively with Pac-West is generally reflective of Qwest current practice of litigating aggressively against CLECs without compromise. Competitive carriers, and particularly small competitive carriers like Pac-West, have difficulty affording a sustained litigation effort, but have little choice if reasonable settlement offers are rebuffed.

Federal Law Developments

When the Level 3 ICA was arbitrated, the Arizona Commission concluded that carriers like Pac-West had an obligation to exchange traffic with Qwest in every local calling area (vs. each LATA). More recent developments at the federal level have established that a competitive carrier need only maintain a single point of interconnection per LATA, not per local calling area. *See In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. November 5, 2008) (“*ISP Mandamus Order*”) (confirming that “section 251(b)(5) is not limited only to the transport and termination of certain types of telecommunications traffic, such as local traffic.”) Pac-West acknowledges that the Level 3 ICA created a contractual obligation and this contractual obligation would have continued until the contract could be amended to reflect the change in law. However, these legal developments are relevant because they explain Pac-West’s predicament. Pac-West entered into the Level 3 ICA solely because Qwest cancelled its current ICA and Pac-West could not afford a lengthy, adversarial arbitration with Qwest. Today, with more current ICAs available, and federal decisions confirming that foundational precepts of the Level 3 ICA were incorrect (POI in every local calling area), opting into a new ICA is the cost-effective and rational step.

Pac-West has endeavored from the very beginning to resolve this billing dispute and move forward under a new ICA with Qwest. Pac-West submits this final offer proposal in that same spirit.

RESPECTFULLY SUBMITTED this 12th day of May 2009.

OSBORN MALEDON, P.A.

By 

Joan S. Burke
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
Telephone: (602) 640-9356
Facsimile: (602) 640-6074
E-Mail: jburke@omlaw.com

Attorneys for Pac-West Telecomm, Inc.

ORIGINAL + 15 copies of the foregoing
filed this 12th day of May, 2009, with:

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

COPIES of the foregoing hand-delivered
this 12th day of May, 2009, to:

Ernest Johnson
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed
this 12th day of May, 2009, to:

Tom Dethlefs
1801 California Street, 10th Floor
Denver, CO 80202-2658

Timothy Berg
Theresa Dwyer
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation

COPIES (Redacted and Unredacted) of this filing mailed
this 12th day of May, 2009, to:

Jane L. Rodda, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
400 W. Congress Ave, Ste. 218
Tucson, AZ 85701-1347

Norman Curtright
Corporate Counsel
Qwest Corporation
20 E. Thomas Road, 16th Floor
Phoenix, Arizona 85012

Naomi EWG

Exhibit A

-----Original Message-----

From: Sanderson, Sandy R [mailto:Sandy.Sanderson@qwest.com]
Sent: Monday, December 10, 2007 2:55 PM
To: Ethan Sprague
Subject: New Interconnection Agreement Request
Importance: High



Qwest Corporation
415 Vesper Way
Suite 100
Camano Island, WA 98282
Telephone: 360-387-6691

Email:
sandy.sanderson@qwest.com

Sandy Sanderson
Qwest Wholesale-Negotiations

December 10, 2007

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, California 95204
esprague@pacwest.com

Mr. Sprague:

The purpose of this letter is to provide notice to Pac-West Telecom of Qwest's intent to terminate the existing Interconnection Agreements (ICA) and enter into replacement ICAs for the states Arizona, Colorado, Idaho, Oregon, Utah and Washington. The existing ICA has long passed its expiration date and is no longer up to date with many of Qwest's current ICA terms and conditions. This notice complies with the Term of the Agreement that establishes a "negotiation window" that this replacement activity must be conducted within. The negotiation clock will start December 10, 2007, through the 135th day of April 23, 2008, with the arbitration window closing on the 160th day, May 18, 2008. I have attached a copy of the negotiation template for your perusal. Please advise me how you would like to proceed.

To begin the process for replacement of an Interconnection Agreements -there are three (3) options you could explore:

Option 1. The Multi-Sate Negotiation Interconnection Agreement is our latest offering to CLECs; including terms, conditions, rates, and product & services. The Agreement can be found on our web page at: <http://www.qwest.com/wholesale/clecs/sgatswireline.html>. Please

open the Multi-state Negotiation Interconnection Agreement. Rates (exhibit As) and other exhibits are listed by state below the Multi-State Interconnection Agreement. The entire Agreement will consist of the Agreement and appropriate Exhibits A.

Option 2. Opt-In - This option allows the adoption of the terms and conditions of numerous existing approved available agreements in a state. I will be happy to provide a list of Agreements that would be available for Adoption upon your request.

Option 3. Negotiations - This option uses the Multi-state Negotiations Interconnection Agreement template as a base starting point for negotiations over the terms and conditions of the Agreement.

Please contact me and let me know which option you would like to pursue.

[REDACTED]

Throughout the negotiation window, I will be making periodic contacts via calls and/or emails to check status if I do not hear from you. The purpose of these contacts are to ensure sufficient progress is being made to achieve the requirements imposed on both parties by the language of the current ICA.

Regards,

V.R. "Sandy" Sanderson

Regards,

V. R. 'Sandy' Sanderson
Qwest Corporation
360-387-6691

This communication is the property of Qwest and may contain confidential or privileged information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply e-mail and destroy all copies of the communication and any attachments.

Exhibit B

NEW APPLICATION
RECEIVED
ORIGINAL

Norman Curtright
Corporate Counsel
20 E. Thomas Road, 16th Floor
Phoenix, AZ 85012

602 630 2187 Direct
303 383 8484 Fax
norm.curtright@qwest.com

2008 FEB 21 P 4: 31

AZ CORP COMMISSION
DOCKET CONTROL

February 21, 2008

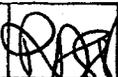


Arizona Corporation Commission
DOCKETED

FEB 21 2008

Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

T-01051B-08-0107
T-03693A-08-0107

DOCKETED BY 

Re: In the Matter of Adoption of the Wireline Interconnection
Agreement between Level 3 Communications, LLC and Qwest
Corporation by Pac-West Telecomm, Inc., in the State of Arizona

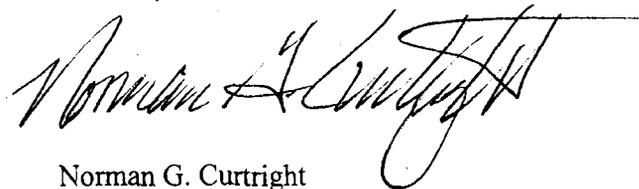
Dear Madam or Sir:

Qwest Corporation hereby files the following for approval under Section 252 (a) and (e) of the Telecommunications Act of 1996:

Wireline Adoption Interconnection Agreement (the "Adoption Agreement") between Pac-West Telecomm, Inc. ("Pac-West") and Qwest Corporation ("Qwest"). By the Adoption Agreement, Pac-West adopts in its entirety under Section 252(i) the terms of the underlying Interconnection Agreement between Qwest and Level 3 Communications, LLC, which was approved by the Commission on January 17, 2007 (the "Underlying Agreement").

Please contact the undersigned if you have any questions concerning the enclosed.
Thank your for your attention to this matter.

Sincerely,



Norman G. Curtright

Enclosures

Docket Control, Arizona Corporation Commission
February 21, 2008
Page 2

cc: Qwest Corporation
Director Interconnection Agreements
1801 California Street, Room 2410
Denver, CO 80202

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, CA 95204

Exhibit C

MEMORANDUM
RECEIVED

TO: Kay Kilger
Docket Control Administrator
Docket Control Center

2008 MAY -1 P 4: 13

AZ CORP COMMISSION
DOCKET CONTROL

FROM: Lori H. Miller *lh*
Programs & Projects Specialist II
Utilities Division

DATE: April 30, 2008

RE: REQUEST FOR ADMINISTRATIVE CLOSURE – QWEST CORPORATION AND
PAC-WEST TELECOMM, INC. (DOCKET NOS. T-01051B-08-0107 AND T-03693A-
08-0107)

The above referenced Interconnection Agreement became effective by operation of law on March 22, 2008, therefore, this matter can be administratively closed.

Should you have any questions concerning the above, please contact me at your earliest convenience.

/lhm

cc: Legal Division

Arizona Corporation Commission
DOCKETED

MAY -1 2008

DOCKETED BY *NR*

Service List for: Qwest Corporation and Pac-West Telecomm, Inc.
Docket No(s). T-01051B-08-0107 and T-03693A-08-0107

Mr. Patrick J. Black
Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

Mr. Ethan Sprague
Pac-West Telecomm, Inc.
Regulatory Department
4210 Coronado Avenue
Stockton, California 95204

Ms. Janice M. Alward
Chief Counsel - Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Ernest G. Johnson
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Exhibit D

Level 3 ICA
Section 1 Excerpt

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, CLEC agrees to abide by those terms and conditions on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, contained in an existing Interconnection Agreement or the SGAT, Qwest may require CLEC to accept Legitimately Related provisions to ensure that the opted into provision retains the context set forth in the Interconnection Agreement or the SGAT. The expiration date of the Interconnection Agreement from which the opted into provision was selected or the expiration date specified in the SGAT respectively, whichever is closer to the present date, shall be considered Legitimately Related. In all other instances, Qwest bears the burden of establishing that an Interconnection Agreement or SGAT provision is Legitimately Related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to this Agreement. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are Legitimately Related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are Legitimately Related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not Legitimately Related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.2.1 Nothing in this Agreement shall preclude CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because

such provision or agreement itself resulted from an opting in by CLEC that is a party to it.

1.8.3 If Qwest has identified additional provisions that Qwest believes are Legitimately Related and has specified provisions in the proposed amendment to which those provisions are not Legitimately Related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are Legitimately Related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) Days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a panel of three arbitrators knowledgeable about the telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorneys' fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorneys' fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission.

Level 3 ICA
Section 5 Excerpt

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its End User Customers and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and order of the Federal Communications Commission and orders of the Commission.

5.2 Term of Agreement

5.2.1 This Agreement shall become effective on the date of Commission Approval. This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire on June 29, 2009.

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in full force and effect until superseded by a successor agreement in accordance with this Section 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred thirty five (135) Days prior to the expiration of the term, or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses.

5.3 Proof of Authorization

5.3.1 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.

Section 5.0 - TERMS AND CONDITIONS

5.1 General Provisions

5.1.1 Intentionally Left Blank.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1 If such impairment is material and poses an immediate threat to the safety of either Party's employees, Customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other Party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates the provision or refuse to provide the same type of service if it reasonably appears that the particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstated as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by the Commission or in accordance with Section 5.18, Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other Party shall provide written notice within five (5) calendar Days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar Days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar Days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

Level 3 ICA
Section 7 Excerpt

Section 7.0 - INTERCONNECTION

7.1 Interconnection Facility Options

7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA Toll carried solely by local exchange carriers and not by an IXC (IntraLATA LEC toll), ISP-Bound traffic, and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide Interconnection at any Technically Feasible point within its network. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Qwest Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Qwest local Tandem Switch to Qwest Access Tandem Switch and Qwest Access Tandem Switch to Qwest Access Tandem Switch connections are not required where Qwest can demonstrate that such connections present a risk of Switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.

7.1.1.2 Intentionally Left Blank

7.1.1.3 Qwest will provide to CLEC Interconnection at least equal in quality to that provided to itself, to any subsidiary, Affiliate, or any other party to which it provides Interconnection. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Interconnection are subject to this requirement. Qwest will provide Interconnection under rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall comply with all state wholesale and retail service quality requirements.

7.1.2 Methods of Interconnection

The Parties will negotiate the facilities arrangement used to interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Qwest territory in each LATA CLEC has local Customers. The Parties shall establish, through negotiations, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a DS1 or DS3 Qwest provided facility; (2) Collocation; (3) negotiated Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection, such as an OCn Qwest provided facility, via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Qwest as a product. OCn Qwest provided facilities may be ordered through FCC Tariff No. 1.

7.1.2.1 Qwest-provided Facility. Interconnection may be accomplished through the provision of a DS1 or DS3 entrance facility of CLEC's determination. An entrance facility extends from the Qwest Serving Wire Center to CLEC's Switch location or any Technically Feasible POI chosen by CLEC. Qwest provided entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for Qwest provided entrance facilities are provided in Exhibit A. Qwest's private line transport service is available as an alternative to Qwest provided LIS entrance facilities, when CLEC uses such private line transport service for multiple services. Entrance facilities

may not be used for Interconnection with Unbundled Network Elements.

7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement.

7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one (1) Party's Switch and the other Party's Switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. A CLEC may not use remaining capability in an existing Mid-Span Meet POI to gain access to Unbundled Network Element. These Mid-Span Meet POIs will consist of facilities used for the Provisioning of one-way or two-way local/IntraLATA and Jointly Provided Switched Access Interconnection trunks, as well as miscellaneous trunks such as Mass Calling Trunks, OS/DA, 911 and including any dedicated DS1, DS3 transport trunk groups used to provision originating CLEC traffic.

7.1.2.3.1 The Mid-Span Fiber Meet architecture requires each Party to own its equipment on its side of the Point of Interconnection (POI). CLECs may designate Mid-Span Fiber Meet as the target architecture, except in scenarios where it is not Technically Feasible or where the Parties disagree on midpoint location.

7.1.2.3.2 In a Mid-Span Fiber Meet the Parties agree to establish technical interface specifications for Fiber Meet arrangements that permit the successful Interconnection and completion of traffic routed over the facilities that interconnect at the Fiber Meet. CLEC is responsible for providing at its location the fiber optic terminal (FOT) equipment, multiplexing, and fiber required to terminate the optical signal provided by Qwest. Qwest is responsible for providing corresponding FOT(s), multiplexing, and fiber required to terminate the optical signal provided by CLEC.

7.1.2.3.3 The Parties shall, wholly at their own expense, procure, install, and maintain the FOT(s) in each of their locations where the Parties establish a Fiber Meet with capacity sufficient to provision and maintain all trunk groups. The Parties shall mutually agree on the capacity of the FOT(s) to be utilized based on equivalent DS1s and DS3s necessary for transport of forecasted local Interconnection trunking. Each Party will also agree upon the optical frequency and wavelength necessary to implement the Interconnection.

7.1.2.4 Intentionally Left Blank.

7.1.2.5 Qwest agrees to provide local Interconnection trunk diversity to the same extent it does so in Qwest's local network.

7.2 Exchange of Traffic

7.2.1 Description

7.2.1.1 This Section 7.2 addresses the exchange of traffic between CLEC's

network and Qwest's network. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers. Unless and until, specifically authorized by the Commission, the Parties shall not exchange VNXX traffic, as defined herein.

7.2.1.2 The traffic types to be exchanged under this Agreement include:

7.2.1.2.1 EAS/Local Exchange Service (EAS/Local) traffic as defined in this Agreement.

7.2.1.2.2 IntraLATA LEC Toll traffic.

7.2.1.2.3 Jointly Provided Switched Access traffic is defined in Section 7.5.1. Jointly Provided Switched Access is associated with Meet-Point Billing.

7.2.1.2.4 Transit traffic is any traffic that originates from one (1) Telecommunications Carrier's network, transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Transit service is provided by Qwest, as a local and Access Tandem Switch provider, to CLEC to enable the completion of calls originated by or terminated to another Telecommunications Carrier (such as another CLEC, an existing LEC, or a wireless Carrier), which is connected to Qwest's local or Access Tandem Switches. To the extent that CLEC's Switch functions as a local or Access Tandem Switch, as defined in this Agreement, CLEC may also provide transit service to Qwest.

7.2.1.2.5 Traffic having special Billing or trunking requirements includes, but is not limited to, the following:

- a) Directory Assistance;
- b) 911/E911;
- c) Operator Busy Line Verify/Busy Line Interrupt;
- d) Toll Free Services;
- e) ISP-Bound Traffic as described in Section 7.3.6 below.

7.2.2 Terms and Conditions

7.2.2.1 Transport and Termination of Exchange Service (EAS/Local) Traffic.

7.2.2.1.1 Exchange Service (EAS/Local) traffic will be terminated as Local Interconnection Service (LIS).

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service (EAS/Local) traffic may occur in several ways:

7.2.2.1.2.1 One-way or two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the other Party must also provision its own one-way trunks to the extent that traffic volumes warrant. To the extent there is a dispute, Section 5.18 applies.

7.2.2.1.2.2 CLEC may purchase transport services from Qwest or from a third party, including a third party that has leased the private line transport service facility from Qwest. Such transport provides a transmission path for the LIS trunk to deliver the originating Party's Exchange Service EAS/Local traffic to the terminating Party's End Office Switch or Tandem Switch for call termination. Transport may be purchased from Qwest as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party's obligation under Section 251(a) of the Act.

7.2.2.1.3 When either Party utilizes the other Party's Tandem Switch for the exchange of local traffic, where there is a DS1's worth of traffic (512 CCS) for three (3) consecutive months between the originating Party's End Office Switch delivered to the other Party's Tandem Switch for delivery to one (1) of the other Party's End Office Switches, the originating Party will order a direct trunk group to the other Party's End Office Switch. To the extent that CLEC has established a Collocation arrangement at a Qwest End Office Switch location and has available capacity, CLEC may, at its sole option, provide two-way direct trunk facilities from that End Office Switch to CLEC's Switch.

7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Qwest's End Office Switch.

7.2.2.1.5 If direct trunked transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties have not been able to resolve the issue through mid-point arrangements, and the Parties cannot agree as to which Party will provide the facility, the Parties may bring the matter before the Commission for resolution on an Individual Case Basis.

7.2.2.1.6 Regardless of the number of Location Routing Numbers (LRNs) used by a CLEC in a LATA, Qwest will route traffic destined for CLEC's End User Customers via direct trunking where direct trunking has been established. In the event that direct trunking has not been established, such traffic shall be routed via a Qwest Tandem Switch.

7.2.2.1.7 Exchange of FX-Like Traffic

7.2.2.1.7.1 Qwest and CLEC have been ordered by the Commission to implement an interim replacement for Virtual NXX (VNXX) which shall be referred to as "FX-Like Traffic".

7.2.2.1.7.2 Qwest and CLEC have been ordered by the Commission to establish a methodology for the exchange of FX-Like Traffic as an interim replacement for VNXX. The interim use of FX-Like Traffic, as described in this Section, shall be allowed to continue until such time as the Commission issues a decision resolving the issues concerning the use of VNXX.

7.2.2.1.7.3 For traffic exchanged between CLEC and Qwest end users, the FX-Like Traffic shall be exchanged at the Point of Interconnection (POI) located in the local calling area of such Qwest end users. FX-Like Traffic shall be routed over a direct end office trunk between CLEC's POI in the Local Calling Area and the Qwest end office serving the Local Calling Area of the Qwest end user. The direct end office trunk shall be established and paid for by CLEC under the terms of this Agreement. CLEC shall be responsible for ordering direct-final end office trunking and transport from the Qwest end office in the Local Calling Area of the Qwest end user to CLEC's POI locating in the Local Calling Area of the Qwest end user.

7.2.2.1.7.4 Intercarrier compensation for FX-Like Traffic exchanged between CLEC and Qwest during the interim period shall be \$0.0007 per MOU consistent with the rate for ISP-bound traffic established by the FCC.

7.2.2.1.7.5 FX-Like Traffic, for a Qwest end user originated call, is not tandem switched.

7.2.2.1.7.6 For purposes of implementing the interim arrangement, CLEC shall establish a virtual POI in each Qwest Local Calling Area for the exchange of FX-Like Traffic where CLEC does not currently have physical collocation facilities. CLEC agrees to compensate Qwest via monthly payments equivalent to the MRC charges for Private Line with EICT and Mux, ICDF frames and direct trunk transport (DTT) from the virtual POI to each end office in the Local Calling Area of the virtual POI as if facilities were provisioned to reach those Local Calling Areas where CLEC does not currently have physical collocation facilities. CLEC also agrees to make a one time payment to Qwest to reimburse Qwest as if Qwest had constructed ICDF collocation in each Local Calling Area where CLEC does not currently have physical collocation at this time.

7.2.2.1.7.7 If CLEC requires FX-Like Traffic arrangements with other LECs or wireless carriers, then CLEC is responsible for ordering FX-Like transit facilities from the POI in the applicable Local Calling Area and will have financial responsibility for direct trunking to the tandems for the exchange of transit traffic.

7.2.2.1.7.8 CLEC shall designate all Local Routing Numbers so that FX-Like Traffic associated with number portability routes directly from the Qwest end office to CLEC.

7.2.2.1.7.9 CLEC will convert to the FX-Like service as a project and be responsible to provide network diagrams and order submission as necessary to provision all FX-Like trunking and transport.

7.2.2.1.7.10 Qwest has negotiated this arrangement under protest to comply with the Commission's Order which requires the Parties to implement an interim "FX-Like" arrangement pending the resolution of the Generic VNXX Docket. By implementing the foregoing arrangement related to FX-Like Traffic, neither Party waives its right to advocate in the Commission's Generic VNXX Proceeding or any other proceeding (including an appeal), positions inconsistent with the interim arrangements herein.

7.2.2.1.7.11 CLEC shall cease using VNXX as of the date FX-Like Traffic facilities are in place or August 28, 2006 which ever is later. Until the date the FX-Like Traffic facilities are in place, Qwest will exchange VNXX traffic on a bill and keep basis. The interim period begins when the FX-Like Traffic architecture has been provisioned and continues until the Commission issues a Decision resolving the issues concerning the use of VNXX.

7.2.2.2 IntraLATA LEC Toll Traffic.

7.2.2.2.1 IntraLATA LEC Toll traffic shall be delivered to Qwest at the Access Tandem Switch or via separate trunks to Qwest's End Office Switch(es), as designated by CLEC.

7.2.2.3 Transit Traffic

7.2.2.3.1 Qwest will accept traffic originated by CLEC for termination to another CLEC, existing LEC, or wireless Carrier that is connected to Qwest's local and/or Access Tandem Switch. Qwest will also terminate traffic from these other Telecommunications Carriers to CLEC. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access.

7.2.2.3.2 To the extent Technically Feasible, the Parties involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP messages to facilitate full Interoperability and Billing functions.

7.2.2.3.3 The originating company is responsible for payment of appropriate rates to the transit company and to the terminating company. In the case of IntraLATA LEC Toll traffic where Qwest is the designated IntraLATA Toll provider for existing LECs, Qwest will be responsible for payment of appropriate usage rates.

7.2.2.3.4 When either Party receives an unqueried call from the other Party to a telephone number that has been ported to another local services provider, the transit rate will apply.

7.2.2.4 Jointly Provided Switched Access. The Parties will use industry standards developed to handle the Provisioning and Billing of Jointly Provided Switched Access (MECAB, MECOD, and the Parties' FCC and state access Tariffs). Each Party will bill the IXC the appropriate portion of its Switched Access rates. Qwest will also provide the one-time notification to CLEC of the billing name, billing address and Carrier identification codes of the IXCs subtending any Access Tandem Switches to which CLEC directly connects. This type of traffic is discussed separately in this Section.

7.2.2.5 Interface Code Availability. Supervisory signaling specifications, and the applicable network channel interface codes for LIS trunks can be found in the Qwest Technical Publication for Local Interconnection Service 77398.

7.2.2.6 Switching Options

7.2.2.6.1 SS7 Out-of-Band Signaling. SS7 out-of-band signaling is available for LIS trunks. SS7 out-of-band signaling must be requested on the order for new LIS trunks. Common Channel Signaling Access Capability Service may be obtained through the following options: (a) as set forth in this Agreement at Section 9.6 or 9.13; (b) as defined in the FCC Tariff # 1; or (c) from a third party signaling provider. Each of the Parties, Qwest and CLEC, will provide for interconnection of their signaling network for the mutual exchange of signaling information in accordance with the industry standards as described in Telcordia documents, including but not limited to GR-905 CORE, GR-954 CORE, GR-394 CORE and Qwest Technical Publication 77342.

7.2.2.6.2 Clear Channel Capability. Clear Channel Capability (64CCC) permits 24 DS0-64 Kbps services or 1.536 Mbps of information on the 1.544 Mbps/s line rate. 64CCC is available for LIS trunks equipped with SS7 out-of-band signaling. 64CCC must be requested on the order for new LIS trunks. Qwest will provide CLEC with a listing of Qwest Switches fully capable of routing 64CCC traffic through the Qwest website: <http://www.qwest.com/disclosures>. Where available to Qwest, Qwest will provide CLEC with the same 64CCC on an alternate route or if necessary via an overlay network.

7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by CLEC if the Qwest Central Office Switch does not have SS7 capability or if the Qwest Central Office Switch does not have SS7 diverse routing.

7.2.2.7 Measurement of terminating Local Interconnection Service (LIS) minutes begins when the terminating LIS entry Switch receives answer supervision from the called End User Customer's End Office Switch indicating the called End User Customer has answered. The measurement of terminating call usage over LIS trunks ends when the terminating LIS entry Switch receives disconnect supervision from either the called End User Customer's End Office Switch, indicating the called End User Customer has disconnected, or CLEC's Point of Interconnection, whichever is recognized first by the entry Switch. This is commonly referred to as "conversation time." The Parties will only charge for actual minutes of use and/or fractions thereof of completed calls. Minutes of

use are aggregated at the end of the Billing cycle by End Office Switch and rounded to the nearest whole minute.

7.2.2.8 LIS Forecasting

7.2.2.8.1 Both CLEC and Qwest shall work in good faith to define a mutually agreed upon forecast of LIS trunking.

7.2.2.8.2 Both Parties shall have the obligation to participate in joint planning meetings at semi-annual intervals to establish trunk design and Provisioning requirements. The Parties agree to provide mutual trunk forecast information to ensure End User Customer call completion between the Parties' networks. Such forecasts shall be for LIS trunking that impacts the Switch capacity and facilities of each Party. Qwest shall provide trunk group specific projections to CLEC on or before the date of the joint planning meeting.

7.2.2.8.3 Switch capacity growth requiring the addition of new switching modules may require six (6) months to order and install. To align with the timeframe needed to provide for the requested facilities, including engineering, ordering, installation and make ready activities, for capacity growth, Qwest will utilize CLEC's semi-annual forecasts and near-term demand submitted on Unforecast Demand Notification Forms to ensure availability of Switch capacity.

7.2.2.8.4 The Parties agree that trunk forecasts are non-binding and are based on the information available to each respective Party at the time the forecasts are prepared. Unforecasted trunk demands, if any, by one Party will be accommodated by the other Party as soon as practicable based on facility availability. Switch capacity growth requiring the addition of new switching modules may require six (6) months to order and install.

7.2.2.8.5 Intentionally Left Blank

7.2.2.8.6 In the event of a dispute regarding forecast quantities, where in each of the preceding eighteen (18) months, trunks required is less than fifty percent (50%) of forecast, Qwest will make capacity available in accordance with the lower forecast.

7.2.2.8.6.1 Three (3) weeks after a forecasting cycle, Qwest will provide CLEC feedback in the form of a potentially lower forecast. In the event of a dispute regarding forecast quantities, where in each of the preceding eighteen (18) months, trunks-required is less than fifty percent (50%) of trunks in service each month, Qwest will make capacity available in accordance with the higher forecast if CLEC provides Qwest with a deposit according to the following terms. As to the difference between the lower and higher forecast, Qwest reserves the right to require, prior to construction, a refundable deposit of up to one hundred percent (100%) of the trunk-group specific estimated cost to provision the new trunks, if CLEC's trunk state-wide average utilization over the prior eighteen (18) months is less than fifty percent (50%) of trunks in service each month. Qwest will return the deposit if CLEC's state-wide average trunks in service to trunk usage (utilization) ratio exceeds fifty percent

(50%) within six (6) months of the forecasting period to which the deposit applies. If CLEC does not achieve the fifty percent (50%) utilization within six (6) months, Qwest will retain a pro-rata portion of the deposit to cover its capital cost of Provisioning. The pro-rata shall assume a full refund when the state-wide average utilization ratio meets or exceeds fifty percent (50%) for one (1) of the six (6) months following receipt of deposit. The pro-rata assumes one-half (1/2) of the deposit is refunded when the highest state-wide average utilization ratio for any one of the six (6) months after receipt of deposit is twenty-five percent (25%). In the event Qwest does not have available facilities to provision Interconnection trunking orders that CLEC forecasted and for which CLEC provided a deposit, Qwest will immediately refund a pro rata portion of the deposit associated with its facility shortfall. Ancillary trunk groups, such as mass calling, are excluded from the ratio.

7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.

7.2.2.8.7 Joint planning meetings will be used to bring clarity to the process. Each Party will provide adequate information associated with the Qwest LIS Trunk Forecast Forms in addition to its forecasts. During the joint planning meetings, both Parties shall provide information on major network projects anticipated for the following year that may impact the other Party's forecast or Interconnection requirements. No later than two (2) weeks prior to the joint planning meetings, the Parties shall exchange information to facilitate the planning process. Qwest shall provide CLEC a report reflecting then current spare capacity at each Qwest Switch that may impact the Interconnection traffic. Qwest shall also provide a report reflecting then current blocking of local direct and alternate final trunk groups, Interconnection and non-Interconnection alike. CLEC will be provided Interconnection trunk group data on its own trunks. Qwest shall also provide a report reflecting Tandem Switch routed Interconnection trunking that has exceeded 512BHCCS. The information is Proprietary, provided under non-disclosure and is to be used solely for Interconnection network planning.

7.2.2.8.8 In addition to the above information, CLEC shall provide:

- a) Completed Qwest LIS Trunk Forecast Forms; and
- b) Any planned use of an alternate Tandem Switch provider.

7.2.2.8.9 In addition to the above information, the following information will be available through the Local Exchange Routing Guide or the Interconnections (ICONN) Database. The LERG is available through Telcordia. ICONN is available through the Qwest Web site.

- a) Qwest Tandem Switches and Qwest End Office Switches (LERG);

Exhibit E

Exhibit Redacted

Exhibit F

Exhibit Redacted

Exhibit G

Exhibit Redacted

Exhibit H



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

via email and overnight mail

August 25, 2008

Mr. Ethan Sprague
Vice President Regulatory
4210 Coronado Avenue
Stockton, CA 95204
esprague@pacwest.com

Re: *Response to Letter of August 15, 2008 and Notice of Default of Interconnection Agreement*

Dear Mr. Sprague:

This letter is in response to your letter of August 15, 2008 in which you request, on behalf of PacWest Telecomm, Inc. ("PacWest"), to adopt an interconnection agreement between XO Communications Services, Inc. and Qwest Corporation ("Qwest"). As discussed below, Qwest is not required to entertain PacWest's request, due to PacWest's default of the current Interconnection Agreement (the "Agreement") between Qwest and PacWest in its payment obligations.

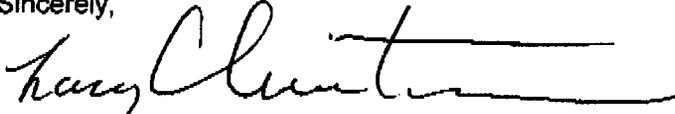
As you well know, PacWest adopted a current interconnection agreement, which was effective March 22, 2008 with an explicit expiration date of June 29, 2009. The Agreement forbids the exchange of VNXX traffic, utilizing, per Commission order, what is referred to as, "FX-Like Traffic," and requiring payment for facilities as discussed in Section 7.2.2.1.7 and its subsections. Section 7.2.2.1.7.4 required Qwest to pay terminating compensation for the FX-Like Traffic, and Section 7.2.2.1.7.6 and other subsections required PacWest to pay Qwest for the facilities used to carry the FX-Like Traffic. Qwest has already paid PacWest and, according to the process established in the Agreement, established the facility billing and sent invoices to PacWest. However, PacWest has refused to comply with the payment obligations and compensate Qwest according to the terms of the Agreement.

PacWest has not legitimately disputed the invoices pursuant to Section 5.4.4 of the Agreement, thus, pursuant to Section 5.4.2 of the Agreement, this letter also serves as notice that Qwest will discontinue processing any orders from PacWest under the Agreement ten (10) business days after the date of this letter. In addition, since PacWest is already in default of its payment obligations, Qwest is under no obligation to consider PacWest's request under the Agreement for alternate agreements or amendments to the Agreement. In addition, Qwest does not waive, and specifically

reserves its rights to pursue further rights claims and/or actions available to it, including but not limited to disconnection of PacWest facilities and cessation of providing services under the Agreement.

Upon PacWest's compliance with the terms and conditions of the Agreement, Qwest will duly consider PacWest's request in your letter and respond accordingly. Please let me know if you have any questions or need any further information, thank you in advance for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Christensen". The signature is written in black ink and is positioned above the printed name.

Larry Christensen

cc: Jeff Nodland, Qwest Corporate Counsel
Maureen Scott, Arizona Corporation Commission
Richard Boyles, Arizona Corporation Commission
Joan Burke, Osborn Maledon, P.A, Counsel to Pac-West

Exhibit I

Exhibit Redacted

Exhibit J

Exhibit Redacted